GUIDELINES FOR TESTIFYING IN COURT

by

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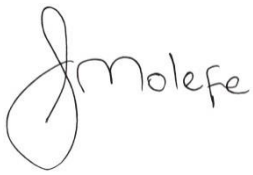
DECLARATION

I, Sannah Nthabiseng Molefe, student number 33228574, declare that “Guidelines for testifying in court” is my own work and that all sources that were used or quoted have been duly acknowledged by means of citations and references.



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ABSTRACT

This study was conducted with the aim to research guidelines for uniformed members, detectives, and public witnesses, for use in testifying in court. The researcher reviewed relevant literature, both national and international, in order to gain an in-depth understanding of the research problem.

The researcher conducted the research on the basis of an empirical design, because it involved going out into the field and ascertaining the personal experiences and knowledge of the participants. The explicit design was considered the most suitable for this research, because the researcher put everything in the open by checking the weak points and the strong points regarding testifying in court. This means that everything was made open, even police testimony.

Key terms:

Criminal investigation, demeanour, evidence, investigation, suspect, testimony, testify, witness, crime scene, Locard principle.

LIST OF ABBREVIATIONS and acronyms

DNA	Deoxyribonucleic Acid
NALA	National Association of Legal Assistance
NPA	National Prosecuting Authority
POLSA	Police South Africa
RoC	Resolving of Crime
SAPS	South African Police Service
SRS	Simple Random Sampling
UNISA	University of South Africa
VUT	Vaal University of Technology

CONTENTS

CHAPTER 1

GENERAL ORIENTATION

1.1 INTRODUCTION

This study focused on investigation and giving evidence (testifying) in court. It is important to start with the definition of "investigation", which is "the logical and intelligent collection of information through inquiry and examination for the purpose of developing evidence in order to solve a problem" (Ferraro, 2012:2). Most significantly, it is the basis of specific pieces of evidence. The investigators must establish proof that the suspect is guilty of an offence (Orthmann & Hess, 2010:6). However, to prove or disprove an assertion, claim or allegation, the prosecution and litigation are by-products in an investigation process (Ferraro, 2012:2).

Marais (1992:198) believes that the product of the total investigation process is the trial, and the manner in which evidence is given in court – and which evidence, from a judicial point of view, can be regarded as "all relevant information which, if admissible in court, is presented". This leads to giving evidence in court, and the competency of the police official is finally judged in court when illogical reasoning or poor judgement is revealed (Marais, 1992:204).

Hamlet (2007:1), however, is of the view that testifying in court is an art that can only be mastered through practice and experience. For this reason, the police must be cautious and meticulous with the material they gather (Stelfox, 2013:2). The Constitution of the Republic of South Africa Act 108 of 1996 carries significant value, as it creates the context within which police officials work, and identifies the values that are inextricably intertwined in police work. It also stipulates the role and responsibilities of the police when it comes to the police undertaking their duties (Hansen, 2013:10).

Karp (1998:188) states that the only way one can know who the role players are in a criminal activity, is by encouraging members of the community to provide the police with information. Huey (2007:110) maintains that the police cannot be everywhere, and they depend on the community to be their eyes and ears and to

call them when a suspicious activity occurs. Gold-Bikin and Kolodny (2003:93) state that a lay witness may include anyone who can add evidence to prove a case. In other words, cases are not won on the basis of the number of witnesses called, but on what each witness adds to prove the case. The National Association of Legal Assistance (NALA) (2010:1) suggests that lay witnesses or fact witnesses testify according to their five senses: what they saw, heard, touched, tasted and smelled. Testimony based on these five senses is admissible in court depending on the ability of the witness to remember the incident.

Lay witnesses have a range of responsibilities to help the police bring criminals to justice (Davey, 2011:268). Conversely, the prosecutor must develop constructive working relations with law enforcement, particularly because prosecutors depend on the police to provide both the suspects and the evidence necessary to convict offenders. In return, the police depend on prosecutors to get offenders off the streets. Thus, prosecutors and police must develop positive working relations, given that they rely on each other to reach their objectives (Pyne, Oliver & Marion, 2016:531). Police officials must use their training, experience and work routines to decide whether arrest and prosecution would be worthwhile. Prosecutors cannot control the types of cases brought to them, because they cannot investigate crimes on their own (Cole, Smith & De Jong, 2015:396).

1.2 PROBLEM STATEMENT

Welman and Kruger (2001:11) write that the statement of the research problem requires the delineation of the problem area and the description of one or more research problems. Singleton and Straits (1999:86) are of the opinion that if there is no problem, there is no purpose in conducting the research. The problem that the researcher identified in practice was that neither uniformed members and detectives from the SAPS, nor public witnesses, are familiar with the techniques for testifying in court, although they often find themselves having to do so. Witnesses who testify in court are bound to be nervous and unsure.

The researcher was trained to become a police official in a six-month basic police course at the SAPS Academy in Tshwane. In working for the SAPS, the researcher became aware of the fact that the guidelines for testifying in court had

not been extensively deliberated on in the police course she had attended. Some advanced police training is offered, such as the Resolving of Crime (RoC) course, which is the basic training for all detectives in the SAPS.

The fact that RoC training is offered to detectives indicates a training divide between the detectives and the uniformed members. It reflects bias in the SAPS and means that the uniformed members will always make mistakes and will lack the confidence to testify in court or answer any question that relates to testifying in court confidently. Uniformed members' mistakes include the lack of ability to handle a crime scene properly, which affects their testimony in court. The curriculum of the RoC qualification describes RoC as basic training, which means that it covers general topics such as testifying in court (where the focus is on the law of evidence), presenting evidence in court, managing crime scenes, and promoting criminal justice. This means that if all police officials received the RoC training, it would improve the way they testify in court.

The researcher worked at Evaton police station, which falls under the Sebokeng cluster, in turn situated in the Vereeniging cluster, from February 2004 until July 2011 as a Client Service Centre member, addressing various complaints. As part of her duties, she attended court cases as a witness on several occasions. She was then transferred to the Detective Branch, where she worked for a year and four months. The researcher had received in-service training for testifying in court. Among other topics, this course taught her how to dress and present herself. This is important, in that uniformed members do not always attend court in uniform. The researcher has observed in practice that police officials do not know how to testify or present themselves in a professional manner in court.

During the pre-research informal interviews, the researcher spoke to police, detectives, public witnesses and prosecutors about the identified problem. These interviews gave her a clear indication that not only police officials, but also witnesses, do not know how to testify in court. An indication of how this can affect the outcome of a case was shown in *S v Dewani* (CC15/2014) [2014] ZAWCHC 188 (8 December 2014) (Schroeder, Bezuidenhout & Geach, 2014:1), where Anni Ninna Dewani was murdered on 11 November 2010 in the Gugulethu

township near Cape Town, after the taxi she was travelling in was hijacked. Shrien Dewani, her husband, was the number one suspect in this murder case.

On 12 September 2014, the main witness failed to give relevant testimony, and evidence that was supplied by the police official was not sufficiently substantive. In addition, Mbolombo, the former hotel receptionist, had fabricated his testimony and admitted to lying to the police in the past. As a result, contradictions in his claims since he first spoke to investigators four years ago, were highlighted (Schroeder et al., 2014:1). Judge Jeanette Traverso threw the case out of court, arguing that the prosecution had failed to put forward sufficient evidence to prove that Dewani had planned the murder (Schroeder et al., 2014:1).

A second case, that of Oscar Pistorius, went to court on 13 March 2014, whereby Colonel Gerhard Vermeulen admitted in his testimony that the toilet door in the athlete's apartment was not handled with care, and that potentially important evidence was missed at the crime scene, which could have had far-reaching consequences for the prosecution's case (*Police admit evidence may be tainted*, 2015).

1.3 THE AIM OF THE RESEARCH

According to Mouton (1996:103), the aim of research should be to establish facts and gather new data. Shuttleworth (2008:1) states that the ultimate aim of research is to generate measurable and testable data, and gradually add to the accumulation of human knowledge. The aim of this research was to research guidelines for uniformed members and detectives of the SAPS, as well as public witnesses, for testifying in court. The research was limited to Sebokeng Cluster because of practical and financial constraints. The research was limited to uniformed members and detectives not linked to any specialised unit.

1.4 THE PURPOSE OF THE RESEARCH

The researcher intended to evaluate the manner in which uniformed members, detectives and public witnesses testify in court, the way they address the court and handle crime scenes, as well as the sequence of events when testifying,

organising evidence, and the giving evidence in chief – with the latter aim focusing on witnesses lying under oath.

Witnesses can help the court to recreate the crime scene, and convince the court with their testimony about the incident that took place. According to Denscombe (2002:25), the research purpose is to indicate the focus of an investigation and its direction, which will help to determine the criteria according to which the outcome of the research will be evaluated. Denscombe (2002:27) is of the view that the main reason for embarking on a piece of research is to solve a practical problem or to improve procedures. In this case, the researcher undertook the research to improve procedures, by making certain recommendations that could enhance the knowledge and ability of witnesses to testify in court. As suggested by Denscombe (2002:26–27), there are six possible purposes for doing research. This study focused on four of these purposes, as described by Denscombe (2002:27):

- **Evaluate:** The researcher attended court, and evaluated the way uniformed members, detectives and public witnesses testified. The evaluation revealed that these role players did not know how to answer questions, how to address the court, or how to narrate events in sequence.
- **Explore:** The researcher reviewed both national and international literature, and recorded pertinent knowledge and data obtained from various sources, such as the study participants, to organise and categorise the information. She used this information to discover and improve knowledge in this field of study.
- **Develop good practice:** The researcher wished to tackle the existing problem and improve the performance of detectives, uniformed members and public witnesses, in court. The researcher formulated guidelines for testifying in court, that clearly indicated how witnesses should testify in court. This was intended to ensure that good practice is developed for witnesses to deliver effective testimony in court.
- **Empower members:** These guidelines will be made available to SAPS management as the custodians of the investigation of criminal cases. The SAPS management will be requested to present these guidelines for testifying in

court to members during training sessions or workshops. These guidelines will ensure that members inform witnesses on how to effectively give testimony in court. In terms of on-going professional development, line managers will be encouraged to recognise the challenges their subordinates face, and devise some means to resolve them – whether it be through workshops, training, or by giving them an opportunity to further their studies.

1.5 RESEARCH QUESTIONS

Jesson, Matheson and Lacey (2011:18) describe that a research question specifies the structure for the whole of the literature review of a research study and recommend the defining of the research question is a crucial step that points the way for the research investigation.. Denscombe (2012:82) is of the same view that research questions display in what way the research will be put into practice.

1.6 KEY THEORETICAL CONCEPTS

According to Leedy and Ormrod (2005:119), the purpose of defining key concepts is to prevent any misunderstandings between the researcher and the academic community who might use the research. At the beginning of their project, according to Noak and Wincup (2004:122), researchers give advance thought to key themes that they wish to address, and design their projects accordingly. The definitions of the key concepts relevant to this study are provided in the next section. Berg (2007:36) asserts conceptualising a term in order to ensure that readers understand what is meant by certain concepts and to further enable readers to appraise how effectively identified key concepts are applied in a study.

1.6.1 Criminal investigation

“Criminal investigation is a process of discovering, collecting, preparing and presenting evidence to determine what happened and who is responsible” (Orthmann & Hess, 2013:8).

1.6.2 Demeanour

This refers to the witness’s behaviour, manner of testifying, personality, and the general impression that they create (Bellengere, Palmer, Theophilopoulos,

Whitcher, Roberts, Melvelle, Picarra, Illsley, Nkuta, Naudé, Van der Merwe, Reddy, 2013:29)

1.6.3 Evidence

Bellengere et al. (2013:3) define evidence as “any information that a court has formally admitted in civil or criminal proceedings, or at administrative or quasi-judicial hearings”.

1.6.4 Investigation

“An investigation is the systematic and thorough examination of and enquiry into something or someone” (Dempsey, 2003:29). “An investigation not only refers to identification, recording and collection of all potential evidentiary material but includes the interpretation of circumstances surrounding the commission of the crime by reconstructing the incident to determine a sequence of events which may reveal a *“modus operandi””* (Horswell, 2004:4*)*. Investigation includes interviewing witnesses or suspects, collecting documentatry evidence, or carrying out forensic analyses (Carter, Ellis & Jalloh, 2016:166).

1.6.5 Suspect

“One about whom there is some apprehension that [he or] she may be implycated in the offence under investigation and, it may further be, whose version of events is mistrusted or disbelieved” (Joubert, 2013:240).

1.6.6 Testimony

“Testimony is simply evidence given in oral, a formal statement especially, the one given in court” (Swanson, Chamelin & Territo, 2003:769). The court only admitting a witness who had personal knowledge of facts, events, or personal opinions. It is accepted as seed which will led to future change (Bowers, 2014:2).

1.6.7 Testify

To testify is “to provide evidence as a witness, subject to an oath or affirmation, in order to establish a particular fact or set of facts” (*The Free Dictionary*, 2014:1).

1.6.8 Witness

“A witness is one who sees an event taking place or knows by personal presence, being there” (Gilbert, 2004:119). A witness is someone who can provide a first-hand accounts of event that he or she saw, head or experienced (Van Rooyen, 2012:15).

1.6.9 Crime scene

Becker and Dutelle (2013:28) state that all crime scenes contain physical evidence – that is, evidence that can be touched, seen or otherwise perceived, using the unaided senses or forensic techniques.

1.6.10 Locard principle

Van Rooyen (2012:20) explains that when two or more objects or people come into contact with one another, clues are usually left behind.

1.7 RESEARCH DESIGN

Research design is the programme that guides the investigator in the process of collecting, analysing and interpreting observation (Creswell, 2012:15). Mouton (2001:55) states that a research design is a “plan or blueprint of how you intend to conduct the research”. The current research study involved going out into the field and ascertaining the personal experience and knowledge of the participants. This is the type of research that Mouton (2001:149) suggests requires an empirical design. A research design can be defined as the logical sequence that connects the empirical data to a study’s initial research questions and ultimately to its conclusions (Shakya, 2009:159). The empirical study involves creation of a hypothesis that is using statical techniques based on the dat collection (Malhotra, 2016:103).

Leedy and Ormrod (2005:65) state that the research design provides a foundation and the form of the research procedures and the collection and analysis of the data. The primary source of information for this study was face-to-face interviews. The secondary source was a thorough review of current relevant literature.

The empirical design is a logical, rather than a mathematical, operation (Maxfield & Babbie, 2001:380). Maxfield and Babbie (2014:4), experience and observation are key contributors of knowledge in empirical research. Maxfield and Babbie (2014:6), furthermore, describe empirical research as the production of knowledge based on experience or observation.

Hoyle, Harris and Judd (2002:18) emphasise that the empirical design uses observation that is systematic in attempting to avoid biases by, for example, standardising the interview. In choosing a research design, the researcher perused implicit and explicit research designs. Evaluation of these design types revealed that the explicit design was more appropriate for the study, as the design is transparent, and its strengths, limitations and consequences can be clearly understood (Maxwell, 2005:3). Implicit designs were deliberately avoided, because they are closed rather than open.

The explicit design was considered best for this research because it allowed the researcher to put everything in the open after establishing the weak points and the strong points regarding testifying in court. This means that everything was made open, even police testimony. Mouton (2001:133) explains that an empirical design is about unearthing facts and discoveries, or the validation of the existence of formally hypothesised phenomena. The researcher achieved this by conducting individual face-to-face interviews with police officials, prosecutors and public witnesses, in order to obtain first-hand, factual information on the topic. It allowed the researcher to study the phenomena from the personal experience of the participants – in other words, from the participants' points of view, as explained by Leedy and Ormrod (2005:94). Only one schedule was use for the interviews to test the general knowledge of the participants.

1.8 RESEARCH APPROACH

Qualitative methodology is a research approach used for exploring and understanding the meaning that individuals or groups ascribe to a social or human problem (Creswell, 2013:4). This research was aimed at solving the problems associated with testifying in court, as experienced by witnesses to criminal actions being tried in court. Babbie (2013:24) states that every observation is

qualitative at the outset, whether it is one's experience of someone's intelligence, the location of a pointer on a measuring scale, or a tick entered on a questionnaire. For example, when one says that a person is intelligent, one has made a qualitative assertion (Babbie, 2013:24). Qualitative research considers "what comes before [the study] or what surrounds the focus of the study" (Neuman, 2000:146). The qualitative research approach is presented in the form of a comprehensive literature study and semi-structured, individual, face-to-face interviews or focus groups with the study participants (Leedy & Ormrod, 2005:95) and addresses the research questions. Using a qualitative approach, the researcher gathered data by means of an interview schedule, and by conducting a literature review of current literature relevant to the topic of the research.

1.9 POPULATION

The "population" of a study is a gathering of things, occurrences or individuals having some general feature that the researcher has an interest in studying. "Population" is defined as a group of persons or elements, or both, that share a set of common characteristics as specified by the investigator (Mouton, 1996:134). A population can be described as the "totality of persons, events, organisation units, case records or other sampling units with which the research problem is concerned" (De Vos, Strydom, Fouché & Delport, 2007:199). (DePoy & Gitlin, 2016:191). The researcher demarcates characteristics of the population, including individuals or units to be studied to use for research and those to be "excluded".

The "population" of this study refers to the police, prosecutors and public witnesses of South Africa. The researcher did not use the whole population – only the Sebokeng Cluster, for the purposes of this research, because of financial and time constraints. Based on these reasons, the researcher chose Sebokeng Cluster.

1.10 TARGET POPULATION

The police stations from the Sebokeng Cluster were chosen via simple random sampling, with each station having an equal opportunity of being selected (Leedy

& Ormrod, 2001:201). Target population clearly identify inclusive and exclusive criteria for partcipantion in the study (Daniel, 2012:9).

The researcher wrote the names of all eight police stations on a piece of paper. She then separated each of the names (having eight name tags in possession) and put them in a small container, and, blindfolded, shook the container and randomly chose three name tags. In this way, Sebokeng, Evaton, and Orange Farm were drawn from the container. According to Welman and Kruger (2001:122), as well as Singleton and Straits (1999:138), a target population is that population to which researchers would like to generalise their result. Target Population is a crucial feature of sampling (Maxfield & Babbie, 2014:186).

Sebokeng Cluster is situated in the province of Gauteng, and the cluster consists of the following police stations: Barrage, Boipatong, Ennerdale, Sebokeng, Evaton, Orange Farm, Sharpeville and Vanderbijlpark. Taeuber (2006:64) states that a scientifically selected sample is not selected haphazardly or only from the people who volunteer to participate. The sample is chosen so that every person from the target population has a random and known chance of being selected (Taeuber, 2006:64). A “representative” sample implies that a researcher is able to generalise about the characteristics of the target population based on the characteristics of the sample. A probability sample allows a researcher to make inferences about the target population (Taeuber, 2006:64).

Marlow (2005:139) indicates that random sampling is the easiest of the sampling methods, where each individual case in the population theoretically has an equal chance of being selected for the sample. Siegel (2012:192) states that “a random sample or simple random sample is selected such that (1) each population unit has an equal probability of being chosen, and two (2) units are chosen independently without regard to one another”. He further states that “by making population units equally likely to be chosen, random sampling is as fair and un-biased as possible” (Siegel, 2012:192). The researcher used random sampling, because it is fair and unbiased, and is aimed at gathering as much independent information as possible (Siegel, 2012:192).

Each population element must be able to be identified and numbered. The selected numbers help to determine which population elements are to be included in the sample (Blaikie, 2003:168). Maxfield and Babbie (2014:186), states that a target population consists of all the elements from which the sample is actually selected.

The researcher employed simple random sampling to choose three police stations out of the eight. This was considered the most accessible way to reach the uniformed members, detectives, witnesses and prosecutors in the Sebokeng cluster. Sebokeng police station had a total of 291 uniformed members, Evaton police station had 261, and Orange Farm 123 uniformed members. Sebokeng police station had a total of 78 detective members, Evaton police station 48, and Orange Farm had 60 detective members. In addition, the researcher resided in this area and was acquainted with the neighbourhoods in this cluster.

1.10.1 Selection of police stations

Simple random sampling is the method of selecting units from the population where all possible samples are equally likely to be selected (Singh & Mangat, 2013:30). The reason for choosing simple random sampling is that every individual has a chance to be chosen in an unbiased manner.

As mentioned earlier, Sebokeng Cluster is situated in Gauteng, and the cluster consists of eight (8) police stations. According to statistics given by the Sebokeng Cluster office, the cluster consists of 321 members out of a total of 1,423 police officials in all eight stations. The researcher resided in this area, and was therefore well acquainted with the neighbourhoods in this cluster.

1.11 SAMPLING

Systematic random sampling, simple random sampling and convenience sampling were used in this research. The researcher used systematic random sampling to select the samples of uniform members and detectives. Simple random sampling was used to select the police stations, and convenience sampling was used to select the public witnesses. Simple random sampling (SRS) is the simplest and most common method of selecting a sample, in which

the sample is selected unit by unit, with equal probability of selection for each unit at each draw (Singh, 2003:71). Simple random sampling was used to select the police stations, and convenience sampling was used to select the public witnesses on the basis of their availability and willingness to respond (Gravetter & Forzano, 2012:151 and Black, 2010 224).

Welman and Kruger (2005:46) consider simple random sampling to be the most basic probability sampling technique, since each general sample will have an equal opportunity of being included in the simple random sample. Systematic random sampling involves selecting individuals according to a predetermined sequence. The sequence originates by chance; for instance, the researcher might scramble a list of units that lie within the population of interest, and then select every 19th unit on the list (Leedy & Ormrod, 2005:203). Lohr (2010:51) gives the example that a systematically selected sample from an order list of accounts receivable is forced to contain some large amounts and some small amounts. Systematic random sampling is similar to simple random sampling, except that, in the former, all individuals defined in the population are known to the researcher (Bellini & Rumrill, 2009:56).

De Vos, Strydom, Fouché and Delport (2011:228) state the difference between systematic random sampling and simple random sampling, as follows: In systematic random sampling, all subsequent cases are selected according to a particular interval; for instance, every fifth or tenth case on a list of names, depending on the percentage sample needed (Rubin & Babbie, 2005:266–267). Alternatively, the researcher can decide from the beginning that each tenth case on an alphabetical list will be selected; for instance, numbers 10, 20, 30, 40, 50 and so on.

The researcher used systematic random sampling to select samples A and B. The reason for choosing this sampling method was that it ensured that she was able to obtain as many subjects as possible in a random yet logical manner. This manner ensured uniformity and a random spread of interviews.

1.11.1 Selection of uniformed members – Sample A

Systematic sampling involves selecting individuals – or perhaps clusters – according to a predetermined sequence. The sequence must originate by chance. For instance, one might create a randomly scrambled list of units that lie within the population of interest, and then selected every tenth unit on the list (Leedy & Ormrod, 2013:212).

Sample A consisted of uniformed members from the selected stations of the Sebokeng cluster. Sebokeng police station had a total of 291 members, Evaton police station consisted of 261 members, and Orange Farm had 123 members. In total, the uniform members from the three police stations numbered 675. For Sample A, the researcher used systematic random sampling to select 5% of the uniformed members from each police station. A separate alphabetical name list for each of the three stations was obtained by the researcher, and each name on the list was numbered. The sequence originated by chance. Three Sample A samples were selected as follows:

- Sample A1 consisted of uniformed members from Sebokeng police station. Five per cent of 291 is 14.5, so the researcher selected 15 members from the list for Sebokeng station. To get a starting point on the list, the researcher divided 291 by 15 and got 20 (rounded up from 19.4). The researcher then took 20 separate pieces of paper, numbered each from 1 to 20, put all in a hat, and shook it. She then drew one piece of paper, which was the number 5. Number 5 on the list was then taken as the starting point. After number 5, the researcher selected every 20th number until she had a total of 15 numbers.
- Sample A2 was selected from the members from Evaton police station. Five per cent of 261 is 13, so the researcher selected 13 members from the list for Evaton station. To get a starting point on the list, the researcher divided 261 by 13 and got 20. The researcher then took 20 separate pieces of paper, numbered each from 1 to 20, put all in a hat, and shook it. She then drew one piece of paper, which was numbered 11. Number 11 on the list was then taken as the starting point. After 11, she selected every 20th number until she had a total of 13 numbers.

- Sample A3 was selected from the members from Orange Farm police station. Five per cent of 123 is 6, so the researcher selected six members from the list for Orange Farm police station. To get a starting point on the list, the researcher divided 123 by 6 and got 20 (rounded down from 20.5). The researcher then took 20 separate pieces of paper, numbered each from 1 to 20, put all in a hat, and shook it. She then drew one numbered piece of paper, which had the number 9 on it. Number 9 on the list was then considered the starting point. After number 9, she selected every 20th number until she had a total of six numbers.

1.11.2 Selection of detective members – Sample B

The detective participants were grouped under Sample B, which consisted of detectives from the Sebokeng cluster. Sebokeng police station had a total of 78 members, Evaton police station consisted of 48 members, and Orange Farm had 60 members. The total number of detectives from the three police stations was 186. Sample B was selected as follows:

- For Sample B1, the researcher used systematic random sampling to select five per cent of the detectives from Sebokeng. Five per cent of 78 is 4, so the researcher selected four members from the list of detectives for Sebokeng police station. To obtain a starting point on the list, the researcher divided 78 by 4 and got 20 (rounded up from 19.5). The researcher then took 20 separate pieces of paper, numbered each from 1 to 20, put them all in a hat, and shook it. She then drew one numbered piece of paper, which had the number 3 on it. Number 3 on the list was then considered the starting point. After number 3, the researcher selected every 20th number until she had a total of four numbers.
- For Sample B2, the researcher used systematic random sampling to select five per cent of the detectives from Evaton. Five per cent of 48 is 2, so the researcher selected two members from the list of detectives for Evaton police station. To reach a starting point on the list, the researcher divided 48 by 2 and got 24. The researcher then took 24 separate pieces of paper, numbered each from 1 to 24, put all in a hat, and shook it. She then drew one numbered piece of paper, which had the number 21 on it. Number 21 on the list was

then taken as the starting point. After number 21 she selected every 24th number until she had a total of two numbers.

- For Sample B3, the researcher used systematic random sampling to select five per cent of the detectives from Orange Farm. Five per cent of 60 is 3, so the researcher selected three members from the list of detectives for Orange Farm police station. To reach a starting point on the list, the researcher divided 60 by 3 and got 20. The researcher then took 20 separate pieces of paper, numbered each from 1 to 20, put all in a hat, and shook it. She then drew one numbered piece of paper, which had the number 15 on it. Number 15 on the list was then considered the starting point. After number 15, the researcher selected every 20th number until she had a total of three numbers.

1.11.3 Selection of public witnesses – Sample C

Sample C consisted of public witnesses. Convenience sampling was employed to select witnesses who were easy to find. Weathington, Cunningham and Pittenger (2010:205) write that convenience sampling is a process by which the researcher chooses members of the population who are easy to find. With convenience sampling, the units included in the sample are chosen because of their accessibility (Anderson, Sweeney & Williams, 2012:976). The researcher went to the three courts (Sebokeng, Vanderbijlpark and Vereeniging) that serve Orange Farm, Evaton and Sebokeng police stations, in order to find witnesses who had testified in these courts. The researcher used convenience sampling, as mentioned in Stommel and Wills (2004:301), to select five participants each for samples C1, C2 and C3, based on the following reasons:

- Using a sample of a convenient population reduces cost and time.
- Convenience sampling allowed the researcher to take a sample from a group to which she had access.

Convenience sampling is probably used often than other kind of sampling, it id an easier, less expensive, timely technique (Gravetter & Forzano, 2012:151).

The researcher used the self-selection bias technique of Chilisa and Preece (2005:101), where participants are allowed to volunteer to participate in a survey, as follows:

- For Sample C1, the researcher went to Sebokeng court on a Monday, and stood at the court door so that she could identify any witnesses who had testified in court. She then introduced herself and told the witnesses the reason for wanting to interview them. The researcher then conducted interviews with these witnesses in an available office at the court. The researcher used convenience sampling, and selected five public witnesses from Sebokeng court who were willing and volunteered to participate in the study.
- For Sample C2, the researcher went to Vanderbijlpark court on the following Tuesday and stood at the court door to identify any witnesses who had testified in court. She introduced herself to the witnesses and explained why she wanted to interview them. As with Sample C1, the researcher conducted an interview with one of the witnesses in an available office at the court. The same method was applied with other witnesses until the researcher had interviewed five witnesses from Vanderbijlpark court.
- For Sample C3, the researcher went to Vereeniging court on the following Wednesday and stood at the court door to wait for any witnesses who had testified in court. She introduced herself to the witnesses and told them why she wanted to interview them. She conducted an interview with one of the witnesses in an available office at the court. The same method was applied with other witnesses, until the researcher had interviewed five witnesses from Vereeniging court. In all, 15 public witnesses were interviewed. All the witnesses who were interviewed were available, and volunteered to be interviewed once the rationale for the study had been explained to them.

1.11.4 Selection of prosecutors – Sample D

Prosecutors work closely with the uniformed members, detectives and public witnesses. To obtain a conviction, prosecutors depend on the evidence and testimony of the uniformed members, detectives and public witnesses. Sample D of the study thus consisted of prosecutors. As mentioned above, the Sebokeng cluster has three courts: Sebokeng, Vereeniging, and Vanderbijlpark. The total number of prosecutors from the three courts was 39. Sebokeng court had 14 prosecutors, Vereeniging had 17, and Vanderbijlpark had eight (8) prosecutors. According to Leedy and Ormrod (2001:214), in a simple random selection every

member of the population has an equal chance of being chosen. Simple random selection was employed by the researcher to select one prosecutor from each court. The name of one prosecutor was selected from each court. In simple random sampling, each element has an equal chance of being selected; for example, when names are drawn randomly from a hat (Weisberg, 2005:238).

To select this sample, the researcher visited the three courts, in order to select three prosecutors working in these courts, using the simple random sampling method:

- Sample D1 was selected from among the Sebokeng prosecutors. The researcher took 14 separate pieces of paper, numbered each from 1 to 14, put all in a hat, and shook it. She then drew one piece of paper, which represented the prosecutor to be interviewed from Sebokeng court.
- Sample D2 was selected from among the Vereeniging prosecutors. The researcher took 17 separate pieces of paper, numbered each from 1 to 17, put all in a hat, and shook it. She then drew one piece of paper, which represented the prosecutor from Vereeniging court to be interviewed.
- Sample D3 was selected from among the Vanderbijlpark prosecutors. The researcher took eight separate pieces of paper, numbered each from 1 to 8, put all in a hat, and shook it. She then drew one piece of paper, which represented the prosecutor to be interviewed from Vanderbijlpark court.

The specific sampling procedure used depends on the purpose of the sampling and a careful consideration of the parameters of the population. In general, however, the sample should be so carefully chosen that, through it, the researcher can set characteristics of the total population in the same propositions and relationships that they would be seen if the researcher were, in fact, to examine the total population. If the sampling procedure is not carefully planned, any conclusions the researcher draws from the data are likely to be distorted. Such destruction is known as bias (Leedy & Ormrod, 2013:207).

As far as sampling was concerned, the researcher noted the definition of bias by Leedy and Ormrod (2010:215), that it is any influence, or set of conditions, that singly, or in combination, distorts the data. Data is, in many respects, delicate

and sensitive to unintended influences. It is critically important to eliminate factors that may introduce sampling bias. As a result of other forms of bias in research, sampling bias may yield inaccurate results that are not comprehensive (Salazar, Crosby & DiClenente, 2015:153). Salazar, Crosby and DiClenente (2015:153) further state that choosing the most rigorous and appropriate sampling technique, such as the one the researcher chose – the qualitative technique, will ensure that sampling bias is reduced to as close to "nothing" as possible.

1.12 DATA COLLECTION

According to Bouma and Atkinson (1995:22) data constitutes evidence, and consists of reports of the actual state of some aspects of the universe at a particular point in time. Data collection is crucial in gaining access to documents and people for the purposes of research, or else researchers will engage in speculation on the subject (Denscombe, 2010:70). Blaxter, Hughes and Tight (2001:153) assert that all research involves the gathering of data, whether through reading, observation, measurement, asking questions, or a combination of these. Support this by a more recent sour) defines data as known facts or things used as a basis for proposals or submissions. Data collection is similar to a production process and, like any process, critical part of data collection is first understanding the process and then improving the process (Kumar, 2006:121).

Belk (2007:72) is of the opinion that primary data sources are forms of evidence usually produced during the historical period under investigation. 'Oral history interview' is a special kind of primary data typically conducted many years after events have occurred, but based on memories created during the time in question. Secondary data sources are the literature about the period, such as books and articles, written at a later date (Belk, 2007:72). The researcher used both primary and secondary data.

Multiple sources are used by researchers for the collection of data, in the hope that the data from these sources will congregate to answer a specific research question (Leedy & Ormrod, 2005:99). Leedy and Ormrod (2010:9) believe that it is worthwhile using more than one method of data collection. Burns and Grove (2005:733) define data collection as the accurate and efficient gathering of the

information needed to address a research problem; however, the method has to be relevant to the research purpose or specific objectives and questions. Data collection is critical in order to fulfil the purpose of the research (Polit & Beck, 2006:293).

Primary data is data acquired at its sources through observation, experiment, interviews, questionnaire surveys, and searches through company records. Secondary data consists of information that others have accumulated and made. Important sources of secondary data include online services and information made available on microform and CD-ROM (Kuiper, 2009:275). The data collection methods used in this research were in-depth in nature, and provided secondary data coupled with interviews with uniformed members, detectives, public witnesses and state prosecutors.

The researcher made use of more than one method to collect data. This is known as 'triangulation'. According to Mason (1998:148), "triangulation refers to the use of multiple methods, which encourages researchers to approach their research questions from different angles and to explore their intellectual puzzle in a rounded and multi-faceted way". Triangulation is the use of more than one method in studying the same phenomenon, in order to validate the phenomenon (Taylor, 2006:235). Qualitative research is a way of knowing in which a researcher gathers, organizes, and interprets information obtained from humans using his or her eyes and ears as filters (Lichtman, 2010:5).

Leedy and Ormrod (2001:102) suggest that qualitative researchers are often described as being the research instrument, because the bulk of their data collection (e.g. interviews and observations) is dependent on their personal involvement in the setting. Lichtman (2010:5) states that qualitative research involves in-depth interviews and/or observations of human in natural and social settings.. The researcher used triangulation which is referred to as the use of two or more techniques and methods to test hypotheses and/or measure variables (Powell, 1997:90). Consequently, a researcher may elect to use two or more techniques and methods to test hypotheses and/or measure variables, this process often is referres to as triangulation (Connaway & Radford, 2016:106).

The researcher interviewed the people who were at her reach and willing to participate.

Triangulation involves locating a true position by referring to two or more other directs (Denscombe, 2010:133). As far as this research is concerned, the researcher used more than one method: literature studies and interviews. Leedy and Ormrod (2005:99) explain that triangulation is the collection of data from multiple sources. However, Leedy and Ormrod (2013:102) stipulate that triangulation is about multiple sources of data that will all converge to support a hypothesis or theory. This approach is especially common in qualitative research; for instance, a researcher might engage in many informal observations in the field and conduct in-depth interviews, and then look for common themes that appear in the data gleaned from both methods.

Throughout the data collection process, the researcher suspended any preconceived notions or personal experience that might have unduly influenced what the researcher “heard” the participants saying. Such suspension – sometimes called “bracketing” – can be difficult for a researcher who has personally experenced the phenomenon under investigation (Leedy & Ormrod, 2013:146).

An important step in addressing researcher bias is bracketing. Bracketing tasks the researcher with acknowledging ideas, values and beliefs that society takes for granted in the world one lives in (Baran, 2016:203). In a structured interview, the researcher measures specific variables, and the interviews provide the technique to measure those variables (Hong & Lee, 2015:76). In a structured interview, the wording and sequence of questions are set in advance, and cannot be altered during the interview (Ferrante, 2007:45). In this research, a sequential interview schedule was prepared, in order to interview the police members, detectives, prosecutors and public witnesses.

1.12.1 Literature study

To obtain literature for the purposes of this study, the researcher consulted both national and international sources, such as books, articles, journals, Internet articles, dissertations, and training and study material. In her search for literature on the topic, the researcher was guided by the aims and research questions of the

study, to ensure that the information obtained was relevant. Data is highly susceptible to distortion of fact, and bias can creep into a research project in a variety of ways (Leedy & Ormrod, 2010:215). To avoid bias, the research concentrated more on the research questions – which guided the researcher in treating all literature in the same way.

1.12.2 Interviews

The researcher obtained permission to conduct interviews with the SAPS members (see Annexure B) from the Provincial Commissioner of Gauteng and with the state prosecutors (see Annexure C). *National Instruction 1/2006* of the SAPS (SAPS, 2006), which requires that "prior permission to record interviews must be obtained from the relevant authorities", was adhered to. Witnesses from the public, who were victims and complainants in cases, were approached, and their permission sought to be interviewed.

Deb (2006:179) mentions various types of interviews: screening interview, informational interview, stress interview, behavioural interview, audition interview, group interview, tag-team interview, lunch interview, follow-up interview, chronological Interview, structured criteria-based interview, technical interview, case study interview, One-on-one interview and telephone interview (Mouton, 2001:105). In this research the researcher decided to use a structured interview with all the samples.

The structured interview is where the researcher asks a series of predetermined questions and records the interviewee's responses on a standardised response sheet. Thus, the topics, precise questions, and response sheets are all produced in advance, and the researcher will keep to a strict agenda (Heffernan, 2016:93). Structured interviews offer little flexibility in relating the interviews to particular ways of getting information and circumstances (Klenke, 2008:125). On the other hand, the advantage of a structured interview is that all candidates are in the same situation, and have the same opportunity to demonstrate their qualifications (Pettersen & Durivage, 2008:10).

The researcher drew up questions in advance, and asked the questions in a chronological order, with the intention of encouraging participants to talk and

describe their experiences in their own way. The questions on the same or similar content appeared together on the interview schedule, which helped to ask the questions in chronological order (Anastas, 1999:388).

The researcher used the interview schedule to bring together and amalgamate the numerous questions that were appropriate to the research. The interview schedule was designed to provide questions aimed at obtaining the necessary and relevant data for this research, depending on the work experience and general experience of the participants as they related to court testimony. Consequently, one structured interview schedule was compiled to accommodate all four samples in this study.

The researcher personally conducted the interviews. To regulate the standard of the interviews, the researcher used the guidelines for conducting productive interviews, as provided by Leedy and Ormrod (2005:147). An indication of the guidelines and how the researcher used these guidelines is as follows:

- Identify some questions in advance: All interview questions were drafted in advance according to the interview schedule. The questions were designed with the aim of eliciting the participants' knowledge and experience of the problem addressed by the research and the research questions.
- Conduct interviews with different participants: The interviews were conducted with the detectives, uniformed members, public witnesses and prosecutors, who made up the study samples. A consent form was signed by each participant.
- Find a suitable location: The interviews were conducted in a quiet place, where movement of people coming in and going out was easily controlled. For the police witnesses, the interviews were conducted at the different police stations' offices, and, for the prosecutors and public witnesses, in one of the court offices.
- Establish and maintain interest: The researcher showed interest in what the participants had to say, by maintaining eye contact with them and nodding her head as they spoke. This also helped them to relax. Howatson-Jones (2012:79) states reflexivity can be defined as reflecting on the specifics of

situations, as well as the conditions from which they arise, and how one might be implicated in those conditions. This requires one to examine the surrounding factors of how a situation arises, and in what ways one's reflection might help one to influence one's experiences, as well as how those experiences might shape one as a person and a practitioner (Howatson-Jones, 2012:79).

- Obtain permission: The researcher obtained permission from the SAPS to interview the police officials (filed as Annexure A), as well as from the National Prosecuting Authority (NPA) before interviewing the prosecutors (filed as Annexure B).
- Focus on the actual rather than on the intellectual or hypothetical: The questions were related to real-life situations, and hypothetical situations were not considered.
- Avoid putting words in people's mouths: The researcher avoided statements such as "and then?" The questions were asked in a way that encouraged participants to reflect on their thoughts.
- Record responses verbatim: The exact responses made by the participants were written down word for word; nothing was changed or manipulated.
- Be polite and calm: The researcher did not react in a way that showed that she was at all surprised.
- Remember that you are not necessarily getting the facts: As confident and convincing as some of the participants were, their responses were taken as perceptions rather than facts.

The interview schedule was perused by the researcher's academic supervisors, to ensure correctness. This process is called a pilot study. The aim of the pilot study is to try out the research approach, in order to identify potential problems that may affect the quality and validity of the results (Blessing & Chakrabarti, 2009:114). The researcher used a pilot study on three police officials and a prosecutor. The feedback given on the study was that the research was relevant, therefore no changes were made.

1.13 DATA ANALYSIS

Data analysis starts with acquiring data (De Levie, 2004:97). Formal data analysis starts with preparing the data (Rieder, 2012:201). Dyson and Norrie (2010:34) define data analysis in a qualitative study as the process of collecting data through to interpreting, explaining and understanding the situations being researched. According to Marshall and Rossman (1999:150), qualitative data analysis is "the process of bringing order, structure, and interpretation to the mass of collected data. It is a messy, ambiguous, time-consuming, creative, and fascinating process". Charmaz (2006:54) describes qualitative data analysis in the following manner: "At first you compare data with data to find similarities and differences. For example, compare interview statement and incidents within the same interview and compare statements and incidents in different interviews"

The literature gathered for this research was analysed according to the spiral analysis method, to ensure proper explanation of the data, as described by Leedy and Ormrod (2005:150). Spiral concept reflects the reality of the problems faced in system developmet (Sofroniou, 2009:116). The researcher followed the steps in the spiral method mentioned by Leedy and Ormrod (2005:150), as follows:

- Organise the data: The researcher organised the data obtained from the interviews, experience and literature, and broke down large bodies of text into smaller units in the form of sentences and individual words. The researcher worked through all the data to decide which was relevant for this study.

- Peruse the entire dataset several times to get a sense of what it contains as a whole: In the process of perusing the dataset, the researcher jotted down a few notes that suggested possible interpretations of categories. The researcher also critically evaluated the entire set of data, to establish both relevancy and irrelevancy.

- Identify and argue general themes and sub-themes, and then classify each piece of data according to these themes: This allowed the researcher to get a general sense of patterns and a sense of what the data meant.

- Finally, integrate and summarise the data for the readers: This step included offering hypotheses that described relationships among the themes. The researcher broke down specific data into themes to answer the research questions under discussion. Each theme was covered in a different chapter of this research dissertation.

1.14 HISTORIC INFORMATION ON THE PARTICIPANTS

The police participants had at least ten (10) years' experience. Their experience helped in making this research rich. The answers they gave were well-versed. Those who could not reply to some of questions, will benefit from this research after it is published. The public witnesses made the researcher aware that witnesses have to be coached, and informed of the expectations of the court. This research will assist, guide and scaffold the gap that has been experienced by different witnesses. The prosecutor's contribution was valued, and their views regarded as authentic, based on their experience. They were confident in answering the questions given to them.

The researcher conducted research among the uniformed members, detectives, prosecutors and public witness, and submits the following summary on their background:

1.14.1 Uniformed members and the detectives

- Thirty-four (34) participants were uniformed members, and nine (9) were detectives.
- Four (4) of the uniformed members who participated fell within the range of 5–10 years' experience, and the other 30 uniformed members had 10–15 years' experience.
- All nine (9) detectives had 10–15 years' experience.
- All 34 uniformed members and nine (9) detectives had received basic training.
- None of the 34 uniformed members had received any training in testifying in court.

- Seven detectives had received training in testifying in court – covered by the Resolving of Crime (RoC) course, and two (2) of the detectives had not received any training in this regard.
- Only 15 uniformed members had testified in court, but all nine (9) detectives had testified in court.

1.14.2 Prosecutors

- All three (3) participants were prosecutors.
- The one participant had 10–15 years' experience; the other two (2) fell within the range of 5–10 years' experience.
- All three participants had received practical training in the interviewing of witnesses in court.

- Two have Masters of Law degree and they are senior prosecutors and the third one has Bachelor of Law degree and is an assistance prosecutor.

1.15 STEPS TAKEN TO ENSURE VALIDITY

According to Leedy and Ormrod (2005:28), validity is concerned with the soundness and effectiveness of the measuring tool. Mouton (1996:109) believes that validity can be regarded as a criterion which is applicable to the whole research process. The validity of the findings of a study is defined as "how accurately the account represents participants' reality of the social phenomena and is credible to them" (Dagnino, 2012:119). The researcher ensured that the questions posed on the schedule were valid (the questions were determined by the research aim and the research questions). The data collection techniques were valid because the researcher used data collection techniques described for a qualitative design, and the data was analysed by using the data analysis spiral, as described and explained by Leedy and Ormrod (2013:158).

The researcher was guided by the research questions, and the aims of the research, in the formulation of the interview questions. The researcher used one interview schedule for the different samples. This ensured that the interview schedule measured what they were supposed to measure. The fact that the interview schedule was scrutinised by the researcher's academic supervisors further enhanced their validity and accuracy. The researcher conducted the

interviews in private, to ensure confidentiality and anonymity. This gave the participants the opportunity to express themselves freely. In order to establish the validity of the sampling method, the researcher used systematic random sampling, convenience sampling and simple random sampling, to ensure that all the participants of the population were embodied in the sample.

Research ethics strives to prevent bias. The fact that the researcher made use of triangulation in collecting the data, further enhanced the validity of the research (Leedy & Ormrod, 2005:99).

According to Creswell (2014:250), eight validation strategies are frequently used by qualitative researchers. The researcher used five of these strategies. These are described in the following sections:

1.15.1 Prolonged engagement and persistent observation in the field

On meeting the participants, the researcher explained to them that she was a former police official and had experienced their work and their work environment. She adopted these strategies to ensure that the answers of the participants were not distorted, manipulated, or influenced by her or by other participants. Their answers were written exactly as they were given.

1.15.2 Peer review or debriefing

The researcher eliminated potential biases and prejudices against participants by asking the same questions to all the participants included in samples and the interview schedule was piloted.

1.15.3 Clarifying bias and assumptions

Researchers need to acknowledge their bias from the outset of the study, so that the readers understand the researchers' position and any biases or assumptions that might affect the inquiry (Merriam, 1988:167). Avoid making assumptions about what they are saying or what the real ojection is. Assumptions stop us from listening and clarifying the objection or question (Bleeke, 2013:157).

1.15.4 Rich, thick descriptions

This involves the writer describing, in detail, the participants or setting of the study. The researcher offered a detailed description of the situation and the subjects, as recommended by (Stake, 2010:49).

1.15.5 Credibility

Credibility is the believability of a source or message, which carries two factors trustworthiness and expertise (Metzger & Flanagin, 2008:8). The term 'credibility' is centred on the idea that results are credible, and therefore to be believed. It is the idea that the reader can have confidence in the data and its interpretation. The term 'credibility' is the qualitative parallel to the positivist notion of internal validity, and the idea that the findings describe some level of reality (Major & Savin-Baden, 2010:78). 'Credibility' refers to confidence that the researcher and user of the research can have in the truth of the findings of the study. Credibility also is ensured through processes that guarantee trustworthiness and transferability, such as spending time with the participants and maintaining thorough, phenomenon-focused observations. It can further be pursued though the use of triangulation (Macnee & McCabe, 2008:172).

1.15.6 Transferability

'Transferability' refers to the probability that the study findings have meaning to others who are in a similar situation (Speziale, Streubert & Carpenter, 2011:49). The focus on transferability is on confirming that what was meaningful in one specific setting or with one specific group, is also meaningful and accurate in a different setting or group (Macnee & McCabe, 2008:171). The term 'transferability' is created by mixed-methods researchers to capture the concepts of generalisability and transferability in quantitative and qualitative research (Riazi, 2016:143).

The method used to ensure transferability is to describe themes that have been identified in one sample to a group of similar participants who did not contribute to the initial data collection, in order to determine if the second group agrees with the themes (Macnee & McCabe, 2008:172). The researcher adopted prolonged engagement and persistent observation in the field, to ensure that the answers

of the participants were not distorted, manipulated, or influenced by herself or other participants. Their answers were written as they were given. These two strategies were applied, to ensure credibility and transferability in this research.

1.15.7 Dependability

Dependability is a criterion which is met, once researchers have demonstrated the credibility of the findings (Speziale et al., 2011:49). Dependability is the ability to deliver service that can be justifiably trusted (Hasselbring & Giesecke, 2006:17). The researcher assured dependability in this research by making sure that the research interview schedule questions were trustworthy to all members of Samples A, B, C and D.

1.15.8 Conformability

Conformability is a process yardstick. The way researchers document the conformability of the findings is to leave an audit trail, which is a recording of activeties over time that another individual can follow (Speziale et al., 2011:49). Conformability determines whether the research findings are unbiased, and relates to how neutral and objective the researcher is. The researcher's identity, values and beliefs cannot be entirely eliminated from the process of analysing qualitative data (Magwa & Magwa, 2015:100). The researcher made sure that the biases and assumptions in this research were clarified.

1.16 STEPS TAKEN TO ENSURE RELIABILITY

According to Denscombe (2002:100), reliability indicates the consistency and stability of the data gathered. The following phenomena were probed, to establish whether a study is reliable: O'Connor and Kleyner (2012:16) mention that the reliability programme must begin at the early stage or phase of a research project.

It is important for a researcher to evaluate the sampling procedure methods and data-collection techniques that are used for the research to ensure its reliability. The researcher drew up one interview schedule for the different sets of participants.

Reliability refers to consistency in research instrument findings when used repeatedly (Kumar, 2011:184). According to Creswell (2014:201) and Leedy and

Ormrod (2013:105), terms such as ‘dependability’, ‘conformability’, ‘verification’, ‘transferability’, ‘trustworthiness’, ‘authenticity’, and ‘credibility’ are used to describe the idea of validity. ‘Dependability’ is the concept used in qualitative research in relation to reliability (Botes, 2003:183). Schurink, Fouché and De Vos (in De Vos et al., 2011:420) explain that the researcher must ask whether the research process is presented logically and well documented. Dependability is noted as the alternative to reliability

Cohen, Manion and Morrison (2007:146) specify that reliability is a measure of consistency over time and over similar samples. Reliability relates to the methods of data collection, and the concern that they should be consistent and not distort the findings. It refers to the ability of the research process to provide results that do not vary from occasion to occasion, or according to the particular persons undertaking the research (Denscombe, 2002:100). Moule and Goodman Iin Taylor, 2013:224) reliability refers to the consistency of methods used within a study and is most important within the data collection phase of the study.

1.17 ETHICAL CONSIDERATIONS

The University of South Africa’s code of conduct, as described in the university’s policy on research ethics (UNISA, 2013) was studied by the researcher, and adhered to in conducting this study. The researcher took into consideration the privacy and confidentiality of the participants, and obtained the consent of the participants for their participation in the study. UNISA’s code of ethics aims to ensure that an ethical and scientific, intellectual culture prevails among its employees and students. UNISA includes, in its code of ethics, the constitutional values of human dignity, equality, social justice, and fairness to everyone.

Research ethics can be considered as moral principles which involve the use of human subjects in research projects. Using human subjects in research should not take place without careful critical examination, according to Leedy and Ormrod (2005:101–102). Ethics “is in the art of recommending to others the sacrifices required for cooperation with oneself” (Remenyi, Swan & Van Den Assem, 2010:17). In line with UNISA’s research ethics, the researcher did not subject the participants to unethical research practices, or force them to do things

that were degrading, inhumane or humiliating, or that would affect their self-esteem. Plagiarism emphasize moral elements of the charge and focus particularly on similarities in phrasing (Mazzeo, 2007:8). Plagiarism refers to "use of others's ideas and presenting them as you own" (Wong, 2011:2).

The *National Instruction 1/2006* (SAPS, 2006) sets out the procedure to be followed for obtaining the necessary authorisation to conduct research and interview its members. The instruction was adhered to, and the required documentation forwarded to the SAPS as well as the NPA. Permission to conduct research was obtained from these institutions, and is attached as Annexure B for the SAPS, and Annexure C for the NPA.

Leedy and Ormrod (2005:101) point out the following ethical principles which need to be observed by researchers, and which this researcher adhered to:

- Protection from harm: The researcher treated the participants with dignity and respect, by ensuring that the participants' viewpoints remained confidential. The participants' names were not used on the schedule, but a number, so that no one could identify and victimise them for what they had said.
- Confidentiality: The names and identities of the participants were not used. Instead, they were referred to as 'participants', to protect them from victimisation or intimidation as a result of their participation in the research.
- Informed consent: The participants were given the freedom to participate voluntarily. In other words, they used their discretion in choosing to participate or to withdraw from participation. They signed a certificate of participation. The researcher did not exert pressure on the participants.
- Right to privacy: The researcher respected the participants' privacy and did not force them to disclose anything they did not wish to disclose. The participants were assured that while the information they gave would be used by other people to empower themselves, their names would be kept secret. Whatever information participants provided to the researcher was handled with great confidentiality.

- Honesty with professional colleagues: The participants were in possession of all the relevant facts, in order to avoid misrepresentation. The time frame was also given. The researcher dealt with professional colleagues in an honest and professional way. The researcher did not lie to participants for her personal gain. The researcher acknowledged all sources with a complete list of references, and complied with the UNISA guidelines for ethics in research (UNISA, 2007) and requirements regarding plagiarism. The researcher adhered to all the ethical requirements as discussed, and ensured that the rights and interests of the participants were respected. The researcher also used information in a reliable, honest way, and refrained from plagiarism.

1.18 CHAPTERS AND LAYOUT

The remaining chapters of the dissertation are summarised as follows:

Chapter 2

This chapter deals with the concept of criminal investigation. In this chapter the researcher discusses the following concepts:

- Criminal investigation
- The purpose of criminal investigation
- The objectives of criminal investigation
- The crime scene
- The Locard principle
- Identification
- Individualisation
- Giving evidence in chief
- Evidence

Chapter 3

This chapter discusses guidelines for witnesses to use when testifying in court. It specifically sets out guidelines for testifying in court for police detectives, uni-formed members of the police, and public witnesses.

Chapter 4

This chapter summarises the findings of the study, and makes recommendations on the basis of the findings.

CHAPTER 2

CRIMINAL INVESTIGATION

2.1 INTRODUCTION

Criminal investigation plays a crucial part in the conviction of suspects. The investigator will be instructed by the prosecutor to investigate the case further if there is not enough evidence to convict the suspect (Smit, Minnaar & Schnetler, 2004:48). The core objective of investigation doctrine is (a) to contribute to an ethical framework of criminal investigation by proposing a number of principles that are ethical, and (b) to encourage community support, as the community is assured that their matters will be handled with great regard (Stelfox, 2013:172).

Criminal investigations collect evidence to prosecute the matter of an allegation in a court of law (Prunckun, 2012:173). “Criminal investigation involves the application of the scientific method to the analysis of a crime scene” (Becker & Dutelle, 2013:7). Becker and Dutelle (2013:28) also assert that no crime scenes are the same; each crime scene tells a story. Investigation of crime incorporates the compilation of information and evidence used to identify someone or something, and to apprehend and convict the alleged criminals (Osterburg & Ward, 2010:5). In this chapter, the main point of discussion is the first research question, which will take the discussion through the concept of criminal investigation, its purposes and objectives.

2.2 CRIMINAL INVESTIGATION

Ormerod and Laird (2015:3) state that the meaning of the word crime “can be traced to the Latin *“crimen”* “(accusation)”. Gilbert (2001:44) declares that crime is an illegal act and blameable conduct that carries a punishment by the state. According to Orthmann and Hess (2013:8), “a criminal investigation is the process of discovering, collecting, preparing, identifying, and presenting evidence to determine what happened and who is responsible”. South Africa is a Constitutional Democracy, which means that the Constitution is supreme law of the country, or above everyone or any government structure or office bearer. Everything starts and ends with the Constitution (Hansen, 2013:9). The SAPS

serves the whole country, and policing in South Africa is regulated and empowered, firstly, by the Constitution. The police are supposed to respect the Constitution, and they must know that they are not above the law (Hansen, 2013:9).

Osterburg and Ward (2012:5) assert that criminal investigation includes the gathering of information and evidence aimed at the identification, apprehension and conviction of suspected offenders. Brandl (2014:3) outlines that criminal investigation involves gathering interrelated information concerning a crime to reach certain goals, namely –

- To solve a crime
- To provide evidence to support a conviction in court
- To provide a level of service to satisfy crime victims

Criminal investigation is used to discover, gather, prepare, identify and present evidence to determine what has happened and who is responsible for the act being investigated (Hess & Orthmann, 2012:8). Osterburg and Ward (2012:5), Brandl (2014:3) and Hess and Orthmann (2012:8) all suggest that investigation concerns the gathering of information related to a committed crime.

The participants of four samples were asked, based on their understanding, what criminal investigation entails. The responses of each of the four samples are summarised as follows:

Sample A1 replied as follows:

- Two (2) participants could not answer the question.
- Thirteen (13) participants said that investigation is the gathering of enough information to apprehend the relevant suspect and to bring him or her before the court to pay for the crime he or she committed.

Sample A2 responded as follows:

- One (1) participant was uncertain about the question.
- Twelve (12) participants responded that criminal investigation is the gathering of information in order to determine the alleged criminal activity.

Sample A3 responded as follows:

- Six (6) participants said that investigation is the discovery of the truth.

Sample A, which consisted of the uniformed members, in their response to the question as to what criminal investigation entails, said that criminal investigation entails the gathering of the truth to establish the alleged criminal activity, and gathering enough information and evidence in order to apprehend the relevant suspect and bring him or her before the court to pay for the crime he or she committed. Three (3) participants did not know the answer to the question.

Sample B1 responded as follows:

- Two (2) participants said it is a process of getting to know what and by whom the criminal activity was committed.
- Two (2) participants did not know the answer to the question.

Sample B2 responded as follows:

- One (1) participant said it is a process that is undertaken by the detective component of the SAPS to gather facts about the crime committed and to prosecute the offenders.
- One (1) participant did not know the answer to the question.

Sample B3 responded as follows:

- Two (2) participants agreed that criminal investigation is a process of gathering facts about a crime that has been committed.
- One (1) participant did not know the answer to the question.

Four participants did not know the answer to the question. Five participants of Sample B said that it is a process of gathering facts about an occurrence that took place and to prosecute the offenders. Both samples A and B talked about the gathering of facts, information and evidence about a crime that took place, the suspected perpetrator of that crime, and that it also involves preparing for prosecution.

Sample C1 responded as follows:

- Three (3) participants said that criminal investigation involves gathering enough information, and discovering the truth, to locate and arrest the perpetrator.
- Two (2) participants did not know the answer to the question.

Sample C2 responded as follows:

- Two (2) participants said that investigation involves searching for the truth.
- Two (2) participants said that it is to discover something or someone.
- One (1) participant did not know the answer to the question.

Sample C3 responded as follows:

- Two (2) participants said that it is a process of getting to know how a particular crime took place.
- Three (3) participants did not know the answer to the question.

The nine (9) participants of Sample C said that criminal investigation is a process of searching for the truth about a crime that took place, and collecting enough information to assist in locating and arresting the perpetrator of that crime. Six (6) out of 15 participants did not know what criminal investigation is.

Sample D1 responded as follows:

- When an act that constitutes a crime has been committed, the circumstances around the commission of that offence must be established. Therefore, evidence is put together to ascertain what took place when the offence was committed. This evidence constitutes witness statements, forensic analysis, and much more – depending on the circumstances of each case.

Sample D2 responded as follows:

- The participant said that criminal investigation is the collection of all evidence to prove the guilt of a criminal – e.g. a murder case where a firearm/knife was used. The participant said: “It’s very vital that we obtain the entire object used in order to prove our case.”

Sample D3 responded as follows:

- The participant said that it involves investigating crime and building your case.

Sample D said that criminal investigation is to investigate and establish the commission of an offence. Evidence is put together to ascertain what took place and to prove the guilt of a criminal.

The answers provided by the 48 participants of samples A, B, C and D were similar to the facts established in the literature review, particularly the studies of Osterburg and Ward (2012:5), Brandl (2014:3) and Hess and Orthmann (2010:28), who stated that criminal investigation involves the gathering of information and evidence aimed at identifying, arresting and convicting a perpetrator of a crime, and convincing the perpetrator of the crime they committed. Thirteen (13) participants did not know the answer to the question.

2.2.1 The purpose of criminal investigation

The purpose of crime investigation is to help establish what happened and to identify the responsible person (Birzer & Roberson, 2016:36). Brandl (2008:4) refers to “purpose” as the goal. The author states that the most common and significant purposes of a criminal investigation are to: solve the crime; produce evidence to support a conviction in court; and provide a level of service to satisfy crime victims. Du Preez (1996:1) mentions prevention of crime as the main purpose of investigation. Olivier (1997:228) explicates that –

> …ondersoek van misdaad die beste voorkomingstegniek is en is ook van mening dat goeie ondersoek misdadigers afskrik. Deur doeltreffende ondersoek, arrestasie, en die bystaan van die aanklaer om die saak suksesvol deur die hof te stuur, vervul die ondersoekbeampte ‘n tersiêre voorkomingsrol.
>
> […investigation of crime is the best method of prevention, and is also of the opinion that good investigation deters criminals. Through effective investigation, arrest, and supporting the prosecutor to send the case to court successfully, the investigating officer performs a tertiary preventative role (Olivier, 1997:228). The purpose of investigation is to ollect foreign intelligence (Bjelopera & Randol, 2011:4).

Olivier (1997:228) observes that the purpose of investigation is to prevent crime. Referring to his experience from the time he was a detective, and when he advanced to commander and supervisor of detectives, he stated that “through effective investigation, the arrested suspect will be convicted in court, sentenced, and imprisoned. The further commission of crime by the same individual will be prevented as the criminal will be in prison”.

Lyman (1999:169) is of the opinion that investigation of crime has three prime purposes. Initially, it is a reactive measure that is a combative response to a crime that took place. Furthermore, it is a proactive measure to be hands-on in observing crime as it takes place. Lastly, it is a preventative measure as it prevents the reoccurring of crime. Investigation of crime is a systematic, orgarnzed search for the truth (Van Rooyen, 2012:13). Du Preez (1996:1), Olivier (1997:228), and Lyman (1999:169) all believe that crime should be prevented from taking place again.

The study participants were asked what the purpose of criminal investigation is. Other

Sample A1 responded as follows:

- Ten (10) participants said that the purpose of criminal investigation is like a mind map: what you plan to achieve when undertaking criminal investigation and preventing the recurrence of crime.
- Five (5) participants said the purpose of criminal investigation is about finding out the following:
    - What happened?
    - When did it happen?
    - Who did it?
    - Where did it take place?
    - How did it happen?
    - How can the information be used to prevent crime?

Sample A2 responded as follows:

- Two (2) participants said that the purpose of criminal investigation is to uncover, preserve and collect evidence of the crime that has been committed.

- Eleven (11) said that it is to determine the elements of crime, and to ensure that the perpetrator is brought before the court to prevent the reoccurrence of crime.

Sample A3 responded as follows:

- One (1) participant said that the purpose of criminal investigation is to investigate information or records that raise a suspicion that a crime has been committed and come up with the preventative measures.
- Five (5) participants said that fingerprints are taken, video footage is used, or scenes pointed out by suspects to make a strong case and to prevent the reoccurrence of crime.

The participants of Sample A said it is about using every measure possible to eradicate the crime – for example, fingerprints, video footage, or scenes pointed out by suspects to make a strong case and to prevent the reoccurrence of crime.

In summary, Sample A participants' statements are in correlation with what the literature asserted, when they responded that the purpose of criminal investigation is to establish what happened, and use punitive measures to eliminate the reoccurrence of crime.

Sample B1 responded as follows:

- Four (4) participants said that the purpose of criminal investigation is to prevent crime, and if it occurs, to identify the suspect and link them to the crime.

Sample B2 responded as follows:

- One (1) participant said is to identify a suspect.
- The other participant stated that the purpose of criminal investigation is to prevent the commission of an offence, to collect evidence, and to secure the presence of the suspect in court.

Sample B3 responded as follows:

- One (1) participant said that the purpose of criminal investigation is come up with enough reasons to prosecute the suspect.

- Two (2) participants said that it is a process of finding the truth with regard to criminal acts, in order to present the findings to court for adjudication.

Sample B focused on preventing the reoccurrence of crime by making sure that the suspect is arrested and is taken to court to have judgment pronounced on him or her. Samples A and B stated that a suspect is arrested to prevent the reoccurrence of crime.

Sample C1 responded as follows:

- Three (3) participants agreed that the purpose of criminal investigation is to discover that a crime did indeed take place.
- Two (2) participants said that it is to prevent crime from taking place again by making sure that the suspect is arrested and convicted.

Sample C2 responded as follows:

- Two (2) participants said that the purpose of criminal investigation is to preserve the crime scene and collect evidence.
- One (1) participant said that it is to secure the presence of the suspect in court and to recover stolen goods.
- Two (2) participants said that it is to prevent crime from reoccurring.

Sample C3 responded as follows:

- Two (2) participants said that the purpose of criminal investigation is to gather enough evidence to prevent the suspect from committing the same crime again.
- Three (3) participants said that if the suspect is known, the purpose is to link the suspect to the crime and to prevent crime from taking place again.

In general, Sample C participants said that the purpose of criminal investigation is to prevent crime from reoccurring, and to ensure that the suspect is punished accordingly.

Sample D1 responded as follows:

- The participant said that the purpose is to understand and ascertain what took place during the commission of the offence, and to prevent the reoccurrence of crime.

Sample D2 responded as follows:

- The participant said that it is to prevent crime and obtain evidence. If a crime was committed, to prove the case in court, and that without evidence, there is no case.

Sample D3 responded as follows:

- The participant said that it is to prove the guilt of the accused.

Sample D said that the purpose of criminal investigation is to establish what transpired during the commission of a crime, and to prevent the reoccurrence of that crime. A second purpose was identified as being able to prove the accused party guilty.

The opinions expressed by the participants of samples A, B, C and D corresponded with what Du Preez (1996:1), Olivier (1997:228) and Lyman (1999:169) mention, which is that the purpose of criminal investigation is the prevention of crime from reoccurring.

2.2.2 The objectives of criminal investigation

Lyman (2008:15), Orthmann and Hess (2013:11) and Becker and Dutelle (2013:17) are of the opinion that the following are the objectives of criminal investigation:

- Identification
- Apprehension
- Crime detection
- Locating and identifying suspects (before a crime scene can be processed, individual perpetrators must be removed from the premises because they pose a danger to police, investigators and others)

- Locating the suspect (meaning trying to find his or her whereabouts; recording, interviewing, or interrogating the suspect and processing, and making use of the information gathered while observing all constitutional considerations)
- Arresting the perpetrator(s) while observing all considerations
- Recovering property
- Preparing for trial, including completing accurate documentation
- Convicting the accused by testifying and assisting in the presentation of legally obtained evidence and statements

Ferraro (2012:77) finds that the objectives of criminal investigation should be well constructed. If they are not well constructed, investigators are likely to be incompetent, and also to lack focus. Ferraro (2012:77) disagrees with Lyman (2008:15), Orthmann and Hess (2013:11) and Becker and Dutelle (2013:17). He makes the important point that one has to put a strong structure around the objectives of investigation of crime, for investigations to run smoothly and in a focused way. The objects of investigation focuses on every possible way to trace and find the suspect so if evidence is not seen there must be other instruments to be used to find the evidence that means putting a strong structure around the objectives of the investigation.

The participants were asked what are, in terms of their experience, the objectives of criminal investigation.

Sample A1 responded as follows:

- One (1) participant said it is to establish that a crime was indeed committed, and identify and apprehend the suspect.
- Fourteen (14) participants said that the objectives are to identify and arrest the suspect, and bring the suspect before court.

Sample A2 responded as follows:

- One (1) participant said it means that the perpetrator has been identified and arrested.

- Twelve (12) participants said that the objectives are to recover stolen property, preserve evidence in crimes, and prepare criminal cases for prosecution.

Sample A3 responded as follows:

- One (1) participant said that the objectives are the identification and location of suspects.
- Five (5) participants said that the objectives are to locate and arrest the suspect of a crime and obtain a witness's statement.

Sample A said that the objectives of criminal investigation are to identify the nature of the crime and discover who is responsible for the crime, locate the suspect's whereabouts, arrest the suspect, and prepare the case for prosecution. The other important objective is to obtain statements from witnesses.

Sample B 1 responded as follows:

- One (1) participant said that the objective is to discover the root cause of a crime committed.
- One (1) participant said that they are to determine the suspect and make sure that the right suspect is sentenced by the court.
- One (1) participant said that the objective is to arrest the correct suspect.
- One (1) participant said it is to establish the nature of crime.

Sample B2 responded as follows:

- One (1) participant said that the objectives are to gather evidence and secure the presence of the suspect in court.
- One (1) participant mentioned the recovery of stolen goods as the objective.

Sample B3 responded in this way:

- One (1) participant said that the objectives are to locate and identify a suspect.
- One (1) participant said that the objective is to arrest him or her for the commission of an offence.

- One (1) participant said that the objectives are to discover and ascertain the location of the suspect.

Sample B said that the objectives are to identify, locate and arrest the right suspect for a crime committed, recover stolen property, and, lastly, to secure the conviction of the suspect.

Sample C1 responded as follows:

- One (1) participant said the objective is to discover the cause of the crime.
- One (1) participant said that the objectives are to unearth what is hidden and determine the root cause of crime.
- One (1) participant said that the objectives are to locate and apprehend the suspect.
- One (1) participant said that the objective is the recovery of stolen goods.
- One (1) participant said the main objective is to arrest suspects.

Sample C2 responded as follows:

- One (1) participant said the objective is to bring the suspect to court.
- One (1) participant said it is to arrest the suspect and release the innocent and wrongfully accused.
- One (1) participant said that the objectives are to detect crime.
- One (1) participant said it is to identify and remove the suspect from the crime scene.
- One (1) participant said that it is to arrest the suspect.

Sample C3 responded as follows:

- One (1) participant said it is to recover the property that has been stolen and evidence.
- One (1) participant said that it is to arrest the suspect.
- One (1) participant said that it is to testify in court.
- One (1) participant said that it is to recover stolen property.
- One (1) participant said that it is to prepare the docket for court.

The objectives of criminal investigation are to locate and apprehend the suspect, and recover stolen property. As a last point, these participants mentioned bringing the suspect to testify in court.

Sample D1 responded as follows:

- One (1) participant said it means that the perpetrator has been identified and arrested.

Sample D2 responded in this way:

- One (1) participant said that the objective is the recovery of stolen goods.

Sample D3 responded as follows:

- One (1) participant said that the objectives are to unearth what is hidden and determine the root cause of crime.

Samples A, B and C participants are of the same view as Lyman (2008:15), Orthmann and Hess (2013:11) and Becker and Dutelle (2013:17), who made the claim that the following aspects are the objectives of criminal investigation:

- Identification, apprehension, crime detection, locating and identifying suspects, recording, and processing, while observing all constitutional considerations.
- Further objectives identified by the participants and the abovementioned authors are arresting the perpetrator(s), recovering property, and preparing for trial, including completing accurate documentation. The participants and authors also mentioned convicting the defendant by testifying and assisting in the presentation of legally obtained evidence and statements.
- Six (6) participants stated that the objectives of criminal investigation start at the crime scene, where certain facts have to be established – such as what happened before, during and after the crime. They outlined the apprehendsion of the suspect if he or she is known, and preserving the crime scene so that evidence collected can be authentic.

2.3 CRIME SCENE

Gilbert (2010:80) asserts that a crime scene is a place where a crime occurred. The crime scene can also be considered to be the location where an illegal deed took place (Houck, Crispino & McAdam, 2012:23). Becker and Dutelle (2013:28) state that all crime scenes contain physical evidence–that is, evidence that can be touched, seen or otherwise perceived, using the unaided senses or forensic techniques. The availability of physical evidence means that processing the crime scene is the most important phase of an investigation (Gilbert, 2010:80).

Lyman (2008:27) argues that, for the protection of the crime scene, it is imperative to avoid contamination. If the crime scene is tampered with, evidence from that crime scene will not be admissible in court. Becker (2010:31) specifies that every entryway to, and exit and path from, the crime scene must be protected and safeguarded to avoid contamination.

Samples A, B, C and D were asked to define the term ‘crime scene’.

Sample A1 responded as follows:

- Fifteen (15) participants said that a crime scene is where a crime has been committed.

Sample A2 responded as follows:

- Thirteen (13) participants said that it is a place where a crime has taken place.

Sample A3 responded as follows:

- Six (6) participants saw the crime scene as a place or area where a crime has been committed.

In summary, for Sample A, the crime scene is a place where a crime has been undertaken.

Sample B1 responded as follows:

- Four (4) participants said that a crime scene is where an unlawful act or crime took place; it has to be protected to avoid contamination because it carries the weight of the case.

Sample B2 responded as follows:

- Two (2) participants said that it is a place where an alleged offence took place.

Sample B3 responded as follows:

- Three (3) participants said that it is a place or area where a crime has happened and it must be secured to avoid contamination.

Sample B said that a crime scene is the surrounding area where a crime occurred and it must be protected to avoid contamination.

Sample C1 responded as follows:

- Four (4) participants said a crime scene is a location at which a crime has taken place
- One (1) participant said that it is a place where a crime has happened and must be secured.

Sample C2 responded as follows:

- Three (3) participants said that it is a place or area where a crime has happened.
- Two (2) participants said it is an area where a crime has been committed.

Sample C3 responded as follows:

- Five (5) participants said it is a place where a crime has been committed.

In summary, a crime scene is a place, location or area where a crime has happened and must be secured.

Sample D1 responded as follows:

- The participant said it is the place where an offence has been committed and forensic evidence may be gathered.

Sample D2 responded as follows:

- The participant said that the place where crime occurred may yield physical clues or evidence. It must be cordoned off to eliminate contamination.

Sample D3 responded as follows:

- The participant replied by saying it is a place where crime took place and it must be cordoned off to eliminate contamination.

In summary, a crime scene, as the place where an offence has been committed and forensic evidence may be gathered, may yield physical clues/evidence, and it must be cordoned off to eliminate contamination.

Samples ‘A’, ‘B’, ‘C’ and ‘D’ participants agreed with the assertion by Gilbert (2010:80), that a crime scene is a place where a crime has occurred. Seven (7) participants agreed with the statements by Becker (2010:31) and Layman (2008:27), that it is an area where a crime took place, which may yield physical clues/evidence, and it has to be protected to avoid contamination.

2.4 THE LOCARD PRINCIPLE

Tilstone, Savage and Clark (2006:15) give concise, but comprehensive, definetions of the Locard principle as follows:

- “The principle holds that every contact leaves a trace.
- Locard’s principle is behind all trace evidence, which depends on comparing traces of materials found on a suspect with bulk material from the scene of the crime”.

Locard’s exchange principle takes place when people and objects come into contact with one another. They leave an exchange of trace evidence, that can help to link a victim or suspect to a crime scene, and it can also link persons, objects and crime scenes to a particular crime (Pyrek, 2006:462). Van Rooyen (2012:20) explains that when two or more objects or people come into contact with one another, clues are usually left behind. This is called a “reciprocal transfer of traces”. For example, when a suspect touches a glass or window, they leave fingerprints that can be used as evidence to trace them. For this reason, Van Rooyen (2012:20) states that investigators can confidently say there will always be clues left behind at the crime scene. The principle is that any action of an individual, including violent action that constitutes a crime, cannot occur without leaving a mark. What is interesting to the investigator is the variety of these

marks. Sometimes they are prints, sometimes trace material, and sometimes stains (Turvey & Petherick, 2009:122). Lorcard principle is a cornerstone for forensic science in general and crime reconstruction specifically (Turvey, & Petherick, 2009:122).

White (2004:56) states that the other name for the Locard principle is “contact theory”, which indicates that there is a reciprocal exchange of traces every time two substances or people come into contact with each other. Orthmann and Hess (2013:18) regard the Locard principle of exchange as the basic forensic theory that “objects that come in contact with each other always transfer bits and pieces of fabric”, but cautioned that “this evidence can easily be lost if the crime scene goes unprotected”. The researcher is adamant that what ever traces which can not be seen with a naked eye does not mean there is no evidence other methods must be used to collect evidence.

Samples A, B C and D were asked the meaning of the concept ‘Locard principle’.

Sample A1 responded as follows:

- Three (3) participants said when people and objects come into contact, they are bound to leave a trace.
- Twelve (12) participants said this describes what the suspect left at the crime scene, such as fingerprints and blood stains.

Sample A2 responded as follows:

- Nine (9) participants said it is a clue that is left at the crime scene which can be visible or invisible with the naked eye.
- Four (4) participants said that the suspect will bring something to the crime scene or leave clues behind at the crime scene.

Sample A3 responded as follows:

- Two (2) participants said it is traceable evidence which is left at the crime scene.
- Four (4) participants said it is an exchange of traces, where your fingerprints can be taken as proof that you were at the scene of the crime.

The feedback of Sample A was that the Locard exchange principle is the exchange of traces. One cannot enter a room without taking something or leaving something behind that can be used as evidence for example hair, fingersprints ect. and taking from the crime scene a stolen property. The Sample A participants said it is the exchange of traces.

Sample B1 responded as follows:

- One (1) participant said that the suspect will enter a scene and leave some evidence behind at the crime scene.
- One (1) participant said that this is when suspects leave clues behind that are tangible or non-tangible.
- One (1) participant said that the clues that are left behind at the crime scene by a suspect will be used to trace the suspect, or link the suspect to the crime, e.g. DNA from a hat, hair, saliva, fibres, and more, that will be used as forensic evidence.
- One (1) participant said the Locard principle encompasses contact of all kinds.

Sample B2 responded as follows:

- Two (2) participants said that the Locard principle involves exchange of traces. It is important to attend a scene before it gets contaminated. The suspect will forever leave something on the scene.

Sample B3 responded as follows:

- Three (3) participants said if a suspect comes into contact with an object, place, or other people, he or she leaves a mark – latent fingerprints, as an example, paint in a motor vehicle accident, blood, a nail, semen, etc.

Sample C1 responded as follows:

- Four (4) participants did not know the meaning of the concept ‘Locard principle’.
- One (1) participant said the fingerprints can be collected in a scene of crime.

Sample C2 and C3 responded as follows:

- Ten (10) participants did not know the meaning of the concept ‘Locard principle’.

In summary, only one participant responded by pointing out the evidence found in a crime scene. The other fourteen participants did not know the answer to the question.

Sample D1 responded as follows:

- The participant said a suspect is bound to leave a trace when entering a place to commit crime – e.g. fingerprints or footprints, his hair, the fibres from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, and the blood or semen he deposits or collects.

Sample D2 responded as follows:

- The participant said that Locard’s principle shows not only how the transfer of trace/evidence can tell a story of what happened, but also how much care is required when collecting and evaluating trace evidence.

Sample D3 responded as follows:

- The participant said that a suspect is bound to leave a trace when entering a place to commit crime.

A summary of the feedback from Sample B revealed that the participants made comments that corresponded to the assertions by Pyrek (2006:462), Van Rooyen (2012:20) and Orthmann and Hess (2013:18), and were in agreement that when a suspect enters a room to commit a crime, he/she will exchange trace evidence with objects on the scene – such as fingerprints or footprints, hair, the fibres from clothes, broken glass, leave tool mark, paint scratch marks, and the blood or semen deposit or collect by the suspect. These authors also point to how much care is required when collecting and evaluating trace evidence.

2.5 IDENTIFICATION

- ‘Identity’ refers to uniqueness, and emphasises the fact that every object or person (individual) can only be identical with itself or him-/herself (individuality) (Van Rooyen, 2012:21). Identity is known as individual characteristics (Osterburg & Ward, 2014:34). The police use a classification scheme in which items are assigned to categories that contain similar items, and given names (Green, 2007:562). Green (2007:562) also states that objects are identified by comparing their class characteristics with those of known standards or previously established criteria. Lyman (2008:134) argues that the identification of criminal suspects through the use of fingerprints has proved to be one of the most effective methods of apprehending people who might otherwise go undetected and continue their criminal activities. Van Rooyen (2012:21) and Osterburg and Ward (2014:34) argue that every object or individual has a uniqueness of its own and must be put in its own group.

Participants of samples A, B, C and D were asked, based on their knowledge, the meaning of ‘identification’.

Sample A1 participants responded as follows:

- One (1) participant said that identification and individualisation work hand in hand; one cannot separate the two.
- One (1) participant said that you cannot individualise what you have not identified first, and it is called individual characteristics.
- Five (5) participants said that you must have seen a suspect to be able to identify the suspect.
- One (1) participant said that someone must be able to identify a suspect, for an investigator to trace the suspect.
- One (1) participant said that a suspect must be pointed out by an eyewitness.
- One (1) participant said that the investigator can only link the suspect to the crime after the suspect has been identified.
- One (1) participant said that every object is unique.
- One (1) participant said that every object has its characteristics.

- One (1) participant said that everything in the universe has its own distinguishing class characteristics.
- One (1) participant said that identification is physical evidence that can be identified.
- One (1) participant said that only the same type of physical evidence can be scientifically tested and identified.

Sample A2 participants responded as follows:

- One (1) participant said you can only identify the suspect you saw.
- Twelve (12) participants said that identification deals with classification of objects or substances, and a comparison can only be made among objects or substances of a similar kind. Physical evidence such as blood and fingerprints help link the suspect to the crime.

Sample A3 participants responded as follows:

- Six (6) participants said that fingerprints cannot lie if they are discovered at the crime scene and a suspect is arrested; they can identify the correct suspect. Fingerprints help to single out an object's characteristics and no counterargument can be made when that is done and established. Fingerprints link the correct suspect to the crime.

Sample A participants were of the opinion that evidence has to be identified in order to categorise or classify an object and the example of fingerprints was given as something that can be used to identify the correct suspect. They only know the identification of suspects where the suspects stand on an identification parade and the victim identifies a suspect.

Sample B1 responded as follows:

- Four (4) participants said for one to individualise, one must have several kinds of evidence identified to compare and differentiate among others. That will lead to a stage of drawing conclusions and apprehending the correct suspect.

Sample B2 participants responded as follows:

- Two (2) participants said that every individual is unique in his or her own way, which makes identification easy.

Sample B3 participants responded as follows:

- Three (3) participants said that evidence in a database can be compared with newfound evidence that helps identification and individualisation.

In summary, Sample B said that every individual is unique, which means that if evidence is kept in a database, it is easy to compare with new evidence and arrest the correct suspect without a doubt; for instance, fingerprints cannot lie. Sample B participants did not have a problem with answering this question.

Sample C1 participants responded as follows:

- Five (5) participants said people are different and unique; identification is a process of identifying that particular individual who committed the crime.

Sample C2 participants responded as follows:

- Five (5) participants said they know identification from a suspect identification parade point of view.

Sample C3 participants responded as follows:

- Five participants said is the act of finding out who someone is or what something is.

In summary, Sample C participants said that people are different and unique, and identification is a process of identifying that particular individual who committed the crime.

Sample D1 participant responded as follows:

- The participant said it is the process of recognising specific objects or persons as the result of remembering.

Sample D2 participant responded as follows:

- The participant said it is a state of being identified according to classification.

Sample D3 participant responded as follows:

- The participant said it is an act of recognising and naming someone or something.

In summary, D said that identification is a process of class identification which is brought about by memory.

Sample A1 and Sample C participants' responses were relevant to what Lyman (2008:134) indicated, of which he provided a practical example: identifying a criminal suspect through the use of fingerprints has proved to be one of the most effective methods for apprehending people. Samples A, B and D participants' responses were relevant to what Van Rooyen (2012:21), Osterburg and Ward (2014:34) and Green (2007:562) agreed upon, which is that every object or individual is unique in their own way, and must be placed in their own category. Objects are identified by comparing their class characteristics with those of known or previous standards.

2.6 EVIDENCE

For Sorgdrager, Coertzen and Bezuidenhout (1993:3), evidence implies that there are grounds for a finding in respect of an issue or fact. Sorgdrager et al. (1993:3) further state that evidence is the object that is pursued when evidential material is placed before the court. According to Gardner (2012:7), evidence can be defined as anything that is liable to prove or disprove a fact in a dispute.

In investigation, evidence can be given as testimony or as physical evidence. Each is important, however, and plays an important role in helping the courts come to a decision as to who is guilty or innocent. Van Rooyen (2012:17) is of the opinion that evidence may be defined as all the relevant facts that are admissible and presented in court. Van Rooyen (2012:106) further states that evidence is the means that provides proof of what took place. It is all the information presented before the court to enable the court to make a decision on factual issues, and includes written and oral statements of witnesses, as well as documents and objects that are presented to be examined or inspected by the court. The researcher is of the opinion that evidence collected from the crime scene must be in its original form to be regarded as authentic. Evidence is anything perceptible by five senses example, blood, photos scraping ect. (Van Rooyen 2012:17).

Swanson, Chamelin and Territo (2003:768) are of the view that evidence can be defined as anything that cultivates the rationale to prove or disprove a fact at issue in a judicial case or controversy. Moderately put, evidence is anything that may have an impact on the outcome of the case. In a criminal case, evidence has a great influence on the innocence or guilt of the perpetrator. Sorgdrager et al. (1993:3), Gardner (2012:7), Van Rooyen (2012:106), and Swanson et al. (2003:768) all argue that evidence is used in court to pass judgment on a perpetrator.

The participants were asked to explain the meaning of the concept ‘evidence’.

Sample A1 responded as follows:

- Fifteen (15) participants said evidence is something that can link the suspect to the crime and be produced in court.

Sample A2 responded as follows:

- Thirteen (13) participants said that evidence is a piece of information or an object presented in court to prove or disprove the commission of a crime.

Sample A3 responded as follows:

- Six (6) participants said of evidence that it can be physical or non-physical and is to be presented in court.

In summary, Sample A participants said that evidence is a form of proof that can substantiate the commission of a crime.

Sample B1 responded as follows:

- Four (4) participants said that it is something of evidential value collected from a crime scene, that will help to link the suspect to the scene.

Sample B2 responded as follows:

- Two (2) participants said that it is information received from crime scenes, and similarly can be gathered from the witness, experts and lay witnesses.

Sample B3 responded as follows:

- Three (3) participants said that it is physical proof of the fact that something has happened and of who has done it.

In summary, Sample B said that evidence is information or physical proof found at the crime scene that confirms that a crime took place.

Sample C responded as follows:

- All the participants of samples C1, C2 and C3 said that evidence is used to prove whether or not the allegations put before court are true.

Sample D1 responded as follows:

- The participant said that evidence can be used to prove a case in a court of law.

Sample D2 responded as follows:

- The participant said that evidence can be used to prove a case and who is guilty of a crime committed.

Sample D3 responded as follows:

- The participant said that evidence can be used to link the suspect to the crime.

In summary, the responses of samples D1, D2 and D3 indicated that evidence is used to prove a case in court, link the suspect to a crime, and prove who is guilty of the crime committed.

The feedback of samples A, B, C and D support the view of Sorgdrager et al. (1993:3), Gardner (2012:7), Van Rooyen (2012:106) and Swanson et al. (2003:768), that evidence can be defined as anything of evidential material which is placed before the court that is liable to prove or disprove a fact in a dispute.

2.7 SUMMARY

In this chapter, the researcher began by indicating the significance of the Constitution, and emphasising that all the police officials and the citizens of South Africa need to respect and obey the Constitution, which was described as the

Constitution as the supreme law of the country. The participants of samples A, B, C and D and the literature agree that criminal investigation is the clue to the topics that are discussed in this chapter. Criminal investigation entails the gathering of information, identifying the correct suspect, and the application of scientific methods to the analysis of a crime scene. The purpose and the objectives of criminal investigation give direction in approaching the investigation, and what to look for in undertaking the investigation.

The crime scene is an area or location where the Locard principle must be applied, in order to identify the suspect. The suspect might still be at the crime scene when the police arrive. The Locard principle can help the police in linking the suspect to the crime that has taken place, as the suspect always takes something from, and leaves something at, the crime scene. The police officials can also identify different kinds of evidence: a mark, or latent fingerprints, for example, or paint in a motor vehicle accident, blood, a nail, or semen. These need to be collected, packed, sealed and put in a safe place, to be used as evidence in court at a later stage.

In the following chapter, the researcher discusses guidelines for testifying in court.

CHAPTER 3

GUIDELINES FOR TESTIFYING IN COURT

3.1 INTRODUCTION

When witnesses are called to testify in court, the court has faith that they will say something definite, and bring answers to unanswered questions. The way they present and project themselves in court plays a substantial role in the case. Testifying in court may be difficult and uncomfortable for most people, but the more one attends courts and testifies, the more one is liable to master the skill.

The testimony given by the witness is a crucial part of any criminal trial. An experienced and knowledgeable witness can make the work of the prosecutor, and the subsequent conviction of the defendant, much easier. Conversely, a witness who is disorganised, unkempt, and unclear in thought, can inadvertently sabotage even the best criminal cases (Lyman, 2008:578).

In this chapter the researcher discusses available guidelines for testifying in court from the literature, what it means to be a witness, types of witnesses, what it means to testify, the importance of professional conduct during court proceedings, and the principles of testifying in court. The chapter also examines the elements of the evidence-giving cycle in a court of law, the meaning of giving evidence in chief, the language to use when testifying in court, and, lastly, advice to witnesses who become angry while testifying. The research question tackled in this chapter is which guidelines could be given to witnesses for testifying in court?

3.2 THE MEANING OF A “WITNESS”

A witness is a person called by a party to take part in court proceedings, to prove a particular matter that is material to a case (Johnston & Hutton, 2006:80). Gilbert (2010:106) defines a witness as someone who has perceived or who has personally watched and observed an incident taking place. Van Rooyen (2012:15) maintains that a witness is someone who can easily bring out information regarding the occurrence that they saw, heard, or experienced for

example you a witness cas see an incidence taking place, hear a screem. Johnston and Hutton (2006:80) focus on court-based information, whereas Gilbert (2010:106) and Van Rooyen (2012:15) focus on a witness who has seen, heard or experienced an incident taking place.

Samples A, B, C and D were asked the meaning of the term ‘witness’.

Sample A1 responded as follows:

- Seven (7) participants defined a witness as a person called to testify about an incident that they saw, heard or experienced.
- Three (3) participants stated that a witness is a person who observed an incident taking place.
- Five (5) participants said a witness is a person who experienced an incident taking place.

Sample A2 responded as follows:

- Three (3) participants said a witness is someone who can easily bring out information.
- Five (5) participants said a witness is a person who has seen, heard or experienced an incident taking place.
- Five (5) participants said a witness is a person who experienced an incident and who can provide the court with information pertaining to the case.

Sample A3 responded as follows:

- Three (3) participants said that a witness is a person who gives evidence in court about the commission of an offence.
- Three (3) participants said that a witness is someone who was present when a crime took place.

In summary, according to Sample A, a witness is a person who experienced an incident and who can provide the court with information pertaining to the case.

Sample B1 responded as follows:

- One (1) participant said a witness is someone who has perceived or who has personally watched an incident taking place.

- One (1) participant said it is someone called to prove a particular matter that is substantial to a case.
- Two (2) participants a witness is a person who experienced an incident taking place.

Sample B2 responded as follows:

- One (1) participant said a witness is a person who has seen, heard or experienced an incident taking place.
- One (1) participant said a witness is a person who has information about the occurrence of a crime.

Sample B3 responded as follows:

- One (1) participant said a witness is someone who can easily bring out information about an incident.
- One (1) participant said a witness is someone testifying to prove a particular matter that is material to a case.
- One (1) participant said a witness is a person who experienced an incident taking place.

In summary, according to Sample B, a witness is a person who experienced an incident taking place, and is called to be a witness to testify to prove a particular matter that is material to a case.

Sample C1 responded as follows:

- Two (2) participants said that a witness is a person who was physically present when an incident took place.
- One (1) participant said a witness is a person who saw an incident taking place.
- Two (2) participants said a witness is a person who has seen an event or who testifies about what he or she saw.

Sample C2 responded as follows:

- Two (2) participants said a witness is a person who witnessed a crime taking place.

- Three (3) participants said a witness is a person who can give a first-hand account of something seen, heard or experienced.

Sample C3 responded as follows:

- Four (4) participants said that a witness is a person who is called to testify about what he or she witnessed.
- One (1) participant said a witness is a person who can give evidence based on personal and immediate knowledge of a fact, event or experience.

In summary, the participants of samples C1, C2 and C3 said that a witness is someone who was present when a crime took place, and who can testify based on what they saw.

Sample D1 responded as follows:

- The participant said that a witness is a person who gives evidence in court about the commission of an offence, and an expert, or member of the community, who has been called to testify about whatever is required of him/her – whether that person saw or heard what happened.

Sample D2 responded as follows:

- The participant said that a witness is a person who was at the scene when the incident happened.

Sample D3 responded as follows:

- The participant said a witness is a person who testifies in court.

The participants of Sample D said that a witness is someone who saw or heard an incident taking place and who is called to give evidence in court about the commission of an offence. A witness can be an expert or an ordinary member of the community. Samples A, B, C and D‘s responses mostly correlated with how Gilbert (2010:106) and Van Rooyen (2012:15) define a witness someone who saw, heard or experienced an incident taking place.

3.2.1 Types of witnesses

The types of witnesses are outlined in Sheetz (2007:130), Weiss, Flaming, Gomez, Swedenborg, (2003:107) and Nemeth (2010:69). Sheetz (2007:130) is of the view that, generally, two types of testimonial winesses exist, namely lay witnesses and expert witnesses:

- Lay witnesses are sometimes termed “fact witnesses”: they give testimony about their personal observation.
- Expert witnesses have a wider scope, meaning that they can testify based on their opinions – provided they have qualifications in that field.

According to Weiss et al. (2003:107), there are three types of witnesses:

- Lay witnesses: those giving testimony based on the occurrence, or lay opinion testimony.
- Independent expert witnesses: those giving specialist testimony who are not a party, the party’s current employee, or a retained expert and
- Controlled expert witnesses: those giving expert testimony who are a party, or a party’s current employee, or a retained expert.

Nemeth (2010:69) describes lay and expert witnesses as follows:

- An expert witness has specialised knowledge on which his or her testimony emerges, such as a chemist, a DNA specialist, or a ballistics examiner.
- A lay witness testifies to objective reality.

Weiss et al. (2003:107) are of the opinion that there are three categories of witnesses, namely lay witnesses, independent expert witnesses, and controlled expert witnesses. Sheetz (2007:130) and Nemeth (2010:69) argue, stating there are two categories of witnesses, namely lay and expert witnesses. Lay witnesses testify based on facts, but expert witnesses have specialised knowledge, so their testimony is of greater value.

Samples A, B, C and D participants were asked to list the types of witnesses.

Sample A1 responded as follows:

- Nine (9) participants said there are two types of testimonial witnesses that exist, namely lay witnesses and expert witnesses.
- Six (6) participants said there are two types of witnesses, namely eyewitnesses, and expert witnesses.

Sample A2 responded as follows:

- Thirteen (13) participants said they know two types of witness: lay and expert witnesses.

Sample A3 responded as follows:

- Six (6) participants said there are two types of witnesses: lay and expert witnesses.

Sample B1 responded as follows:

- Four (4) participants said there are two types, namely lay witnesses, who testify on the basis of reality occurrences, and expert witnesses, whose testimony is in-depth and based on special knowledge.

Sample B2 responded as follows:

- Two (2) participants said there are two types: lay witness testimony is founded on his or her observation, whereas expert testimony can be based on experience and is supported by qualifications.

Sample B3 responded as follows:

- Two (2) participants said there are two categories of witnesses: eyewitness testimony is based on what he or she saw, and expert witnesses, which means there is expert analysis in the case.
- One (1) participant said there are two types of witnesses: lay and expert witnesses.

Samples C1, C2, and C3 responded as follows:

- The 15 participants of Sample C said they only know lay witnesses, whose testimony is based on what they saw.

Samples D1, D2 and D3 participants were asked about the types of witnesses.

Sample D1 responded as follows:

- The participant listed several types of witnesses and commented on the reliability of witness accounts:
- Eyewitness: An eyewitness brings the testimony of what he or she observed to the proceedings.
- Expert witness: An expert witness is one who has greater knowledge than the normal person.
- Character witness**:** The testimony of this witness relies on the good reputation of another person.
- Reliability of witness accounts: There is much disagreement on the reliability of witness testimony.

Sample D2 responded as follows:

- The participant said that there are two categories of witnesses: lay and expert witnesses.

Sample D3 responded as follows:

- The participant said that witnesses fall into two categories: lay and expert witnesses.

Sample D managed to answer this question easily. The participant of Sample D1 said that there are several types of witnesses, naming three types as eyewitnesses, expert witnesses, and character witnesses. This participant also commented on the reliability of witness accounts. The participants of Sample D2 and D3 both identified two categories of witnesses, namely lay witnesses and expert witnesses.

Participants of samples A, B, C and D said the equivalent of what Sheetz (2007:130) and Nemeth (2010:69) articulated, namely that there are two categories of witnesses: lay and expert witnesses. Lay witnesses testify on the basis of facts, but expert witnesses have specialised knowledge, so their testimony has greater value.

3.3 TESTIFYING

“The testimony is not the event itself, but a report of the event. The statement and the story constitute information on the basis of which one forms an opinion about a sequence of events, the connection of an action, the motives for the act, and the character of the person; all of which provide the meaning of what has happened” (Kang, 2011:42). Testifying is an oral statement that relates to a legal dispute that occurs in the presence of court personnel, and that is made for the purpose of providing members of the court with evidence (Wells, 2004:17). Both “Kang (2011:42)” and Wells (2004:17) are of the opinion that testifying is giving oral evidence about the sequence of events relating to a legal dispute.

Samples A, B, C, and D participants were asked the meaning of the term ‘testifying’.

Sample A1 responded as follows:

- Eight (8) participants said testifying is spoken evidence given in the court of law.
- Seven (7) participants said it is an oral statement that carries weight in the case of a dispute.

Sample A2 responded as follows:

- Nine (9) participants stated that it is evidence given in the presence of court officials.
- Four (4) participants said it is about giving evidence in chronological order of how the incident unfolded.

Sample A3 responded as follows:

- Six (6) participants said that testifying is giving an oral statement in a court of law about what you observed.

Sample B1 responded as follows:

- Four (4) participants said testifying is spoken evidence based on observation given in a court of law.

Sample B2 responded as follows:

- Two (2) participants said it is testimony based on experience.

Sample B3 responded as follows:

- One (1) participant said it is to narrate the incident to the court exactly the way it took place.
- Two (2) participants said testifying is retelling the story about what you observed in a court of law.

Samples C1, C2 and C3 responded as follows:

- All 15 participants of this sample said that testifying is to give evidence about an incident that took place; it is the actual act of giving testimony in court.

The Sample D1 participant responded as follows:

- Testifying is giving *viva voce* evidence (spoken evidence) under oath or affirmation in a court of law, by testifying about what a witness has seen, heard, tasted, smelled or touched.

Sample D2 participant responded as follows:

- When testifying about a story or incident to the court, you are bound to state only what you witnessed and saw with your own eyes.

Sample D3 responded as follows:

- *Viva voce* evidence in court.

In summary, samples D1, D2 and D3‘s answers were that the term “testifying” is about giving evidence by word of mouth in court. Samples A, B, C and D said that the term “testifying” concerns giving evidence in an oral way in court about an incident that took place. These responses are equivalent to the definitions provided by Kang (2011:42) and Wells (2004:17).

3.4 PROFESSIONAL CONDUCT DURING COURT PROCEEDINGS

For Van Rooyen (2012:348) it is important that the investigator conduct him- or herself in a businesslike and efficient manner (i.e. professionally). In considering

the witness's appearance, the court looks at how the witness appears in the witness box in respect of the image he or she projects, and the behaviour the witness exhibits (Bellengere et al., 2013:204).

If the officer behaves in a professional manner on the witness stand, the prosecution's case is materially enhanced and the chances of a conviction increase accordingly (Lyman, 2008:580). A testifying witness is expected to testify in a professional way and they should not get emotional and should testify in an objective manner (Becker, 2010:501). Investigators, officers, and witnesses should conduct themselves in a professional manner when testifying in court.

Samples A, B, C and D participants were asked why it is important to conduct oneself in a professional manner within a court of law when giving evidence.

Sample A1 participants responded as follows:

- Five (5) participants said one has to be well presented, well outfitted, and dignified.
- Eight (8) participants stated that it is to maintain an attitude of confidence, respect, and good manners to all court personnel.
- Two (2) participants said to be respectful in your explanations and dealings with the court, and not to show emotion.

Sample A2 participants replied as follows:

- Five (5) participants spoke about a good attitude, and professionalism in the courtroom.
- Eight (8) participants said one has to be well dressed and dignified.

Sample A3 participants responded as follows:

- Two (2) participants said to be respectful in your explanations and dealings with the court and not to show emotions.
- Four (4) participants said one has to be well dressed and dignified.

Sample B1 participants responded as follows:

- Two (2) participants said to show respect in your answers and not to show emotions.

- One (1) participant said one has to be well groomed and dignified.
- One (1) participant stated that an attitude of confidence and professionalism in his or her approach to the court is important.

Sample B2 participants responded as follows:

- One (1) participant said when dealing with the court, do not show emotions.
- The other (1) participant stated that one must carry oneself with respect and dignity and project attributes of professionalism.

Sample B3 participants responded as follows:

- One (1) participant stated that one must maintain an attitude of self-reliance, respect, and good manners to all court personnel.
- Two (2) participants said to be respectful in your explanations, dealing professionally with the court, and not to show emotions.

Sample C1 responded as follows:

- Five (5) participants said that professional conduct gives a good impression in court.

Sample C2 responded as follows:

- Five (5) participants spoke about carrying yourself in a professional manner.

Sample C3 responded as follows:

- Five (5) participants felt that the demeanour of a witness when testifying can affect his/her credibility and the court can make an incredibility finding against a witness.

Sample D1 responded as follows:

- The participant said that witnesses should take into account that their demeanour when testifying in court can affect their credibility.

Sample D2 responded as follows:

- The participant said the court always assesses a witness in accordance with his or her demeanour; the court will take or believe the testimony of a witness by their conduct.

Sample D3 responded as follows:

- The participant said that the demeanour of witnesses when testifying is important, in order to avoid discrediting themselves in court. Everybody is bound to behave in a professional manner, otherwise no one will believe them.

Samples A, B, C and D participants made statements similar to what Van Rooyen (2012:348), Bellengere et la. (2013:204), Lyman (2008:580) and Becker (2010:501) wrote, namely that one should conduct oneself in a professional manner in court, to enhance the chances of conviction.

3.5 GIVING EVIDENCE IN CHIEF

According to Bellengere et al. (2013:119), evidence in chief is the first stage of a trial because it precedes the other two stages in the sequence at a trial, in the process of putting evidence on the record. Bellengere et al. (2013:119) state that the basic rule of evidence in chief is that the witnesses are generally required to give their account in their own words, in response to specific questions from the party calling them. This rule is usually expressed in the form that a party may not ask leading questions to their witnesses.

To lead a witness though their evidence means to support and guide the witness in bringing out the best testimony by asking a series of open questions (Selby, 2009:157). Joubert (2010:341) maintains that this takes place when the witness gives his/her evidence in chief. The witness is called to the witness stand for the purpose of giving the court their version of the facts. The evidence is given orally, under oath (also referred to as *viva voce*), and is led by means of questions posed by the prosecutor if the witness is a state witness, or by the attorney or advocate for the defence (or the accused themselves) if the witness is called by the defence.

A party almost invariably presents the evidence in chief of their witnesses on the basis of earlier *extra curial* written statements made by the witness concerned. These earlier statements generally may not be proved or quoted by the party conducting the examination in chief. During the examination in chief, the earlier

written statement serves an extremely limited purpose: it merely assists a party to examine their witness on facts falling within the latter's knowledge.

There are, however, some instances where a witness's previous consistent oral or written statement may either during examination in chief, or during re-examination, be put to more use on account of its relevance. A witness's previous written statement may also be used to refresh their memory while they are in the witness stand, but certain strict requirements must be satisfied (Van der Merwe, 2009:365). In summary, Bellengere et al. (2013:119), Selby (2009:157), Joubert (2010:341) and Van der Merwe (2009:365) note that giving evidence in chief is giving oral evidence on what the witness has observed during the commitment of the crime.

Samples A, B, C and D participants were asked the meaning of the term 'giving evidence in chief'.

Sample A1 responded as follows:

- Four (4) participants said giving evidence in chief is the first part of giving evidence.
- Ten (10) participants said it is when you answer the questions asked by the prosecutor.
- One participant said if the statement is recorded by audio or video recorder by the police, it can be played as part of, or as all of, your evidence in chief.

Sample A2 responded as follows:

- Eleven (11) participants said giving evidence in chief is the first part of giving evidence in a trial.
- One (1) participant said the questions asked in evidence in chief are based on what the witnesses told the police in their statements.
- One (1) participant said it is an opportunity for the witnesses to tell the court what happened to them.

Sample A3 responded as follows:

- One (1) participant said evidence in chief is used to examine the witnesses' knowledge based on what they said in their statement.

- One (1) participant said the prosecutor will ask the witness questions.
- Four (4) participants said the witness will answer the questions asked by the prosecutor.

Sample B1 responded as follows:

- Two (2) participants said it is the first stage of the trial in order to put evidence on record.
- Two (2) participants said it is the stage where the prosecutor asks the witness questions.

Sample B2 responded as follows:

- One (1) participant considered giving evidence in chief as an opportunity for the witnesses to tell the court what happened to him/her.
- One (1) participant said it is when you answer the questions asked by the prosecutor.

Sample B3 responded as follows:

- One (1) participant said giving evidence in chief is the first stage of the trial.
- Two (2) participants stated that it is when you answer the questions asked by the prosecutor.

Sample C1 responded as follows:

- Two (2) participants did not comprehend this question and were therefore unable to answer it.
- Three (3) participants said that giving evidence in chief is giving evidence in connection with the case.

Sample C2 responded as follows:

- Two (2) participants did not respond.
- Three (3) participants said it is affidavits, annexures, and tendered documents used in making your case, and is also evidence given orally.

Sample C3 responded as follows:

- Three (3) participants did not respond.

- Two (2) participants said that it is to give evidence to judges – verbal evidence that supports the statement.

The Sample C participants defined giving evidence in chief as giving verbal evidence that supports statements, as well as affidavits, annexures and tendered documents used in making a case. Seven participants did not know the answer to the question.

Sample D1 responded as follows:

- The participant said that evidence in chief is giving instant evidence based on the written statement given earlier and compiling all documents before judgement is presented.

Sample D2 responded as follows:

- The participant said that the prosecutor will question the witnesses step by step about occurrences, and how they unfolded exactly as they were written on the statement.

Sample D3 responded as follows:

- The participant said that the main points made during the first time that a witness testifies concerns giving direct evidence about the issues the witness is directly involved with; this is testifying verbally to what the statement of the witness entails.

Sample D participants said that giving evidence in chief is giving oral evidence in a chronological order of what was written on the statement.

Samples A, B and D participants' statements agree with the views of Bellengere et al. (2013:119), Selby (2009:157), Joubert (2010:341) and Van der Merwe (2009:365), when they said that giving evidence in chief is giving oral evidence under oath. Sample C participants also spoke of the oral evidence, listing the example of the oral evidence as affidavits, annexures and tendered documents used in making a case.

3.6 LANGUAGE TO USE WHEN TESTIFYING IN COURT

The court may permit any witness to testify in their own language if the witness cannot communicate adequately in the court's working languages (Pasqualucci, 2003:198). Common Law courts recognise the right of the witness to testify in their own language, and to be provided with interpretation services (Hale, Ozolins & Stern, 2009:39). The witness must speak clearly and answer in the language which they are comfortable, with exactly according to what is asked. The police official's witnesses should avoid using different languages during testimony (Joubert, 2010:345). Joubert (2010:345) also advocates that the witness must use simple language, but should avoid using slang or street language. Pasqualucci (2003:198), Hale et al. (2009:39), and Joubert (2010:345) concur in their view that a witness must use his or her home language or language that he or she feels comfortable with speaking but must avoid slang. The researcher concure with the statement of Joubert (2010:345) when he says witness to testify in their own language, inaddition the researcher alludes that they will testify effectively.

Samples A, B, C and D participants were asked which language they would advise the witness to use when testifying in court.

Sample A1 responded as follows:

- Eight (8) participants said that the witnesses must inform the attorney sub-poenaing them that they are going to use their home language to testify in court, so that the attorney can arrange for an interpreter.
- Two (2) participants said the witness must use his or her own language.
- Five (5) participants said the language he or she feels comfortable speaking.

Sample A2 responded as follows:

- Six (6) participants responded by saying 'mother tongue'.
- Three (3) participants said the language one feels comfortable using.
- Four (4) participants said the common language used in court, or, if the wit-ness is unable, they must use their home language.

Sample A3 responded as follows:

- Three (3) participants said that it is preferable that the witness uses their home language.
- Three (3) participants said that the witness should use the language that they feel comfortable using.

Sample B1 responded as follows:

- Three (3) participants said that the witness should use the language that they feel at ease using.
- One (1) participant said the common language used in court, but if the witness is unable, they must use their home language.

Sample B2 responded as follows:

- One (1) participant said a witness must use their home language.
- One (1) participant said the language they feel comfortable using.

Sample B3 responded as follows:

- One (1) participant said the language they feel comfortable using.
- One (1) participant said it is preferable that the witness uses their home language, unless they are comfortable in another language.
- One (1) participant said the witness must use their home language.

Samples C1, C2 and C3 responded as follows:

- All 15 participants said that the witness should use the language they feel comfortable using.

Sample D1 responded as follows:

- The participant said it is preferable that the witness uses their home language, unless they are comfortable in another language.

Sample D2 responded as follows:

- The participant said that the witness should use their home language.

Sample D3 responded as follows:

- The participant said that the witness should use the language that they feel comfortable using, unless they are comfortable in another language.

Samples A, B, C and D participants expressed opinions that were similar to those of Pasqualucci (2003:198), Hale et a.l (2009:39) and Joubert (2010:345), which are that a witness must use their home language or a language that they feel comfortable using.

3.7 ADVICE TO WITNESSES WHO BECOME ANGRY WHILE TESTIFYING

Lyman (2008:579) suggests that witnesses should always speak in a calm tone of voice. Lyman (2008:580) suggests maintaining self-control during the stress of a courtroom appearance, as it is often difficult for a witness to retain their composure. Self-control is vital on the witness stand, whatever the provocation.

Barsky (2012:141) advises witnesses to remind themselves that they are doing a good job and that they are trying to be helpful and honest. They should concentrate on staying calm and in control. Nelson, Phillips and Steuart (2010:562) suggest that witnesses stay calm and project professionalism in their behaviour and appearance. Van Rooyen (2012:355) advises witnesses to keep their temper under control in the courtroom.

The participants of four samples, that is sample A, B, C and D were asked what advice they would give to a witness who becomes angry while testifying.

Sample A1 responded as follows:

- Four (4) participants said that the witnesses must not become angry, even if they are criticised.
- Nine (9) participants said to stay calm, otherwise the court will draw a negative inference about you.
- Two (2) participants said to always stay calm.

Sample A2 responded as follows:

- Six (6) participants responded by saying “do not become angry, even if an attorney tries to provoke you”.

- Three (3) participants said that even if you are under pressure, control yourself and stay composed.
- Four (4) participants said keep your emotions in check and stay calm.

Sample A3 responded as follows:

- Five (5) participants said that if one is under pressure and that makes one angry, the only way to keep the situation under control is to stay composed.
- One (1) participant said the witnesses must not become angry, even if they are criticised or provoked.

Sample B1 replied as follows:

- Two (2) participants said that a witness who gets angry makes themselves vulnerable, and might end up being victimised by the attorneys.
- One (1) participant said that an angry witness appears to be prejudiced.
- One (1) participant said that if one is under pressure and that makes one angry, the only way to keep the situation under control is to stay calm.

Sample B2 responded as follows:

- One (1) participant said that a witness who gets angry is at the mercy of the attorneys.
- One (1) participant said to constantly stay unruffled. If not, the court will draw negative decisions against such a witness.

Sample B3 responded as follows:

- Three (3) participants said to keep your emotions in check and stay calm.

Sample C1 responded as follows:

- All five (5) participants said that if one is under pressure and that makes one angry, the only way to keep the situation under control is to stay calm.

Sample C2 responded as follows:

- All five (5) participants said to keep calm.

Sample C3 responded as follows:

- Five (5) participants said the witness must not get angry when answering the questions.

In summary, Sample C's 15 participants stated that witnesses must keep their emotions in check and stay calm.

Sample D1 responded as follows:

- The participant said to always stay calm. If not, the court will make negative conclusions against such a witness.

Sample D2 responded as follows:

- The participant said to stay calm, otherwise the court will draw a negative inference about you.

Sample D3 responded as follows:

- The participant said to stay calm.

In summary, Sample D participants advised witnesses to stay calm when testifying, to avoid gaining a bad reputation.

Samples A, B, C and D participants made similar comments to what Lyman (2008:580), Barsky (2012 141), Nelson et al. (2010:562) and Van Rooyen (2012:355) make, which is that one should maintain self-control, even during the stress of a courtroom appearance when it is often difficult for a witness to retain their composure.

3.8 GUIDELINES FOR TESTIFYING IN COURT

The starting point is that the testimony of all witnesses in both civil and criminal cases is required to be presented in court, after the witness has been sworn in or when they have made a solemn affirmation (Singh & Ramjohn, 2016:5). The investigator often has to search for, locate, and identify the person before he can interview them (Van Rooyen 2012:314). Guidelines for testifying come into play when witnesses are cross-examined, as their responses are considered to be valid in providing information. This information plays a major role in determining

their validity as a witness. Furthermore, the most important factors are the number of witnesses required to testify, how they are cautioned to give accurate information, and lastly, how justice should rule in cases of conflicting testimony (McClish & Olivelle, 2012:79).

Brammertz and Jarvis (2016:33) state that knowing what to expect from the court process helps alleviate the stress and anxiety of testifying "as follows", and ensures the coherent presentation of evidence. During the testimonial stage, prosecutors explain to witnesses how their evidence will be presented in court. Brammertz and Jarvis (2016:33) further state that witnesses are allowed to review their evidence, to clarify key aspects of the evidence, and are shown exhibits, such as photographs or documents, that the prosecutor intends to show them during their testimony. This allows witnesses to be prepared, in order to avoid being surprised by the questions posed to them during their court appearance.

When reviewing the evidence with the witnesses, prosecutors have to be careful not to influence the content of the witnesses' testimony, and to operate within strict guidelines (Brammertz & Jarvis, 2016:33). Van Rooyen (2012:348) specifies that the witness should be familiar with the court, stand up straight, speak loudly and clearly, and look directly at the questioning attorney or the presiding official. The witness must also remember that messages are sent non-verbally, so tone of voice, facial expression, hand gestures, body position, and eye contact are important. Orey (2011:19) and Van Rooyen (2012:355) list the "ten commandments" of testifying:

- Tell the truth.
- Do not arrive late at court.
- Do not lose yourself (control or temper).
- Do not disguise the truth with lies.
- Do not answer a question before it is fully understood.
- Do not memorise your testimony.
- Do not just blurt out an answer.
- Do not engage in hearsay.
- Do not be unprepared.

- Once again, do not lie.

The participants of four samples were asked what guidelines could be given to witnesses for testifying in court.

Sample A1 responded as follows:

- Eleven (11) participants said that if it is your first time to go to court, you have to visit the court before your matter is heard, so you can familiarise yourself with court procedures.
- Four (4) participants said to not talk about your evidence with other witnesses. If that happens, justice should rule in cases of conflicting testimony.

Sample A2 responded as follows:

- Ten (10) participants said that when you go to court, be prepared to wait a while before you are called in to the court to give evidence. Some cases are delayed, or even put off until another date, for various reasons.
- Three (3) participants said that when you are called to give evidence, you will be shown to the witness box and asked to stand. Before giving evidence in court, you will be asked if you wish to take an oath or make an affirmation that your evidence is true. The difference between an oath and an affirmation is that the oath is a religious commitment, whereas an affirmation is non-religious.

Sample A3 responded as follows:

- Six (6) participants said that the prosecutor and the defence lawyer will stand up behind the “bar table” when they are about to ask you questions.

Sample B1 responded as follows:

- One (1) participant said that the prosecutor is not allowed to help you with your answers.
- Three (3) participants said to wait for each question and answer it as best you can.

Sample B2 responded as follows:

- One (1) participant said to listen carefully to the questions.

- One (1) participant said to only answer what you are asked.

Sample B3 responded as follows:

- One (1) participant said if you cannot remember, say that you do not remember.
- Two (2) participants said if the question is confusing or difficult to follow, you can ask for the question to be asked again in an easier way.

Samples A and B responded as follows:

- Speak loudly, speak clearly, and speak slowly.
- Listen carefully to the questions.
- Do not be afraid to say you do not know if you really do not.
- If you do not know the answer to a question, just say so; do not guess.
- If you do not understand a question, just say so or ask for it to be repeated.

Samples C1, C2 and C3 responded as follows:

All 15 participants responded that it is important to tell the truth.

- Sample D1 responded as follows:

The participant said that testifying in court is an art – one that can only be mastered through practice and experience.

Sample D2 responded as follows:

- The participant said to stand up straight, and speak loudly and clearly.

Sample D3 responded as follows:

- The participant said to know what is in the docket and be prepared before you testify. Familiarise yourself with the courtroom before the hearing.

Samples A, B, C and D spoke something in correlation with what Van Rooyen (2012:348) said by specifying that the witness should be familiar with the court, stand up straight, speak loudly and clearly, tell the truth, and look directly at the questioning attorney or the presiding official, even though they do not seem confident in giving the answer to the question.

3.9 SUMMARY

In this chapter, the researcher investigated the guidelines for testifying in court. The topics in this chapter are interlinked. As a witness in court, one has to know how to carry oneself inside the courtroom; that is what is called one's demeanour in court. Whether one is a lay-witness (public witness) or an expert witness (uniformed member or detective), the court expects one to deliver a credible testimony. If the officer behaves in a professional manner on the witness stand, the prosecution's case is materially improved, and the chances of a conviction increase accordingly. In any case, a testifying witness is expected to testify in a professional way and they should keep their temper under control.

Looking at testifying is about providing meaningful, verbal information about the crime that took place, in a sequential manner, and helping the court to piece together the information provided with the evidence presented before the court. If one testifies trustfully – which is one of the guidelines for testifying in court, one will not worry if one is subjected to giving evidence in chief. Testifying in court is a challenge on its own, so the witnesses are advised to speak in their home language, which is their mother tongue and they should keep their temper under control.

In the following chapter, the researcher discusses the findings and recommendations of this research.

CHAPTER 4

FINDINGS AND RECOMMENDATIONS

4.1 INTRODUCTION

This research was generated because of an interest in investigation and giving evidence in court. The definition of investigation was provided, as well as guidelines for testifying in court. Section 205(3) of the Constitution (South Africa, 1996) was outlined, with the understanding that everything starts and ends with the Constitution; even the SAPS is mandated by the Constitution. Section 25 of the Constitution sets out the roles and responsibilities of the police. This research also focused on witnesses, their viewpoints, and what is regarded as admissible in court.

The aim of this research was to research guidelines for uniformed members, detectives of the SAPS and public witnesses, for testifying in court. The research questions were the following: “What does criminal investigation entail?” and “What guidelines could be given to witnesses (uniformed members, detectives and public witnesses) for testifying in court?”

4.2 FINDINGS

The findings are presented under primary and secondary findings. The primary findings will focus on answering the research questions:.

- What does criminal investigation entail?
- What guidelines can be given to witnesses (uniformed members, detectives and public witnesses) for testifying in court?

4.2.1 The primary findings

Research Question: 1 What does criminal investigation entail?

The following findings were gathered from the literature and interviews conducted by the researcher. The researcher’s findings concerning the above research question were as follows:

- The literature extrapolates that criminal investigation is the collection of information that will help to discover evidence aimed at identifying, apprehending and convicting alleged offenders.
- The 48 participants of samples A, B, C and D said that criminal investigation is to investigate and establish the commission of an offence; evidence is put together to ascertain what took place and to prove the guilt of a criminal.
- The other 13 participants of samples A, B and C did not know the answer to the question.

4.2.2 Primary findings

Research Question 2: What guidelines could be given to witnesses for testifying in court?

4.2.2.1 *Guidelines for testifying in court*

- The literature denotes that witnesses are allowed to review their evidence, in order to clarify key aspects of the evidence, and are shown exhibits, such as photographs or documents, that the prosecutor intends to show them during their testimony. This allows witnesses to be prepared, in order to avoid being surprised by the questions posed to them during their court appearance. When going over the evidence with the witnesses, prosecutors have to be careful not to influence the content of the witnesses' testimony, and have to operate within strict guidelines.
- The participants said that when one is called to give evidence, one will be shown to the witness box and asked to stand. Before giving evidence in court, one will be asked if one wishes to take an oath or make an affirmation that one's evidence is true. The difference between an oath and an affirmation is that the oath is a religious commitment, whereas an affirmation is non-religious.
- The participants and the literature reached agreement on the following points:
    - Speak loudly, speak clearly, and speak slowly.
    - Listen carefully to the questions.
    - Do not be afraid to say you do not know, if you really do not.
    - If you do not know the answer to a question, just say so. Do not guess.

    - If you do not understand a question, just say so, or ask for it to be repeated.
- The guidelines for testifying in court are quite comprehensive, and the participants gave their own viewpoints.
- The research revealed that witnesses are not confident when testifying in court, because they do not know how to testify in court.

4.2.3 Secondary findings

Based on the information from the literature and the interviews conducted, the following secondary findings were made:

4.2.3.1 The purpose of criminal investigation

- The literature revealed that the purpose of investigation is to prevent the reoccurrence of crime.
- The participants of four samples responded that is to understand and ascertain what took place during the commission of the offence, and to prevent the reoccurrence of crime.
- There is a similarity between what the literature and the participants said.
- All the participants answered the question as to what the purpose is of criminal investigation.

4.2.3.2 The objectives of criminal investigation

- The objectives of criminal investigation are identification, apprehension, crime detection, locating and identifying suspects (before a crime scene can be processed, individual perpetrators must be removed from the premises because they pose a danger to police, investigators and others), recording, and processing while observing all constitutional considerations, recovering property, preparing for trial (including completing accurate documentation), and convicting the accused by testifying and assisting in the presentation of legally obtained evidence and statements, as the literature stipulates.
- The participants of samples A, B, C and D made an inference that the objectives are to identify, locate and arrest the right suspect for a crime committed, recover stolen property, and, lastly, to secure the conviction of the suspect.

- They gave answers according to their experience.
- All the participants answered the question as to the objectives of criminal investigation.

4.2.3.3 Crime scene

- The crime scene is considered to be the location where an illegal deed took place and to contain physical evidence – that is, evidence that can be touched, seen, or otherwise perceived using the unaided senses or forensic techniques. The availability of physical evidence means that processing the crime scene is the most important phase of an investigation.
- The participants of samples A, B, C and D had a clear understanding of "crime scene", inferring that it is where a crime occurred, that it may yield physical clues/evidence, and must be cordoned off to eliminate contamination.
- The above statement corresponded with the literature.
- All the samples' participants answered this question.

4.2.3.4 The Locard principle

- The Locard principle takes place when people come into contact with one another. They leave an exchange of trace evidence that can help to link a victim or a suspect to a crime scene, and it can also link persons, objects and crime scenes to a particular crime. The Locard principle involves an exchange of traces. It is important to attend a scene before it becomes contaminated. The suspect will always leave something at the scene, namely the evidence which is not visible or which cannot be touched – such as fingerprints or his footprints, his hair, the fibres from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. This was inferred by the participants.
- The participants of samples A and B answered this question, but with great struggle. They kept on asking what Locard is all about. After a thorough explanation, they managed to relate to it, and they answered the question based on their experience.

- One (1) participant responded by pointing out the evidence found in a house-breaking and theft crime scene agreeing with the literature.
- The other fourteen (14) participants did not know the answer to the question, namely the meaning of the concept ‘Locard principle’.

4.2.3.5 Identification

- Identification refers to uniqueness, and stresses the fact that every object or person (individual) can only be identical to itself (individuality).
- Samples A, B, C and D participants indicated that identifying a criminal suspect through the use of fingerprints has proved to be one of the most effective methods for apprehending criminals, which means that every object or individual is unique in their own way, and must be placed in their own category. Objects are identified by comparing their class characteristics with those of existing or previous standards.
- All the participants agreed with the literature.

4.2.3.6 Evidence

- Evidence is defined as anything that is liable to prove or disprove a fact in a dispute. In investigations, evidence can be given as testimony or as physiccal evidence, but each is important, and plays an important role in helping the judges come to the decision of who is guilty or innocent.
- Participants deduced that evidence is used to prove a case in court, link the suspect to a crime, and prove who is guilty of the crime committed.
- Their induction is similar to the literature.
- All the participants responded.

4.2.3.7 The meaning of a “witness”

- A witness is someone who can easily bring out information regarding the occurrence that they saw, heard or experienced. Another definition from the literature states that a witness is a person whom the party calls to participate in court proceedings, in order to prove a particular matter or substantial material to the case.

- The participants said that a witness is a person who gives evidence in court about the commission of an offence, and an expert or member of the community who has been called to testify about whatever is required of them – i.e. whether that person saw or heard what happened.
- The researcher compared the viewpoints from the literature with that of the participants, and found that their viewpoints concurred.
- All the participants answered this question with ease.

4.2.3.8 Types of witnesses

- The literature states that, generally, witnesses fall into two categories: lay and expert. An expert witness has specialised knowledge upon which their testimony emerges, such as a chemist, a DNA specialist, or a ballistics examiner. Lay witnesses testify to objective reality. Other types of witnesses were mentioned:
    - **Lay witnesses:** Those giving testimony based on the occurrence or lay opinion testimony. **Independent expert witnesses**: Those giving specialist testimony who are not a party, the party's current employee, or a retained expert.
    - **Controlled expert witnesses**: Those giving expert testimony who are a party, or a party's current employee, or a retained expert.
- All the participants knew about two types of witness – that is, eyewitness and lay witness, except Sample D1, who mentioned the various types of witnesses not cited by the literature, namely:
    - **Eyewitness:** An eyewitness brings the testimony of what they observed, to the proceedings.
    - **Expert witness:** An expert witness is one who has greater knowledge than the normal person.
    - **Character witness:** The testimony of this witness relies on the good reputation of another person.
- The explanation found in the literature fits with that of the participants.
- All the participants responded.

4.2.3.9 Testifying

- Testifying is an oral statement that relates to a legal dispute which occurs in the presence of court personnel, and which is made for the purpose of providing members of the court with evidence. In addition, the literature mentions that testifying is about giving oral evidence about the sequence of events relating to a dispute.
- Testifying is giving *viva voce* evidence (spoken evidence) under oath or affirmation in a court of law, by testifying about what a witness has seen, heard, tasted, smelled or touched.
- The participants made the same deductions found in the literature.

4.2.3.10 Professional conduct during court proceedings

- The literature indicates that it is important for the investigator to conduct themselves in a businesslike and efficient manner (i.e. professionally). In considering the witness's appearance, the court looks at how the witness appears in the witness box, in respect of the image they project and the behaviour the witness exhibits. Another literature inference stipulates that if the officer behaves in a professional manner on the witness stand, the prosecution's case is materially enhanced, and the chances of a conviction increase accordingly.
- All the participants said that the demeanour of witnesses when testifying is important, in order to avoid discrediting themselves in court. Everyone is bound to behave in a professional manner, otherwise no one will believe their testimony.

4.2.3.11 Giving evidence in chief

- Taken from the literature, evidence in chief takes place when the witness gives their evidence in chief. The witness is called to the witness stand for the purpose of giving the court their version of the facts. The evidence is given orally, under oath (also referred to as *viva voce*), and is led by means of questions posed by the prosecutor if the witness is a state witness, or by the attorney or advocate for the defence (or the accused themselves) if the witness was called by the defence. To lead a witness though their evidence

means to question that witness in chief, which is to ask a series of open questions.

- The basic rule of evidence in chief is that the witnesses are generally required to give their account in their own words in response to specific questions from the party calling them. This rule is usually expressed in the form that a party may not ask leading questions of their witnesses.
- Giving evidence in chief is giving verbal evidence that supports statements, as well as affidavits, annexures, and tendered documents used in making a case, as revealed by the participants.
- The participants of samples A, B and D's answers ascertain that they have knowledge, and their answer has the same meaning as that of the literature.
- Seven participants of Sample C did not know the answer to the question.

4.2.3.12 Language to use when testifying in court

- The witness must speak clearly, and answer, in the language they are comfortable with, exactly according to what is asked. The police official's witnesses should avoid using different languages during testimony. Lastly, a witness must use their home language, or a language that they feel comfortable with speaking, but they must avoid slang.
- The participants make a valid point in saying the attorney subpoenaing them must be cognisant that they are going to use their home language to testify in court, so that the attorney can arrange for an interpreter. They also said that witness must inform the attorney subpoenaing them that they are going to use their home language to testify in court so the attorney can arrange for an interpreter. This is not mentioned by the literature.
- The literature and the participants are of the same opinion regarding the use of language when testifying in court.
- All the participants answered this question.

4.2.3.13 Advice to witnesses who become angry while testifying

- The literature makes mention of maintaining self-control during the stress of a courtroom appearance, as it is often difficult for a witness to retain their composure. Self-control is vital on the witness stand, whatever the provocation.

- The participants said to keep the situation under control is to stay calm; if not, the court will form negative conclusions about such a witness. Maintaining composure is important.
- Samples A. B, C and D participants made similar comments to the literature, in that one should maintain self-control, even during the stress of a courtroom appearance, when it is often difficult for a witness to retain their composure.
- All the sample participants responded to this question.

4.3 RECOMMENDATIONS

The following recommendations are made on the basis of the facts that placed emphasis on the following aspects during the training of police officials:

4.3.1 Research Question 1

4.3.1.2 Recommendations for "What does criminal investigation entail?"

- Uniformed members should receive training in criminal investigation.
- Detectives should receive in-service training in criminal investigation; and
- As for the public witnesses, an article must be written for them to learn about what criminal investigation entails. The article will be submitted to POLSA and *Servamus* for publishing.

4.3.2 Research Question 2

4.3.2.1 The Locard principle

Having considered the problems participants had in answering the question, what is the meaning of the concept Locard principle. The recommendation is that uniform members and the detectives must receive continuous in-service training on the Locard principle. The article will be submitted to POLSA and *Servamus* for publishing.

4.3.2.2 Giving "evidence in chief"

A recommendation, as an article on giving evidence in chief, must be written, and it will benefit the public witnesses. The article will be submitted to POLSA and *Servamus* for publishing.

4.3.2.3 Guidelines for testifying in court

The court trusts the testimony of the police officials, so if the police do not know how to testify in court, then that is a disgrace to the SAPS and to the whole world. The police officials must carry the guidelines for testifying in court everywhere they go, like their pocket books. The uniformed members and the detectives were not confident in replying to the guidelines for testifying in court so the recommendation is in-service, to be offered to both the departments.

4.3.2.4 Crime scenes, identification and evidence

The recommendation is to host a workshop and continuous in-service training, for uniformed members and detectives, on crime scenes, identification and evidence and also the workshop which would include NPA and public witnesses. These are the aspects that strengthen or destroy the case.

4.4 CONCLUSION

The researcher used triangulation in this study, which yielded good results. The participants answered the questions correlated to the research. This information was obtained from the participants, as well as from the literature reviewed for the report. The primary research questions under investigation were answered. The results of the research indicate that training in testifying in court should be taken as a matter of urgency, and it should be compulsory for every police official to attend.

The researcher discovered that there is a link between these points of discussion: First chapter criminal investigation, the purpose of criminal investigation, the objectives of criminal investigation, “crime scene”, Locard principle, identification and evidence. Second chapter the term “witness”, the types of witnesses, testifying, evidence, giving evidence in chief, a testifying witness who becomes angry while testifying, and guidelines for testifying in court. These titles and subtitles caused the research to have a coherent flow.

Criminal investigation is about the gathering of information, evidence, and application of scientific methods to the analysis of a crime scene – to name but a few. If these three pointers are followed, it will lead to the arrest of the correct suspect,

and the bringing of the suspect before the court, to be convicted. The purpose of criminal investigation is to understand and establish what took place during the commission of a crime, and to prevent the reoccurrence of crime. According to the objectives of criminal investigation, the police must establish that a criminal act was indeed committed, identify the suspect, and gather evidence. In order to apprehend the person responsible for the criminal act, eliminate the innocent, wrongfully accused, attempt to recover any property and further evidence. In addition, prepare for trial, including completing accurate documentation; convicting the accused by testifying, assisting in the presentation of legally obtained evidence and statements.

Hamlet (2007:1), however, is of the view that testifying in court is an art that can only be mastered through practice and experience. For this reason, the police must be cautious and meticulous about the material they gather. Testimony based on these five senses is admissible in court, depending on the ability of the witness to remember the incident. Lay witnesses have a range of responsibilities to help the police bring criminals to justice (Davey, 2011:268). The prosecutors depend on the police to provide both the suspects and the evidence needed to convict lawbreakers. Police officials must use their training, experience and work routines to decide whether arrest and prosecution would be worthwhile.

The participants and the literature enriched this research. The researcher offered, in detail, a description of the situation and the subjects, as recommended. These guidelines will be made available to SAPS management as the custodyans of the investigation of criminal cases. The SAPS management will be requested to present these guidelines for testifying in court to members during training sessions or workshops. In two cases that were extrapolated in the research, that of Pistorius and Dewani, the police showed a lack of training in handling evidence and testifying in those cases. The commanding officer must identify training deficiencies in members. Find ways of sending them on appropriate training programmes to achieve the desired level of service delivery.

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LIST OF CASES

S v Dewani (CC15/2014) [2014] ZAWCHC 188.

***S v Pistorius* (CC113/2013) [2014] ZAGPPHC 793.**

ANNEXURE A

INTERVIEW SCHEDULE FOR SAMPLES A, B, C AND D

TOPIC: GUIDELINES FOR TESTIFYING IN COURT

RESEARCH AIM

The aim of this research is to research guidelines for witnesses to use when testifying in court.

RESEARCH QUESTIONS

- What does criminal investigation entail?
- Which guidelines could be given to witnesses for testifying in court?

INFORMED CONSENT FORM

Affiliation: Lecturer at Vaal University of Technology

Researcher: Sannah Nthabiseng Molefe

Title of study: Guidelines for testifying in court

Aim of study: The aim of this research is to research guidelines for witnesses to testify in court.

Procedures:

The researcher will conduct the interview using an interview schedule, in a suitable location. The interview will take about two hours, depending on the participant's willingness to participate. The responses will be written down and recorded with the informed consent of the participant.

Risks and discomfort:

The researcher will conduct the interview in a polite and calm manner to avoid any discomfort on the participant's part. The researcher will ensure that the participant risk is minimal.

Benefits:

The researcher hopes that the participants' participation will make them proud that they are part of a solution, not a problem, and that they will feel their contributions are valued.

Participants' rights:

The interview is voluntary and is based on mutual trust and understanding with the researcher. If the participant feels uncomfortable, he or she is free to stop the

interview. In this case, the information that the participant has provided will be destroyed.

Rights of access to researcher:

The participant is always welcome to contact the researcher at the given telephone numbers on this form, if the participant needs clarity on interview particulars.

THANK YOU FOR YOUR PARTICIPATION IN THIS STUDY.

I, the undersigned, agree to participate in this study voluntarily without duress.

Signed at ……..…… on this …… day of ……..…..…… 20…….

Signature: …… (Print name): ……..……

Cell number: ……..……

SECTION A: HISTORICAL INFORMATION

Sample A

A.1 (a) For how long have you been involved in investigation of crime?
1 to 5 years, 5 to 10 years, 10 to 15 years?

(b) For how long have you been a uniformed member?
1 to 5 years, 5 to 10 years, 10 to 15 years?

A.2 Did you undergo specific training on testifying in court?
YES/NO

A.3 Have you ever testified in court?
YES/NO

Sample D

A.1 Are you a prosecutor?
YES/NO

A.2 For how long have you been a prosecutor?
1 to 5 years, 5 to 10 years, 10 to 15 years?

A.3 Did you undergo practical training to interview witnesses in court?

YES/NO

SECTION B: CRIMINAL INVESTIGATION

B.1 Based on your understanding, what does criminal investigation entail?

B.2 What is the purpose of criminal investigation?

B.3 In terms of your experience, what are the objectives of criminal investigation?

B.4 Define the term “crime scene”.

B.5 What is the meaning of the concept “Locard principle”?

B.6 Based on your knowledge, give the meaning of “identification”.

B.7 Can you explain the meaning of the concept “evidence”?

SECTION C: GUIDELINES FOR TESTIFYING IN COURT

C.1 What is the meaning of the term “witness”?

C.2 Can you list types of witnesses?

C.3 What is the meaning of the term “testifying”?

C.4 Why is it important to conduct oneself in a professional manner within a court of law when giving evidence?

C.5 According to your understanding, what is the meaning of the term “giving evidence in chief”.

C.6 Which language will you advise the witness to use when testifying in court?

C.7 From your experience, what advice would they give to a witness who becomes angry while testifying?

C.8 Which guidelines could be given to witnesses for testifying in court?

ANNEXURE B

PERMISSION TO CONDUCT RESEARCH IN THE SAPS

A2

J.P.S 002-0222 SAPS 21

SUID-AFRIKAANSE POLISIEDIENS SOUTH AFRICAN POLICE SERVICE

Private Bag X57 Braamfontein 2017

Verwysing Referance	: 3/34/2 (201400011)
Navrae Enquiries	: SAC Linda Ladzani
Telefoon Telephone	: 011 274 7324
Sel nommer Cell number	: 076 499 8661
Epos E-mail	: ladzanim@saps.gov.za

THE PROVINCIAL COMMISSIONER
GAUTENG PROVINCE
PARKTOWN
2017

2014-04-25

A. The Deputy Provincial Commissioner: Operations Officer
S A Police Service
GAUTENG

B. The Deputy Provincial Commissioner : Crime Detection
S A Police Service
GAUTENG

C. The Deputy Provincial Commissioner : Operational Service
S A Police Service
GAUTENG

D. The Provincial Head: Legal Services
S A Police Service
GAUTENG

APPLICATION FOR RESEARCH: MRS SN MOLEFE: GUIDLINES OF TESTIFYING IN COURT

A: For your approval
B –D: For your recommendation

1. Attached herewith is an application from the above mentioned person to conduct research within the SAPS.

2. The application has been evaluated by the Provincial Research Centre (Strategic Management) as per the attached Annexure and found to be in compliance with National Instruction 1 of 2006: Research.

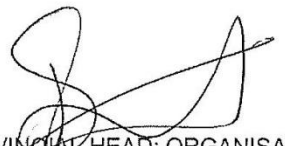
3. In the opinion of the Research Centre, the research will be to the advantage of the SAPS as it will enable the SAPS members to enhance their knowledge and ability to testify in court.

APPLICATION FOR RESEARCH: MRS SN MOLEFE: GUIDLINES OF TESTIFYING IN COURT

4. In line with National Instruction 1 of 2006, you are afforded the opportunity to comment on the relevance and feasibility of the proposed research within your area of responsibility. Any objections against the research will be noted and you will be requested to clarify and motivate those with the Provincial Head: Organisational Development & Strategic Management.

5. In order to ensure the effective and efficient finalisation of this application you are requested to forward your comments back to the Provincial Project Centre within the allocated timeframe for attention (*SAC Linda Ladzani at 011 274 7324*).

6. Your cooperation and assistance is appreciated.



BRIGADIER
PROVINCIAL HEAD: ORGANISATIONAL DEVELOPMENT & STRATEGIC MANAGEMENT
SJ PHETO
Date: 2014/04/30

ANNEXURE A

APPLICATION FOR RESEARCH: MRS SN MOLEFE: GUIDLINES OF TESTIFYING IN COURT

A. COMMENTS & RECOMMENDATION: PROVINCIAL RESEARCH CENTRE

i	OFFICIAL FILE NO:	3/34/2(201400016)			
	FILE COMPUTER REFERENCE NO:	6998194			
ii	MOTIVATION FOR RESEARCH:	To indicate the direction and focus of an investigation that will help determine the criteria in which the outcome of the research will be evaluated. It will enable the SAPS members to enhance their knowledge and ability to testify in court.			
	APPLICATION FOUND TO BE COMPLETE:	YES	X	NO	
	INDEMNITY / UNDERTAKING SIGNED	YES	X	NO	
iii	APPLICATION PERUSED BY:	SAC ML Ladzani			
	CONTACT NO:	011 274 7324			
	SIGNATURE:	[signature]			
	DATE:	2014-04-24			
iv	APPLICATION VERIFIED BY:				
	APPLICATION RECOMMENDED:	YES	X	NO	
	CONTACT NO:				
	SIGNATURE:				
	DATE:				

B. RECOMMENDATION BY PROVINCIAL HEAD: ORGANISATIONAL DEVELOPMENT & STRATEGIC MANAGEMENT

COMMENTS:				
APPLICATION RECOMMENDED:	YES	✓	NO	
SIGNATURE:	DATE:	2014/04/30		

APPLICATION FOR RESEARCH: MRS SN MOLEFE: GUIDLINES OF TESTIFYING IN COURT

C. RECOMMENDATION BY PROVINCIAL HEAD: LEGAL SERVICES
TIME ALLOCATED: 3 days

COMMENTS WITH REGARDS TO ANY LEGAL OBJECTIONS AGAINST THE RESEARCH WITH ANY ADDITIONAL LIMITATIONS TO RESEARCHER:				
APPLICATION RECOMMENDED:	YES	X	NO	
SIGNATURE:	DATE: 2014/05/08			

D. RECOMMENDATION BY RELEVANT LINE MANAGER: DEPUTY PROVINCIAL COMMISSIONER: CRIME DETECTION
TIME ALLOCATED: 2 days

COMMENTS WITH REGARDS TO THE RELEVANCE AND FEASIBILITY OF THE RESEARCH WITHIN YOUR ENVIRONMENT:				
APPLICATION RECOMMENDED:	YES	X	NO	
SIGNATURE: MAJ GEN	DATE: 2014-05-09			

PERMISSION TO CONDUCT RESEARCH IN THE SAPS

RESEARCH TOPIC: **GUIDLINES OF TESTIFYING IN COURT**

RESEARCHER: **MRS SANNAH NTHABISENG MOLEFE**

Permission is hereby granted to the researcher above to conduct research in the SAPS based on the conditions of National Instruction 1 of 2006 (as handed to the researcher) and within the limitations as set out below and in the approved research proposal.

This permission must be accompanied with the signed Indemnity, Undertaking & Declaration and presented to the commander present when the researcher is conducting research.

This permission is valid for a period of six months after signing.

Any enquiries with regard to this permission must be directed to Lt Col Moolman at moolmanj@saps.gov.za or SAC Linda Ladzani at Ladzanim@saps.org.za .

RESEARCH LIMITATIONS / BOUNDARIES:

Research Instruments:	Interviews (Semi-structured)
Target audience / subjects:	Detective and Uniform members from police stations
Geographical target:	Sebokeng SAPS / Evaton SAPS and Orange Farm SAPS
Access to official documents:	None

MAJOR GENERAL
DEPUTY PROVINCIAL COMMISSIONER: OPERATIONS OFFICER
NP MASIYE

ANNEXURE C

PERMISSION TO INTERVIEW PROSECUTORS

National Prosecutions Service

J Venter

6 May 2014

BENONI

Tel: 011 746 7600
ax: +27 11 421 0508

Cnr Tom & Harpur Ave
Benoni magistrate court
1500

P/Bag X013
BENONI
1500
South Africa

Me SM Molefe

By e mail

Dear me Molefe

Request to conduct interviews for research project.

Authority is herewith granted for the research interviews as set out in your attached documentation.

Kind regards.

Johan Venter
Chief Prosecutor

ANNEXURE D

PROOF READING AND EDITING LETTER

GRAMMAR GUARDIANS

09 January 2017

To whom it may concern

Re: Proofreading and academic editing for Ms N. Molefe

I, J.L. van Aswegen of Grammar Guardians, hereby confirm that we proofread and performed academic editing on "Guidelines for Testifying in Court" by Nthabiseng Molefe during September 2016.

Please contact me on 082 811 6857 or at jeanne@grammarguardians.co.za regarding any queries that may arise.

Kind regards,

J.L. van Aswegen

Grammar Guardians

ANNEXURE E

EDITOR ACCREDITATION LETTER

22 February 2017

I, Marlette van der Merwe, ID 480206 0118 085, hereby certify that the text and list of references of the master's dissertation titled "Guidelines for testifying in court", by Sannah Nthabiseng Molefe, have been edited by me, according to the modified Harvard reference method as used by the School of Criminal Justice, Unisa.

Marlette van der Merwe
BA, HDipLib (UCT)