

**THE IDENTIFICATION PARADE AS A TECHNIQUE FOR THE
IDENTIFICATION OF SUSPECTS: A CASE STUDY IN
KWAZULU-NATAL**

By

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I **Campbell Msizi Nyuswa** declare that **IDENTIFICATION PARADE AS A TECHNIQUE FOR THE IDENTIFICATION OF SUSPECTS: A CASE STUDY IN KWAZULU-NATAL** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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Preface

This study explores the utilisation of the identification parade as a technique for the identification of suspects. The intention of the study is to empower the investigators with knowledge they can use during their investigations. An identification parade is the most common police identification procedure. When conducted properly, it is considered more accurate than other methods.

Crime in South Africa is a serious concern and it impacts negatively on many lives. The fear of crime, the loss of life and the socioeconomic impact of crime, etc., create the impression that the battle against crime has been lost. The limited knowledge among the police investigators contributes to making the reduction of crime more difficult to achieve.

This study aims to develop good practice by recommending new ideas on how identification parades should be conducted with the view to enhancing the performance of police investigators.

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CHAPTER 1

GENERAL ORIENTATION

1.1 Introduction

The percentage of serious and violent crimes in South Africa has increased over the past few years. Many citizens are robbed, raped, murdered, etc. Some of these crimes are not reported as some victims have lost trust in the police. This challenge is not only an indication that the society in South Africa lack trust in the police but it is a challenge on the police that they need to come up with good strategies and techniques to combat crime in order to win the trust from the society.

When a crime is reported to the police, the police must investigate this is the obligation placed by Section 205 of the Constitution, Act 106 of 1996 to prevent, combat and investigate crime. The investigation leads to the arrest of an offender. When a person is arrested it does not means that he will be put on trial and be convicted. The state has to prove a case beyond reasonable doubt. There should be overwhelming evidence against the accused. This evidence must be collected in a manner that is admissible in the court of law, processed properly and lawful in a manner that is above reproach.

The identification parade plays a major role during a hearing, in linking the perpetrator to the crime committed. In contact crimes, such as murder, armed robbery and rape, the courts rely mainly on the positive identification of perpetrators by the victim or by a witness as a person who saw the crime being committed. It is therefore important that investigators in the South African Police Service (SAPS) understand the procedures to be followed when

conducting an identification parade and the requirements for an identification parade to be admissible in court.

The high crime rate in South Africa and, particularly, in the Port Shepstone area in KwaZulu-Natal, poses a threat to the community. According to the crime analysis report (SAP 6), circular 3/21/3/1/77 of 2006 at the Port Shepstone police station, the following crimes were reported in 2005:

- 70 cases of attempted murder were reported of which 28 were solved;
- 75 rape cases were reported of which 25 were solved; and
- 55 robbery cases reported of which 20 were solved.

In 2006, 82 cases of attempted murder were reported of which 32 were solved, 27 rape cases were reported of which 17 were solved, and 45 robbery cases were reported of which 23 were solved. In 2007, 90 cases of attempted murder were reported of which 35 were solved, 80 rape cases were reported of which 12 were solved, and 60 robbery cases were reported of which 20 were solved. Some of these dockets are incomplete as they are still under investigation.

Even though identification parades have been used in some of these cases, in a number of which the accused have been identified, the parade was not always admissible in court as evidence, because of the manner in which they were conducted. The researcher has even checked some filed dockets where the identification parade was used, and found that in most cases the identification parades were not admissible as evidence in court, as proper procedures were not followed.

In an attempt to determine the cause of this problem, the researcher interviewed investigators and public prosecutors at the Regional Court of the Port Shepstone Magistrate's Court, and after interviewing them it was clear to the researcher that the problem experienced by courts is that the investigators are not familiar with the procedures to be followed for an identification parade to be admissible as evidence.

1.2 Aims of the research

In general, the aim of research is to establish facts, gather new data and to determine whether there are interesting patterns in the data (Mouton, 1996:103). The aim of this research is to investigate the correct procedures to be followed when conducting a professional identification parade which will be admissible as evidence in court.

1.3 Purpose of the research

The purpose of the research indicates the focus and direction of the research, and provides criteria for the evaluation of the outcomes of the research (Denscombe, 2002:25). In this research the purpose will be to:

- Establish the strengths and weaknesses in the way identification parades are conducted, and to consider possible changes (Leedy & Ormrod, 2005:95).
- Describe how identification parades should be conducted. To do this the researcher has explored how it is done internationally, and what admissibility requirements are set by legislation and the courts (Babbie, 1995:84).
- Develop good practice by recommending new ideas on how identification parades should be conducted, with a

view to enhancing the performance of investigators (De Vos, 2001:9).

- Empower those involved in investigation with new knowledge to enhance their investigation skills, by writing an article and presenting lectures at Station level in the Port Shepstone area (Denscombe, 2002:28).

1.4 Research questions

Research questions specify exactly what is to be investigated. They are not the broad goals of the research that are associated with the aims. They are things that are directly investigated by the researcher - specific things that are to be observed, measured, and interrogated in order to shed light on the broader topic (Denscombe, 2002:31).

The researcher intends to answer the following research questions during the investigation:

- What does identification as investigation technique entail?
- How should an identification parade be conducted to be admissible in court?

1.5 Key theoretical concepts

The researcher has reviewed the topic and the research questions, and has identified the main concepts he is going to use in the research. Concepts are defined as follows:

1.5.1 Identification

According to Van Rooyen (2001:58), identification is regarded as a classification system where objects with similar characteristics are

classified in one category (class) and a name is then allocated to such a category.

1.5.2 Identification Parade

According to Marais and Van Rooyen (1991:107), an identification parade can be seen as the direct personal identification method whereby a number of persons are paraded with the purpose of affording the identifying witness an opportunity to identify a person they saw committing a crime.

1.5.3 Admissibility

If what is adduced can in law be properly put before the court, it is admissible. It is only after it has been - or could be - admitted, that its persuasiveness (alone or in conjunction with other evidence) in satisfying the court as to the *facta probanda*, has to be considered (Van der Merwe, Morkel, Paizes & Skeen, 1993:33).

1.6 Research Design and Approach

According to Hagan (1997:63), a research design is a plan or blueprint of a study. Nachmias and Nachmias (1987:103) state that research design is the programme that guides the investigator in the process of collecting, analysing and interpreting observation. It defines the domain of generalisability, that is, whether the obtained interpretations can be generalised to a larger population or different situations. Seaman (1987:165) states that a research design refers to the way in which the researcher plans and structures the research process.

The researcher has used an empirical study instead of a non-empirical study, because an empirical study is more logical than a mathematical operation (Babbie, 1995:414). Empirical research

involves the collection of new data (Mouton & Marais, 1990:57). The researcher has used primary data because it seems to be more accurate and less biased (Baker, 1988:270).

The researcher has decided to follow a qualitative approach, because it is the non-numerical examination and interpretation of observation for the purpose of discovering underlying meanings and patterns of relationships. This approach pre-dates quantitative analysis. It remains a useful approach to data analysis, and is even enjoying a resurgence of interest among social scientists (Babbie, 2007:378). A qualitative research method is more flexible and encourages slowly focusing the topic throughout a study. Qualitative research begins data gathering with a general topic and notion of what will be relevant (Neuman, 2000:149).

1.7 Population and sampling procedures

The researcher had to select the element of the study. An element is that unit about which information is collected and which provides the basis of the analysis. Elements are people or certain types of people. Population is the theoretically specified aggregation of study elements (Babbie, 2007:190). According to Taylor (1994:158), population includes all individuals or cases of a certain type. The ideal population for the research should be all investigators of SAPS. The size of the population, the cost in time and money necessary to observe all the elements, and the difficulty of being able to observe all of the subjects, make the study of the total population prohibitive. Moreover, measuring the population could destroy or change the units or affect the subsequent state (Seaman, 1987:364). Population for the study is that group of people about whom the researcher wishes to draw conclusions. It is almost impossible to study all members of the population. In

virtually every case, the researcher must sample subjects for study (Babbie, 1995:103).

For this reason the researcher decided to make use of a study population. Maxfield and Babbie (1995:186) state that a study population is that aggregation of elements from which the sample is actually selected. The study population of the researcher was the investigators and prosecutors in the Umzimkhulu area in KwaZulu-Natal. The Umzimkhulu area has 34 police stations, including specialised units, under one Area Commissioner. This has changed due to the Restructuring in the South African Police Service as from 2007. The Area office was dissolved and members were transferred to stations to build up capacity and also Serious and Violent Crime Unit was closed and some of the members were transferred to the Stations Detective Service and others to Organised Crime Unit. The Area was divided into three (3) clusters being Port Shepstone Cluster with fifteen (15) stations, Margate Cluster with five (5) stations and Kokstad Cluster with eight (8) stations and two (2) specialised Units serving all three (3) Clusters being Organised Crime Unit and Family Violence, Child Protection and Sexual Offence Unit (FCS). The researcher is stationed at Organised Crime Unit. Due to costs and time, the researcher thought it necessary to conduct research in police stations closer to Port Shepstone. The researcher decided to interview investigators from these stations and units: Organised Crime Unit, Family Violence, Child Protection and Sexual Offences Unit (FCS), Port Shepstone SAPS, Margate SAPS, Gamalakhe SAPS, and South Port SAPS. All these stations and units are about 15 km away from Organised Crime Unit Offices, and it was easy for the researcher to visit these stations and units to interview the respondents.

The study population for this research consists of the following units and stations: Twenty (20) investigators from Organised Crime Unit, which has offices at Port Shepstone, 22 investigators from Family Violence, Child Protection and Sexual Offences Unit (FCS), which has offices in Port Shepstone, and 30 investigators from Port Shepstone's detective branch, 30 investigators from Margate SAPS, which is 15 km away from Port Shepstone SAPS, 10 investigators from South Port SAPS, which is 12 km away from Port Shepstone SAPS, and eight investigators from Gamalakhe SAPS, which is 15 km away from Port Shepstone SAPS.

Permission to conduct research was obtained from SAPS Head Office, Pretoria. The researcher decided to interview experienced investigators with more than eight years' service in the field of investigation. The researcher wanted these investigators because of their experience, knowledge and investigation skills. The researcher then spoke to the human resource management sections of the stations and units concerned, and was supplied with a list of investigators with more than eight years' service as investigators. The combined list totaled 50 investigators. The researcher wanted to interview only 30 investigators. The researcher then wrote the names of all 50 investigators on small pieces of paper and put them into a hat. He then shook the hat and drew 30 names, using simple random sampling. The researcher used this sample, because it represents the whole population of investigators, as they have had the same training, use the same procedures and follow the same Constitution.

All these police stations use Port Shepstone Magistrate's Court for their cases. The researcher then decided to interview prosecutors from Port Shepstone Magistrate's Court, as it is closer to the

researcher and serves all the abovementioned police stations. Permission to conduct research was obtained from the Port Shepstone Magistrate's Court. The researcher wanted the prosecutors to assist with the admissibility requirements of the identification parade at court. Port Shepstone Magistrate's Court has 10 prosecutors. The researcher wrote the names of all the prosecutors on small pieces of paper and put them in a hat, shook the hat and drew five names of prosecutors, for interviews. This was done using simple random sampling. The researcher used this sample because it represents the whole population of prosecutors as they all studied law and the Constitution.

Simple random sampling is the least sophisticated of all sampling techniques, and the sample is chosen by simple random selection, whereby every member of the population has an equal chance of being selected (Leedy & Ormrod, 2001:214).

1.8 Data collection

According to Bouma and Atkinson (1995:22) data are facts; they are records of the actual state of some aspects of the universe at a particular point in time. Blaxter, Hughes and Tight (2001:153) state that all research involves the collection of data, whether through reading, observation, measurement, asking questions or a combination of these. As this is qualitative research, the researcher has included a literature study, documents, in-depth interviews and focus groups as data collection techniques (McMillan & Schumacher, 2001:42). Qualitative data requires in-depth study to decide how to arrange information in the best way (Hopkins, 1980:177). The researcher selected a few participants who could best shed light on the phenomenon under investigation (Leedy &

Ormrod, 2001:102). The data collection techniques used by the researcher are as follows:

1.8.1 Literature

In an attempt to find literature on the topic, the researcher perused the catalogue for local and international books and journals in the library and on the Internet. There were no books written locally on the topic. The researcher searched further for books and journals published internationally and found that there were journals with information relating to the researcher's topic, but not on the exact topic. The information only related to international cases. The researcher therefore saw the need to continue with his research, since his topic is based on case studies in South Africa.

The researcher broke down the topic and research questions into concepts, to find relevant material. The researcher examined the material to find answers to the research questions. The following concepts were used to find data: identification and procedures when conducting identification parade, identification parade, line-ups and decided cases in the case law.

1.8.2 Documents

According to Seaman (1987:185), documentary design is structured to collect and interpret data, by examining material that already exists. The researcher has studied the SAPS Training manual on Identification parades, letters and national instructions issued by the National Head Office of the SAPS, regarding identification parades, which are only available to the police. The researcher has included historical documents, which helped to clarify interpretation and meaning of the research topic (Rosenthal & Rosnow, 1991:170; Marshall & Rossman, 1995:84). History is an account of some past

event or combination of events. Historical analysis is a method of discovering, from records and accounts, what happened in the past. Historical analysis is particularly useful in qualitative studies, for establishing a baseline or background prior to participant observation or interviewing. The researcher searched for sources of historical data, such as contemporary records, including national instructions, legal papers and confidential reports, including archives and regulations (Marshall & Rossman, 1995:89). This was done after the researcher had received permission from Head Office to peruse these documents.

The following questions were asked by the researcher to find answers in the existing documents (Blaxter, Hughes & Tight, 2001:170):

- What is an identification parade?
- Who may conduct an identification parade?
- How many people should stand on an identification parade?
- What are the duties of the legal practitioner in the identification parade?

1.8.3 Interviews

The researcher used the semi-structured interview, as this is a qualitative study, and semi-structured interviews revolve around the central questions, leaving the researcher free to vary the exact wording of questions, as well as their ordering (Leedy & Ormrod, 2001:159; Robson, 2000:80). Open-ended questions were posed to the interviewees, focusing on the research questions. When compiling the interview schedule, the researcher formulated

questions that could answer the research questions. The researcher ensured that he complied with the suggested guidelines for conducting a productive interview in that the interviews are representative of the group. The researcher had to find a suitable location to conduct the interviews - a quiet place with no distractions or interruptions; the researcher was courteous and respectful at all times during the interviews; the researcher asked the participants to sign an informed consent form; the researcher focused on the actual rather than on the abstract or hypothetical during the interviews; the researcher let the people choose their own way of expressing their thoughts; the researcher recorded responses verbatim from the interviewees, and the researcher kept his reactions to himself. The researcher knew that as confident and convincing as some of his participants might be, he should always treat their responses as perceptions rather than facts (Leedy & Ormrod, 2001:159-160).

1.8.4 Focus group

De Vos (2001:314) states that a focus group can be described as a purposive discussion on a specific topic or related topic taking place between eight to 10 individuals with a similar background and common interests. The researcher interviewed six detective commanders from the six participating units, as they have similar backgrounds and common interests. The researcher did this in order to obtain a better understanding of and solutions to identified problems. The researcher focused attention on the given experience and its effect (Kidder & Judd, 1986:274). Bless and Higson-Smith (2000:110) states that it is important that the focus group participants are selected according to explicitly stated criteria. (The researcher selected the subjects on the basis of relevancy to the topic under study). Participants are not selected through

rigorous probability sampling methods. This means that participants do not statistically represent any meaningful population. However, the purpose of the study is to explore rather than to describe or explain in any definitive sense (Babbie, 1998:248). These interviews were conducted with different individuals so that the researcher could identify trends in the perception and opinions expressed, which are revealed through careful systematic analysis. The advantages of focus group interview are that this method is socially oriented, studying participants in a natural, real-life atmosphere; the format allows the facilitator the flexibility to explore unanticipated issues as they arise in the discussion; the results have high face validity because the method is readily understood; the findings appear believable; it is relatively low-cost; it provides quick results; and, finally, it can increase the sample size of qualitative studies by interviewing more people at one time (Marshall & Rossman, 1995:84).

Berg (2004:133) states that focus group procedure includes a trained and practiced facilitator who asks a small group of individuals a series of open-ended questions. The researcher used a single standard set of questions, asking each in turn to stimulate discussion and conversation during a given session. The researcher posed the following questions to the focus group (Leedy & Ormrod, 2001:159):

- What are the requirements for an identification parade room?
- Should a witness be allowed to read his/her statement before attending an identification parade?
- What are the duties of a legal practitioner on the identification parade?

The researcher introduced the questions to be discussed to the participants, ensured that no one individual dominated the discussions, and kept the group focused on the topic.

1.8.5 Case Study

In a case study the researcher examines in depth many features of a few cases over duration of time. The data is usually more detailed, varied, and extensive. In a case study, a researcher may intensively investigate one or two cases or compare a limited set of cases, focusing on several factors. The researcher carefully selects one or a few key cases to illustrate an issue and analytically studies it in detail. Case studies help researchers connect the micro level, or the actions of individual people, to the micro level, or large-scale social structures and processes. The logic of the case study is to demonstrate a casual argument about how general social forces shape and produce results in particular settings. Case studies are likely to produce the best theory (Neuman, 2000:32-33).

The researcher perused dockets of rape, robbery and attempted murder cases to examine the problems in practice. Due to time constraints the researcher decided to peruse dockets from 2001 to 2006. Some of these cases are still court-driven, meaning that they are not finalised. The researcher concentrated on the dockets that are in the archives - finalised dockets where an identification parade was used. The researcher perused 350 dockets from four different stations, namely, Port Shepstone, Margate, Gamalakhe and South Port. The researcher selected these stations as they are very close to the researcher and the researcher intended to conduct interviews with the investigators from these stations. This was done after the researcher had obtained permission from Head Office to conduct research.

The researcher was seeking answers to the following questions:

- Who may conduct an identification parade?
- How many people should stand on the identification parade?
- Who should be present on the identification parade?
- What are the aids that can be used during the identification parade?
- What are the rights of the accused during the identification parade?
- Is there a time limitation for an identifying witness to stay in the parade?

1.9 Research analysis

De Vos (2001:204) states that data can be analysed manually or by the computer. Leedy and Ormrod (2001:160-161) state that in a qualitative study there is no single right way to analyse the data; the researcher begins with a large body of information and must, through inductive reasoning, sort and categorise it and gradually reduce it to a small set of abstract, underlying themes.

Following the guidelines in De Vos (2001:204) and Leedy and Ormrod (2001:160-161), the researcher analysed the data by doing the following:

- Organisation

The researcher broke down the topic and research questions into concepts to find more material. The researcher studied the literature to find answers to the research questions and interview schedule. The researcher organised the data, using index cards, manila

folders and a computer. Field notes were edited, corrected, and made more legible before they were organised, indexed and entered into a computer. Recorded interviews were transcribed, corrected, and edited before being indexed and entered into the computer.

- Perusal

The researcher perused the entire data set several times to get a sense of what is contained as a whole. The researcher jotted down some notes on scrap paper, and wrote in the margins suggested possible categories or interpretations.

- Classification

The researcher identified general categories or themes, subcategories or sub-themes as well, and classified each piece of data accordingly. At this point the researcher had a general sense of patterns of what the data meant.

- Synthesis

The researcher integrated all the themes and concepts into a theory that offers an accurate, detailed, yet subtle interpretation of the research. The researcher used computer software to store and retrieve information.

1.10 Validity

Validity concerns the accuracy of the questions asked, the data collected and the explanation offered. Generally, it relates to the data and the analysis used in the research (Denscombe, 2002:100). Mason (1998:147-148) states that validity of data generation methods involves asking what it is that you think your data source and generation methods can potentially tell you, and how well they can do this. Mason further states that the researcher can think about the validity of his/her methods in both broad and detailed ways. Broadly, the researcher will be asking how well matched the

logic of the method is to the kinds of research questions the researcher is asking, and the kind of social explanation the researcher is intending to develop. In the process of data analysis and the presentation of the researcher's explanation to others, the researcher should revisit those difficult questions which he asked himself about linking research questions, methodology and methods, when he was designing the research questions. To convince others, the researcher must show how he reached decisions on these issues, and by what logic he connected his chosen methods with his intellectual puzzle and research questions.

The researcher drew up a set of questions for an interview schedule relevant to the study. The researcher used these questions to collect data from literature, documents, case studies and interviews. The researcher analysed the data obtained. The researcher compared the material within the categories, looking for variations and nuances in meanings. The researcher made comparisons across the categories to discover connections between the themes. The aim of the researcher was to integrate the themes and concepts into a theory that offers an accurate, detailed yet subtle interpretation of the research.

1.11 Reliability

Reliability is a matter of whether a particular technique, applied repeatedly to the same object, yields the same results each time (Babbie, 2007:143). 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 and do not vary according to the particular persons undertaking the research (Denscombe, 2002:100). The researcher used primary

data because it is more accurate and less biased - if applied repeatedly to the same object it yields the same results. The researcher studied literature and documents and the information obtained was reliable - if applied repeatedly to the same object it will yield the same results. The researcher has used the simple random sampling technique to ensure that each and every investigator had an equal opportunity of being selected; this sampling procedure was reliable, as the population study of the researcher has had the same training and same understanding of the Constitution; if repeated on the same object it will yield the same results. The researcher has conducted interviews with prosecutors and focus groups to collect data; all data obtained was reliable as the objects had the same training and have the same qualifications. The researcher has used four (4) different data collection techniques, this is called triangulation. The researcher has compared multiple data sources in search of common themes, to support the validity of his findings (Leedy & Ormrod, 2005:99).

1.12 Ethical consideration

Leedy and Ormrod (2005:101-102) state that whenever human beings are the focus of investigation, the researcher must look closely at the ethical implications of what he/she proposes to do. Leedy and Ormrod suggested the following to take into account when ethicality is discussed:

1.12.1 Protection from harm

The researcher did not expose research participants to undue physical or psychological harm. The researcher ensured that the participants did not risk losing life or limb, nor were they subjected to unusual stress, embarrassment or loss of self-esteem.

1.12.2 Informed consent

Research participants were told the nature of the study to be conducted and given the choice of either participating or not participating. Furthermore, they were told that if they agreed to participate, they would have the right to withdraw from the study at any time. The participants were informed that participating in the study was voluntary. The form that described the nature of the research project was given to the participants and contained the following items of information:

- A brief description of the nature of the study.
- A description of what participants will be involved in, in terms of activities and duration.
- A statement indicating that participation is voluntary and can be terminated at any time without penalty.
- A list of any potential risk and/or discomfort that participants may encounter.
- The guarantee that all responses will remain confidential and anonymous.
- The researcher's name, plus his contact details.
- A place for the participants to sign and date the letter.

1.12.3 Right to privacy

Any research study should respect the participants' right to privacy. Under no circumstances should a research report, either oral or written, be presented in such a way that others become aware of how a particular participant has responded or behaved. The researcher has kept the nature and quality of participants' performance strictly confidential.

1.12.4 Honesty with professional colleagues

The researcher reported his findings in a complete and honest fashion, without misrepresenting what he has done or intentionally misleading others about the nature of his findings. Leedy and Ormrod (2005:102) state that the researcher must under no circumstances fabricate data to support a particular conclusion. Honest researchers do not hesitate to acknowledge their indebtedness to others. The researcher has acknowledged all sources he used during the research.

1.13 Research structure (Chapter Outline)

The report is divided into different chapters.

Chapter Two: Identification

In this chapter the researcher researched identification, the purpose of identification, different categories of identification and different techniques that can be used in identification.

Chapter three: What is an identification parade?

In this chapter the research will briefly explain what is an identification parade and the purpose of an identification parade.

Chapter Four: Conducting an identification parade

In this chapter the researcher researched steps to be followed when conducting the identification parade, and legal rights for the identification parade to be admissible in court.

Chapter Five: Findings and Recommendations

In this chapter the researcher gave his findings about the research, and his recommendations.

CHAPTER 2

IDENTIFICATION

2.1 Introduction

In this chapter the researcher will analyse forensic investigation, criminal investigation, identification and individualisation.

The positive identification of all persons involved in a crime is an indispensable requirement for the investigation of crime. Positive identification of offenders is a legal requirement, while the solving of crimes can only really proceed once the victim has been positively identified (Marais, 1992:18).

The ability to describe people accurately is traditionally an important aspect of forensic investigation. Before the advent of fingerprint classification, physical descriptions formed the basis of files on identification (O'Hara, 1976:657). Prior to the 1840s, the methods of identification of criminals were very limited, such as an artist's impression with a high description, or the branding of repeat offenders (recidivists) with hot irons. The addition of photography in the 1840s aided this identification process (Pepper, 2005:4).

Alphonse Bertillon, having received a scientific education, became frustrated with the identification process that was undoubtedly flawed, leading to many miscarriages of justice. After only a few months Bertillon wrote a paper which demonstrated that by using a number of measurements of different parts of the body, he could show that no two individuals were exactly alike. His system of identification used eleven measurements of varying parts of the body, from the length and breadth of the head to the distance between elbow joint and fingertip. Called anthropometry, the

system relied upon accurate measurements to identify the repeat offenders. Such a system did have some recorded success with twenty-six recidivists being identified within three months in 1883.

The news of success drew attention to his work from across Europe and the United States of America (USA). Bertillon built on this success, implementing the use of a metre scale when taking photographs of evidence, such as tool marks and footprints at crime scenes, to which he could then apply his basic method of identification in his workshop. In contemporary terms he was the first real crime scene investigator and established one of the first crime laboratories (Pepper, 2005:4-5).

In South Africa the “Magnific Facial Identification System”, a colour photo system that creates a very accurate and realistic description picture, was developed by Lieutenant Curlewis of the South African Criminal Record Centre (Marais & van Rooyen, 1992:104). This confirms the standpoint of Gilbert (2004:19-22), namely that Bertillon had a strong influence on - and that his system in fact formed the basis of - all methods of identification which were eventually developed (Van der Westhuizen, 1996:68).

2.2 Forensic Investigation

According to Van Rooyen (2004:7) the term “forensic investigator” has become a buzzword used by many, directly or indirectly involved in investigation. Widespread confusion exists within the investigation industry regarding the true meaning of forensic investigation.

Karagiozis and Sgaglio (2005:3) state that the term “forensic” is derived from the Latin construction *forum + ensis*, indicating the

public forum in which the Romans debated their legal cases and where verdicts were announced. The Biblical account of Jesus of Nazareth's trial before Pontius Pilate is a classical example of Roman law being dispensed in open forum. Karagiozis and Sgaglio further state that though significantly more structured, the legal system today still rightly employs the term "forensic" to any matter which has relevance to a criminal or civil issue before the court. The core of every forensic investigation relies on the painstaking recognition, identification and individualisation of physical evidence.

Van der Westhuizen (1996:9) states that forensic refers to a specific skill or activity aimed at serving justice with a specific scientific knowledge. Browne and Walker (2002:378) define forensic as, firstly relates to the application of scientific methods to the investigation of crime and, secondly, relates to a court of law. Browne and Walker further states that forensic was derived from the Latin word *forensis* meaning "in open court, public". Forensic medicine is the application of medical knowledge to the investigation of crime, particularly in establishing the causes of injury or death.

The Concise Oxford Dictionary (1981:384) state that forensic investigation is understood to mean "pertaining to legal matters" and further that forensic investigation is derived from the Latin word *forensis* (forum), meaning the public place, marketplace, or place of assembly for judicial and other business. In practice, forensic investigation refers to an objective and court-orientated investigation or any type of investigation.

Van Rooyen (2004:7) states that dictionaries differ slightly in their definition of the word “forensic”, the true meaning is two fold. Firstly, it refers to courts of law, juristic or court-directed and relating to the application of science to decide questions arising from crime or litigation. Secondly, it includes the function of examination or analysis. Van Rooyen (2004:7) further states that forensic investigation is usually associated with the investigation of computer-related crimes, which also includes corruption, fraud, embezzlement and or/other white-collar crimes.

Jackson and Jackson (2004:1) state that forensic investigation may be defined as any science that is used in the service of the justice system. This definition encompasses both civil disputes and criminal cases. However, in practice, forensic investigation is more likely to be involved in the investigation and resolution of criminal cases. Forensic investigation plays a pivotal role in most criminal prosecutions, especially those of a more serious nature. Jackson and Jackson (2004:1-2) further state that forensic investigation and resolution of criminal offences begins at the crime scene. The effective recovery of items of physical evidence is crucial to the success of the subsequent investigation. It is vitally important that a “chain of custody” is established for each individual item of evidence from the point of its recovery at the crime scene through to its appearance as a court exhibit. If continuity of evidence cannot be adequately demonstrated, then that evidence may be deemed inadmissible in court because the possibility of contamination, or tampering, en route cannot be ruled out.

To the question “What is forensic investigation?” The participants respondents reacted as follows:

- Ten participants respondents stated that forensic investigation involves a process of crime investigation using the new technology.
- Ten participants respondents stated that forensic investigation is the systematic search of the truth through science and technology.
- Ten participating respondents stated that forensic investigation involves investigation of white collar crimes or commercial crimes.

The same question was put to the focus group which responded by saying that forensic investigation is the investigation of crime that involves science and technology.

This question was put to the prosecutors and they responded by saying that forensic investigation is the application of science to the solution of legal problems. Forensic investigation may provide answers to a number of important questions in court with regards to forensic analysis of items of physical evidence.

The researcher found out that the term forensic investigation is associated with the investigation of computer related crimes which also include corruption, fraud and other white collar crimes. It also include examination and analysis of physical evidence.

2.3 Criminal Investigation

Brown (2001:3) states that criminal investigation is the process of legally gathering evidence of a crime that has been or is being committed. Marais and Van Rooyen (1992:17) and Bennett and Hess (2004:4) state that investigation of crime represents the

medium whereby facts for positive investigation are detected, identified, collected, preserved and prepared for the judicial process. According to Van Rooyen (2001:50), "investigation is systematic search for the truth". "Investigation means to observe intensely, to question systematically and to gather information that will reveal the truth". Dempsey (2003:29) states that an investigation is the systematic and thorough examination and inquiry into something or someone.

Bennett and Hess (2004:4) state that an investigation is a patient, step-by-step inquiry or observation, a careful examination, a recording of evidence or legal inquiry. Bennett and Hess (2004:4) and Dempsey (2003:29) further state that the word "investigate" is derived from the Latin word *vestigare*, meaning to "to track or trace," a derivation easily related to police investigation.

2.4 Difference between Criminal Investigation and Forensic Investigation

Criminal Investigation	Forensic Investigation
Van Rooyen (2004:6) states that investigation is a systematic, organised search for the truth. It entails observation and enquiry for the purpose of gathering objective and subjective evidence about an alleged crime or incident.	Jackson and Jackson (2004:1) state that forensic investigation may be defined as any science that is used in the service of justice system. It encompasses both civil disputes and criminal cases. In practice, forensic investigation is more likely to be involved in the investigation and resolution of criminal cases.
Bennet and Hess (2004:5)	Karagiozis and Sgaglio (2005:3)

<p>state that the goals of investigation are to determine whether a crime has been committed, legally obtain information and evidence to identify the responsible person, arrest the suspect, recover stolen property and present the best possible case to the prosecutor.</p>	<p>state that forensic investigation is the application of natural science to matters. Karagiozis and Sgaglio (2005:3) state that forensic investigator refers to a professional who performs an orderly analysis, investigation, enquiry, test, inspection or examination of a piece of evidence. The core of every forensic investigation relies on the painstaking recognition, identification and individualisation of physical evidence, so that the forensic investigator can offer an expert opinion on the nature and relevance of the evidence in question. Jackson and Jackson (2004:1) state that the role of forensic investigation in the investigation of crime may be recognised within the procession from the collection of physical evidence to the presentation of scientific findings in court.</p>
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Base on the understanding what each concept entails, there is no real difference in meaning.

2.5 Objectives of Investigation

According to Van der Westhuizen (1996:4-7), investigation takes place with definite objectives in mind. An objective describes, more precisely, a commitment which must be achieved within an appointed time and according to a specified standard. Van der Westhuizen (1996:4-7) describes the following objectives of investigation:

2.5.1 Identification of the crime

Identification of the crime concerns identification, that is to say, the type of crime committed, and, if any, what kind of information or clues can possibly be collected. The crime situation must therefore be identified not only by means of set juridical elements, but also by means of preliminary observations made at the crime scene. The information and facts gathered must therefore confirm that an act, judged by the set juridical elements of particular crimes, indeed amounts to unlawfulness and that a specific person or persons is/are responsible.

2.5.2 Gathering evidence

Marais and Van Rooyen (1992:19) state that the gathering of evidence begins at the crime scene because it is the terrain of visible and hidden information. Evidence falls into two categories, namely, direct and indirect sources of information. Direct information is actual sensory experience of people. Indirect information - that is, the so-called mute evidence of physical clues that reveals the circumstances of events - includes all solids and liquids through which the associative relationship of a person, weapon or vehicle to the crime or victim can be determined. Indirect information on the crime scene can comprise the following:

2.5.2.1 Evidence left behind at the scene of crime by the criminal

This information can comprise: physical matter such as blood, hair and semen; prints such as fingerprints, tool marks, foot and vehicle tracks; trace information such as paint flakes, tobacco, materials fabric, soil and other; instruments such as weapons, firearms and implements; and personal possessions such as clothing, jewellery etc (Marais & Van Rooyen, 1992:19).

2.5.2.2 Crime scene information that has been transferred to the criminal (Transfer evidence)

This can comprise: physical matter from the victim in the form of blood and hair; indentations such as wounds, scratch marks and vehicle damage; trace information such as soil, paint or fabric on the body or possessions of the criminal; instruments such as firearms found on the criminal which are compared with disputed objects on the scene; and personal possessions which have been removed from the scene, such as the victim's possessions or any other objects removed from the scene by the criminal, for example (Marais & Van Rooyen, 1992:19).

2.5.2.3 The body and position of objects at the crime scene

The body and position of objects at the crime scene can be applied to reconstruct the crime scene. Method of entry to and manner of leaving the crime scene, and the exact position of weapons, furniture and objects can contribute to reconstructing the crime (Marais & Van Rooyen, 1992:19).

2.5.2.4 Supplementary information in relation to the crime scene

Examples of this are letters, notes and any other objects or articles that can supply the crime investigator with background information (Marais & Van Rooyen, 1992:19).

2.5.3 Individualisation of the crime

Van der Westhuizen (1996:5-6) and Van Heerden (1986:194) state that the emphasis in individualisation is on the involvement of the perpetrator or alleged criminal in the act committed and, based on establishing probability from the information and facts collected, that a specific person committed the crime.

2.5.4 Arresting the criminal

According to Van der Westhuizen (1996:7) and Marais (1988:19), once all the relevant information and facts have been collected and the criminal has been identified, the criminal investigator can proceed to have the criminal arrested, that is, to ensure that the criminal will be present at his trial.

Van der Westhuizen (1996:7) further states that it is very important to remember that the presence of the offender at the trial can also be ensured in other ways. In the Republic of South Africa, section 38 of the Criminal Procedure Act 51 of 1977, stipulates that issuing a summons, a written notification and a deed of accusation can also ensure the presence of a person at his/her trial. Arrest is a drastic act by authorities with far-reaching implications, and the alternative measures are preferable, especially in the case of less serious or minor offences and if there is no reason to believe that a perpetrator will not stand trial.

2.5.5 Recovery of stolen property

Van der Westhuizen (1996:7-8) states that this objective of criminal investigation is twofold:

- to restrict the victim's losses to a minimum; and

- to present the recovered property as evidential material at the trial.

2.5.6 Involvement in the prosecution process

Van der Westhuizen (1996:7) states that this objective is to assist the public prosecutor in the prosecution process. The successful prosecution of criminals depends to a great extent upon the skills and efficiency of those who conduct the criminal investigation. The investigator's involvement here lies in the presentation of the information gathered and in making sure that everyone and everything is presented in court on the trial date. Only on eventual conviction can one talk of positive individualisation. This also underscores the fact that individualisation as a process begins at the scene of crime and only ends after the presentation of evidence in court.

To the question "What are the objectives of investigation?"

- All thirty participants respondents stated that the objectives of investigation are to determine whether a crime in deed was committed, use investigative techniques and approaches to legally obtain information and evidence to identify the responsible perpetrators, arrest the suspect, recover stolen property and present the best possible case to the prosecutor.

This question was put to the prosecutors and the focus group and they responded the same as the investigators.

The researcher felt that all participants responded understand what the objectives of investigation are, as all participants are involved in the investigation of crime.

2.6 Identification

According to Van Rooyen (2001:58), identification is regarded as a classification system when objects with similar characteristics are classified in one category (class) and a name is then allocated to such a category. Identification concerns the identification of something or somebody belonging to a specific category. Swanson, Chamelin and Territo (2003:08) state that for the investigator to fully appreciate the potential value of physical evidence, the investigator has to understand what class characteristics are. Class characteristics are characteristics of physical evidence that are common to a group of objects or persons. Bennett and Hess (2004:97) describe class characteristics as the features that place an item in a specific category. For example, the size and shape of a tool mark may indicate that the tool used was a screwdriver rather than a pry bar.

James and Nordby (2005:225) state that hair, fibres, blood and other body fluids, paint, glass, firearms, bullets, fingerprints, and other imprint evidence are all examples of associative evidence. These items are considered of unknown or questioned origin until a comparison is made to a known standard or exemplar. A standard may be collected from a victim, suspect, witness or investigator. Associative evidence can further be subdivided into class and identification evidence.

James and Nordby (2005:225-226) further state that class characteristic evidence is not considered unique and it is part of a

limited class along with potential members. Identifying evidence positively provides for identification of questioned evidence. When comparing evidence of both types, the examiner must convey the meaning or significance of the results in a written report. When examining class characteristic evidence, the examiner must make all reasonable attempts to distinguish questioned samples from the known standard. The result may be that the questioned sample is indistinguishable from the known standard, does not match the known standard, or the comparison is inconclusive. Conclusions regarding comparisons of class characteristic evidence are limited. The questioned sample, even when indistinguishable from the known standard, cannot be said to be from that particular standard to the exclusion of all others; for example, the green carpet of a suspect's car - this evidence does not exclude all similar carpeting as the source of the fibres.

To the question "What is identification?" the participants respondents reacted as follows:

- Five participants respondents said identification is the method of identifying the person whom the witness has seen committing a crime.
- Ten participants respondents said identification is the positive identification and tracing of the suspects who are responsible for committing the crime, as it is indispensable for the successful investigation of crime.
- Fifteen participants respondents stated that identification involves the placing of an object in a specific class or group with similar characteristics.

The same question was put to the focus group; they reacted by stating that identification is recognition of an object or a person by means of its or his/her characteristics, group or class.

This question was put to the prosecutors and they responded by saying the same as the focus group and further stated that identification of a person by means of his/her clothing, hair and beard is not enough because a person can change the clothing, cut the hair and shave the beard and he/she becomes a total different person; but there are things that a person can not change, things like nose, eyes, scars on the face, ears, etc., these are the things the investigating officer should concentrate on when interviewing witnesses and victims.

All participants respondents knows what identification is.

2.7 Identification categories

According to Van der Westhuizen (1996:6-7) and Van Heerden (1986:195-199), the following are the categories of identification:

2.7.1 Situation identification

Marais (1992:2) emphasis that it is very important for the crime investigator to firstly determine whether a crime has in fact been committed and, if so, which crime. The identification and evaluation of the crime situation implies the formulation of an investigation hypothesis. In other words, on the basis of his knowledge and experience of the facts of the crime, the crime investigator attempts to isolate those facts that can throw light on the crime situation in question. Consequently, the correct identification of the crime situation is of fundamental importance, because mistaken identification can give rise to the investigation being sent in the

wrong direction, valuable evidence being lost and the hypothesis remaining unconfirmed.

Marais further states that through the reconstruction of events and identification, the crime investigator strives to form a rational theory about the crime. The reconstruction can take place through deductive, inductive or rational approaches. In the deductive approach, the reasoning is from the general to the specific: a theory is presumed on the grounds of the general appearance of the crime scene and the surrounding circumstances. An attempt is then made to support the theory by means of a thorough evaluation of the collected information.

Marais further states that by the application of the inductive approach, the particular (that is, the facts and evidence) gives rise to the general. This means that all facts are first collected and thoroughly analysed, before a theory is formulated. Although the inductive approach should enjoy precedence over the deductive approach, it appears that the rational approach - where all possible theories are considered and which is a combination of the deductive and inductive approaches - is the most acceptable.

2.7.2 Witness identification

Van der Westhuizen (1996:6) explains that the collection of evidence starts at the scene of the crime. As far as the collection of evidence is concerned, it is possible to distinguish between people and objects at the scene of crime. People as sources of information consist of:

- Victims and complainants.
- Witnesses who were directly involved in the events.

- Persons involved in the events, but who were not present, or persons who can only be a source of information, such as a reporter.

Witness identification individualises the part of the alleged suspect by means of the account of events that emerges from the statements of complainants and witnesses.

2.7.3 Victim identification

Marais (1992:4) states that victim identification concerns, in particular, the identification of the dead victim(s). The identity of the victim is an important facet in the total investigation process. Where the victim is still alive, the identification usually does not present a problem. In the case of murder (i.e. where a person is murdered in his own house or flat), there is no problem in identifying the victim because relatives, friends, neighbours and the caretaker (in the case of a block of flats) can do the identification. However, where identification cannot be effected in this way, the crime investigator is largely dependent on the information which the crime scene could possibly offer. The clothes of the victim could possibly be the key to identification through, inter alia, identification marks, initials and dry-cleaning labels. The same applies to the letters and identification documents which are found on the person of the victim. In addition to this, jewellery, watches and other personal belongings may have unique engraving, repair and manufacturers' marks, which could lead to the positive identification of the victim.

2.7.4 Imprint identification

Imprint identification attempts to achieve individualisation by comparing a disputed imprint with a control imprint of the alleged object (Van der Westhuizen, 1996:6). Van Rooyen (2004:11) states

that when a crime is committed, some or other clue is usually left behind, because, on the basis of the Locard principle or contact theory, a reciprocal transfer of “tracks” take place when two objects or persons come into contact with one another. For instance, when a suspect touches a glass window, s/he leaves traces on it in the form of fingerprints. Reciprocal traces from the windowpane, such as dust or glass splinters, are transferred to the suspect’s hand. The tracks at the scene of crime can be used to reconstruct or recreate the crime scene and individualise the perpetrator.

2.7.5 Origin identification

Origin identification is mainly concerned with the analysis of organic and inorganic solids and fluids to determine whether the disputed sample and the example have a common origin (Van der Westhuizen, 1996:6).

Marais (1992:75) describes toxicological investigation as the study of poisoning. It is concerned with the origin, characteristics and components of poisons, the symptoms and fatal physiological results, and antidotes. It is the chemical identification of poison and a medical interpretation of its distribution, metabolism and discharge of toxic substances through clinical systems and post-mortem findings. The investigating officer must have a sound knowledge of the systems of toxic substances, as well as of taking samples and reports that must be submitted to the toxicologist.

2.7.6 Action identification

Action identification refers to the identification of human acts that are directly related to the crime and, indeed, constitute the essential element of the crime. Individualisation touches on the question of

whether the disputed handwriting in a case of forgery, for instance, is the work of a particular person (Van der Westhuizen, 1996:6).

Marais (1992:181,182 & 187) states that documents are part of a person's everyday existence. Because of the importance of documents in almost all types of business transactions, businessmen, attorneys, officials and even the general public have all become more conscious of documents. The role of the expert in the field of documents has also become all the more important. The document expert is as reliant on comparison standards as other forensic experts. In comparing disputed documents - which include, inter alia, handwriting, typewriting, paper and ink - with comparison standards coming from or found in the possession of the suspect, he can make an inference. A comparison standard can, for instance, be a handwriting sample which is offered as a standard, and against which a disputed handwriting may be tested. It can serve as proof of being the original handwriting of the person with whom the disputed document or signature is linked.

The basic principle in the investigation of disputed documents is to obtain all the facts relevant to the document. Every grain of information in respect of the origin and possible authenticity thereof, and of the author, is important. Clarity must also be obtained as to the exact nature of that which is being disputed (Marais, 1992:181-182; 187).

2.7.7 Culprit identification

Marais (1992:4 & 5) defines culprit identification as it is concerned with the positive identification of the suspect as a person, rather than the identification of his unlawful conduct. The determination of the identity of the culprit or suspected perpetrator of a criminal act is

of decisive importance, because the detection and, by implication, clarification of the crime situation, is hardly possible without it. The collection of information and facts, in order to determine the identity of the offender and his part in the crime, remains the crux of any crime investigation. In the collection process the crime investigator can make use of both direct and indirect methods of identification. The direct method refers especially to perpetrator identification techniques, such as personal description, sketches, identification parades, incidental identifications, photo identifications, voice identification and modus operandi. As opposed to this, the indirect method concerns physical evidence and phenomena by which the identity of the offender and his part in the crime may be determined. Examples of this are physical evidence left behind at the scene by the offender, such as fingerprints, footprints and tool impressions, and also physical evidence which connects the offender with the victim, such as, inter alia, blood, semen, hairs and fibres.

2.7.8 Cumulative identification

Cumulative identification is where contributions of different specialists are collectively considered within the framework of the history and relevant circumstances of the situation as a whole (Van der Westhuizen, 1996:6). Marais (1992:5-6) states that with the exception of omission, a person cannot commit a crime without performing some act. Irrespective of the nature of the act, be it violent or taciturn, the possibility is that the perpetrator will leave or remove something from the scene, which could contribute in connecting him with the criminal act. The best-known example of physical evidence is fingerprints, which can only be left by contact with certain objects.

Marais further states that quite often verbal evidence by people is not available – when the victim is dead or when witnesses are not present. In these situations, reliance must be placed on the evidential value that physical evidence may possess. Physical evidence includes a large variety of objects. Almost any object, substance, trace or impression could constitute physical evidence. It is a matter of things rather than people. Anything that could indicate that a crime has been committed, or which could point to the identification, detection or association of a criminal, such as weapons, fingerprints and other prints, handwriting, hair, blood, semen, containers, tool pieces, fingernail scrapings, soil, grass and documents, may be termed evidence. In a murder case it could be a weapon or the victim's corpse, and in a burglary it could be a piece of material on a broken windowpane or a screwdriver, at the burglary scene.

During the investigation process, all the different categories of identification are important. In this research the researcher has focused on culprit identification - in particular, the identification parade.

2.8 Different Identification Techniques

According to Bennett and Hess (2004:162-194), suspects can be identified through fingerprints, voice identification, on-the-field identification, an identification parade, photograph identification, and a police artist. Gilbert (2004:513) states that a primary task of the investigator is to identify the suspect. In most of the cases reported for investigation, the suspects are unknown. Even when the suspect's identity is known, identification procedures may be required to confirm information furnished by victims or witnesses.

The researcher will now very briefly explain what each identification technique means. The reason for this is that the researcher is not researching the different identification techniques, but has focused on the identification parade.

2.8.1 In-the-field Identification

Marais and Van Rooyen (1991:106) describe in-the-field identification as a chance or informal identification which usually take place in the street or elsewhere, when the crime investigator, immediately after the commission of the crime, acceptance of a complaint and obtaining of a personal description, accompanies a complainant or a witness in the street or to places in the vicinity of the crime scene where the suspected criminal may possible be traced. Bennett and Hess (2004:162) state that this is also known as show-up identification. Field identification or show-up identification refers to the on-scene identification of a suspect by a victim of or witness to a crime. Field identification must be made within a short time after the crime was committed. Marais and Van Rooyen (1991:106) state that this identification technique must take place properly and comply with the requirements of fairness, reasonableness and honesty, despite the fact that the offender may be unaware of the identification. Marais and Van Rooyen (1991:106) further state that the time factor in informal identification must be stressed, and such identification must take place shortly after the commission of the crime - between ten and twenty minutes. Gilbert (2004:531) states that courts have held that allowing a witness to view a single suspect shortly after the crime, is permissible. This type of identification has been allowed in the belief that a witness can at best identify an offender while his/her memory of the person is still fresh, shortly after the crime.

Gilbert (2004:531) further states that this form of suspect identification must be conducted in a proper manner to avoid possible constitutional violations. A suspect may be returned to the crime scene or viewed in the police agency by victims or witnesses if:

- The suspect is apprehended shortly after the offence;
- A formal complaint, warrant, or indictment has not been issued;
- A legal representative has not been appointed to represent the suspect; and
- Police officers make no suggestions, by speech or action, that the individual is suspected of any wrongdoing.

Bennett and Hess (2004:163) state that the judge ruled in *United States v Ash, Jr.*, 413 U.S. 93 (1973) that a suspect does not have the right to have counsel (legal practitioner) present at field identification. The suspect may not even know such identification is occurring.

In *S v Thapedi* 2002 (1) SACR 598 (T) it was held that the accused may ask for a legal representative to assist him during the conduct of an identity parade, although the failure to provide legal assistance at that stage does not per se amount to parade evidence being obtained unconstitutionally.

2.8.2 Photograph Identification

Zeffertt, Paizes and Skeen (2003:149) state that as police practice, a primary use of photographs is to glean information to solve crimes either to ascertain an as yet unknown suspect, or to confirm

suspicion about an already known one. It follows that the procedure does not demand the stringent requirements for an identification parade. Photographic identification can be used specifically to prove identity. It would be improper to hold a photographic identification procedure in lieu of an identification parade; but there would be nothing amiss about showing eyewitness photographs of suspects who are still at large.

Gilbert (2004:534), Bennett and Hess (2004:171) and Swanson, Chamelin and Territo (2003:211) state that the investigator will often have occasion to show victims and witnesses a series of photographs in an attempt to identify the suspect. This procedure is typically carried out when a specific offender is suspected but is not in custody. Rutledge (2003:74) states that when constructing a photo-spread, it is best to use individuals who match the general description of the suspect. The investigator must try to use photos of people of the same sex, race, colouring, build, features, and approximate age.

S v Hlalikaya and others 1997 (1) SACR 613 (SECLD), (Du Toit, De Jager, Paizes, Skeen & Van der Merwe, 2006:35) is an example of a case where a suspect refused to cooperate in the holding of the usual type of identification parade. No adverse inference was drawn from non-cooperation, but the court did receive in evidence the results of the so-called photographic identification parade, which was held by police in lieu of the ordinary parade. The court concluded that the accused did not have a constitutional right to legal representation at a photo identification parade and accordingly, whether or not they were advised that their legal representative could be present at the parade, was immaterial. The court further stated that if an accused were entitled to legal representation at a photo identification parade, then the question

could be asked whether he would not also be entitled to be legally represented while being pointed out to the police by state witnesses at the scene of the crime or elsewhere – the answer to which question must clearly be in the negative. Section 37 (1) (d) of the Criminal Procedure Act 51 of 1977 authorises the taking of photographs by any police official. As a result of this section, the taking of photographs at an identification parade is also authorised (Joubert, 2004:282).

S v Maphumulo 1996 (2) SACR 84 (N) 88c-d and *S v Zwayi* 1997 (2) SACR 772 (CK) are examples of a case where the court was satisfied that the use of a photograph of the accused in the course of a photographic identification parade, and as part of a criminal investigation, was not an infringement of the accused's constitutional rights to privacy (Du Toit et al., 2006:3-32).

Joubert (2001:282) states that photographs of persons who have been convicted may be used in the compilation of photographic identification parades.

2.8.3 Fingerprints

Brown (2001:120) states that fingerprints are particularly valuable evidence. Fingerprints are circumstantial evidence that merely places a suspect at a location. They do not prove that the person who left them committed a crime.

Swanson et al. (2003:229-232) and Bennett and Hess (2004:102) describe fingerprints as a very important identification technique in forensic investigation. They state that fingerprints can be used to identify the following:

- Crime victims are identified by their prints to prove the *corpus delicti*. *Corpus delicti* evidence establishes that a crime has been committed.
- Courts, parole and probation officers and prosecutors use fingerprints to positively identify people with multiple criminal records.
- Fingerprints also aid in non-criminal investigations by helping to identify victims and unconscious persons.
- Military agencies use fingerprint records at enlistment, to identify those killed in combat.
- Hospitals use fingerprints to identify newborn babies.

2.8.4 Voice Identification

Gilbert (2004:527) describes voice identification as the identification of a suspect, based on the hearing of voice sound. It has been of legal significance for centuries; however, this means of identification is subject to many errors. Such identifications are likely to be challenged as to their reliability, unless the sense of hearing is constantly relied upon to a greater-than-average extent. Information gathered by this means alone generally requires further substantiation. Schwikkard and Van der Merwe (2002:518) state that evidence of voice identification must be treated with caution and, in the absence of prior acquaintance, is considered extremely poor evidence.

Zeffertt, Paizes, and Skeen (2003:149) state that in some cases in which witnesses claimed to be able to identify the accused by his/her voice, identification parades have been held in order to allow the witness to pick out one of several persons each saying the

same thing. In none of these cases do arrangements seem to have been entirely satisfactory.

In *S v M* 1972 4 SA 36 (T) 364F the judge ruled that the whole idea was silly, because the criminal would be likely to disguise his/her voice. The judge further ruled that in any case the grounds upon which the witness makes identification should be thoroughly investigated. The witness should be asked whether s/he knows the voice well and whether it has any peculiarities making for easy recognition. Du Toit et al. (2006:28) state that the principles of fairness which apply in respect of ordinary visual identification parades should be applied in respect of voice identification parades. For example:

- a) One voice should be tested against others. In *R v Gericke* 1941 CPD 211 five persons were not considered sufficient.
- b) The voices of other persons who take part in the parade should have some similarity to that of the suspect (*R v Chitate* 1966 (2) SA 690 (RA) 692H).
- c) The reliability of the voice identification remains untested if the test itself was improperly conducted (*R v Chitate* 1966 (2) SA 690 (RA) 693A).
- d) The identifying witnesses should not be able to communicate with one another (*S v M* 1972 (4) SA 361 (T) 364).
- e) The voice identification parade must be held as soon as possible after the alleged offence (*R v Chitate* 1966 (2) SA 690 (RA) 692).
- f) Voice identification at a parade has no value in circumstances where the witness heard the suspect talking

prior to the relevant parade and the witness at that stage knew that the suspect had been arrested for the alleged offence (*R v Chitate* 1966 (2) SA 690 (RA) 691H).

2.8.5 Police Artist

Brown (2001:122) states that if there are witnesses to the crime, it may be worthwhile to have them work with a police artist to create a likeness of the suspect. As with eyewitness identification, the investigator should be somewhat cautious in placing a great deal of faith in the accuracy of the sketch. Witnesses may be limited in their ability to recall a face seen only briefly in a stressful situation. It is possible that the sketch could be so inaccurate as to mislead investigators, and later become an asset to the defence in that they can argue that the accused was incorrectly identified.

Gilbert (2004:536) states that the artist must be able to ask the right questions in such a way as to elicit the information required to produce a recognisable likeness. A four-step process is usually followed. Initially, the artist engages the witness in light conversation, putting the witness at ease to recall events without undue stress. Secondly, the artist creates a basic sketch, indicating general shapes - skull, hair, ears and configuration of the cheeks.

Then, guided by the witness, features and shading are added. Finally, finishing refinements are made, giving the face a lifelike appearance and expression. The entire process is a slow one, often taking many hours, as the work is detailed and necessarily precise. Child witnesses have guided many of the most realistic sketches.

According to Circular 11/1/3/1 over 31/6/2 of 2003, the South Africa Police Service has members trained to do facial identifications. They are responsible for the following functions:

- Establishing a visual likeness of unknown person (suspect) using computer software, through verbal description from a victim or witness.
- Rendering of facial features that have changed due to ageing, for the purpose of identification or recognition.
- Morphological alteration and restoration of facial features to establish identity (e.g. unknown deceased persons).
- Analysing photographic, video or other renderings of a person's face with the intention of linking an identity to the individual in question (e.g. surveillance footage).

2.9 Individualisation

Marais (1992:19) states that individualisation is only possible if it is preceded by a series of identifications. Individualisation is based on, and takes place through, comparison. It refers to the demonstration that a particular sample is unique even among members of the same class. Individualisation indicates further that a disputed object found at the crime scene and the standard of comparison is of the same class. Marais (1992:21) and Van der Westhuizen (1996:6) further state that individualisation intends to individualise positively the different disputed objects and to indicate adequately the involvement of the object or person that provides the standard of comparison.

Van der Westhuizen (1996:6) states that individualisation involves comparison, usually of disputed objects found at the crime scene, with one known origin obtained. Van der Westhuizen (1996:6) is of the opinion that the overall aim of individualisation is to individualise

the crime as the act of a particular person or persons. Bennett and Hess (2004:97) describe individual characteristics as features that distinguish one item from another of the same type. For example, chips and wear patterns in the blade of a screwdriver may leave marks that are distinguishable from those of any other screwdriver.

Swanson et al. (2003:68) state that evidence with individual characteristics can be identified, with a high degree of probability, as originating from a particular person or source. Examples of evidence of individual characteristics are fingerprints, palm prints and footprints. James and Nordby (2005:226) state that individual characteristic evidence includes fingerprints, DNA profiles, some impressions, and evidence of fracture match.

James and Nordby (2005:226) further state that courts and juries have long accepted fingerprints as evidence of identification, although statistics regarding the significance of the match are generally not provided. The use of DNA to identify individuals has been highly scrutinised and the forensic laboratory must provide statistics demonstrating the significance of genetic profiling results. By examining a number of genetic locations, the frequency of occurrence of a genetic profile will become so small that the examiner may conclude that the evidence came from a particular individual.

Van Rooyen (2004:12) state that individualisation usually entails a series of identifications and comparison with two fold aim, firstly, it is intended to individualise positively the different disputed objects and, secondly, to indicate adequately the involvement of the object or person that provides the standard of comparison.

To the question “What is individualisation?” the participants

respondents reacted as follows:

- Five participants respondents defined individualisation as the process to link a particular object with a place or object - a crime scene, for instance, or physical evidence obtained from the crime scene.
- Ten participants respondents stated that individualisation concerns the investigation of each and every individual clue found at the crime scene. In a case of murder where a firearm was used, the cartridges found at the crime scene will be forwarded to the ballistic unit for analysis, to establish the calibre of the firearm.
- Fifteen participants respondents stated that individualisation involves tracing of offenders by fingerprints left on the crime scene using fingerprint experts to lift prints and compare them to the automated fingerprint identification system. The AFIS system has all the fingerprints of the repeat offenders.

The same question was put to the focus group, which reacted by stating that individualisation is a process that involves comparing the identified disputed objects connected with the crime and objects with other samples of known origin, to determine individuality.

This question was not put to the prosecutors.

2.10 Difference between Identification and Individualisation

Marais (1992:19) states that identification and individualisation in criminalistics are two inalienable concepts. One follows the other and they are complementary. Identification without individualisation has no evidential value but serves rather as a direction giving aid in the investigation of crime or victim identification. Van der Westhuizen (1996:6) declares that identification is merely

concerned with the identification of something or somebody belonging to a specific category. In other words, A is simply A, and a hair is simply a hair. No comparisons are drawn. Individualisation, on the other hand, involves comparison, usually of the disputed object found at the scene of the crime with one of known origin obtained, for example, from the suspected criminal. An example is a fingerprint of a known criminal (fingerprints of known origin). A comparison is thus made to determine whether the print in dispute at the scene of the murder is that of a known criminal with previous convictions, whose fingerprints are on record.

Brown (2001:86) states that evidence with individual characteristics can be used to identify a specific suspect and link that suspect to a particular crime. Examples of individual characteristic evidence are fingerprints, palm prints and footprints. Class characteristics are common to a group or class of objects. Examples of class evidence are fibers and other items that can be placed in a general category, such as oil found at a crime scene that leaked from the crankcase of an engine, and soil transferred to or from a crime scene. At this time DNA evidence is still described as evidence with class characteristics, with the decision about identity being based on statistical probability.

To the question “What is the difference between identification and individualisation?” the participants respondents reacted as follows:

- Fifteen participants respondents said identification involves the identification of the persons involved in the commission of a crime; whereas individualisation concerns describing the unlawful acts of each person involved in the commission of the crime.
- Fifteen participants respondents said that identification

is the recognition of an object as just a tool, a human being or an animal; whereas individualisation goes beyond that as it tells us that an object in question originates from another particular object.

The same question was put to the focus group. Their reaction was that in identification concentration is laid only on identifying the disputed object connected with the crime. For example, at the crime scene the fingerprints left by the suspect are identified and they are preserved and lifted for future comparison, whereas individualisation involves comparing the objects that have been identified at the crime scene with other samples of known origin. For example, the fingerprints lifted at the crime scene are compared with those of the known suspect. Individualisation is dependent on the uniqueness of an object; for example, there is only one person with a specific set of fingerprints, and therefore that person can be individualised by means of his/her fingerprints.

This question was not put the prosecutors.

2.11 Summary

The identification of suspects is highly pertinent to successful case solution. Efforts in identification are made in cases of both known and unknown suspects. When a suspect is unknown, identification efforts focus on trace evidence and/or eyewitness accounts. In investigation of cases in which identity is known, efforts are focused on placing the suspect at the scene or confirming the claimed identity.

Identification by eyewitness includes in-the-field and identification parade procedures. In-the-field identifications are generally conducted prior to the filing of formal charges, whereas

identification parades are typically held in accordance with section 37 (1) (b) of the Criminal Procedure Act. Suspect identification may also be accomplished by displaying a photographic series to a witness. As with all forms of suspect identification, the investigator must make every effort to ensure fairness, with regard to similarity of the suspects, when presenting photos to be viewed by a witness.

In investigations in which the identity of the suspect is completely unknown, victims and witnesses can often provide sufficient verbal description to create an accurate likeness of the suspect. Identification and individualisation are two inalienable concepts. They are complementary, and one follows the other. Identification without eventual individualisation has no evidential value, but serves rather as direction in the investigation of crime or victim identification.

CHAPTER 3

IDENTIFICATION PARADE

3.1 Introduction

In this chapter the researcher will analyse the following topics: identification parade; purpose of an identification parade; authority to conduct an identification parade; legal requirements to conduct an identification parade; admissibility requirements for an identification parade and the rights of the accused in the parade.

Identification parade is often an extremely emotional experience for victims of crime. The victim has to face a person who attacked him or her. The fear and shock of the victim can affect his ability to point out the suspect in the identification parade. Usually, the victim's memory tends to focus on the fear and shock, creating difficulties when the time comes to give accurate descriptions and to make identification.

Victims of crime are not exposed to the same situation as the investigators. Victims can not identify danger the same way as the investigators can do. The investigators should listen to the victims without criticising and suggesting to the victims when taking statements. The victim can not think like an investigator when confronted with danger. Most of the victims are never prepare themselves to encounter danger. Victims do not know how to react in situation where their lives are in danger and when all their instincts are focused on survival.

3.2 Identification Parade

O'Hara and O'Hara (2003:725) state that an identification parade is a police identification procedure in which the suspect of a crime is

exhibited with a number of other persons, in order to be identified by a witness. It is used as a means of selecting a suspect from a group of similar-looking persons. Bennett and Hess (2004:171) state that the identification parade is commonly used when the suspect is in custody and there were witnesses to the crime. Police have adopted identification procedures to ensure accurate, fair identification and to meet standards established by South African Supreme Court decisions.

Swanson et al. (2003:211) state that an identification parade is a procedure in which a number of similar-looking persons, including the suspect, are shown simultaneously or sequentially to a witness who may be able to identify one of them as the perpetrator. Callanan (1994:5) and Marais and Van Rooyen (1991:107) describe an identification parade as a direct method of person's identification, in which a number of persons, more or less similar in appearance, dress and social standing are paraded for the purpose of allowing the witness to identify the person whom s/he saw and of whom s/he has a mental image imprinted in the memory.

Becker (2000:154) states that in virtually every criminal trial there must be an identification of the suspect. The prosecutor has a responsibility to identify the suspect as the person who perpetrated the crime or was arrested for the crime charged. There is often a prior identification that took place at the hands of a witness. That pre-trial identification generally occurs in the viewing of a police identification parade, by a witness.

In *S v Mohlathe* 2000 (2) SACR 530 (SCA) the judge laid down the common sense requirement, namely, that where there are several suspects on the parade, care should be taken to ensure that there

are sufficient non-suspects whose general appearance approximates that of each of the suspects, and it may be advisable to hold more than one parade (Zeffert et al., 2003:146).

3.2.1 Clothing

The researcher is now going to discuss about clothing that should be worn by persons in the identification parade. In particular, the accused should not be dressed differently from the others or have any distinctive features which would inevitably attract attention. If the number of non-suspects whose general appearance approximates that of each suspect is too few, or if there are other features of the parade which may materially influence an identifying witness, the probative value of the identification will be greatly reduced. The danger in such a case is, of course, that, because the identification is made at a parade, it carries with it an assurance of reliability which is unjustified (Zeffertt et al., 2003:146).

3.2.2 Number of persons on the parade

Zeffertt et al. (2003:146) state that the parade should consist of at least eight people who are similar to the accused in general appearance. Joubert (2004:278) also states that there should preferably be only one suspect and at least eight other persons on the parade. Du Toit et al. (2006:19-20) state that the identification parade should in principle consist of at least eight to ten persons, but a greater number is desirable. It is generally undesirable that there should be more than one suspect on the parade; and, if a second suspect is placed on the parade, the two suspects should be more or less similar in general appearance and the persons on the parade should be increased to at least twelve to sixteen.

O'Hara and O'Hara (2003:725-726), on the other hand, maintain

that to conduct an identification parade, a group of at least six persons, including the suspect, should be assembled. The procedure is designed to provide for an accurate and reliable identification. The persons participating in the parade should have the same general appearance as the suspect, with respect to race, sex, height, hair, and clothing. Persons known to the witness should not be used in the parade. All identification parades should include a reasonable number of participants – five to nine persons, in addition to the suspect (Gilbert, 2004:532). Joubert (2004:278) states that the suspect and other persons on the parade should be more or less of the same build, height, age and appearance, and more or less similarly dressed. Joubert (2004:279) further states that the purpose of the requirement that all persons on the parade should be similar in general appearance is to ensure that the suspect is not noted as a result of his/her difference from the other persons present on the parade. A witness's attention is easily drawn to colourful clothing, for example. Therefore, if the suspect is dressed in noticeably colourful clothes, while the other persons on the parade wear fairly plain-coloured clothes, the suspect will stand out as a result of his/her clothing.

Hoffmann and Zeffertt (1990:616) suggest that the suspect should not be dressed differently from the others or have any distinctive features which would initially attract attention.

In *S v Mlati* 1984 (4) SA 629 (A) 635 it was held that the evidence of the result of the identification parade concerned had no real persuasive value because, at the parade, the accused was the only person clad in a particular item of everyday clothing which was, during the investigative stage and prior to the parade, specifically described to the police by the identifying witness concerned.

3.2.3 Requirements of persons on the parade: Important court decisions

In *R v Masemang* 1950 (2) SA 488 (A) the judge ruled that where identification rests upon the testimony of a single witness, and the accused was identified at a parade which was admittedly conducted in a manner which did not guarantee the standard of fairness observed in the recognised procedure, but was calculated to prejudice the accused, such evidence standing alone can have little weight (Zeffertt et al., 2003:146-147).

S v Charzen & Another 2006 (2) SACR 143 (SCA) is a case where three armed men robbed the complainant, at his house at Chawelo in Soweto, of his Audi A4 motor vehicle, a wallet containing R600 in cash, a mobile phone, books, cassettes and a blue baby seat. During the robbery the complainant sustained five gunshot wounds to his legs and was fortunate not to undergo amputation. Subsequent to this robbery, three men were arrested. At an identification parade, the complainant identified two of the three men who had robbed and shot him. The complainant's wife, who was a witness to the robbery, was unable to identify anyone on the parade. Only two witnesses were called on behalf of the state prosecution in the regional court, namely, the complainant and the police inspector who held the identification parade.

Both the accused were convicted. Accused 1 was sentenced to effective imprisonment of 20 years, and accused 2 to effective imprisonment of 32 years. Their appeal to the High Court in Johannesburg was unsuccessful. On further appeal to the Supreme Court of Appeal in Bloemfontein (SCA), the court again scrutinised the evidence originally presented in the regional court. The SCA

remarked that in the complainant's statement to the police, he described one of his attackers, identified as accused 1, as a "man with dreadlocks". But, neither at the identification parade, held some sixteen days after the robbery, nor at the trial, did accused 1 have dreadlocks. In this regard the SCA remarked that it was regrettable that the police officials, who arrested the accused two days after the robbery, were not called to testify, since they would have been able to relate whether accused 1 had dreadlocks two days after the robbery. The appeal of both accused succeeded and their convictions and sentences were set aside (Lambrechts, 2006:71).

In *R v Tusi* 1957 (4) SA 553 (N) 554 E - H the court was not impressed by an argument that the effectiveness of a parade identification was diminished because on the parade the accused was the only one with a short beard (Du Toit et al., 2006:21). Du Toit et al. (2004:20) suggest that it would be improper to have, for example, Whites as well as Asians on the parade.

In *S v Daba* 1996 (1) SACR 243 (E) 249d-e the judge ruled that the bald statement of a witness that he had identified the accused at an identification parade, was worthless where no information was placed before the court as to the circumstances under which the identification took place, and therefore whether it was reliable (Du Toit et al., 2006:7; Schwikkard & Van Der Merwe, 2002:516). In *R v Y* 1959 (2) SA 116 (W) the judge ruled that an identification witness should be asked to give a detailed description of the alleged criminal at the earliest possible moment. If there is a delay, the witness is not only likely to forget, but may have the opportunity to compare notes with other witnesses, which would diminish the value of his/her evidence (Zeffertt, Paizes & Skeen, 2003:146).

O'Hara and O'Hara (2003:725) state that an identification parade should only be used when the identification by a witness is an important factor in the case. O'Hara and O'Hara (2003:725) further state that an identification parade may be dispensed with in the following situations:

- When there is a significant amount of other incriminating evidence and the eyewitness recollection is weak.
- When the witness knows the suspect and recognised him during the offence.
- When the suspect's appearance is so unusual that suitable identification parade participants cannot be located.
- When the suspect is being held in custody at a great distance from the witness.

In *S v Mohlathe* 2000 SACR 530 (SCA) 541d-e, the judge ruled the following with regard to the danger of relying on parade identification evidence which stemmed from an improper parade:

“But an identification parade, though it ought to be a most important aid to the administration of justice, may become a grave source of danger if it creates an impression which is false as to the capacity of the witness to identify the accused without the aid of his compromising position in the dock. Unsatisfactory as it may be to rely upon the evidence of the identification given by a witness not well acquainted with the accused, if that witness has not been tested by means of the parade, it is worse to rely upon a witness whose evidence carries with it the hall-mark of such useless because it is imperfect. In some respects the quality of the parade must necessarily be a question of degree” (Schwikkard & Van der

Merwe, 2002:516).

To the question “What is an identification parade?” the participants respondents reacted as follows:

- Eight participants respondents stated that an identification parade is to identify the person by pointing [to] him/her on the parade.
- Ten participants respondents stated that an identification parade is where a number of persons are place[d] on the parade and the suspect is also present on the parade. The witness is allowed to walk through the parade to see if s/he can identify the person whom s/he saw and of whom s/he has a mental image imprinted in his/her memory. All persons on the parade must be more or less similar in appearance to the accused.
- Twelve participants respondents stated that an identification parade is the process whereby the witness is given an opportunity to identify and point out the suspect from among a group of about eight or more other individuals, depending on the number of suspects, who are more or less similar to the suspect/s.

This question was not put to the focus group and prosecutors, as it appeared to the researcher that investigators know what an identification parade is.

While perusing closed dockets during the research, the researcher established that on one occasion two police officials – an Asian male and an African male - were placed on one parade, as they were both charged with corruption. An African police official was

pointed out on the parade, but the evidence of the parade was not admissible in court. Both police officials were found not guilty.

In another case the accused was placed in the parade with very tall persons whereas the accused was short. Identification parade was not admissible in court.

In another case the accused was the only person with the Rasta hair style in the parade amongst person with normal hair styles. The identification parade in this matter was not admissible in court.

3.3 Purpose of an Identification Parade

O'Hara and O'Hara (2003:725) state that the purpose of an identification parade is the elimination of the power of suggestion as a factor in identification. Swanson et al. (2003:211) state that the purpose of an identification parade is to conduct a parade in a consistent manner in order to ensure accuracy, reliability, fairness and objectivity in the witness's identification. Gilbert (2004:532) is of the opinion that the identification parade was devised to increase the accuracy of identification, by circumventing the errors of suggestibility that could result in a single suspect viewing.

Du Toit et al. (2004:7) state that an identification parade is not only an effective investigative procedure, but also serves as an important evidential purpose, in that it can provide the prosecution with evidence which is of far more persuasive value than identification in court - i.e. the so-called "dock identification". Joubert (2004:276) states that an identification parade serves a dual purpose which is, firstly, an effective investigation tool - the outcome will therefore enable the investigating officer to reassess the direction of his/her investigation; and, secondly, it also serves an important evidential purpose, since it can provide the

prosecution with evidence far more persuasive than identification in court.

Callanan (1994:2) states that the identification of the accused and suspected persons has only one purpose - the submission of evidence. Callanan (1994:2-3) states further that the identification parade is used to identify the accused, and this leads to individualisation. In this instance it is a matter of identifying the perpetrator as a person rather than identifying his unlawful conduct.

To the question "What is the purpose of an identification parade?" the participants respondents reacted as follows:

- Fourteen participants respondents stated that the purpose of the identification parade is to fairly and accurately test the ability of the witness to identify the suspect and to eliminate the element of suggestion as a determining factor.
- Sixteen participants respondents stated that the purpose of the identification parade is to identify the suspect by pointing him/her out on the parade.

This question was also put to the five prosecutors, and their reaction was that the purpose of the identification parade is to give the witness an opportunity to identify the person arrested by the SAPS as being the one who committed the crime, prior to the trial commencing.

This question was put to the focus group and they stated that the purpose of the identification parade is to allow the witness/ victim to point out the person he/ she saw committing a crime.

The researcher acknowledges that the participants respondents

know the purpose of the identification parade. Further the researcher went and consulted the Module Criminal Procedure Act sub module "Identification Parade" as presented in the Detective Learning Programme (2004:1) and find out that the module states the same as Callanan that identification parades are used to identify the accused and this leads to individualisation. It is the matter of identifying the perpetrator as a person rather than identifying his unlawful conduct.

3.4 Authority to conduct an Identification Parade

Section 37 (1) (b) of the Criminal Procedure Act provides that persons who have been arrested or released on bail, or on warning in lieu of bail, can be made available for identification purposes. The police official may also determine the condition, position or clothing of such person. Such a parade is considered as an important safeguard to minimise the possible unreliability of the identification evidence (Joubert, 2004:276; Du Toit et al., 2006:7; Callanan, 1994:5). In *S v Mphala & another* 1998 (1) SACR 654 (W) the judge ruled that an accused does not have the right, whether or not s/he has received legal representation, not to participate in an identification parade held in accordance with the provisions of Section 37(1)(b) of the Criminal Procedure Act; and to require an accused to participate in an identification parade is not a violation of the accused's constitutional rights (Du Toit et al., 2006:7).

In *S v T* 2005 (2) SACR 318 (E) members of the public (a street committee) held an informal identification parade, i.e. one not sanctioned by section 37 of the Criminal Procedure Act. The investigative powers of the police were usurped. The judge described the parade as an extra-legal identification. The committee made no attempt to comply with several of the accepted rules of

practice designed to ensure a fair procedure and reliable outcome. The identification evidence was not excluded, but the court held that the identification parade conducted by the street committee was so tainted by irregularities that no reliance could safely be placed on the identifications that were made there. The court also concluded that no weight could be attached to two dock identifications, because these followed upon the irregular identification of the appellant in the identification parade and because there was no one, apart from the appellant, in court when the dock identification was made, who had a defective eye. The court noted that a street committee should not attempt, in future, to comply with the rules of an identification parade, but ought rather to provide information to the police so that a proper investigation can be conducted (Du Toit et al., 2006: 27- 28).

To the question “Which authority allows the conducting of an identification parade?” the participants respondents (prosecutors) reacted as follows:

- Two participants respondents stated that section 37 (1) (b) of the Criminal Procedure Act 51 of 1977 authorises a police official to hold an identification parade, and have a person (arrested or released on bail, or on warning in lieu of bail) be made available for identification parade purposes. The witness and or complainant must have furnished the police officials with a detailed description of the suspect/accused in his/her statement before the parade is held.
- Three participants respondents stated that section 37 (1) (b) of the Criminal Procedure Act 51 of 1977 gives powers to police officials to make such persons available, or cause them to be made available, for identification in such condition, position or apparel as the police officials may determine. It is

important that the police must have obtained a statement from the witness or complainant about the appearance of the suspect/accused.

This question was put to the investigators, and they all participants responded as follows:

- Section 37 (1) (b) of the Criminal Procedure Act 51 of 1977 allows the police to conduct an identification parade.

This question was put to the focus group, and they reacted as follows:

- The answer was the same as that of the investigators.

This gave the researcher the indication that the police investigators have a general knowledge about the holding of a parade.

3.5 Legal requirements to conduct an Identification Parade

Chapter 2 of the Constitution of the Republic of South Africa 108 of 1996 stipulates that the accused's rights must be respected at all times. Joubert (2001:23) states that the Constitution is the highest form of authority and thus influences all investigation procedures. Joubert (2001:268) further states that police officials are tasked with the investigation of crime. In order to perform this duty successfully, police officials are equipped with various powers that enable them to obtain evidence. As a general rule, evidence has to be obtained in accordance with the Constitution. Although the methods used by police to obtain evidence may result in infringement on the rights of individuals, it must be remembered that the rights in the Bill of Rights may be limited.

Sections 35 (3) (f-l) and 4 of chapter 2 of the Constitution 108 of

1996, Bill of Rights, state that every accused has the right to a fair trial, which includes:

- The right to a legal practitioner of his/her choice;
- The right to be informed of these rights immediately;
- The right to a legal practitioner provided by the state at state expense;
- To be innocent until the contrary is proven;
- The right to remain silent;
- The right to be present and challenge evidence;

These rights should be given to a person during his/her arrest and detection in a language that s/he understands.

Section 35 (3) (j) of the 1996 Constitution states that a person may not be compelled to give self-incriminating evidence. Section 36 of the 1996 Constitution, Limitation of Rights, states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

Section 37 of the Criminal Procedure Act 51 of 1977 does not infringe upon a person's privilege against self-incrimination, since this privilege is confined to communication (Joubert, 2001:274).

In *S v Binta* 1993 (2) SACR 553 (C) the judge ruled that privilege against self-incrimination does not apply to section 37 of the Criminal Procedure Act (the ascertaining of bodily features), since there is a distinction between being obliged to make a statement against one's interests, and furnishing real evidence. This

distinction has not been affected by the fact that the right against self-incrimination is now entrenched in the Constitution (Joubert, 2001:274).

Du Toit et al. (2006:11) state that the identification parade does not, strictly speaking, consist of rules of law, but there are, basically, rules of police practice based upon considerations of fairness and gleaned from reported cases. These police rules are merely guidelines to the police on the procedures to be followed in the holding of identification parades. These rules do not create rights, and non-compliance with one or other of them will not result in a ruling that the parade is inadmissible.

To the question “What are the legal requirements to conduct an identification parade?” the participants respondents reacted as follows:

- Fifteen participants respondents (investigators) stated that section 37 of the Criminal Procedure Act provide for the legal requirement to conduct an identification parade.
- Fifteen participants respondents (investigators) stated that section 37(1)(b) of the Criminal Procedure act, authorises a police official to hold an identification parade on the person that are in custody on any charge, persons released on bail and persons released in terms of section 72 of the Criminal procedure Act, act 51/1977.

This question was put to prosecutors, and they stated that there are no rules of law governing the conducting of identification parades, but there are rules of police practice based upon considerations of fairness and guidelines taken from the reported cases.

This question was put to the focus group and they stated that Sec 37 of the Criminal Procedure act gives powers to the police to make certain persons avail themselves for the identification parade. This section does not state the procedures as to how the parade must be conducted.

The researcher agrees with the participants respondents Section 37 (1)(b) of the Criminal Procedure Act, Act 51/1977 authorises any police official to conduct an identification parade and to make any person, who has been arrested upon any charge or released on bail or on warning, available for identification in such condition, position or apparel as the police official may determine.

3.6 Admissibility requirements for an Identification Parade

Joubert (2001:396) states that when evaluating evidential material, a court must determine the credibility of the witness, draw inferences from facts, and weigh up possibilities and probabilities. Joubert further states that various forms of evidential material, such as oral and documentary or real evidence, may provide corroboration.

Schwikkard and Van der Merwe (2002:244) state that a trial within a trial should, as a rule, be held where the defence objects to the admissibility of evidence on the basis of section 35 (5) of the 1996 Constitution. Section 35 (5) of the 1996 Constitution states that evidence obtained in a manner that violates any right in the Bill of Rights must be excluded, if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice (Schwikkard & Van der Merwe, 2002:200). Schwikkard and Van der Merwe (2002:200) state further that section 35 (5) is in structure and wording closely modeled on

section 24 (2) of the Canadian Charter, which reads as follows:

- Anyone whose rights or freedom, as guaranteed by this Charter, have been infringed or denied, may apply to a court of competent jurisdiction for such remedy as the court considers appropriate and just in the circumstances.
- Where, in proceedings under subsection (1), a court concludes that evidence obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

In *S v Naidoo* 1998 1 SACR 479 (N) 527g the judge held that having regard to the similarity between section 35 (5) of the new Constitution and section 24 (2) of the Canadian Charter (but bearing in mind the differences between the two enactments), and also the provisions in section 39 (1) (C), when interpreting the Bill of Rights, a court may consider foreign law. "I am of the view that it is more helpful to interpret the provisions of section 35 (5) with reference to the Canadian decisions than to South African cases dealing with a more general discretion."

But, in *S v Vilakazi & Another* 1996 (1) SACR 425 (T) it was held that there was no violation of the accused's constitutional rights to a fair trial if evidence of an identification parade is led without recourse to a trial within a trial; it was also held that irregularities during the course of the parade merely affected the weight of the evidence of identification (Du Toit et al., 2006:25).

In *S v Mokoena* 1998 (2) SACR 642 (W) it was held that where a

suspect's constitutional rights were infringed during an identification parade, it is unnecessary to hold a trial within a trial, because such an infringement only affects the evidentiary weight and not the admissibility thereof (Du Toit et al., 2006:16). Du Toit et al. (2006:16) state that identification parade evidence which stems from any unduly suggestive procedure, may be excluded if it violates due process, i.e. the right to a fair trial.

3.7 Rights of the accused at the Parade

Du Toit et al. (2006:14) and Joubert (2001:277) state that the accused should be informed of the purpose of the parade and the allegations against him/her, and should further be given an opportunity to obtain a legal representative to be present at the parade. In *S v Mhlakaza & others* 1996 (2) SACR 187 (C) evidence of the identification parade was held inadmissible because the accused had not been granted a reasonable opportunity or sufficient time to obtain legal representation. In this case, two of the accused had objected to the absence of their legal representatives at the parade. The court held that an accused was constitutionally entitled to legal representation at the parade (Du Toit et al., 2006:11).

In *S v Mphala* 1998 1 SACR 654 (W) the judge was satisfied that admission of the identification evidence would not have resulted in one or both of the consequences identified in section 35(5) of the Constitution Act 108 of 1996. Two factors weighed heavily with the court in coming to this conclusion. Firstly, the judge was satisfied that the police conduct in holding the parade in the absence of the accused's legal representatives was not of such a nature that the court's disciplinary function had to be relied upon in excluding the impugned evidence. Secondly, the judge concluded that the

presence of the legal representatives would not have made any difference to the outcome of the parade. "Evidence was led by the state that the parade had been properly conducted, and there was no suggestion to the contrary in cross-examination on behalf of the accused, or in the evidence given by them." The judge however, admitted the evidence even on the assumption that the accused had not expressly waived their right to the presence of an attorney at the parade, and that the evidence was, in consequence, procured in breach of a constitutional right to have an attorney present (Schwikkard & Van der Merwe, 2002:231).

Joubert (2004:279) and Du Toit et al. (2006:23) further mention that the police official in charge of the parade should tell the suspect to choose a position on the parade and, if s/he should so desire, to change position between witnesses. It should be ensured that the suspect is satisfied with the parade and that all reasonable requests are granted. Although a police official may determine the condition, position or clothing of the suspect, the granting of a suspect's reasonable requests contributes to the credibility of the parade. Du Toit et al. (2006:23) state that it is wise for the police official in charge of the parade to comply with any reasonable request made by the suspect. Du Toit et al. (2006:7) state that to require the accused to participate in an identification parade is not a violation of his constitutional rights.

Section 35 of the Constitution of the Republic of South Africa 108 of 1996 stipulates the following:

35 (1) Everyone who is arrested for allegedly committing an offence has the right:

- a) to remain silent;
- b) to be informed promptly-

- (i) of the right to remain silent and
 - (ii) of the consequences of not remaining silent.
- (2) Everyone who is detained, including every sentenced prisoner, has the right-
- a) to be informed promptly of the reason for being detained,
 - b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly,
 - c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

Du Toit et al. (2006:19) and Joubert (2001:278) are of the opinion that the suspect should be informed that his refusal to take part in a parade can at a possible later criminal trial be adduced as evidence against him/her and that the court might draw an adverse inference from such refusal or non-compliance. Privilege against self-incrimination cannot be successfully invoked with regard to the ascertainment of bodily features. In *S v T* 2005 (2) SACR 318 (E) it was said that a suspect may not refuse to take part in an identification parade. However, many difficulties in holding a proper parade can arise where a suspect refuses to cooperate (Du Toit et

al., 2006:19).

In *R v Marcoux & Solomon* 1975 29 CRNS 211 in Canada, the judge may at common law direct the jury to decide, on all the evidence, what weight, if any, they will attach to the refusal of an accused to attend an identification parade. The accused cannot rely upon the privilege against self-incrimination as justification for his refusal to attend or cooperate (Du Toit et al., 2006:19).

In *S v Sibanda* 1969 (2) SA 345 (T) 349 A-C the judge ruled that it may be necessary, in the interests of justice, under certain circumstances, to refuse a suspect permission to change his clothing - for example, where the change would have the effect of completely or partially disguising the suspect and altering his appearance radically, which may have the effect of rendering the parade null and void. The court further stated that it must always be kept in mind that the easier it is made for a potential witness to point out a person by some external phenomenon which may be common to more than one person, the more danger there is that the wrong person may be pointed out. The more conspicuous the phenomenon, the greater the likelihood that the wrong person will be pointed out or that the real person will be pointed out for this very reason and not for the reason that he was independently observed or identified on the identification parade as the person who is sought to be pointed out.

To the question "What are the rights of the accused at the parade?" the participants respondents (investigators) reacted as follows:

- Six participants respondents stated that the accused has the right to be informed of the purpose of the parade; the right to be informed in the language s/he understands; the right to

have his/her legal representative present during the parade; and, the right to change positions when electing to do so.

- Twelve participants respondents stated that the accused has the right to be informed of his constitutional rights in terms of Section 35 of the Constitution Act 108 of 1996; the right to be informed of the purpose of the identification parade; the right to make a reasonable request; and, the right to change his place in the parade or his number, before the next witness comes to inspect the parade.
- Twelve participants respondents stated that the accused has the right to stand in any position s/he desires and may change his/her position for any other witness still to come.

This question was put to the focus group and the prosecutors. They stated that the accused has a right to change his/her position in the parade after every witness, and a photo to be taken of the new position before the next witness enters the parade.

The researcher has observed, through checking closed dockets, that the accused's rights are explained to them, as the form SAP 329 indicates.

Paragraph 6 of the form SAP 329 (see Figure 1 below in chapter 4) makes provision for the date when the accused is informed of the intended identification parade, and the date the parade is to be held. Paragraphs 7 and 18 of the form SAP 329 provide for the suspect to be informed of the purpose of the parade and the allegations against him/her, and to be given an opportunity to obtain a legal representative to be present at the parade. Paragraph 8 of the form SAP 329 makes provision for the accused to choose whether s/he does or does not desire the services of a legal

representative.

Paragraph 19 of the form SAP 329 (see figure 1 below in chapter 4) makes provision for the request made by the accused to be recorded. Paragraph 20 of the form SAP 329 makes provision for the accused to be asked whether s/he is satisfied with the parade, including the persons on the parade, and to record the answers. Paragraph 26 of the form SAP 329 makes provision for the accused to be given an opportunity to change his/her position and to be asked whether s/he is satisfied.

3.8 Summary

The identification parade is a police identification procedure in which the suspect is put among a number of persons, in order for a witness to point out the suspect. An identification parade is commonly used when the suspect is in custody. Persons on the parade should be more or less similar in appearance, dress and social standing. The accused should not be dressed differently from the others, or have any distinctive features which would inevitably attract attention.

An identification parade should consist of at least eight to ten people who are similar to the accused in general appearance. The purpose of the identification parade is the elimination of power of suggestion as a factor in identification.

Section 37 (1) (b) of the Criminal Procedure Act 51 of 1977 provides that persons who have been arrested, or released on bail, or on warning in lieu of bail, can be made available for identification purposes. This Act further states that the police may determine the condition, position or clothing of such persons.

Chapter 2 of the Constitution of the Republic of South Africa 108 of 1996 stipulates that the accused's rights must be respected at all times.

CHAPTER 4

CONDUCTING AN IDENTIFICATION PARADE

4.1 Introduction

In this chapter the researcher will be exploring the process of conducting an identification parade and analysing the form SAPS 329 entirely.

In the absence of other evidence, eyewitness identification will often be of critical importance to a criminal investigation. To ensure that the identification is an independent and honest recollection by the witness, the investigator must be familiar with the techniques and precautions involved. The most common police identification procedure is an identification parade. When conducted properly, it is considered more accurate than fingerprints (O'Hara & O'Hara, 2003:724-725).

4.2 Process of conducting an Identification Parade

Zeffertt et al. (2003:146) state that the procedure for the conducting of the parade is largely a matter of police practice, but judges have laid down rules which should be observed if the accused is not to be prejudiced and if the parade is to have maximum probative value. The cardinal principle is fairness to the accused. In *R v Masemang* 1950 (2) SA 488 (A) 493-4 the judge ruled that the recognised procedure does not, strictly speaking, consist of rules of law, but are basically rules of police practice based upon considerations of fairness and guidelines gleaned from reported cases (Du Toit et al., 2006:11).

Callanan (1994:6) states that the investigating officer must not participate in the proceedings of the identification parade. As soon

as the investigating officer in any way involves him-/herself in the identification parade, it weakens the state's case. Any capable member of the police may, at the request of the investigating officer, hold the parade. It is, for practical reasons, preferable, but not compulsory, that the member in charge of the parade is of the same race and sex as the accused/suspect, as this will eliminate communication problems and will promote calmness and peace of mind during the parade. Joubert (2004:277) and Du Toit et al. (2006:13) also state that the investigating officer should not be in charge of the parade. This will minimise the possibility of any deliberate or unintentional influence of witnesses by the investigation officer, the person holding the parade, or another witness.

Du Toit et al. (2006:13) state that the purpose of the above rule is to avoid the possibility of any deliberate or inadvertent collusion between, firstly, the investigating officer and the official in charge, and secondly, the investigating officer and any identifying witnesses. Swanson et al. (2003:212) state that the primary investigator should not be the person conducting the identification parade, since s/he might give inadvertent verbal or body language clues.

In *S v Mbuli* 2003 (1) SACR 97 (SCA) the judge ruled that if the investigating officer is present at the parade s/he shall not intervene in any way and should be so positioned that s/he can at all times be seen by those forming the parade line (Du Toit et al., 2006:13).

To the question "Who can conduct an identification parade?" the sample of investigators reacted as follows:

- Twelve participants respondents stated that any police official

can conduct an identification parade, but it must be an experienced police official well conversant with court proceedings and with vast experience in procedures to conduct identification parades.

- Eighteen participants respondents stated that any impartial police official, who is not involved in the investigation, and preferably not from the same station, can conduct an identification parade.

The same question was put to the focus group and the prosecutors, and their responses were similar, in that they stated that a police official who did not attend to the crime scene when the matter was reported, who does not know the merits of the case, and preferably not from the same unit or station as the investigating officer, should conduct an identification parade. Prosecutors further suggested that the investigating officer should preferably not have to approach this police official him-/herself, but rather make use of his/her supervisor or commander to arrange for this police official, as it will assist during the trial-within-a-trial, that the investigating officer did not participate in anything during the identification parade process.

The researcher observed that the participants respondents have knowledge of who must conduct the identification parade. The researcher went on to study the Module Procedure Act sub module "Identification Parades" as presented in the Detective Learning Programme (2004:4) and found out that the investigating officer has to request an impartial police official who was not involved in the relevant investigation to take charge of and hold an identification parade. The request must be in writing. The following important information must be provided to the person in charge of the parade:

- Names of the accused

- Names of witnesses
- The case number
- The type of crime committed
- The date, place and time the crime was committed
- A blank SAP 329 (Identification form)

The researcher noticed that all participants responded did not mention that a request must be in writing which is the most important point during the court process especially during trial-within-a-trial.

4.2.1 The Identification Parade Form (SAP 329)

Figure 1 represents a form that is used when conducting the identification parade. This form (SAP 329) is completed by the police official in charge of the identification parade. It is completed at the commencement of the parade up to the termination of process. The official in charge of the parade records everything that occurs during the parade, on this form. This form must be made available to the defence.

Figure 1: Identification Parade Form (SAP 329)

G.P.-S. 002-0384
SUID-AFRIKAANSE POLISIEDIENS
UITKENNINGSPARADEVORM
Artikel 37 (1) (b) Wet No. 51 van 1977



SAP 329
SOUTH AFRICAN POLICE SERVICE
IDENTIFICATION PARADE FORM
Section 37 (1) (b) Act No. 51 of 1977

1. Lid in beheer van parade
Member in charge of parade
2. Stasie
Station MAS/MP No. / /
CAS/CR No. / /
3. Klagte(s) • Charge(s)
4. Opdrag vir die hou van die parade ontvang op
Instruction for the institution of the parade received on
om vanaf die ondersoekbeampte Nr.
at from the investigating officer No
Rang Naam
Rank Name
5. Volle naam(e) van verdagte(s):
Full name(s) of suspect(s):
(1) Taal
Language
(2) Taal
Language
(3) Taal
Language
(4) Taal
Language
(In geval van meer verdagtes, vervolg op folio.) • (If there are more suspects, continue on folio.)
6. Verdagte(s) is op
Suspect(s) was/were informed on van die voorgename
of the intended
parade op om te ingelig.
parade on at at
7. Verdagte(s) is op
Suspect(s) was/were informed on verwtig dat hi/sy/hulle
That he/she/they
geregtig is op regsverteenvoordiging.
is/are entitled to legal representation.
8. Verdagte(s) verlang/verlang nie regsverteenvoordiging nie.
Suspect(s) desire/do not desire legal representation.
9. Regsverteenvoordiger(s)
Legal representative(s) (1) (2)
(3) (4) is
was/were informed
op
on (1) (2)
(3) (4)
ingelig van die datum, tyd en plek van die parade.
of the date, time and place of the parade.
10. Naam van fotograaf
Name of photographer
11. Naam van tolk
Name of interpreter
12. Die parade is buite sig en gehoor van ander persone gehou.
The parade was held out of sight and hearing of other persons.
Plek datum tyd
Place date time
13. Naam van lid wat toesig oor getuie(s) gehou het voordat hi/sy/hulle parade bygewoon het
Name of member who guarded the witness(es) before he/she/they attended the parade
Kantoor Nr.
Office No.
14. Naam van lid wat getuie(s) na parade begelei
Name of member who escorts witness(es) to the parade
15. Naam van lid wat getuie(s) van parade begelei
Name of member who escorts witness(es) from the parade
16. Naam van lid wat toesig oor getuie(s) gehou het nadat hi/sy/hulle parade bygewoon het
Name of member who guarded the witness(es) after he/she/they had attended the parade
Kantoor Nr.
Office No.
17. Daar was altesaam persone op parade [insluitende die verdagte(s)]. Hulle is min of meer van dieselfde lengte, liggaamsbou, ouderdom
There were persons on parade [including the suspect(s)]. They are of about the same height, build, age and appearance and
en voorkoms en is almal naastebly soos die verdagte(s) geklee.
were dressed more or less the similar to the suspect(s).

18. Verdagte(s) is van die beweerde klagte(s) en die doel van die parade verwittig en meegedeel dat hy/sy/hulle—
 Suspect(s) has been informed of the allegation(s) and the purpose of the parade and that he/she/they—
- (1) enige posisie van sy/haar/hulle keuse op die parade mag inneem en van posisie mag verander voordat 'n ander getuie geroep word; en
 may take up any position of his/her/their choice on the parade and may change his/her/their position before another witness is called; and
 - (2) enige redelike versoek(e) ten opsigte van die parade mag rig.
 may make any reasonable request(s) in respect of the parade.

19. (1) Sy/haar/hulle versoek(e) is soos volg:
 His/her/their request(s) is/are the following:

Verdagte • Suspect 1

Verdagte • Suspect 2

Verdagte • Suspect 3

Verdagte • Suspect 4

- (2) Stappe gedoen as gevolg van die versoek(e):
 Steps taken as a result of the request(s):

Verdagte • Suspect 1

Verdagte • Suspect 2

Verdagte • Suspect 3

Verdagte • Suspect 4

20. Verdagte(s) is gevra of hy/sy/hulle tevrede is met die opstel van die parade, insluitende die persone op parade.
 Suspect(s) was/were asked whether he/she/they is/are satisfied with the parade, including the persons on parade.

Sy/haar/hulle antwoord(e) is soos volg:
 His/her/their answer(s) is/are as follows:

Verdagte • Suspect 1

Verdagte • Suspect 2

Verdagte • Suspect 3

Verdagte • Suspect 4

21. Naam van regsverteenvoorder(s), indien teenwoordig:
 Name of legal representative(s), if present:

Naam • Name	Namens • On behalf of

2. Persone op parade, verdagte(s) ingesluit:
 Persons on parade, suspect(s) included:

Naam • Name	Ouderdom • Age	Adres • Address
(1).....		
(2).....		
(3).....		
(4).....		
(5).....		
(6).....		
(7).....		
(8).....		
(9).....		
(10).....		
(11).....		
(12).....		
(13).....		
(14).....		
(15).....		
(16).....		
(17).....		
(18).....		
(19).....		
(20).....		

Naam • Name	Ouderdom • Age	Adres • Address
(12).....		
(13).....		
(14).....		
(15).....		
(16).....		
(17).....		
(18).....		
(19).....		
(20).....		

23. In Foto is geneem nadat die parade opgestel is: Ja • Nee
 A photograph was taken after the parade had been set up: Yes • No

VERLOOP VAN PARADE • PROCEDURE OF PARADE

24. Die persone, insluitende die verdagte(s), wat aan die parade deelneem, neem die volgende posisies van links na regs voor my in:
 The persons, including the suspect(s), taking part in the parade, take up the following positions from left to right in front of me:

- | | |
|------------|------------|
| (1) | (2) |
| (3) | (4) |
| (5) | (6) |
| (7) | (8) |
| (9) | (10) |
| (11) | (12) |
| (13) | (14) |
| (15) | (16) |
| (17) | (18) |
| (19) | (20) |

25. Eerste getuie • First witness

Naam • Name Taal • Language

is gevra om die verdagte(s), indien op parade, uit te wys deur sy/haar/hul skouer(s) aan te raak, wat (datum, tyd, plek en klagte):
 was asked to point out the suspect(s), if on parade, by touching his/her/their shoulder(s), who (date, time, place and charge):

.....

(1) Tyd deur getuie geneem om persoon(e) op parade uit te wys
 Time taken by witness to point out person(s) on parade

Uitslag • Result

(2) Reaksie van getuie tydens uitwysing van persoon(e):
 Reaction of witness during pointing out of person(s):

(3) Kommentaar deur persoon uitgewys deur getuie
 Comments by person pointed by witness

26. Verdagte(s) word geleentheid gebied om van posisie(s) te verander en gevra of hy/sy/hulle tevrede is met sy/haar/hulle posisie. Sy/haar/hulle antwoord(e) was:
 Suspect(s) is/are given the opportunity of changing his/her/their position(s) and asked whether he/she/they is/are satisfied. His/her/their answer(s) was/were:

- | |
|-----------|
| (1) |
| (2) |
| (3) |
| (4) |

27. Posisies deur persone op parade ingeneem voordat tweede getuie op parade verskyn:
 Positions taken by persons on parade before the second witness appears on parade:

- | | |
|------------|------------|
| (1) | (2) |
| (3) | (4) |
| (5) | (6) |
| (7) | (8) |
| (9) | (10) |
| (11) | (12) |
| (13) | (14) |
| (15) | (16) |
| (17) | (18) |
| (19) | (20) |

28. Tweede getuie • Second witness

Naam • Name Taal • Language

is gevra om die verdagte(s), indien op parade, uit te wys deur sy/haar/hul skouer(s) aan te raak, wat (datum, tyd, plek en klagte);
was asked to point out the suspect(s), if on parade, by touching his/her/their shoulder(s), who (date, time, place and charge):

(1) Tyd deur getuie geneem om persoon(e) op parade uit te wys
Time taken by witness to point out person(s) on parade

Uitslag • Result

(2) Reaksie van getuie tydens uitwysing van persoon(e):
Reaction of witness during pointing out of person(s):

(3) Komentaar deur persoon uitgewys deur getuie
Comments by person pointed by witness

29. Verdagte(s) word geleentheid gebied om van posisie(s) te verander en gevra om te sê of hy/sy/hulle tevrede is met sy/haar/hulle posisie. Sy/haar/hulle antwoord(e) was:
Suspect(s) is/are given the opportunity of changing his/her/their position(s) and asked whether he/she/they is/are satisfied. His/her/their answer(s) was/were:

- (1)
- (2)
- (3)
- (4)

30. Posisies deur persone op parade ingeneem voordat tweede getuie op parade verskyn.
Positions taken by persons on parade before the second witness appears on parade:

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)
- (11)
- (12)
- (13)
- (14)
- (15)
- (16)
- (17)
- (18)
- (19)
- (20)

31. Derde getuie • Third witness

Naam • Name Taal • Language

is gevra om die verdagte(s), indien op parade, uit te wys deur sy/haar/hul skouer(s) aan te raak, wat (datum, tyd, plek en klagte);
was asked to point out the suspect(s), if on parade, by touching his/her/their shoulder(s), who (date, time, place and charge):

(1) Tyd deur getuie geneem om persoon(e) op parade uit te wys
Time taken by witness to point out person(s) on parade

Uitslag • Result

(2) Reaksie van getuie tydens uitwysing van persoon(e):
Reaction of witness during pointing out of person(s):

32. Opmerkings, indien enige
Remarks, if any

33. Naam van polisie-stasie
Name of police station

VB Nr.
OB No.

34. Ek, Nr. Rang Naam
I, No. Rank Name

sertifiseer dat hierdie parade deur my waargeneem is, dat die besonderhede wat op die vorm deur my ingevul, korrek en 'n presiese weergawe van die gebeure is.
certify that this parade was conducted by me, that the particulars which have been completed on the form by me are correct and that it is a just report of the procedures which took place.

Handtekening, Nr. en rang van lid in beheer van parade
Signature, No. and rank of member in charge of parade

The researcher will now briefly discuss the form:

1. Paragraph 1 requires the name of the police official in charge of the parade to be provided.
2. Paragraph 2 requests the station and case number to be provided.
3. Paragraph 3 makes provisions for the charge against the accused to be recorded.
4. Paragraph 4 makes provision for the date when instructions were received for the member to hold a parade, as well as the time and the full particulars of the investigating officers, i.e. their service number, rank and name, to be recorded.
5. Paragraph 5 makes provisions for the name of the accused to be recorded, as well as the language used by the accused.
6. Paragraph 6 makes provision for the date to be recorded when the suspect/accused was informed of the intention to conduct an identification parade, and the date, time and place where parade is going to be held.
7. Paragraph 7 provides for the date to be recorded when the suspect was informed that s/he is entitled to a legal representative during the parade.
8. Paragraph 8 provides for the declaration by the suspect whether s/he desires a legal representative or not, to be recorded.
9. Paragraph 9 makes provision for the name of the legal representative to be recorded.
10. Paragraph 10 makes provision for the name of the photographer to be recorded.
11. Paragraph 11 makes provision for the name of the interpreter to be recorded.

12. Paragraph 12 provides for the declaration by the official in charge that the parade was held out of sight and hearing of other persons, to be recorded, as to date, time and place.
13. Paragraph 13 provides for the name and office number of the member who guarded the witness before s/he attended the parade, to be recorded.
14. Paragraph 14 provides for the name of the member who escorted witness to the parade, to be recorded.
15. Paragraph 15 provides for the name of the member who escorted the witness from the parade, to be recorded.
16. Paragraph 16 provides for the name and office number of the member who guarded the witness after s/he had attended the parade, to be recorded.
17. Paragraph 17 provides a space for the number of people that were on the parade, including the suspect, to be recorded, that they were of about the same height, build, age and appearance, and were dressed more or less similarly to the suspect.
18. Paragraph 18 provides for the rights of the suspect to be explained to him/her, that the suspect has been informed of the allegation and the purpose of the parade, and that s/he -
 - 1) may take up any position of his/her choice on the parade and may change his/her position before another witness is called;
 - 2) May make any reasonable request in respect of the parade.
19. (1) Paragraph 19(1) provides for the request made by the suspect to be recorded.
 - (2) Paragraph 19(2) provides for the steps taken as a result of the request by the suspect, to be recorded.

20. Paragraph 20 provides for whether the suspect was asked whether s/he was satisfied with the parade, including the persons on the parade, and his/her answer to be recorded.
21. Paragraph 21 provides for the name of the legal representative, if present, to be recorded.
22. Paragraph 22 provides for the names, ages and addresses of the persons on the parade, suspect included, to be recorded.
23. Paragraph 23 provides for the indication to be recorded as to whether or not a photograph was taken after the parade had been set up.
24. Paragraph 24 requests the persons, including the suspect, taking part in the parade, to take up positions from left to right of the person in charge of the parade, and this to be recorded.
25. Paragraph 25 of the form provides for the name and language used by the first witness to be recorded and the note that the witness was asked to point out the suspect, if on the parade, by touching his/her shoulder who (date, time, place and charge). In the one-way mirror the witness calls the number displayed by the person s/he points out.
- 1) Paragraph 25(1) provides for the time taken by the witness to point out the person on the parade, to be recorded.
 - 2) Paragraph 25(2) provides for the reaction of the witness during the pointing out of the person, to be recorded.
 - 3) Paragraph 25(3) provides for the comments by the person pointed out by the witness.
26. Paragraph 26 provides for whether the suspect was given the opportunity of changing his/her position and asked

- whether s/he was satisfied. His/her answer to be recorded.
27. Paragraph 27 provides for the position taken by the persons on the parade before the second witness appears on the parade, to be recorded.
 28. Paragraph 28 provides for the name and language used by the witness to be recorded, and the note that the witness was asked to point out the suspect, if on the parade, by touching his/her shoulder, who (date, time, place and charge). If it is a one-way mirror, the witness calls the number displayed by the person s/he points out.
 - 1) Paragraph 28(1) provides for the time taken by a witness to point out the person on parade, to be recorded.
 - 2) Paragraph 28(2) provides for the reaction of a witness during pointing out of the person to be recorded.
 - 3) Paragraph 28(3) provides for the comments of the person pointed by the witness, to be recorded.
 29. Paragraph 29 provides for whether the suspect was given the opportunity of changing his/her position and asked whether he/she is satisfied. His/her answer to be recorded.
 30. Paragraph 30 provides for the positions taken by persons on the parade before the third witness appears on the parade, to be recorded. The form states "before the second witness". This is a misprint.
 31. Paragraph 31 provides for the name and language used by the witness to be recorded, and the note that s/he was asked to point out the suspect, if on parade, by touching him/her shoulder, who (date, time, place and charge). If it is a one-way mirror, the witness calls the number by the

person s/he points out.

- 1) Paragraph 31(1) provides for the time taken by a witness to point out the person on parade, to be recorded.
- 2) Paragraph 31(2) provides for the reaction of a witness during pointing out of the person, to be recorded.
32. Paragraph 32 makes provision for the member in charge of the parade to record any remarks about the parade.
33. Paragraph 33 makes provision for the member in charge of the parade to record the police station and occurrence book number where the parade was held.
34. Paragraph 34 provides for the member in charge of the parade to write his/her service number, rank, name and a certificate that the parade was conducted by him/her, that the particulars which have been completed on the form by him/her are correct, and that it is a just report of the procedures which took place, and to sign at the bottom of the page. The member must put his/her full official signature, meaning his/her signature, service number, rank and name.

The researcher observed, while reading closed dockets at the stations, that investigators prefer to use the same police officials to hold identification parades for them. This was seen on the form SAP 329. When the researcher questioned the participants respondents about this, their reaction was that it is because these police officials are experienced in holding identification parades, and that they have held identification parades before, with successful results in court.

4.2.2 Preparations

The investigating officer is responsible for the preparations of the identification parade. This includes arrangement of the venue, informing the police official in writing who will conduct the parade, the witnesses, accused and accused's legal representative.

Witnesses think that once they have submitted their statements to the police and the suspect is apprehended, the investigation stops there and the next step is to take the accused to court. It is the duty of the investigating officer to inform the witness about the investigation process and to prepare the witness for the process. The witnesses have to be informed about the identification parade process by the investigating officer, and the fact that the investigating officer will not form part of the group involved with the proceedings of the identification parade (Carney, 2004:212).

4.2.2.1 Preparing the witness for the parade

Carney (2004:212) states that witnesses do not know what to expect when viewing an identification parade. Some feel that the police have already captured the suspect and that s/he is definitely in the room. They feel compelled to identify the one whom they think most closely resembles the suspect. Others will say that they do not think they can identify the suspect even if they do see him/her, yet, frequently, when witnesses see the suspect on the identification parade, they make a positive identification without reservation. Callanan (1994:8) states that the witness must be instructed and have explained exactly what is required from him/her at the parade.

Carney (2004:212-213), O'Hara and O'Hara (2003:726) and Rutledge (2003:74) state that witnesses should be told what to

expect. They need to know that it is understood that the situation is extremely difficult for them. It should be explained that there will be about ten people on the parade. In some cases, the suspect's attorney may also be present in the room during the identification parade. If the attorney is present, witnesses must know that there can be no interference and that they are only there as observers. Witnesses must be informed that they will have as much time as is needed to scrutinise the people on the parade. If the witness needs them to speak certain words, it can be arranged. In order for an identification parade to be fair, witnesses must be informed that the suspect may not even be on the identification parade. The witnesses should be told that when viewing the identification parade, they will be asked if they recognise anyone.

Kerstholt, Koster and Amelsvoort (2004:15) say that the statement of the witness constitutes an important part of the evidence in legal cases. For this reason it is crucial to maximise the probability that the suspect is indeed the person the witness saw at the time of the crime. In order to test the witness's memory, s/he is usually presented with an identification parade. At an identification parade the witness stands in front of the one-way mirror and can see all the persons in a row, who stand as still as possible in a neutral position in order to reduce the possibility that movements or facial expressions may provide suggestive clues.

Swanson et al. (2004:172) state that the witness should be given clear instructions before the parade. Witnesses must be informed that they need not identify anyone in the parade, that they are not to confer with any other witness viewing the identification parade, and that they do not have to indicate any identification in any way.

Carney (2004:213) further states that investigators should be prepared for the emotional state that confronting the witness's assailant might trigger in the witness. Let the witness know that s/he cannot be harmed and that his/her safety will be ensured.

To the question "What can an investigating officer do to prepare a witness for the identification parade?" the participants respondents (investigators) reacted as follows:

- Thirteen participants respondents stated that the investigating officer should explain the importance of the identification parade to the witness, and the importance of the witness's evidence, should he point out the suspect on the parade.
- Seventeen participants respondents stated that the investigating officer must guide the witness throughout the process of the parade. Explain to him/her that there is nothing to fear, as the suspect will not see him/her in a situation where a one-way mirror is used.

This question was put to the focus group, and their response was that the investigating officer should inform the witness what to expect in the identification parade, and also explain to the witness that s/he (the investigating officer) will not form part of the identification parade.

This question was also put to the prosecutors, who responded by stating that it is important that the investigating officer prepares the witness for the identification parade. The investigating officer must inform the witness not to fear the parade and to take his/her own time in the parade. If there is a legal representative, the witness should not fear, as the legal representative is not going to ask the witness any questions. The witness If the witness is a minor, he/she

will be accompanied by his/her parent or guardian when attending the parade.

The researcher observed that it is important for the investigating officer to talk to his/ her witnesses before the parade in order to brief them as to what to expect in the parade and the fact that the investigating officer will not be present during the parade.

4.2.2.2 Helping the witness to remember

Zeffertt et al. (2003:147) and Joubert (2001:279) state that it is undesirable that the officer investigating the case should also take charge of the parade, and the person who escorts the witness to the place where the parade is held should not have seen the parade being formed or know who the accused is. If there are several witnesses, they should be segregated or kept under supervision before the parade, to prevent them from comparing notes about the criminal's appearance, and witnesses who have completed an identification should not be allowed to rejoin the others.

Carney (2004:211) states that some witnesses find they cannot make any kind of identification at all, while others can still make an identification even though it is difficult for them. The investigating officer needs to help witnesses through their ordeal. Witnesses need to understand that they are not to be blamed for what happened. It may sometimes be necessary for the investigating officer to speak with relatives or friends of the witness/victim to make sure that they do not imply that the witness/victim was in any way at fault for what occurred.

Rutledge (2003:75) states that the investigating officer must not try to help the witness make an identification by saying or doing

anything that would suggest the person the investigating officer thinks the witness should identify. Rutledge (2003:75) further states that the court will examine the following five factors to establish the reliability of the identification parade:

- Witness's opportunity to observe the suspect during the crime or flight;
- Witness's degree of attention;
- Accuracy of the description given by the witness before making the identification;
- Level of certainty in making an identification; and
- Time period between the crime and the identification.

To the question "Should the witness be allowed to read his statement before the identification parade?" the participants respondents reacted as follows:

- Ten participants respondents (investigators) stated that the witness should be given the part of his/her statement giving a description of the accused, to refresh his/her memory before the parade, and told not to discuss the statement with anybody.
- Ten participants respondents (investigators) stated that witnesses should be given notes, but care should be taken that they do not discuss the issue of the accused's appearance before the parade.
- Ten participants respondents (investigators) were not certain whether witnesses can be given their statements to refresh their memory or not.
- Three participants respondents (prosecutors) stated that there is nothing wrong with witnesses being given their statements to refresh their memory regarding the appearance of the accused, but the police should guard that the witnesses

do not share this information with other witnesses who will attend the same parade.

- Two participants respondents (prosecutors) stated that even at court, witnesses are allowed to refresh their memories before the trial commences. The most important issue here is that witnesses should not compare notes and that they should be guarded by a police official at all times, as this creates an issue at court if not done.

This question was put to the focus group. Their reaction was that witnesses should be given their statements to read regarding the description of the accused, before they attend the parade. They further stated that care should be taken that witnesses do not exchange notes about the description of the accused.

The researcher went to check the National Instruction 1/2007 concerning Identification Parade and the Module Criminal procedure Act sub module "Identification Parades" as presented in the Detective Learning Programme and find that these documents are quiet about this issue. The researcher suggests that the investigating officer has to meet his/ her witness before the parade and let the witnesses go through their statements. This must be done before the parade day as the investigating officer will not be involved with the process of the parade.

4.2.2.3 The procedure to be followed with a witness before the parade

Joubert (2001:279), Du Toit et al. (2006:24) and Zeffertt et al. (2003:147) state that witnesses should be segregated or kept under supervision before the parade, to prevent them from comparing notes about the criminal's appearance. Du Toit et al. (2006:24) and

Joubert (2004:280) state that witnesses should be prevented from seeing any member of the parade before the parade, including the suspect, in circumstances indicating that s/he is the suspect. It should be ensured that the witnesses do not see the suspect under arrest before the parade. A witness's judgement may also be influenced if s/he saw any other member of the parade beforehand. Du Toit et al. (2006:24) state that identifying witnesses should be prevented from seeing any member of the parade before they are brought in for the purpose of making identification, and, in particular, should not be allowed any opportunity of seeing the suspect in circumstances indicating that he is the suspect, before or after the parade.

In *R v Nara Sammy* 1956 (4) SA 629 (T) 631C-D the judge strongly disapproved of the procedure of herding the witnesses together in a room without supervision or control, without a warning not to discuss anything, and in circumstances where they had every opportunity of exchanging notes as to the appearance of the accused (Du Toit et al., 2006:24). In *R v Nara Sammy* 1956 (4) SA 629 (T) 631 D-E it was considered an irregularity where a constable, who was charged with the duty of escorting the witnesses one by one, was admitted to the room when the parade was initially formed and later re-formed for purposes of a further inspection by identifying witnesses. The judge described this procedure as one which introduces opportunity for abuse (Du Toit et al., 2006:24 -25). Joubert (2001:279) further recommends that the police official, who supervises the identifying witnesses, should submit a statement for inclusion in the docket, confirming that the witnesses were kept separately and that no discussion took place between them. Paragraph 13 of form SAP 329 makes provision for the recording of the name of the police official who guards the

witness before the witness attends the parade.

To the question “What are the procedures to be followed with a witness before the parade?” the participants respondents reacted as follows:

- All participants respondents stated that witnesses should be kept under supervision before the parade, witnesses should not see the parade being formed, and witnesses should not discuss or exchange notes especially with regards to the identity and description of the suspect.

This question was put to the prosecutors, who reacted as follows:

- All participants respondents stated that witnesses should be kept in a room and guarded by a police official who has not seen the parade being formed, and this police official must ensure that witnesses do not discuss the description of the accused.

This question was put to the focus group, and they stated that witnesses should not see the accused before the parade. Witnesses should be kept under the constant supervision of a police official, and the police official should preferably not know who the accused is.

The researcher observed that all participants respondents had a knowledge about the procedure to be followed with the witness before the parade.

4.2.3 Aids when conducting the identification parade

In this section the researcher will discuss the requirements of the identification parade room, persons that should be present in the

parade room, persons that may be present in the parade room and the aids that can be utilised during the parade.

4.2.3.1 Identification parade room

O'Hara and O'Hara (2003:726) mention that the identification parade should be held in a room away from the public view, so that there is little opportunity for disturbance. The room must at least be large enough to accommodate six identification parade participants side by side, but still having room for their freedom of movement. Though not required, consideration should be given to installing a screen or two-way mirror, so that the witnesses can view the parade unobserved. Du Toit et al. (2006:19-20) require at least eight persons on the parade.

Callanan (1994:6) states that the parade should geographically be held in the same town, city or vicinity where the offence was committed. The reason for this is evident - namely, greater convenience and lower costs for everyone involved. As an identification parade is not a public matter but a police investigation procedure, it must be held away from the public view. Even more important is that the accused/suspect must under no circumstances whatsoever be viewed by the identifying witnesses before the parade. Witnesses must not view any participants beforehand. Witnesses and participants must be strangers to each other.

To the question "What are the requirements of the identification parade room?" the participants respondents (investigators) reacted as follows:

- Eight participants respondents stated that the identification room must be out of sight and hearing.
- Ten participants respondents stated that in the Port Shepstone

area they have a room that is used only for identification parades. Investigators book this room; it is large enough to take twenty persons side by side and it has a one-way mirror. Witnesses can view persons on parade while the person on parade cannot see the witnesses. The room reduced the fear of witnesses being intimidated by the suspect.

- Twelve participants respondents stated that the identification room should have a one-way mirror and it must be equipped with a video recorder and be out of sight and hearing.

This question was put to the focus group and the prosecutors. They stated that the parade room should be out of sight and be easily able to accommodate at least twenty people. The prosecutors further suggested that there should at least be a board outside the room stating there is an identification parade in progress, in order to ensure that the room is quiet and no disturbances will occur.

The researcher observed that all participants respondents had knowledge of the requirements of the identification parade room, that it must be out of sight, big enough to accommodate the participants and that sign should be placed to ensure that no one disturb the process.

4.2.3.2 Persons who must be present in the parade room

Callanan (1994:7) states that the following persons must be present at all parades, and without them a legal identification parade is out of question:

- The suspect/accused;
- At least eight other persons with more or less the same appearance, social standing, build, clothing, age, occupation, as well as of the same race and sex as the accused/suspect.

In *S v Pelwan* 1963(2) PH H 237(T) the judge ruled that when there are two suspects/accused, at least ten other similar persons must be on the parade. In *R v Ojia* 1935 TPD 213 the judge ruled that in the event of there being more than two suspects/accused, police officials must use their own discretion;

- The member in charge of the parade;
- The identifying witnesses, one at a time.

To the question “Who must be present in the parade room?” the participants respondents (investigators) reacted as follows:

- All participants respondents stated that there should be at least eight persons for one suspect, at least ten for two suspects, and thereafter the official should use his/her own discretion. They further stated that the persons standing on the parade should be of more or less the same appearance, social standing, build, clothing, age, race and sex as the suspect. Others present should be the witness (while doing the identification), the member in charge of the parade, and the interpreter (if needed).

This question was put to the focus group and the prosecutors. They stated the same as the investigators, above. Prosecutors further suggested that the interpreter should not be the police official from the same station/unit as the investigating officer, as it might happen that s/he attended the crime scene or s/he was involved in the arresting of the suspect/accused, which might weaken the state's case.

All participants respondents responded well to this question which indicated to the researcher that they know who must be present in

the parade room. Also when checking the dockets the researcher observed in the form SAPS 329 that only the member in charge of the parade, accused, witness whilst identifying and at least eight other persons are always in the parade room.

4.2.3.3 Persons who may be in the parade room

Callanan (1994:7) states that the following persons, where applicable, also have the right to attend the parade:

- The suspect's/accused's legal representative.
- An interpreter, if necessary.
- A police photographer or video camera operator, if the investigating officer or member in charge of the parade considers it advisable, especially in the event of serious cases or large parades. Photographs or videos of identification parades may later help to confirm or disprove allegations in court.
- An assistant or two police officials are not forbidden, and may, especially in the event of large parades, be very useful.

To the question "Who may be in the identification parade room?" the participants respondents (investigators) reacted as follows:

- Fifteen participants respondents stated that only the suspect and persons standing on the parade, the police official in charge of the parade, the interpreter (if required), the legal practitioner of the suspect, and the identifying witness should be present in the identification parade room.
- Fifteen participants respondents stated that the people who should be at the parade are: the legal practitioner of the suspect, an interpreter (if required), the police video camera operator, a police photographer, the police official who will assist in the parade, and, in a case where a juvenile appears on the

identification parade and the legal practitioner is not required, the parent or guardian or the probation officer must be present.

This question was put to the focus group and the prosecutors. They stated that the following persons should be present at the parade: a police photographer; a police video camera operator; a police official to escort the witness to the parade; a police official to escort the witness from the parade room; a police official to supervise the witnesses who have already attended the parade; a police official to act as a door guard during the parade; a police official to assist in the event of any occurrence taking place during the parade; the interpreter; at least eight persons other than the suspect; the suspect; the legal practitioner; the parent or the guardian; the probation officer; the witness; and, the police official conducting the parade.

The researcher observed, when checking closed dockets, that in almost every identification parade held, the photographers are present to take photographs of the parades and that the accused's legal representatives do not always attend the identification parade, even if they have been informed in good time. Respondents said the problem lies with the state legal representatives - they do not attend identification parades.

4.2.3.4 Aids to assist the Parade

Du Toit et al. (2006:22) and Joubert (2001: 279) state that it is extremely desirable that at least one photograph should be taken of all persons - including the suspect - on the parade, depicting them as they appear on the parade and standing next to each other. In *S v Monyane and Others* 2001 (1) SACR 115 (T) 132b-c the judge ruled that in recent years it has become almost standard practice to

produce in evidence a photograph of the line-up, and this in itself greatly assists in determining whether the suspect was placed among others whose general appearance did or did not resemble his own (Du Toit et al., 2006:22-23).

In *S v Mohlate* 2000 (4) SACR 530 (SCA) 540j the SCA noted that the absence of a photograph precludes the court from making its own assessment (Du Toit et al., 2006:23). In *S v Mlati* 1984 (4) SA 629 (A) 634 a colour photograph was found to be very useful (Du Toit et al., 2006:23). In *S v Ventfol & 7 Others* (a Bisho High Court decision, CC04/98, dated 7 September 1998), the absence of a photograph of all suspects on the parade was a factor which the court took into account in holding that there had been an irregular parade (Du Toit et al., 2006:23). Joubert (2001:279) suggests that the use of video footage will enhance the persuasive value of the identification.

In *S v Jacobs & Others* 2004 4 A11 SA 538 (T) the State alleged that a bail applicant, upon being identified at a parade, gave the name of another person on the parade. After the photographs had been developed it was discovered that the bail applicant was, in fact, the person who was pointed out. This alleged conduct weighed heavily with the court in refusing bail (Du Toit et al., 2006:25).

4.2.3.5 Duties of a legal representative at the identification parade

O'Hara and O'Hara (2003:727-728) state that a suspect's request for legal council at the identification parade should be honoured, even if by law it is not necessarily required. The duty of the defence attorney's presence at the identification parade is that of an observer. He is not permitted to participate in any way in the conduct of the parade or converse with any official, witnesses or the

participants. However, he is permitted to make suggestions to the person holding the parade about the procedure of the parade, to ensure fairness for his client. If the requests are reasonable, they should be adopted.

Joubert (2004:277) and Bursey (1991:795) are of the opinion that a legal representative at the parade is only allowed to observe, and his/her presence does not place an obligation on the defence to ensure that the parade is conducted properly. Callanan (1994:5) says that the accused's legal representative has the right to be present at the identification parade. He may not participate in or interfere with the proceedings. He is only an observer, but it must be kept in mind that he may elicit facts with regard to the identification parade during cross-examination in court, and even give evidence thereon.

Bursey (1991:795) further states that the form SAP 329 provides for the suspect to be asked by the police officer holding the parade if s/he is satisfied with the manner in which the parade is being conducted and whether s/he has any request to make. The form also provides for the police officer to record the suspect's answers in response to these questions. The suspect's legal representative would probably be permitted this amount of participation on behalf of his client, and it would be wise of the police officer holding the parade to ask the legal representative those questions as well, so as to minimise any chance of allegations of irregularities at a later stage. Should the legal advisor observe any irregularities in the procedure employed, or wish to dispute any facts concerning the identification parade held by the police, the police officer may be cross-examined on the proceedings at any subsequent criminal trial, or even take the unusual step of giving evidence in person.

The accused's legal representative would be entitled to make notes or a statement of whatever irregularities he might note in the proceedings, the positions of various participants in relation to his client, who pointed out what persons, when, where, how and how long the witness took to identify the suspect, what the witness said and what he was asked, what the suspect was wearing and the colour of his clothing, etc.

In *R v Luswazi* 1951 (2) PH H 102 (OK) the judge ruled that every accused has a right to legal representation by an advocate or attorney, and if he is denied this right, it may lead to the setting aside of his conviction and sentence (Callanan, 1994:4). In *US v Wade* 388 US 218 (1967) the Supreme Court of the USA held that the appearance of an accused at a post-indictment identification parade without the assistance of his counsel, had deprived him of his sixth amendment right to counsel at a critical stage of the process (Du Toit et al., 2006:15). Becker (2000:154-155) said that in *US v Wade* officials were conducting an investigation of the robbery of a federally insured bank in which two men with pieces of tape affixed to their faces stuffed the bank's money into a pillowcase and fled. A federal indictment was returned prior to the arrest of Wade. Fifteen days later, without notice to his counsel, Wade was placed on an identification parade, to be viewed by bank personnel. Wade was identified as a robber. At trial, witnesses who had made identifications at the parade testified that they had seen Wade earlier in the custody of officials. At trial, the witnesses identified Wade and reconfirmed their identification. Wade was convicted of robbery. The USA Supreme Court felt that there was grave potential for prejudice, intentional or not, in the pre-trial identification parade. The court stated that counsel itself could often avert prejudice and ensure a meaningful confrontation at trial. There

can be little doubt that for Wade the post-indictment identification was critical to the prosecution and one at which he was entitled to counsel. The court said both Wade and his counsel should have been notified of the impending parade, and counsel's presence should have been a prerequisite for conducting a parade. It should be noted that the requirement that counsel be present applies to post-indictment identification parades, not to pre-indictment parades. This is the controlling case for police pre-trial identification parades. Becker further states that in *Gilbert v California* 1967 388 US 263 the majority held that only a per se exclusionary rule as to such testimony can be an effective sanction to assure that law enforcement authorities will respect the accused's constitutional right to the presence of counsel at the critical identification parade. The desirability of deterring the constitutionally objectionable practice must prevail over the undesirability of excluding relevant evidence.

In *S v Jija & Others* 1991 (2) SA 52 (E) the judge ruled that the suspect's legal representative will, for example, be entitled to check with the officer in charge of the parade that they agree on such matters as the number of persons on the parade, the position of the suspect, the identity of the witness and the identity of persons pointed out (Du Toit et al., 2004:12). But in *S v Monyane* 2001 (1) SACR 131 (T) 131b-f the judge ruled that the legal representative present at a parade could enjoy no greater rights than those of the accused, his client. He cannot advise him not to participate, nor offer advice as to the clothing that he should wear, unless permitted to do so by the police officer in charge. He may, if present, make suggestions to the police as to the conduct of the parade but these can legitimately be ignored. At best, he can advise the accused to remain silent and not to draw attention to himself, but this at a

properly conducted parade will be achieved by the police officer in charge of the parade (Du Toit et al., 2006:14).

In *S v Thapedi* 2002 (1) SACR 598 (T) the judge concluded that an accused should be given a reasonable opportunity to arrange for the presence of a legal representative at the parade, although the failure to provide legal assistance at that stage does not per se amount to parade evidence being obtained unconstitutionally (Du Toit et al., 2006: 18).

To the question “What are the duties of the legal representative at the parade?” the participants respondents (investigators) reacted as follows:

- Five participants respondents stated that the legal representative will be in the same room as the police official conducting the parade, and his duties will be to observe that the rights of the suspect are not infringed, and note any irregularities - and raise them on the trial date.
- Eleven participants respondents stated that the legal representative would be present as an observer of the proceedings, to see if procedure that is followed on the parade is fair and proper.
- Fourteen participants respondents stated that the legal representative’s duty is to see that his/her client’s rights are looked after in terms of the Constitution and to make requests on the client’s behalf.

The same question was put to the focus group. They stated that this is one of the reasons they prefer experienced investigators to conduct identification parades, because some investigators are threatened by the presence of the legal representative at the

parade, and allow the legal representative to take control of the parade.

This question was put to the prosecutors. They stated that the legal representative's duty in the identification parade is to guard the interests of his client. The legal representative does not participate in anything in the identification parade. If s/he observes anything in the parade s/he will note it down, and can only argue that in court.

The researcher observed that all participants understand the duties of the legal representative at the identification parade. The investigators state that they prefer to have experience police official conducting a parade as they will not be intimidated by the presence of the accused legal representative.

4.2.3.6 Procedure to be followed by a witness pointing out someone on the parade

Du Toit et al. (2004:25) and Joubert (2001:280) state that the official in charge of the parade should inform each identifying witness that the person whom the witness saw may or may not be on the parade, and further, that if s/he cannot make a positive identification, s/he should say so. The identifying witness should be requested to make the identification by touching the shoulder of the suspect. In the event of any identification being made in this manner, it is desirable that a photo be taken of the actual act of identification. The purpose of the rule requiring physical contact is to eliminate any possibility of the identifying witness being misunderstood as regards his/her specific identification. This is, once again, not a hard-and-fast rule, as there may be circumstances where the identifying witness might be afraid to approach and touch the suspect.

Callanan (1994:9) mentions that the member in charge of the parade must inform the witness as to the nature and purpose of the parade, followed by: "Walk up and down and inspect every person thoroughly. Take your time. If the person whom you saw committing the offence is present, please identify him by placing your hand on his shoulder" – or words to that effect. Callanan further states that this eliminates suggestion, because no witness must get the impression that the suspect/accused is on the parade. If a witness is under the impression that s/he must, at all costs, point out someone, it may harm the administration of justice. If the witness recognises the suspect/accused, s/he must be pointed out, but if nobody is recognised, the witness must say so. Should it appear to the member that the circumstances of the case are of such a nature that it cannot be reasonably expected of the witness to physically touch the suspect, or where the witness indicates reluctance to do so, the member must use other acceptable methods by means of which the witness can point out the suspect.

In *R v Nara Sammy* 1956 (4) SA 629 (T) 631H-632A the judge ruled that it is important that officers holding identification parades should add the important words "if such person is present on the parade". Otherwise, a witness, particularly an illiterate one, might think it is his/her duty to point out somebody, and an act of disrespect to (or criticism of) the police if unable to do so (Du Toit et al., 2006:25). But, in *S v Hay* 1970 (1) PH H98 (A), the judge ruled that failure to add the words "if present" is not necessarily fatal (Du Toit et al., 2006:25).

To the question "What are the procedures to be followed by a witness when pointing out someone on the parade?" the

participants respondents (investigators) reacted as follows:

- Ten participants respondents stated that the police official in charge of the parade informs the identifying witness to take his/her time when examining/viewing the parade, and the time taken by the witness to point out the suspect is recorded on the form SAP 329. There is no limitation of time - the witness can take as much time as s/he likes.
- Ten participants respondents stated that a witness must be asked by the police official in charge of the parade to point out a person whom s/he saw, by touching his/her shoulder, and a photograph must be taken of the actual act of identification.
- Ten participants respondents stated that if there is more than one suspect on the parade, the witness should, when identifying the suspects, state what each identified suspect did during the commission of the offence.

This question was put to the focus group. They stated that a witness is made as comfortable as possible and told to take his/her time and walk through the parade, and if s/he sees the person that s/he identified during the commission of a crime, s/he must point out the said person. The witness must be informed that the suspect might not be on the parade.

This question was put to the prosecutors. They stated that the police in charge of the parade should explain the procedure of the identification parade to the witness, calm the witness, and put him/her at ease. Inform the witness that s/he must take his/her own time on the parade, as there is no limitation of time, and point out a person whom s/he saw on the date, and at the time and place of the offence.

The researcher went and checks National Instruction 1/2007 and finds out that there is new instruction pertaining to the identifying of suspects in the parade. The new instruction state that if an identification parade facility with a one-way mirror is available, every person in the line-up must be provided with a number board to hang around his or her neck, containing a distinctive picture and clearly depicting the number of his or her position in the line-up and the identifying witness must identify the relevant person by mentioning the number or picture on the board around the neck of that person. This manner of identification must be utilised even if such a facility is not available and the identification of the person by touching or pointing at him or her will be traumatic to the identifying witness, especially where the witness is a victim of an offence involving violence. A photograph must be taken of actual act of identification.

The researcher recommend that paragraph 25, 28 & 31 of the form SAP 329 which reads "...was asked to point out the suspect(s), if on parade, by touching his/her/their shoulder(s), who (date, time, place and charge)..." be changed to "... you are now on an identification parade where a number of people are present in order to determine whether the accused is present. On ... (date, time, and place) you were a witness/ victim of a ...(Crime). You are requested to point out the person, should he be present on the parade. You need only refer to the number or picture displayed by him. **You do not have to touch the person.** Remember you are not compelled to point out anyone. You may walk through the parade." As it is stated in the National Instruction 1/2007 and the Module Criminal Procedure Act sub module "Identification Parade" presented in the Detective Learning Programme (2004:6).

4.2.4 Steps to be completed after the parade is held

In the following paragraphs the researcher will briefly discuss the steps to be followed after the parade is held.

4.2.4.1 Procedure to be followed with a witness after the parade

Du Toit et al. (2006:24) and Joubert (2001:280) state that the police official who is neither the investigating officer, nor the official in charge of the parade, nor the official charged with supervising the identifying witnesses, should escort one identifying witness at a time from the place or office where the latter is kept, to the parade; and, after such identifying witness's inspection of the parade, such official should escort the witness to an office or place where the witness can have no contact with witnesses who are still waiting to inspect the parade. The police official who escorts the identifying witness may not discuss the case with him/her. Callanan (1994:10) states that the member supervising witnesses who have already attended the parade, has to ensure that witnesses do not communicate with waiting witnesses. Callanan states further that evidence to the effect that witnesses were continuously under observation and that they did not communicate with anyone, is important.

In *S v Ventfol & Others* (a Bisho High Court decision, CC04/98, dated 7 September 1998) the judge found it irregular that the inspector in charge of the parade had personally escorted a witness from the waiting room to the parade.

Paragraph 14 of the form SAP 329 (see Figure 1) makes provision for the recording of the name of the police official who escorted the witness to the parade. Paragraph 15 of the form makes provisions for the name of the member who escorted the witness from the

parade. Paragraph 16 of the form makes provisions for the name of the member who guarded the witnesses after they attended the parade.

To the question “What are the procedures to be followed with a witness after the parade?” the participants respondents (investigators) reacted as follows:

- Fifteen participants respondents stated that witnesses who have already attended the parade should have no communication with other witnesses still to attend the parade. Witnesses should always be kept under supervision.
- Fifteen participants respondents stated that the police official escorting the witness to the parade must not discuss the case with the witness. Even after the parade, no discussion must take place with the witness as to the arrangement of the parade.

This question was put to the focus group. They stated that witnesses must be taken to a separate room where they will not mix with witnesses who still have to attend the parade. The witnesses have to remain in that room until the parade is finalised.

This question was put to the prosecutors – they stated that the witness must be escorted from the parade. The witness should be informed that the outcome of the parade will be explained to him/her by the investigating officer.

The researcher observed, whilst checking closed dockets and form SAP 329s, that witnesses are guarded before and after attending the parade, to ensure that they do not mix and discuss the parade set-up.

The researcher went and studied the Module Criminal Procedure Act sub module “identification parade” as presented in the Detective Learning Programme (2004:7) regarding the procedure to be followed with the witness after the parade and find that it is the same view as the participants respondents, that witnesses who have already attended the parade must not communicate with witnesses who have yet to attend the parade.

4.2.4.2 The completion of the form SAPS 329

Joubert (2004:277) and Du Toit et al. (2006:12) state that the police official in charge of the parade should, at the time of the parade, record the proceedings on the form SAPS 329. The recording is essential in order to ensure that an accurate account of events can be furnished to the court. The suspect is entitled to have access to the completed SAPS 329 form.

Burse (1991:795) mentions that the suspect’s legal representative would be entitled to make notes or a statement of whatever irregularities he might notice in the proceedings of the identification parade. Likewise, the police officer attending the parade is also a witness and is entitled to record his own observations regarding what he perceives to be taking place before him. He may make use of his pocket book or a piece of paper on which to make notes, or even compile a witness statement for inclusion in the police docket. The police official holding the parade completes the identification parade form SAP 329. Zeffertt et al. (2003:743) and Du Toit et al. (2006:13) agree that the form SAP 329 must at any rate be made available to the defence as soon as the official who was in charge of the parade uses this document to refresh his memory in court. This is in accordance with the basic rules of evidence, which govern the situation where a witness refreshes his memory from a

document which he compiled, checked or dictated at a time more or less contemporaneous with the event so recorded.

Du Toit et al. (2006:13) and Kriegler and Kruger (2002:80) state that the prosecutor who wishes to lead evidence of an identification parade should make the relevant form SAP 329 available to the defence at some reasonable stage prior to the trial. This may be done in order to allow the defence sufficient time to prepare or take the necessary instructions.

In *S v Mpetha* (1) 1982 (2) SA 253 (C) 260B-C the judge ruled that the sort of document which is normally brought into being in the case of an identification parade, cannot be classified as the kind of relatively formal statement envisaged by section 335. The completed form SAP 329 used to be privileged on the basis that it formed part of the state's common law privilege attached to statements obtained from possible witnesses for purpose of contemplated litigation (Du Toit et al., 2006:12).

Olmesdahl (2005:134) states that section 335 of the Criminal Procedure Act 51 of 1977 says that whenever a person has, in relation to any matter, made to a peace officer a statement in writing, or statement which was reduced to writing, and criminal proceedings are therefore instituted against such person in connection with that matter, the person in possession of such statement shall furnish the person who made the statement, at his request, with a copy of such statement.

In *S v Jija & Others* 1991 (2) SA 52 (E) the judge concluded that a completed identification parade form does not fall within the ambit of the "witness statement privilege". The judge pointed out that it is

difficult to see how privilege can attach to a document completed in the presence of the accused and his legal representatives who may be present and who are entitled to question the correctness of the information set out in the document. The judge ruled that the defence is entitled to a copy of the completed form SAP 329 (Du Toit et al., 2006:12; Callanan, 1994:11).

In *S v Mpenzo* 1998 (1) SACR 449 (CK) the police used a separate form in respect of each identifying witness who participated in the proceedings. However, certain answers and formal details were not duplicated in the forms and the police officials concerned did not sign any of the forms. It was argued that the use of separate forms amounted to irregularities which rendered the identification evidence inadmissible. The judge rejected this argument on the basis that there had been substantial compliance, at the parade, with the requisite procedure (Du Toit et al., 2006:13).

In *S v Shabalala* 2003 (1) SACR 134 (SCA) 139g and 141e-f the judge ruled that discrepancies in notes made by the parade officer were, in the facts of the case, not considered fatal. In paragraph 34 of form SAP 329 (see figure 1) the police official in charge of the parade is required to certify that the particulars have been completed on the form by him/her, and that it is a just report of the procedures that took place.

To the question “When should the form SAP 329 be completed?” the participants respondents (prosecutors) reacted as follows:

- All five participants respondents stated that the police official in charge of the parade completes a form SAP 329 regarding proceedings in the parade; this form is complete[d] from the beginning of the parade until the end of the parade, and the accused’s legal representative takes notes of all proceedings

in the parade if he is present during the parade.

- All participants respondents (investigators) stated that the form SAP 329 should be completed by the police official in charge of the parade, from the beginning of the parade up to the end, and everything that occurred during the parade should be recorded on this form.

This question was put to the focus group. They said that form SAP 329 is the most important form which guides the police official in charge of the parade regarding the steps needed to be taken during the parade and the recording of people present during the parade. This form needs to be completed from the time the parade starts up to the termination of the parade.

The researcher observed that all participants respondents know that the form SAP 329 should be completed as the proceedings occur in the parade.

4.3 Summary

There are no standing orders that regulate the manner in which an identification parade should be held, but police rules of practice in this regard are set out in various police training manuals and the so-called Identification Parade Form, official known as SAP 329.

The suspect should be informed about the purpose of the identification parade, and his rights should be explained to him in terms of the Constitution. Any reasonable request by the suspect must be obeyed. The suspect's legal representative has a right to be present at the parade but his/her presence has nothing to do with the way the parade is conducted. The legal representative cannot advise the suspect not to stand on the parade; he is merely

there at the parade as an observer, to see that the rule of fairness is being complied with. The legal representative is entitled to make notes about the proceedings in the parade.

The identification parade room should be out of sight; witnesses should not see the parade when it is formed. The investigating officer should not be involved in the parade. Any police official who was involved in the investigation must not be involved in the parade. A police photographer, a video camera operator, an interpreter and a police official guarding the witnesses before and after the parade, should be arranged. Witnesses must be warned not to compare notes regarding the appearance or the identity of the suspect, because that would jeopardise the object of the parade.

CHAPTER 5

FINDINGS AND RECOMMENDATIONS

5.1 Introduction

This research was born out of the need to improve the general knowledge of investigators, specifically those investigating cases where contact crimes are involved. In most of these cases the identification parade is used as a technique to identify suspects. For the identification parade to be admissible in court as evidence, it should be conducted in a proper and fair manner that does not undermine the constitutional rights of the accused person. From experience, investigators do not follow the proper procedures when conducting identification parades, as a result of which these parades are not admissible as evidence in court.

To address this shortcoming, the aim of the research was to investigate the correct procedures to be followed when conducting a professional identification parade which will be admissible as evidence in court. To address this aim, two research questions were asked, namely:

- What does identification as an investigation technique entail?
- How should an identification parade be conducted to be admissible in court?

In an attempt to address these research questions, the researcher gathered information from literature by authors of national and international origin, and also involved the experience of investigators, to obtain knowledge from practice. In an attempt to enhance the validity of his interpretation, the researcher has drawn

on the experiences of those most involved in the research setting itself.

5.2 Findings

5.2.1 Findings regarding the research questions

The following findings relate to the research questions:

5.2.1.1 Research question one: What does identification as an investigation technique entail?

The following findings were made in terms of certain relevant points that the researcher came upon during the research:

5.2.1.1.1 What is forensic investigation?

- In this research it has been established that forensic investigation is derived from the Latin word *forenses (forum)*, which means “the market place”. In practice, forensic investigation refers to an objective and court-orientated investigation of any type of crime. This means that a *prima facie* case, based on approved methods and techniques, is presented in court in order to prove that a particular perpetrator has committed the crime under investigation.
- All participants respondents had different understanding of what ‘forensic investigation’ means. From this, the researcher comes to the conclusion that participant respondents are not properly trained.

5.2.1.1.2 Criminal Investigation

- In this research it was established that the investigation of crime represents the medium whereby facts for positive investigation are detected, identified, collected, preserved and prepared for the judicial process.

5.2.1.1.3 Difference between Forensic Investigation and Criminal Investigation

- It has been established by the researcher during the research that the two concepts 'forensic investigation' and 'criminal investigation' mean the same.

5.2.1.1.2 Objectives of investigation

- It has been established by the researcher that the objectives of investigation are: identification of the crime committed, gathering of evidence, arresting of the criminal, recovering of stolen property and involvement in the prosecution process.
- All participants respondents understood the objectives of investigation. They all agreed that the objectives of investigation are: to identify the crime, to gather evidence by taking statements from witnesses and by preserving physical evidence found on the crime scene and dispatching it in time for analysis, and to identify and arrest the perpetrator and successfully prosecute him.

5.2.1.1.3 What is identification?

- The researcher has established that identification concerns the identification of something or somebody belonging to a specific category. Through identification, witnesses, suspects, exhibits and evidence are identified.
- All participants respondents had knowledge of what identification is. The researcher established that the investigators who attended the detective Learning Programme presented at the Detective Learning Academy for twelve weeks are more knowledgeable than the detectives who attended the four week course.

5.2.1.1.4 What is individualisation?

- The researcher has established that individualisation involves comparison, usually of disputed objects found at the crime scene, with one known origin obtained.
- All participants respondents know what individualisation is. Five stated individualisation is the process to link a particular object with a place or object - for instance, a crime scene or physical evidence obtained from the crime scene.
- Ten said individualisation concerns the investigation of each and every individual clue found at the crime scene.
- Fifteen said individualisation involves tracing of offender by fingerprints left on the crime scene using fingerprint expert.

The researcher feels that from time to time investigators need to be trained on these topics on workshops and during in service training at their respective Units.

5.2.1.1.5 Difference between identification and individualisation

- The researcher has established that in identification no comparison is drawn, whereas individualisation involves comparison, usually of disputed objects found at the crime scene, with one of the origins.
- Fifteen participants respondents stated that identification is the recognition of an object as just a tool, whereas individualisation goes beyond that as it informs that the object in question originates from a particular object.
- Fifteen participants respondents said identification involves the identification of the persons involved in the commission of a crime; where as individualisation concerns describing the

unlawful acts of each person involved in the commission of the crime.

5.2.2 Research question Two: How should an identification parade be conducted to be admissible in court?

The following findings were made in terms of certain relevant points that the researcher came upon during the research:

5.2.2.1 Identification parade

- An identification parade can be seen as the direct personal identification method whereby a number of persons are paraded with the purpose of affording the identifying witness an opportunity to identify a person that s/he saw committing a crime.
- The participants respondents (investigators) have knowledge on what an identification parade is.

5.2.2.2 Purpose of an identification parade

- In this research it was established that the purpose of the identification parade is to conduct a parade in a consistent manner, in order to ensure accuracy, reliability, fairness and objectivity, to identify the perpetrator.
- The participants respondents understood the purpose of the identification parade, although they had different views. Fourteen said it is to identify the suspect by pointing him/her out on the parade; sixteen said it is to fairly and accurately test the ability of the witness to identify the suspect and to eliminate the element of suggestion as a determining factor.

5.2.2.3 Authority to conduct an identification parade

- In this research the researcher has established that section 37(1)(b) of the Criminal Procedure Act 51 of 1977 provides

for any police official to make an arrested person, or such a person released on bail or warning, available, or cause him/her to be made available, for an identification parade.

- It has also been established by the researcher in *S v T* 2005 (2) SACR 318 (E) that the court ruled that street committees should not attempt to comply with the rules of the identification parade, but ought rather to provide information to the police so that a proper investigation can be conducted.
- All participants respondents understood and have general knowledge as to who has the authority to conduct an identification parade.

5.2.2.4 Legal requirements to conduct an identification parade

- The researcher has established that the Constitution is the highest form of authority, and thus influences all investigation procedures, and that chapter 2 of the Constitution of the Republic of South Africa Act 108 of 1996 stipulates the accused's rights, which must be respected at all times.
- The researcher found out that section 35(3)(j) of the South African Constitution states that a person may not be compelled to give self-incriminating evidence.
- The researcher has established that section 36 of the Constitution Act 108 of 1996, Limitation of Rights, states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.
- The researcher has established that section 37 of the Criminal Procedure Act 51 of 1977 does not infringe upon

a person's privilege against self-incrimination, since this privilege is confined to communication.

- In *S v Binta* 1993 (2) SACR 553 (C) the court ruled that privilege against self-incrimination does not apply to section 37 of the Criminal Procedure Act 51 of 1977, since there is a distinction between being obliged to make a statement against one's interests, and furnishing real evidence.
- All participants respondents (investigators) had an idea that section 37 (1) (b) of the Criminal Procedure Act authorises a police official to hold an identification parade on the person that are in custody on any charge, person released on bail and persons released in terms of section 72 of the Criminal Procedure Act, Act 51/1977.

5.2.2.5 Admissibility requirements for an identification parade

- It has been established during the research that a trial-within-a-trial should, as a rule, be held where the defence objects to the admissibility of evidence on the basis of section 35 (5) of the Constitution (Act 108 of 1996).
- The researcher has established during the research that identification parade evidence which stems from any unduly suggestive procedure, might be excluded if it violates due process, i.e. the right to fair trial.

5.2.2.6 Rights of the accused at the parade

- The researcher has established during the research that the accused should be informed of the purpose of the parade and the allegations against him, and should further be given an opportunity to obtain a legal representative of his choice.

- The researcher has established in *S v T* 2005 (2) SACR 318 (E) that an accused may not refuse to take part in an identification parade.
- All the participants respondents had knowledge about the rights of the accused in the parade.

5.2.2.6 Process of conducting an identification parade

- The researcher established that the investigating officer should not be in charge of the parade. This will minimise the possibility of any deliberate or unintentional influence of the witness by the investigating officer, the person holding the parade, or the witness.
- All participants respondents had knowledge of the fact that an impartial police officer who is not involved in the investigation, must conduct a parade, and that it must be an experienced police official well conversant with court procedures.

5.2.2.7 Preparing the witness for the parade

- The researcher has established that the witness should be given clear instructions before the parade. The witness must be informed that s/he need not identify anyone in the parade, that s/he is not to confer with any witness viewing the identification parade and that s/he does not have to indicate any identification in any way.
- All participants respondents had this knowledge.

5.2.2.8 Helping the witness to remember

- The researcher has established during the research that a witness can be given a copy of his statement where he describes the perpetrator, to refresh his memory before the parade, but care is to be taken that witnesses do not discuss the parade before attending it.

- Ten participants respondents did not know how the witness can be helped to remember; the other respondents had knowledge as to what to do to help the witness remember.

5.2.2.9 Procedure to be followed by a witness pointing out someone on the parade

- In this research the researcher has established that in *R v Nara Sammy* 1956 (4) SA 629 (T) 631H-632A the judge ruled that it was important that the officer holding the identification parade should add the important words “if such person is present on the parade”. Otherwise, a witness, particularly an illiterate one, might think it is his/her duty to point out somebody, and an act of disrespect to the police if unable to do so.
- The researcher has established that the official in charge of the parade should inform each identifying witness that the person whom the witness saw may or may not be at the parade and, further, that if the witness make a positive identification, he should say so and request the identifying witness to make his identification by touching the shoulder of the suspect or calling the number out, so that a photo can be taken of the person pointed out.
- The researcher established that National Instruction 1/2007 has new instruction pertaining to the identifying of suspects in the parade. The new instruction state that if an identification parade facility with a one-way mirror is available, every person in the line-up must be provided with a number board to hang around his or her neck, containing a distinctive picture and clearly depicting the number of his or her position in the line-up and the identifying witness must identify the relevant person by mentioning the number or picture on the board

around the neck of that person. This manner of identification must be utilised even if such a facility is not available and the identification of the person by touching or pointing at him or her will be traumatic to the identifying witness, especially where the witness is a victim of an offence involving violence. A photograph must be taken of actual act of identification.

- All participants respondents had no knowledge of the new procedures to be followed by a witness pointing out someone on the parade. The researcher thinks that in service training and workshops on this topic will help the investigators to understand the new instructions.

5.2.2.10 Requirements for the identification parade room

- The researcher has established that the parade room should be away from the public view, to avoid disturbance. The room must at least be large enough to accommodate six to eight participants side by side, which still leaves room for the participants' freedom of movement.
- All participants respondents had knowledge of the requirements of the identification parade room. All said it must be out of sight and big enough to accommodate twenty people.

5.2.2.11 Persons who must be present in the parade room

- In this research it has been established that the suspect/accused and at least eight other persons, the witnesses, one at a time, should be in the room.
- All participants respondents had knowledge of the persons who should be in the parade room.

5.2.2.12 Persons who may be at the parade

- The researcher has established that the suspect's legal representative, an interpreter - if necessary, a police photographer or video camera, an assistant, or two police officials, are not forbidden and may, especially in the event of large parades, be present.
- All participants respondents had knowledge as to who may be present at the identification parade.
- The researcher has established in *S v Charzen & another* 2006(2) SACR 143 (SCA) that persons on the parade must fit the description given by the witness on the statement to the police.
- The researcher has established that the identification parade should consist of at least eight people who are similar to the accused in general appearance and be of the same race, sex, height, hair and clothing.
- The researcher has established that it is generally undesirable that there should be more than one suspect on the parade; and if a second suspect is placed on the parade, the two suspects should be more or less similar in general appearance and the persons on the parade should be increased to at least twelve to sixteen.

5.2.2.13 Aids to assist the parade

- The researcher has established that it has become almost standard practice to produce in evidence a photograph of the line-up in court, which greatly assists in determining whether the suspect was among others whose general appearance did or did not resemble his/her own.

- The researcher has also established that a colour photograph was found by court to be very useful, and that the use of video footage enhances the persuasive value of the identification parade.

5.2.2.14 Duties of the legal representative at the identification parade

- It has been established by the researcher that the legal representative at the parade is only allowed to observe, and his presence does not place an obligation on the defence to ensure that the parade is conducted properly. The legal representative is entitled to make notes or a statement of whatever irregularity he might note in the proceedings of the identification parade.
- All participants respondents had knowledge of the duties of the legal representative at the parade.

5.2.2.15 Procedure to be followed with a witness after the parade

- The researcher has established that a member who is neither the investigating officer, nor the official in charge of supervising the identifying witnesses, should escort one identifying witness at a time from the place or office where the latter is kept, to the parade; and after such identifying witness's inspection of the parade, such official should escort the witness to an office or place where the witness can have no contact with witnesses who are still waiting to inspect the parade. The police who escort the identifying witness may not discuss the case with a witness.
- All participants respondents had knowledge of the procedure to be followed with a witness after the parade. They all said that a witness should be kept under supervision at all times.

5.2.2.16 Completion of the form SAP 329

- In this research the researcher has established that a police official in charge of the parade should, at the time of the parade, record the proceedings on the form SAP 329. The recording is essential, in order to ensure that an accurate account of events can be furnished to the court.
- The researcher has also established in *S v Jija & Others* 1991 (2) SA 52 (E) that the defence is entitled to a copy of the completed form SAP 329.
- The researcher has also established in *S v Shabalala* 2003 (1) SACR 134 (SCA) 139g & 141e-f that discrepancies in notes made by the parade officer were, on the facts of the case, not considered fatal.
- All participants respondents understood the completion of the form SAP 329 - that it has to be completed during the proceedings of the parade, and that it has to be made available to the defence.

5.3 Recommendations

At the beginning of this research it was stated that the set purpose was to develop good practice and to empower those involved in investigation. This can only be achieved if investigators have sufficient knowledge, as well as a proper understanding, of what they are investigating.

The researcher therefore recommends that more research be done in the following areas, to improve the investigation process:

- Forensic investigation - what it entails;
- Identification parade as a technique to identify suspects;

- Identification.

The researcher established that there is a lack of knowledge due to lack of (or insufficient) training of investigators in different aspects addressed earlier in this research. It is therefore recommended that the following topics be incorporated in training curricula, whether basic or in-service training:

- Forensic investigation - what it entails;
- Identification parade as a technique to identify suspects;
- The objectives of investigation;
- Purpose of an identification parade;
- Legal requirements to conduct an identification parade;
- Admissibility requirements for an identification parade;
- Authority to conduct an identification parade;
- Procedure to be followed by a witness pointing out someone on the parade;
- The Constitution; the Bill of Rights;
- Identification.
- Individualization

The researcher recommend that paragraph 25, 28 & 31 of the form SAP 329 which reads “...was asked to point out the suspect(s), if on parade, by touching his/her/their shoulder(s), who (date, time, place and charge)...” be changed to “... you are now on an identification parade where a number of people are present in order to determine whether the accused is present. On ... (date, time, and place) you were a witness/ victim of a ...(Crime). You are requested to point out the person, should he be present on the parade. You need only refer to the number or picture displayed by him. **You do not have to touch the person.** Remember you are not compelled to point out anyone. You may walk through the parade.” As it is

stated in the National Instruction 1/2007 and the Module Criminal Procedure Act sub module “Identification Parade” presented in the Detective Learning Programme.

5.4 Conclusion

The aim of the research was to research the correct procedures to be followed when conducting a professional identification parade which will be admissible as evidence in court. In Chapter Three, the identification parade was analysed to obtain a better understanding of it, and it was established by the researcher that the investigating officer of the case should not be involved in the parade. It was also established that the parade room should be out of sight of the public.

The purpose of the identification parade is to conduct a parade in a consistent manner, in order to ensure accuracy, reliability, fairness and objectivity in the witness’s identification. It was also established that section 37 (1) (b) of the Criminal Procedure Act 51 of 1977 gives powers to the police to conduct an identification parade. The Constitution is the highest form of authority and this influences all investigation procedures. The researcher also established that a trial-within-a-trial should be held as a rule where the defence objects to the admissibility of evidence of the parade. The form SAP 329 should be completed during the proceedings of the parade.

It was also established by the researcher that the accused has no legal right to refuse to stand on the parade and that the accused’s legal representative has nothing to object to regarding the parade - he can only write down the irregularities and challenge them at court.

The researcher hopes that this research will empower investigators with knowledge in the same way as it has empowered him. He hopes that investigators will use the research to enhance their performance and ability to investigate more effectively, in order to resolve crime.

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Interview Schedule (Annexure A)

The identification parade as the technique for the identification of suspects

Research questions

- What does identification as investigation technique entails?
- How should an identification parade be conducted to be admissible in court?

History information

1. Are you an investigator?
2. For how many years?
3. In what type of investigation do you specialize?
4. Specify your tertiary qualifications?
5. Did you undergo any training in the investigation of crime?

Identification

1. What is forensic investigation?
2. What are the objectives of investigation?
3. What is identification?
4. What is individualization?
5. What is the different between identification and individualization?

Identification Parade

1. What is identification parade?
2. What is the purpose of an identification parade?
3. Who has an authority to conduct an identification parade?

- 4. What are the legal requirements to conduct an identification parade?**
- 5. Who can conduct an identification parade?**
- 6. What an investigator can do to prepare a witness for the parade?**
- 7. Should a witness be allowed to read his/her statement before the parade?**
- 8. What are the requirements for the identification parade room?**
- 9. Who are the persons that must be in the parade room?**
- 10. Who are the persons that may be in the parade room?**
- 11. What are the duties of the legal representative in the parade room?**
- 12. What are the procedures to be followed by the witness when pointing out someone in the parade?**
- 13. What are the rights of the accused in the parade?**
- 14. What are the procedures to be followed with a witness after the parade?**
- 15. When is the form SAP 329 completed?**