

**A CRITICAL ANALYSIS OF THE PROCEDURES FOLLOWED TO  
CONDUCT IDENTIFICATION PARADES: A CASE STUDY IN  
MPUMALANGA, SOUTH AFRICA**

**by**

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## **ABSTRACT**

The research attempts to establish how an identification parade should be conducted, for evidence derived from it to be admissible in court. To conduct effective investigation, it is important for investigators to be familiar with the concept "identification parade", its purpose, the procedures to conduct it and its values.

To achieve the goals and objectives of the practice of an identification parade, investigators must know how to conduct it, what the value of its evidence is, and how to use it as a technique to identify suspects.

The direction, by implication, and clarification of the crime situation, is hardly possible without the determination of the identity of the perpetrator or suspect of a criminal act. The recognition of the identification parade as a form of evidence gathered is of the utmost importance.

## LIST OF ABBREVIATIONS

MTech	-	Magister Technologiae
SAPS	-	South African Police Service
Technikon SA	-	Technikon of Southern Africa
Unisa	-	University of South Africa

## **DECLARATION**

I Madimetja William Mokonyama declare that A CRITICAL ANALYSIS OF THE PROCEDURES IN CONDUCTING IDENTIFICATION PARADES is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

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(MW Mokonyama)

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# CHAPTER 1

## GENERAL ORIENTATION

### 1.1 INTRODUCTION

The high rate of crime in South Africa is generally felt to be unacceptable, particularly in the geographical area where this research has been conducted – Middelburg, Mpumalanga. According to the South African Police Service's Annual Report of the SAPS Mpumalanga for 2005/2006, a total of 160 armed robbery cases were reported in Middelburg. The detection rate was 37.93%, while the conviction rate was only 6.58%.

In light of the need to curb the high crime rate in South Africa, the researcher decided to investigate possible reasons for these low results in Middleburg. Prior to the research, the researcher perused dockets in the archives of Middelburg police station for cases in which the accused were found not guilty and discharged. The researcher found that in 70% of the dockets in which an identification parade had been conducted, the evidence regarding the identification parade had not been admissible in court. The researcher perused the copies of the identification parade forms in the dockets, and found the following: the appearances of people placed on a parade often did not remotely resemble the appearance of the suspect. The photo albums and the copies of the identification forms (SAPS 329) indicated that the suspect didn't more or less look similar to other people on the parade in terms of height, build, complexion and age.

The researcher also, prior to the research, interviewed the senior public prosecutor in the Middelburg magistrate's court and the senior legal officer who advises the investigating officers of the legal aspects in Mpumalanga, who both indicated that identification parade evidence is often not admissible in court, because the suspect was not informed of the right to legal representation and that the suspect looked different from other people on the parade, with regard to height, built, complexion and age. The reasons for inadmissibility corresponded with what was initially found in the dockets. The

legal officer is based in the South African Police Service (SAPS) department. The researcher interviewed the investigators of the general detective service and the provincial tracing team; 80% of the investigators indicated that they did not know how to conduct identification parades. They claimed to have attended a detective course where only the theory of the identification parade technique had been presented to them within a short period.

The researcher perused the South African Police Service (SAPS) Detective Learning Programme: module on identification parades, and the South African Police Service (SAPS) National Instruction 1/2007, which both address the procedure in identification parade but do not address the challenges as to why some evidence derived from the identification parade is not admissible in court.

This research study has been conducted to investigate how identification parade evidence should be conducted, for evidence derived from it to be admissible in court. In the libraries consulted, there were no books on identification parades as such, at the time this research was undertaken, and there was also no information found on this subject on the Internet.

## **1.2 RESEARCH AIM**

According to Terre Blanche and Durrheim (2004:55), the research aims of a study specify and operationalise the focus of the research. The sole aim of this research was to investigate how an identification parade should be conducted, for the evidence derived from it to be admissible in court.

## **1.3 RESEARCH PURPOSES**

According to Denscombe (2002:29), the purpose of the research calls for the researcher to identify a relatively narrow and precise area for investigation, rather than setting out to investigate some general area of interest. Denscombe (2002:25) explains that the purpose of the research should be stated clearly and explicitly. Following the guidelines presented in Denscombe

(2002:25-27), the researcher decided on the following as the purposes of this research:

- to evaluate the procedures followed by investigating officials in conducting identification parades, with the aim of determining the strengths and weak points of the procedures, with the aim of improving the procedures
- to explore national and international sources in order to find new information on how an identification parade should be conducted
- to develop good practices which would address the problem and enhance the performance of individuals when conducting identification parades
- to empower investigating officials by providing them with the right procedures for conducting an identification parade

#### **1.4 RESEARCH QUESTIONS**

According to Denscombe (2002:31), research questions specify exactly what is to be investigated by the research. To understand the research problem better, the researcher asked and addressed the following research questions:

- What is the purpose of an identification parade?
- How should an identification parade be conducted for the evidence derived from it to be admissible in court?

#### **1.5 DEFINITION OF KEY CONCEPTS**

According to Terre Blanche and Durrheim (2004:2), key concepts describe and set the parameters of the research topic. The following concepts are key to this study:

##### *1.5.1 Critical*

According to Tulloch (1993:340), “critical” means making or involving adverse or censorious comments or judgements.

### 1.5.2 *Analysis*

Tulloch (1993:49) states that analysis is the act or process of breaking something down into its constituent parts.

### 1.5.3 *Identification*

According to Lee and Harris (2000:12), identification is the process of using class characteristics to identify a particular object.

### 1.5.4 *Admissible*

According to Tulloch (1993:22), “admissible” means allowable as evidence.

### 1.5.5 *Identification parade*

According to Dempsey (2003:279), an identification parade is the placing of a suspect with a group of other people of similar characteristics (such as build, race, hair colour, type and weight) so that a witness or victim of a crime has the opportunity to identify the perpetrator of a crime.

### 1.5.6 *Evidence*

Kriegler (1993:500) states that evidence is the means of providing proof of something, and may be given orally, in writing, by means of documents and through objects ( real evidence)

## **1.6 RESEARCH APPROACH AND DESIGN**

According to Welman and Kruger (2001:46), a research design is a plan in accordance with which the researcher obtains research participants and collects information from them. The researcher decided to use an empirical design for this research. For Goddard and Melville (2001:8), the term “empirical” is used to describe the study of things as they currently exist in the world. Goddard and Melville (2001:32) write that empirical research includes experimental and descriptive research, and not theory as in non-empirical

research. The researcher used an empirical research design, because he was looking for new knowledge on the basis of experience and observation (Maxfield & Babbie, 1995:4).

The researcher followed a qualitative research approach, which involves the use of a variety of empirical materials such as interviews, case studies and observation (Denscombe, 1998:27). According to Babbie (1995:45), qualitative research allows participants in a setting to tell their stories in their own words. The procedures used provide outsiders with maximum insight into the situation. Qualitative research refers to a series of research techniques where the researcher has direct and sustained social interaction with participants in a particular setting (Taylor, 1994:208). The researcher felt that the involvement of the practice was very important for this research. Due to the scant availability of literature, the researcher needed to seek information from experienced SAPS investigators with more than 10 or 15 years of investigation service.

## **1.7 TARGET POPULATION AND SAMPLING**

According to Welman and Kruger (2001:119), the target population is the population to which researchers ideally want to generalise their results. Melville and Goddard (1996:29) state that a population is any group which is the subject of research interest. In this research, the population consisted of investigators in South Africa, attached to the SAPS. As it was difficult to conduct a research study on the whole of South Africa, the researcher decided to work with a target population consisting of detectives from two different units in Middelburg, Mpumalanga. The researcher decided to do the research in Middelburg, as it is one of the towns that contribute most of the crime in Mpumalanga. The primary function of these detectives was investigation. They had to use various investigation techniques, such as the identification parade. These units are the ones in Middelburg which conduct investigations. There were 50 investigators attached to the general detective service, and 44 investigators attached to the provincial tracing team. The provincial tracing team investigates all serious crimes in Mpumalanga and

processes the case dockets through courts. All detectives attached to these units at some or other time used the identification parade as a technique for identifying suspects. The researcher regarded the target population as representative of the research population, as the detectives of the target population were working under the same legislation and Constitution, had undergone the same basic training as all members of the population, and had been selected from society by means of the same criteria.

The sample consisted of 30 investigators, selected from both units. According to Tulloch (1993:1362), a sample is a small part or quantity intended to show what the whole looks like. The researcher used a systematic sampling procedure to select the sample. According to Welman and Kruger (2001:58), in systematic sampling every element is included, and this type of sampling also requires less time and is cheaper than simple random sampling. The researcher collected an alphabetical name list of each of the units involved. From the list involving the general detectives, the researcher closed his eyes and placed a pencil on the list. It landed on number 3, so he selected every third member on the list until he obtained a sample of 16. The provincial tracing team had 44 members. The pencil fell on number 13, so the researcher selected every third member up to the end, and then started again at the beginning, until he had a sample of 14 members. The sample selected from both units was asked the same questions. The same interview schedule was used.

The researcher also interviewed the senior public prosecutor who deals most with the serious cases in which identification parades are mostly conducted in Middelburg. She is the representative of the prosecutors in Middelburg, as most prosecutors fall under her and get advice from her. The researcher interviewed the senior legal officer who advised the investigators in Mpumalanga of the legal aspects during investigation.

## **1.8 DATA COLLECTION**

The researcher used literature, interviews and a case study, from which he collected data. According to Bouma and Atkinson (1995:22), data are facts. They are records of events. Tulloch (1993:363) defines data as known facts or things used as a basis for inference or reckonings. The researcher collected primary data. According to Welman and Kruger (2001:35), primary data consists of written or oral accounts of a direct witness to (or a participant in) an event, or an audiotape, videotape or photographic recording of it. From all the available methods of collecting primary data, the researcher concentrated on the interview, the literature study and the case study.

According to Terre Blanche and Durrheim (2004:431), "triangulation" refers to the use of multiple methods to study a single problem, looking for convergent evidence from different methods, e.g. interviewing. For Babbie (1998:111), the use of different research methods to test the same findings is called "triangulation". The author further states that each method has its strengths and weaknesses. The literature obtained was analysed against the research questions, in an attempt to find relevant information.

### **1.8.1 Literature**

For Melville and Goddard (1996:18), the term "literature study" is often used to describe the process of finding previous work from a range of sources (only some of which are literary). The researcher contacted the South African Police Service (SAPS) National Training for the Detective Learner Programme module and the South African Police Service (SAPS) National Instruction 1/2007. An analysis of the curriculum of the Learning Programme was done, but the researcher could not find specific reference to the admissibility of evidence. The researcher visited the Unisa Gold Fields Library in Florida, Roodepoort, to locate books on the same topic as that of the present study. No books on the same topic were found. The researcher checked the shelves in the policing section, and also the catalogue, under the relevant keywords. The researcher used the following keywords to search for information in the

library: identification, admissible, identification parade and evidence. The researcher also perused journals and the Internet, including criminal justice websites, for any material on the same topic, but no material on the same topic was found. The researcher then broke down the topic into the main concepts of the study, such as “critical analysis”, “identification”, “admissible” and “parade”, to check for any literature covering these concepts. The literature found was studied, to find answers to the research questions and to the questions developed in the interview schedule.

### **1.8.2 Interviews**

Berg (2004:78) mentions the following types of interviews:

- The standardised interview: here the interviewers are required to ask subjects to respond to each question, exactly as worded.
- The un-standardised interview: it does not utilise schedules of questions and is located on the imaginary continuum at the opposite extreme from standardised interviews.
- The semi-standardised interview: it involves the implementation of a number of predetermined questions and special topics.

The researcher relied on the standardised interview, as it is designed to extract information using a set of predetermined questions that are expected to elicit the subject’s thoughts, opinions, and attitudes about study-related issues.

The researcher used the guidelines in Leedy and Ormrod (2005:147) for conducting a productive interview, as follows:

- *Identify some questions in advance*

The researcher compiled the interview schedule from the research questions. He asked open-ended questions to allow the samples to express themselves freely. The researcher used the research questions, research aims and research purposes to identify the interview schedule questions. The schedule topic was relevant to the samples’ work experience, i.e. investigation.

- *Make sure your interviews are representative of the group*

The researcher interviewed members of the detective service and the provincial tracing team in Middelburg. He regarded the target population as representative of the population, as these detectives had undergone the same basic training, and worked under the same legislation and Constitution. The researcher collected an alphabetical name list of the general detectives, closed his eyes and put the pencil down. It fell on number 3, so he selected every third member on the list until he had obtained a sample of 16. For the provincial tracing team, the pencil fell on number 13, so the researcher selected every third member up to the end, and then started again at the beginning until he had a sample of 14 members.

- *Find a suitable location*

The researcher conducted the interviews at the samples' workplaces, where there were no children to disturb them. The interviews were conducted in an office where there were no interruptions.

- *Get written permission*

The researcher obtained written permission to conduct the research from the National Commissioner of the SAPS, and to use the National Instruction 1/2007 and the SAPS National Training for the Detective Learning Programme module. The researcher also obtained permission from the samples to hold interviews with them.

- *Establish and maintain rapport*

The researcher was courteous and respectful at all times, and showed interest in what the samples had to say. The researcher conducted the interviews personally.

- *Focus on the actual rather than the abstract or hypothetical*

The researcher asked the samples questions relating to the identification parade.

- *Don't put words in people's mouths*

The researcher used open-ended questions, so that the samples had to formulate their own responses.

- *Record responses verbatim*

The researcher wrote down everything that was said by the samples.

- *Keep your reactions to yourself*

The researcher showed interest, even when some of the samples could not give the right responses or failed to answer a question.

- *Remember that you are not necessarily getting the facts*

The samples responses were treated as perceptions rather than as facts.

According to De Vos, Strydom, Fouchè and Delport (2002:211), a pilot study is defined as the process whereby the research design for a prospective survey is tested. The researcher tested the interview schedule by physically asking a small number of the investigators attached to the general detectives and the provincial tracing team, to evaluate the schedule and check for shortcomings. No shortcomings were identified. The members used for testing the interview schedule were omitted from the list used to draw the sample.

### **1.8.3 Case Analysis**

According to Welman and Kruger (2001:182), the term “case study” pertains to the fact that a limited number of units of analysis, such as an individual, a group or an institution, are studied intensively. Welman and Kruger (2001:21) explain that the objective of case study research is to investigate the dynamics of some single bounded system, typically of a social nature, such as a family, group, community or participants in a project or practice. A case study can answer the question “What is going on?” (Bouma & Atkinson, 1995:110). A case study allows an investigation to retain the holistic and meaningful characteristics of real-life events (Mason, 1996:129). Case study methods involve systematically gathering enough information about a particular person, social setting, event or group (Berg, 1998:212).

The researcher perused the dockets from 2005/2006 that were filed in the filing store, and selected 150 dockets in which identification parades had been

held. The pencil fell on number 3; the researcher picked every third docket until it reached 50 dockets. The dockets were analysed against whether:

- the suspect and/or their legal representative had been timeously informed of the time, date and venue of the identification parade
- the officer conducting the identification parade (ID) had been provided with the following information:
  - a) case number, date, time and place of the commission of the offence
  - b) names and number of witnesses
  - c) the suspect and their lawyer's name
- the copy of the identification parade form (SAPS 329) had been properly completed
- the people in the parade were more or less compliant with the criteria characteristics of the suspect in respect of height, colour and age
- the purpose of the parade had been explained to the suspect
- the suspect had been informed of their constitutional rights
- statements had been obtained from all the witnesses and guards/supervisors who attended the parade

## **1.9. METHODS OF DATA ANALYSIS**

According to Babbie (1998:110), "data analysis" is the interpretation of the collected data for the purposes of drawing conclusions that reflect on the interests, ideas and theories that initiated the inquiry. The researcher used Tesch's eight-step process to analyse the data collected (Van As & Van Schalkwyk, 2001:162) as follows:

- To get a sense of the whole, the researcher read through all the transcripts carefully and took some ideas as they came to mind.
- The researcher picked the document on top of the pile. He went through this document, asking himself what the essence of the document was all about. He looked for the underlying meaning of the document rather than thinking about the "substance" of the information. He then wrote his thoughts about this in the margin.

- When the researcher had completed the above task for several informants, he made a list of the topics that emerged, and clustered together similar topics. He formed these topics into columns, arrayed as major topics, unique topics and leftovers (leftovers were given a specific category).
- The researcher took the list and went back to the data. He abbreviated the topics as codes and wrote the codes next to the appropriate segments of the text. He tried out these preliminary organising schemes to see whether new categories and codes emerged.
- The researcher found the most descriptive wording of the topics and turned them into categories. He looked at reducing the total list of categories by grouping together topics that related to one another, and drew lines between the categories to show the interrelationships, where applicable.
- The researcher made a final decision on the abbreviation of each category, and alphabetised those codes.
- The researcher then assembled the data material belonging to each category in one place and performed a preliminary analysis of the data.
- Where necessary, the researcher re-coded the existing data.

#### **1.10 METHODS TAKEN TO ENSURE 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). According to Melville and Goddard (1996:37), “validity” means that the measurements used in the research are correct. This means that an instrument measures what it is intended to measure and that it measures it correctly. The researcher conducted interviews, perused case studies and consulted literature, to cover the ground of the research field. The researcher conducted personal interviews with the samples. The samples were asked the same questions from the interview schedule and the researcher recorded their responses verbatim. Other

researchers are likely to get the same results if they use the same methods. The advantage of the personal interviews was that if the samples did not understand the question, the researcher could explain it to them.

For the case analysis, the researcher perused the dockets in which an identification parade had been conducted with the checklist presented in section 1.8.3 above. To ensure the validity of the literature research, the researcher used only information that was relevant or that addressed the research questions. According to Terre Blanche and Durrheim (2004:431), “triangulation” refers to the use of multiple methods to study a single problem, looking for convergent evidence. The researcher used the following methods to ensure the validity of the research: a literature search, case analysis and interviews. Other researchers are likely to arrive at the same results if they use the same methods.

### **1.11 METHODS TO ENSURE RELIABILITY**

According to Mouton (2001:144), “reliability” refers to the fact that different research samples being tested by the same instrument at different times should respond identically to the instrument. The researcher used an interview schedule during the interviews, and wrote down the samples’ answers. For the case analysis, a checklist was compiled against the set of questions. The information from the literature consulted was noted down. Systematic sampling was used to choose the samples. Every investigation official from the target population had an equal chance of being selected.

Reliability relates to the methods of data collection, and is concerned that they should be consistent and should not distort the findings. Generally, it entails an evaluation of the methods and techniques used to collect the data. It refers to the ability of the research process to provide results that do not vary from occasion to occasion, and that do not vary according to the particular researchers undertaking the research (Denscombe, 2002:100). The researcher also used different methods, i.e. a literature study, interviews and

case studies. Other researchers are likely to get the same results if they use the same methods.

## 1.12. ETHICAL CONSIDERATIONS

Babbie (1998:438) defines “ethical” as conforming to the standards of conduct of a given profession or group. The researcher took ethical conduct into consideration when undertaking the research. He abided by the Unisa Code of Ethics (2000:2) relevant to this research, which stipulates the following:

- *trustworthiness and sincerity*  
The researcher was always trustworthy and sincere.
- *obtaining consent and approval*  
The researcher obtained the approval of the National Commissioner of the SAPS to conduct the research, and also obtained the samples’ consent to conduct the interviews with them.

The researcher made appointments with the samples, so as not to violate their time schedules, and established whether their names could be mentioned in the research or not. According to Leedy and Ormrod (2005:101), most ethical issues in the research will fall into one of these four categories:

- *Informed consent*  
The samples were physically informed of the nature of the study and they volunteered to participate in the study.
- *Right to privacy*  
For those samples who did not want their names to appear in the research, their names were not mentioned on the interview schedule. The interviews took place in the samples’ work offices where there was no interference.
- *Honesty with professional colleagues*  
The researcher undertook to report the findings in a complete and honest fashion. The researcher referred to all sources, listed them on a list of references and gave credit to the ideas of other authors.

### **1.13 RESEARCH STRUCTURE (CHAPTER AND LAYOUT)**

To address the research questions, the researcher decided to arrange the dissertation as follows:

Chapter 2: Purpose of ID parade

Chapter 2 presents the following:

- forensic investigation
- the objectives of investigation
- identification
- the purpose of an identification parade
- factors that may influence the abilities of a witness or victim to do a pointing out on an identification parade
- the necessity for identification during forensic investigation

Chapter 3: Admissibility of an identification parade

Chapter 3 presents the following:

- the meaning of evidence
- the meaning of admissibility
- duties of the member who conducts the parade
- rights of the suspect on the parade
- completion of the identification parade form (SAPS 329)
- procedure for conducting an identification parade

Chapter 4: Findings and recommendations

Chapter 4 presents the findings of the study regarding possible shortcomings in the identification parade, and makes recommendations for addressing these shortcomings.

## **CHAPTER 2**

### **THE PURPOSE OF AN IDENTIFICATION PARADE**

#### **2.1 INTRODUCTION**

Everything is done for a purpose. In this chapter the purpose of an identification parade is discussed. To find out the real purpose of an identification parade, the research discusses the samples', the literature's and the case docket analysis' viewpoints in regard to the meaning of forensic investigation, identification, individualisation and the identification parade.

This chapter examines whether there is any difference between the concepts of forensic and criminal investigation, and discusses the difference between identification and individualisation. It also discusses the real purpose of an identification parade, the advantages and disadvantages of holding an identification parade, and the factors that may influence the parade.

#### **2.2 FORENSIC INVESTIGATION**

Tulloch (1993:585) defines "forensic" as having a connection with the courts of law. Olivier (2003:3) defines "investigation" as the discovery of the relevant facts, the making of inferences from these facts, the gathering of relevant information from those who are involved and claim to have knowledge of the incident under investigation, the construction of the crime scene, the identification and apprehension of the offender, and the preparation of the case for prosecution and the trial of the accused. Tulloch (1993:585) and Olivier (2003:3) both provide a connection with the courts of law: Tulloch links the concept "forensic" to the courts of law. Olivier's definition of "investigation" includes prosecution and the trial of the accused. According to Tulloch (1993:339), "criminal" means involving or concerning crime. This meaning of "criminal" has to do with the courts.

Forensic investigation is a process of collecting facts that can serve as evidence before a court of law, through which the associated part of an accused in the commission of a crime can be proved (Slyter, 1995:21).

To the question: "How will you define forensic investigation?", the samples responded as follows:

- Eight investigators said forensic investigation is the investigation that involves DNA.
- Five investigators said it is the use of science and biology in investigating a crime.
- Four said it is comparing the disputed sample or exhibit, e.g. blood, hair or cartridges, scientifically, to analyse for the provision of evidence that individualises the offender.
- Three said it has to do with the investigations in laboratories.
- Six investigators said they didn't know the meaning of forensic investigation.
- Two said it is the process by which evidence obtained from the crime scene is examined, to test the liability of the accused.
- Two said it deals with physical evidence which is related to court.

From the samples' responses and the various studies consulted, it is clear that the majority of the samples understood the meaning of forensic investigation as, investigation involving DNA, science and biology, laboratories and physical evidence related to the courts. The majority of the samples agree with the literature. There was a lack of knowledge in the six samples who mentioned that they didn't know the meaning of forensic investigation.

## **2.3 CRIMINAL INVESTIGATION**

Gilbert (2004:37) says that criminal investigation is a logical, objective, legal enquiry involving a possible criminal activity. Weston and Wells (1997:1) state that criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. Marais and Van Rooyen (1994:17) state that investigation is a systematic search for the truth.

To the question: "How will you define criminal investigation?", the samples responded as follows:

- Thirteen investigators said it is the collection of evidence and presenting the case in court.
- Eight said it is the search for the truth through various investigation methods.
- Six said it is to gather evidence in order to prove a case in court.
- Three said it is the collecting of statements and physical evidence to prove a case in court.

The samples are in line with the literature on the meaning of criminal investigation, as all mentioned that it has to do with a search for the truth and presenting the case in court.

## **2.4 THE DIFFERENCE BETWEEN FORENSIC AND CRIMINAL INVESTIGATION**

The *Oxford dictionary of English* (2005:25) defines "forensic" as relating to, or devoting the application of scientific techniques to, the investigation of crime, while Tulloch (1993:339) defines "criminal" as involving or concerning crime. Olivier (2003:3) defines "investigation" as the discovery of the relevant facts, the making of inferences from these facts, the gathering of relevant information from those who are involved and claim to have knowledge of the incident under investigation, the construction of the scene, the identification and the apprehension of the offender, and the preparation of the case for

prosecution and the trial of the accused. From the discussions above and in 2.2 and 2.3, it shows that there is no difference between forensic investigation and criminal investigation.

To the question: “What is the difference between forensic and criminal investigation?”, the study samples responded as follows:

- Twenty-eight investigators said there is no difference.
- Two said they don’t know the answer.

According to the literature, the deduction the researcher can make is that there is no difference because both refer to investigation and forensic investigation being the concept that is relatively new, involving the corporate investigation sectors. From the above discussion it shows that most of the samples have the same understanding as the literature.

## **2.5 THE OBJECTIVES OF INVESTIGATION**

In light that forensic investigation and criminal investigation are the same, in this research, when referring to the one, it includes the other.

Bennett and Hess (2001:5) agree with Becker (2000:8), in that the objectives of an investigation are to:

- determine whether a crime has been committed
- legally obtain information and evidence to identify the person responsible
- arrest the suspect
- recover the stolen property
- present the best possible case to the prosecutor
- convict the defendant

Gilbert (2004:38) states that the results of an investigation will answer the following questions:

- Did a criminal violation, as described by the code of statute, occur?

- Where, and at what time and date, did the crime occur?
- Who were the individuals involved in the planning, execution and after-effects of the violation?
- Was a witness to the criminal activity present?
- Is there an indication of guilt or innocence to aid judicial officials in determining a just solution to the case?

Bennett and Hess (2001:5), Gilbert (2004:38) and Becker (2000:8) all mention the identification of the suspect as an objective of investigation.

The docket analysis indicated that various investigation techniques were used in one investigation to obtain more evidence against the suspect.

Dempsey (2003:30), Becker (2000:8) and Bennett and Hess (2001:5) all believe that the objectives of an investigation are: to determine if there is sufficient factual evidence to support or defeat each element of all causes of action; to accumulate the necessary factual evidence to prove or defeat a case at trial or to form the basis for a settlement; to locate leads to additional evidence; to locate people or property; and, to find evidence that might be used to discredit a witness or the opponent.

All the above authors agree on the objectives of investigation as having to do with the following:

- Locating and identifying suspects
- Arresting the perpetrator
- Presenting the case in a court of law

To the question: "What are the objectives of investigation?", the samples responded as follows:

- Twelve samples said it is something like a thorough investigation, with the aim of convicting the suspected criminal.
- Five said it is to obtain evidence like hair, blood and nails by using scientific and biological materials comparisons between two or more evidential materials.

- Six said it is the search for the truth in order to convict the guilty party.
- Four said it is to obtain scientific or biological evidence in the investigation of crime.
- Three said they don't know the objectives of the investigation.

Twenty-seven of the samples understood the objectives of investigation as having to do with a search for the truth and obtaining the scientific and biological evidence in order to prove the case in court. The other three did not understand the objectives of investigation. This showed a lack of knowledge in the objectives of investigation, on the part of those investigators. The case docket analysis supports the views of the twenty-seven samples and the literature.

## **2.6 IDENTIFICATION**

According to Lee and Harris (2000:12), identification is the process of using class characteristics to identify a particular object. Hinz and Pezdek (201:188) differentiate between the process of recognition and the process of identification. They state that recognising that a stimulus is familiar is a relatively fast process that involves determining whether there is a match between a stimulus and representation that exists in memory. In recognition responses, stimuli that surpass a familiarity threshold are responded to as "old". This can explain how a familiar, non-target face may be misidentified as "old". However, identification of a specific stimulus is a relatively slower process that involves recalling contextual information regarding the circumstances surrounding the initial perception and encoding of the stimulus. Identification involves determining, for example, whether a specific face was seen at the scene of the crime or at some other place. The authors further state that the critical difference between recognition responses and identification responses is the recall of contextual information in identification responses.

Marais (1992:18) writes that “identify” means to recognise uniqueness, and that identification rests on the theory that everything in the universe is unique in that it has certain distinctive, individual and class properties. In the analogy of the word “identification”, we commonly speak of a person or an object as being identified through comparison, when what we mean, in fact, is that individuality has been established - in other words, the person or object has been individualised.

The case docket analysis indicated that in 85% of the cases the right suspect was pointed out, and in 15% the wrong suspect was pointed out. The docket analysis showed that identification is a useful technique to identify the suspect or accused.

To the question: “What is identification?”, the samples responded as follows:

- Seven investigators said it is to identify the suspect from other people.
- Six said it is identifying a person or object.
- Five said it is recognising something you have seen before.
- Four said it is recognising as being a specific person.
- Four said it is to point out the accused and make use of the images from memory at the time when the incident happened.
- Three said it is to point out a person from among a group of people.
- One said it is to choose among others.

The samples mentioned identifying, pointing out, choosing and recognising among a group, and are all in line with Marais’ identification theory (1992:18) which states that everything in the universe is unique in that it has certain distinctive, individual and class properties. Here, identification has to do with pointing out a person among other people who look similar to them. Most of the authors are international authors, but their definitions resemble the South African definition. This means that the investigation technique in South Africa does not differ from that of other countries. The case docket analysis agrees

with the literature and showed that identification is a useful technique to identify the suspect or accused.

## **2.7 INDIVIDUALISATION**

According to Lee and Gaensslen (2001:45), individualisation refers to the demonstration that a particular sample is unique, even among members of the same class. Rainis (2006:23) mentions that individualisation refers to the physical characteristics that can be used to identify a particular individual within a group or population.

The case docket analysis indicated that in 85% of the cases the right suspect was pointed out and in 15% the wrong suspect was pointed out. The docket analysis showed that identification parade is a useful technique to individualise the suspect or accused.

To the question: "What is individualisation?", the samples responded as follows:

- Sixteen investigators said individualisation means that everything is unique to itself.
- Eight investigators said it is the characteristics that belong to something itself.
- Six investigators said it is the using of forensic methods to identify the origin of something.

The samples` responses in the definition of individualisation were in line with the literature. The samples had an understanding of the definition of individualisation.

## **2.8 THE DIFFERENCE BETWEEN IDENTIFICATION AND INDIVIDUALISATION**

According to Marais (1992:18), identification rests on the theory that anything in the universe is unique in that it has certain distinctive, individual and class

characteristics. Lee and Harris (2000:12) agree with Marais (1992:18), saying identification is the process of using class characteristics to identify a particular object. Marais (1992:19) mentions that identification has no value in criminalistics, because it means that an expert would identify an object as a piece of glass without relating it to the surface of origin, while individuality means that the piece of glass is positively compared with the surface of origin.

To the question: “What is the difference between identification and individualisation?”, the samples responded as follows:

- Fourteen investigators said identification means that an object falls into a particular group, while individualisation means that an object belongs to itself.
- Nine investigators said identification means that something is similar to a specific group, while individualisation means an object is similar to itself.
- Seven investigators said identification is identifying something by its physical characteristics, while individualisation is the using of forensic methods to identify its origin.

The samples agree with the literature on the difference between identification and individualisation. The samples had an understanding of the difference between identification and individualisation.

## **2.9 DIFFERENT IDENTIFICATION TECHNIQUES**

There are various identification techniques, and only the ones where witnesses and victims are used to do the identification will be discussed.

### **2.9.1 Identification parade**

According to Tredoux, Parker and Nunez (2007:208), line-ups are also known as “identification parades” in South Africa and England. This means that

identification parades and line-up identifications are the same thing, the only difference being the terms by which they are known in the different countries.

Conradie (1994:113) defines an identification parade as a direct personal identification method where a number of people with more or less the same appearance, attire and social standing are paraded, with the purpose of the identifying witness being able to identify the person whom they saw, and of whom they have an image in memory.

According to Dempsey (2003:279), an identification parade is the placing of a suspect with a group of other people of similar physical characteristics (such as race, age, hair colour, type and weight), so that a witness or victim of a crime has the opportunity to identify the perpetrator of the crime. Gilbert (2004:599) agrees with the view expressed by Dempsey (2003:279), when he suggests that a line-up is an assembly of persons, including the suspect, viewed for identification purposes by a crime victim or witness. According to National Instruction 1/2007 of the South African Police Service (SAPS, 2007:1), "identification parade" means a parade in which a number of people, more or less similar in appearance, dress or social standing, are paraded for the purpose of allowing a witness to identify the person they allegedly saw during the commission of an offence, and who is suspected of having been involved in the commission of the offence.

The Detective Learning Programme module (SAPS 2004:1) definition is the same as the SAPS NI 1/20207.

Van Heerden (1982:210) expresses a view concurrent with that of Dempsey (2003:279), arguing that an identification parade is a direct method of a person's identification, in which a number of people, more or less similar in appearance, dress and social standing, are paraded for the purpose of allowing the witness to identify the person whom they saw and of whom they have a mental image imprinted in their memory.

To the question: "What is an identification parade?", the samples responded as follows:

- Seven said that it is to point out a person among a group of people.
- Fourteen said it is a place where a number of people are paraded and a witness has to identify the suspect among them.
- Four said it is individualisation of the people for the purpose of recognising a specific person.
- Four said it is when a witness is given the opportunity to identify the suspect by means of an identification parade.
- One said it is a method of identifying a person among people of similar appearance or character.

Both the international and the South African authors all describe an identification parade as a parade of people where witnesses are given an opportunity to identify the person they saw committing the offence. All the samples argued that identification is a method of identifying a suspect among other people. The samples were mostly in agreement with the literature and the National Instruction 1/2007, on the meaning of "identification parade".

### **2.9.2 Photographic identification**

Conradie (1994:116) writes that the use of photographic identification is a valuable aid in the investigation of crime. The Detective Learning Programme module (SAPS, 2004:9) mentions two types of photo parades: the provisional photo parade and the individualised photo parade.

Conradie (1994:116) distinguishes between the provisional photo parade and the individualised photo parade as follows:

- Individualised photo parade - a photograph of a specific suspect is arranged among at least ten other photographs, before the witness is requested to point out the photograph of the offender.

- Provisional photo parade – here it is assumed that the offender could possibly have been arrested before, and that a photograph of him would be in the criminal file.

Conradie (1994:116) states that in general, photographic identification is subject to the same principle of fairness and objectivity as in the case of the identification parade. Zeffertt, Paizes and Skeen (2003:618) claim that the proper identification by photograph is for the witness to be asked to pick out the alleged criminal from a number of photographs. It was ruled in *R v Jackson* 1955 (4) SA 85 (SR) that if the witness is shown only a single photograph, his identification is worth almost as little as if he had been shown the accused and asked: "Is this the man?".

In terms of section 37(1)(b) of the Criminal Procedure Act, Act 51 of 1977, any police official may make a person referred to in paragraph (a)(i) or (ii) available or cause such person to be made available for identification in such a condition, position or apparel as the police official may determine;

The docket analysis indicated that in 5% of photographic identification the right suspect was pointed out, and its evidence was admissible in court.

According to Joubert (2001:281), the advantages of a photo parade are:

- It can be set up faster than the identification parade.
- A very large database is easily available.
- No problems are experienced with the people on parade - in this way eliminating possible bias against the suspect.
- The anxiety of witnesses is greatly reduced since they do not have to face the suspect.

Conradie (1994:116) agrees with Zeffertt et al. (2003:618), both mentioning that the witness is asked to pick out the alleged criminal from a number of photographs. The above authors are supported by *R v Jackson* 1955 (4) SA

85 (SR) in that if the witness is shown only a single photograph, his identification is worth almost as little as if he had been shown the accused and asked: "Is this the man?".

To the question: "What is photographic identification?", the samples responded as follows:

- Twenty-one said it is where photos of different suspects are kept for investigation purposes.
- Four said it is where the suspect's album is shown to the witnesses so that they can point out the right suspect.
- Five said it is where photos of various suspects are shown to the witnesses.

The samples' answers were compared with the views of Conradie (1994:116) and Zeffertt et al. (2003:618), and show no difference – which means that they are in agreement on the meaning of photographic identification. The case docket analysis supports the samples viewpoints.

### **2.9.3 Voice identification**

The Detective Learning Programme module (SAPS, 2004:13) states that, should the possibility exist that an accused may only be identified by means of his voice, a voice parade may be held, and further, that the witness will then be given the opportunity to identify the voice of the accused among eight other similar voices.

According to Conradie (1994:118), identification by means of voice, as in the case of ordinary identification parades, is allowed as testimony if it can be proved that the identification took place fairly and without force or cheating. Zeffertt et al. (2003:619) explain that in some cases where witnesses have claimed to be able to identify the accused by their voice, identification parades have been held to allow the witness to pick out one of several people, each saying the same thing. In *R v Gericke* 1941 CPD 211 the court said that the parade should include more than five people, and some of them should be

known to the witness. Conradie (1994:118) agrees with Zeffertt et al. (2003:619), by mentioning that in some cases in which witnesses claimed to be able to identify the accused by voice, identification parades have been held to allow the witnesses to pick out one of several people, each saying the same thing.

In the case docket analysis there were no instances where voice identification parade was used.

To the question: "What is voice identification?", the samples responded as follows:

- Fifteen said it is where a number of people are hidden from the witness and told to say something, for the witness to identify the right suspect's voice.
- Seven said it is where the suspect is identified by voice.
- Five said it is where the expert identifies the voice as belonging to a specific person.
- Three said they did not know.

Twenty-two of the samples had an understanding of voice identification, as they said it is where the suspect is placed among others and must be identified by voice. This is in line with Conradie (1994:118) and Zeffertt et al. (2003:619). Five investigators differed from the other twenty-two, as they said it is where the expert identifies the voice as belonging to a specific person. That showed a lack of knowledge on their part.

The majority of the samples had the same understanding as that presented by the literature – apart from the five who said the expert identifies the voice, and the three who said they did not know.

## 2.10 THE PURPOSE OF AN IDENTIFICATION PARADE

Gilbert (2004:532) states that the line-up was devised to increase the accuracy of identification by circumventing the errors of suggestibility that could result in a single-suspect viewing. Bennett and Hess (2001:181) claim that the purpose of the line-up is to permit witnesses to observe all persons in the line-up, in order to make an identification. Bennett and Hess (2001:179) state that police have adopted line-up procedures to ensure accurate, fair identification, and to meet the standards established by the Supreme Court decisions in England and Wales.

Van Heerden (1982:18) mentions that the cardinal importance of identification is determining whether the witness has, in fact, a true picture of events. Marais and Van Rooyen (1994:107) agree with the view expressed by Van Heerden, by suggesting that the emphasis falls on the fair, accurate testing of a witness's ability to recognise the suspected offender.

In *S v Du Toit* at 3-24 it was suggested that an identification parade serves a dual purpose. It is, firstly, an effective investigation tool. The outcome thereof will enable the investigating officer to reassess the duration of the investigation. Secondly, it also serves an important evidential purpose, since it provides the prosecution with more persuasive evidence than the identification in court.

Van Heerden (1982:22) argues that the main purpose of the identification parade is to test justly and accurately determine the ability of the witness to recognise the offender, and to eliminate the possibility of suggestion as a deciding factor in the identification.

The Detective Learning Programme module (SAPS, 2004:11) expresses a similar view to that expressed by Bennett and Hess (2001:179), claiming that the purpose of the identification parade is to fairly and accurately test the ability of the witness to identify the accused/suspect and to eliminate

suggestion as a determining factor. This view is also expressed by Van Heerden (1982:22).

The senior public prosecutor and the senior legal officer agreed that the purpose of the identification parade is to obtain court-related evidence, and the prosecutor further agreed with Van Heerden (1982:22), saying it is to test the credibility and observation abilities of the witness.

According to the SAPS National Instruction 1/2007 (SAPS, 2007:1), an identification parade must be held during an investigation into the alleged commission of an offence, if:

- a reasonable suspicion arises that a certain person was involved in the commission of the offence, but there is insufficient evidential material available that positively identifies the person as one who was involved in the commission of the offence;
- there is a person who may possibly be able to identify the said person during an identification parade as one who was involved in the commission of the offence.

According to Steblay, Dysart, Fulero and Lindsay (2003:523), identification procedure provides a memory test of the witness that can aid police in ascertaining whether a suspect is, in fact, the perpetrator of the crime being investigated.

The case docket analysis revealed that in 65% where identification parade was held, the right suspect was pointed out and 30% of the evidence was admissible in court while 70% was inadmissible.

To the question: “What is the purpose of an identification parade?”, the samples responded as follows:

- Five said it is to give the witness the opportunity to identify the suspects.

- Twelve said it is to test the ability of the witness to identify the suspects.
- Seven said it is to identify possible suspects.
- Two said it is to make sure that the suspect is the right person who was seen by the witness.
- Three said it is to prove that the suspect is the right person, and to have a right picture of something under investigation.
- One said it is to connect the suspect with the crime.

The samples gave similar answers, e.g. to give the witness the opportunity to identify the suspect, and to make sure that the suspect is the right person. Fourteen investigators were in line with Steblay et al. (2003:523), arguing that it is to test the memory of the witness to ascertain whether the suspect is the right perpetrator. The samples had the understanding of the purpose of an identification parade. The docket analysis indicated that the purpose of identification parade was achieved, as 65% of the suspects were correctly pointed out during the identification parade.

## **2.11 ADVANTAGES OF AN IDENTIFICATION PARADE**

Gilbert (2004:532) states that the line-up increases the accuracy of identification by circumventing the errors of the suggestibility that could result in a single-suspect viewing. Bennett and Hess (2001:171) agree with Gilbert's view, by explaining that the line-up ensures accurate, fair identification and meets the standards established by the Supreme Court decisions. Valentine and Heaton (1999:61) claim that through the line-up the investigating officers are able to obtain identification evidence that provides more information than that contained in a witness's verbal description of the culprit.

According to Joffe (1976:709), a departmental committee on evidence of identification in criminal cases maintained that the identity parade is the best available method of identifying a suspect, and recommended no alternatives.

Van Heerden (1982:23) believes that to restrict legal and human error to a minimum, the identification parade is recommended as by far the best method of identification.

The docket analysis indicated that in 30% of cases where the suspect was pointed out, its evidence was admissible in court.

To the question: "What are the advantages of an identification parade?", the samples responded as follows:

- Five said the court will know that the accused has been identified by the witness.
- Two said that if the witness manages to identify the suspect, it will be admissible in court.
- Eight said that the suspect can be identified among people of a similar character.
- Three said the court will know that the suspect was identified at the identification parade, and that will add value to the evidence.
- Three said that the witness confirms the identity of the suspect.
- One said it creates a fair trial for the accused and the victims or witnesses.
- One said it is to add sufficient evidence to the existing evidence.
- Six said it is to prove the case.
- One said he did not know the advantage of an identification parade.

The majority of the samples said it adds sufficient evidence to the existing evidence and it confirms the identity of the suspect. These views are in line with that of Valentine and Heaton (1999:61). These authors believe that through a line-up, the investigating officers obtain identification evidence that provides more information than that contained in a witness's verbal description of the culprit.

The advantages of an identification parade can be summed up as follows:

- Gilbert (2004:532) suggests that it increases the accuracy of identification, by circumventing the errors of suggestibility that could result from a single-suspect viewing.
- Bennett and Hess (2001:171) argue that it ensures accurate, fair identification.
- Valentine and Heaton (1999:61) claim that it provides more information than that contained in a witness's verbal description of the culprit.
- Joffe (1976:709) finds that it is the best available method of identifying a suspect.

## **2.12 DISADVANTAGES OF AN IDENTIFICATION PARADE**

The literature review identified several disadvantages in holding an identification parade. Zeffertt et al. (2003:618) mention in *S v Mthethwa* 1972 (3) SA 766 (A) that evidence of identification is approached by the court with some caution. Cole (1996:93) states that identification parades consume a great deal of time and space, the recruitment of innocent participants is never easy, and, very often, witnesses take a lot of persuading to become involved in confrontation. Yarmey (2003:181) argues that innocent people are convicted each year because of mistaken eyewitness identification. Wright and Stroud (2002:642) maintain that if the witnesses are of a different race from that of the culprit, it is always difficult for them to point out the right culprit.

Valentine and Heaton (1999:61) agree with Yarmey (2003:181), arguing that known cases of wrongful imprisonment have repeatedly suggested that mistaken eyewitness identification is a major factor in miscarriages of justice. According to Joffe (1976:707), the disadvantage of an identification parade is that there are often no external factors against which evidence can be tested.

The copies of the identification forms (SAPS 329) revealed that in 35% of cases the witness couldn't point out the right suspect because the witness was nervous.

To the question: "What are the disadvantages of an identification parade?", the samples responded as follows:

- Six said the suspect may intimidate the witness after the parade.
- Two said the victim or witness might fail to positively identify the suspect.
- One said the suspect cannot be compelled to participate in an identification parade.
- Thirteen said the witness may identify the wrong person, who will be convicted of a crime they did not commit.
- Five said it can be harmful to the accused and lead to an unfair trial.
- Two said it reminds the witness of the painful incidents.
- One said witnesses become nervous and fail to identify the suspect.

Two samples said the identification parade reminds the witness of the painful incidents. Thirteen samples agree with the view expressed by Yarmey (2003:181), who argues that innocent people are convicted as a result of mistaken eyewitness identification. Six said the suspect might intimidate the witness after the parade and one said a suspect cannot be compelled to participate in an identification parade. The docket analysis indicated that some witnesses became nervous and failed to point out the right suspect.

Disadvantages of the identification parade can be summed up as follows:

- Zeffertt et al. (2003:618) mention that evidence of identification is approached by courts with caution.
- The samples explained that witnesses may fail to positively identify the suspect.
- The samples argued that it reminds the witness of the painful incidents.
- Yarmey (2003:181) argues that innocent people are wrongly convicted because of identification parades.

- Joffe (1976:707) states that there are no external factors against which evidence can be tested.
- Cole (1996:93) states that identification parades consume a great deal of time and space.

### **2.13 FACTORS THAT MAY INFLUENCE THE ABILITIES OF A WITNESS OR VICTIM TO DO A POINTING OUT ON AN IDENTIFICATION PARADE**

According to Yarmey (2003:182), the effects of lighting and distance on the accuracy of the eyewitness's memory can influence the identification parade. Wright and Stroud (2002:642) agree with the opinion expressed by Yarmey (2003:182), mentioning the following as factors that may influence the identification parade:

- short exposure times, which may negatively affect liability
- poor lighting
- witnesses having heard misleading information
- the culprit and the witness being of different races
- the culprit and the witness differing in age

Gilbert (2004:529) gives the following factors:

- internal perception factors that can affect perception include personal drives and interests, emotions, prejudices, past experiences and conditioning
- external perception factors such as weather conditions

Van Heerden (1982:18) believes that in the case of identification, most witnesses show little ability to observe and describe the facial features and general appearance of a stranger. This is because they are seldom required to do so, and because the activity is improved by practice only. Identification can be influenced by a witness's ability to observe, memory, fear, emotion, association and suggestion.

Van der Westhuizen (1996:78) concurs with Van Heerden (1982:18) when he maintains that because of the fallibility of human observation, evidence of identification is approached by the courts with some caution, because the reliability of witnesses' observation must also be tested, as it depends on various factors such as lighting, visibility, eyesight, the proximity of the witness, and their opportunity for observation - with regard to both time and situation.

In *S v Mthethwa* 1972(3) SA 766 (A) the judge laid down the statement as mentioned in Van der Westhuizen (1996:78) and Van Heerden (1982:18), that because of the fallibility of human observation, evidence of identification is approached by the court with some caution. This is because the reliability of witnesses' observation must also be tested, as it depends on various factors such as lighting, visibility, eyesight, proximity of the witness, and their opportunity for observation - both as to time and situation, also saying that Didcott J in *S v Ngcobo* 1986 (1) SA 905 (H) restated the dangers of a witness making a mistaken identification.

Van Heerden (1982:18) further believes that since recall of what has been seen is decided by memory, the memory image is expected to fade. This happens more quickly in children and older people. He argues that through prejudice and bias, people tend to notice only what they expect or what they want to notice. A witness is thus likely to pay more attention to events that are important to them.

The docket analysis indicated that in 20% of cases where the suspect was not pointed out, the suspect was African and witness was white.

To the question: "What are the factors that may influence the abilities of a witness or victim to do a pointing out on an identification parade?", the samples responded as follows:

- Six reported that witnesses said they would be able to identify the suspect, but failed.

- Seven mentioned the visibility, the premises where the parade is held and the ability of the witness to identify the suspect.
- Two mentioned violation of the accused's rights.
- Five said it is when the witness is able to identify the suspect.
- Four said: people of similar physical appearance.
- Three said: unlawfulness.
- Three said: race or nationality.

The majority of the samples gave different responses, such as: violation of the suspect's rights, when a witness is able to identify, unlawfulness and physical appearance, which is not in agreement with the literature. Ten samples agree with Van der Westhuizen (1996:78) and Yarmey (2003:182). This shows that there is a lack of knowledge among the majority of the samples. The docket analysis agrees with Wright and Stroud (2002:642) and Yarmey (2003:182), showing that race influenced the outcome of 20% in the identification parades.

#### **2.14 THE NECESSITY TO IDENTIFY DURING INVESTIGATION**

Bennett and Hess (2001:179) state that police have adopted line-up procedures to ensure fair identification and to meet the standards established by the Supreme Court decisions. According to the Detective Learning Programme module (SAPS, 2004:11), the element of suggestion as a determining factor is eliminated. Schreiner J A held in *R v Kola* 1949 (1) PH H00 (A) approved in *S v Mlati* 1984 (4) SA 629 (A) that it is unsatisfactory, as it may have to rely on the evidence of identification given by a witness who is not well acquainted with the accused, if that witness has not been tested by means of a parade. Conradie (1994:113) agrees with the decision taken in *R v Kola* 1949 (1) PH H00 (A), writing that the main objective of identification is to accurately test the ability of the witness to recognise the offender.

Van Heerden (1982:18) claims that the cardinal importance of identification is determining whether the witness has, in fact, a true picture of events. Marais and Van Rooyen (1994:107) agree with the view expressed by Van Heerden (1982:18), stating that the emphasis falls on the fair and accurate testing of a

witness's ability to recognise the suspected offender. Van Heerden (1982:23) further explains that to restrict legal and human error to a minimum, the identification parade is recommended as being by far the best method of identification. According to Van Heerden (1982:22), the main purpose of the identification parade is to test justly and accurately the ability of the witness to recognise the offender, and to eliminate the possibility of suggestion being a deciding factor. O'Hara and O'Hara (2003:275) explain that a line-up should only be used when the identification by a witness is an important factor in the case.

The docket analysis indicated that in 10% of cases the suspect was only linked with the evidence of the identification parade, and in 55% of cases identification parade evidence corroborated other evidence. There were no cases where identification parade evidence contradicted other evidence.

To the question: "Why is it necessary to identify during forensic investigation?", the samples responded as follows:

- Three said it is in order to eliminate doubt, and identify the specific person linked to the crime.
- Nine said it is to make sure that the suspect is the right person seen by the witnesses.
- Four said it is to have a link between the crime and the culprit.
- Seven said it is to connect the suspect with the crime.
- Two said it is to prove the knowledge of the witness.
- Four said it is to have a clear picture of something under investigation.
- One said it is to prove that the defendant is the real person who committed the offence.

Van Heerden (1982:10) argues that identity means uniqueness and that identification rests on the theory that everything in the universe is unique in that it has certain distinctive, individual and class properties.

The docket analysis indicated that in 10% of dockets, only identification parade evidence linked the suspect to the crime.

Twenty-six samples' responses agree with van Heerden (1982:22), by mentioning that it had to do with eliminating doubt, making sure, connecting and proving knowledge of the witness, while four said it is to have a clear picture of something. The docket analysis showed positive results in pointing out the right suspects.

## **2.15 WHEN SHOULD AN IDENTIFICATION PARADE BE CONDUCTED?**

Van Heerden (1982:24) asserts that when a witness declares that he is able to identify the offender, an identification parade must be held when the opportunity presents itself, and in every case a description must be taken and identification made before the witness can compare his observation with other witnesses, and for the same reason - identification. According to Bennett and Hess (2001:17), line-up identification is commonly used when the suspect is in custody and there were witnesses to the crime.

Van Heerden (1982:24) states that identification parades are redundant when a witness claims to know the offender personally. Tulloch (1993:1284) explains that "redundant" means unnecessary. By this he means that if the witness knows the suspect(s), identification parades must not be conducted. It was held in *R v Mputing* 1960 (1) SA 787, (T) that when a witness declares that he will be able to identify the offender; an identification parade must be held.

The senior legal officer mentioned that an identification parade should be held whenever the investigating officer deems it necessary to hold one, and an identification parade should be held during the daytime.

The docket analysis indicated that identification parades were held where the description of the suspect was mentioned in the statements and the suspect was unknown to the witness. In 40 of the case dockets the ID parade was held directly after arrest, and in 10 cases the ID parade was held after the first

appearance in court. In 45 cases the ID parade was held in support of the other evidence.

To the question: "When should an identification parade be conducted?", the samples responded as follows:

- Five said: when the witness gives the description of the suspect, and a person of similar description is arrested.
- One said: when the suspect is unknown to the witnesses.
- Three said: when the witness has to identify the suspect.
- Eight said: when the suspect is described and not known to the witness, but can only be identified on face value.
- One said: to make sure that the suspect is the right person.
- Four said: when the witness has said that they will be able to identify the suspect.
- Five said: if the suspect is arrested and the witness is able to identify him or her.
- One said: when the suspect is to be identified in order to prove that the witness can identify the suspect.
- Two said: when the investigation officer wants to make certain that the witness/victim can identify the suspect.

The senior public prosecutor agreed with *R v Mputing* 1960 (1) SA 787 (T) when saying that it is held when the identity is in dispute, or only after arrest, or once the suspect is charged, and stressed further that if the suspect is not charged, the suspect must be willing and give permission for the parade to be held.

The samples said that the witness must give a description of the suspect, and the accused must be unknown to the witnesses. The other samples said an identification parade must be held when the witnesses mention that they can identify the suspect and the suspect is arrested. The samples' answers are mostly in agreement with the literature and the case docket analysis.

## 2.16 REFUSAL OF THE SUSPECT TO STAND ON THE PARADE

Section 35(3)(j) of the Constitution of South Africa Act 108 of 1996 states that a person may not be compelled to give self-incriminating evidence. In terms of section 37(1)(b) of the Criminal Procedure Act 51 of 1977, any police official may make a person referred to in paragraph (a)(i) or (ii) of this section available or cause such person to be make available for identification in such condition, position or apparel as the police official may determine. Section 33 (1) of the Constitution states that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

There was no instance in the case dockets where the accused or suspect refused to stand on the parade. Section 36(1) of the Constitution states that the right in the Bill of Rights may be limited only in terms of law of general application. It was held in *S v Mphala and another* 1998 (1) SACR 654 (W), that an accused has no right to refuse to participate in an identification parade. Adams (1990:91) agrees with the decision held in *S v Mphala*, claiming that a suspect may not refuse to stand in a line-up. Bennett and Hess (2001:179) differ from the view expressed by Adams (1990:91), indicating that a suspect may refuse to participate in a line-up, but that such a refusal can be used against the suspect in court. Tulloch (1993:942) defines the word “may” as expressing possibility. Thus, according to Adams (1990:91), a suspect may not refuse, and according to Bennett and Hess (2001:179), the suspect may refuse.

The senior public prosecutor and the senior legal officer indicated that they had never experienced such a situation, but in terms of section 37 (1) (b) of the Criminal Procedure Act the police officer may make a person referred to in paragraph (a) (i) or (ii) of the Criminal Procedure Act available, or cause such a person to be made available, for an identification parade.

To the question: “Can a suspect refuse to stand on the parade?”, the samples responded as follows:

- Eight said that the suspect may not refuse to stand, as the police official can force him or her to stand.

- Five said that section 35(3)(j) of the Constitution states that a person may not be compelled to give self-incriminating evidence – in that way the suspect may refuse.
- Seventeen said that the suspect may not refuse, as he is told to stand, not asked to stand.

Twenty-five samples said that a suspect may not refuse. In *S v Mphala and another* 1998 (1) SACR 654 (W) and with the view expressed by Adams (1990:91), it is explained that an accused may not refuse to stand on the identification parade. The samples' answers are in line with the view of Adams (1990:91) and that in *S v Mphala and another* (1998 (1) SACR 654 (W). Section 37(1)(b) of the Criminal Procedure Act of 51 of 1977 agrees with the views in *S v Mphala and another* 1988(1) SACR 654(W). The majority of the samples and the literature all agree that the suspect may not refuse to stand on the identification parade. Five samples referred to s35(3)(j) which doesn't refer to the bodily features in terms of section 37(1) of the Criminal Procedure Act.

## **2.17 SUMMARY**

From the above discussion it is clear that there is no difference between forensic investigation and criminal investigation, and that the identification parade is an important technique in forensic investigation. There are different categories of identification parades and there are factors that may influence the success of the parade. For example, various factors may influence the witnesses' ability to identify the suspect, and a debate exists as to whether or not the suspect may refuse to stand on the parade. The samples were found not to know when and how to conduct an identification parade.

## **CHAPTER 3**

### **ADMISSIBILITY OF AN IDENTIFICATION PARADE**

#### **3.1 INTRODUCTION**

The investigation of crime is the “daily bread” of the investigators that formed the sample of this study. The SAPS’ objectives, in terms of s205(3) of the 1996 Constitution of South Africa (Act 108 of 1996) are:

- preventing, combating and investigating crime
- protecting and securing the inhabitants of the Republic and their property
- upholding the law

In the investigation of crime, the police have to use various forensic techniques. They have to acquire the knowledge of how to use these techniques during their investigations. In this chapter the researcher focuses on the identification parade as one of the techniques used in the investigation of crime, and how it should be conducted for evidence derived from this technique to be admissible in court, and the procedure followed in conducting identification parades.

#### **3.2 EVIDENCE**

According to Miletich (2003:87), evidence includes written material such as contracts and deeds, verbal testimony, and objects such as guns and knives, which a court allows a jury to consider in determining if something disputed in court is a fact. Dempsey (2003:107) agrees with this view, stating that evidence includes all the means by which the truth of an alleged fact is submitted to scrutiny.

Gilbert (2004:58) agrees with the views expressed by Dempsey (2003:107) and Miletich (2003:87), arguing that evidence is anything that is properly admissible in court and that will aid the function of criminal proceedings in

establishing guilt or innocence. Brown (1998:47) states that, evidence is the means by which facts are proved in a lawsuit.

Wilding (1997:75) defines evidence as all the legal means, excluding mere argument, which tend to prove or disprove any matter of fact, the truth of which are submitted to judicial investigation. Gilbert (2004:596) further mentions that evidence is any type of proof that, when legally presented during a trial, is admitted onto the official record for the review of a judge or jury.

Kriegler (1993:500) agrees with the view expressed by Gilbert (2004:596), suggesting that evidence is the means of providing proof of something, and may be given

- orally
- in writing
- by means of documents
- through objects (real evidence)

### **3.2.1 Different Forms of Evidence**

Joubert (2001:342) lists the following types of evidence:

- *oral evidence*

Evidence is usually presented orally, under oath, in the presence of the public and the parties to the case, and is subject to examination.

- *real evidence*

Zeffertt et al. (2003:404) present an opinion in accordance with that of Joubert (2001:342), arguing that real evidence consists of things which can be examined by the court as means of proof. Real evidence refers to those exhibits which are shown in court, e.g. a blood-stained murder weapon or stolen goods.

- *documentary evidence*

According to Schwikkard, Skeen and Van der Merwe (1997:260), three basic rules must be obeyed before a court can rely on documentary evidence:

- The contents of the documents must be relevant to the facts in issue.
- The authenticity of the documents must be proved.
- The original documents must be submitted.

- *computer-generated evidence*

Computer printouts are copies of the original document, which are stored in electronic form on a disk. However, the reality is that computer printouts are the best available evidence in most businesses.

- *Video- and audio-recordings*

It was held in *S v Rangobin* 1986 (4) SA 117(17) that there is no difference between video- and audio-tapes, and it was also decided that both of these tapes are documentary evidence. In *S v Mpumlo* 1986 (3) SA 485(E) the court ruled that video film is not a document and that video- and tape-recordings constitute real evidence.

- *photographs and films*

Photographs and films may be documentary or real evidence. When they are presented because they were stolen, they are real evidence. When a photograph is presented to prove what was recorded by the camera, it can amount to documentary evidence.

Inside the dockets there was a lot of other evidence, e.g. witness statements, pointing out forms and confession statements.

To the question: “What is evidence?”, the samples responded as follows:

- Two said: the collected happening of an incident, e.g. when someone explains that “A” has shot “B” with a firearm.
- Five said: evidence is facts presented before court to prove a case; it can either be in the form of statements or exhibits.
- One said: evidence is the commission of a crime.
- Nine said: anything that is found at the scene of crime, or on a person, or that has some connection with a crime that occurred, e.g. exhibits, oral or written statements.
- Four said: evidence is an explanation given to the court about an incident or about the commission of an offence.
- Eight said: anything that can be used to connect a criminal with the crime committed.
- One said: evidence is proven facts.

There was no difference between the majority of the samples’ responses and the case docket analysis.

### **3.3 ADMISSIBILITY**

According to Dempsey (2003:110), “admissibility” means the evidence that is admissible in court. Bennett and Hess (2001:42) emphasise that “admissibility” is evidence that meets specific criteria in order to be admissible in court. Gilbert (2004:59) specifies which evidence will be admissible, when he suggests that “admissibility” means that the evidence must be competent, relevant and material, to be held admissible.

According to Brown (1998:50), “admissibility” means that all items of evidence are admissible, as long as they are both relevant and material, subject to certain other restrictions. According to Bennett and Hess (2001:121), the admissibility of evidence in court means that the investigator is able to:

- identify the evidence as that found at the crime scene
- describe exactly where it was found
- establish its custody from discovery to the present
- voluntarily explain any changes that have occurred in the evidence

In *S v Mphala and another* 1998 (1) SACR 654(W) it was contended, on behalf of the accused, that evidence of an identification parade should be excluded, as it had been obtained by unconstitutional means in that their attorney had not been present at the time of the parade. The court held that there was no suggestion that the presence of an attorney would have made any difference to the outcome of the parade, and the evidence of the identification parade was admissible.

In *S v Vilakazi* 1996 (1) SACR 425 (T) an application was made that evidence of an identification parade be rendered by way of a trial-within-a-trial. The court denied the application, stating that any irregularity which occurred during the identification parade would affect the weight to be attached to such evidence.

In *S v Mokoena* 1998 (2) SACR 642 (W), if an accused was not advised of his relevant constitutional rights before an identification parade, it would affect the evidentiary weight of an evidence of identification, but not the admissibility thereof. Griesel J observed in *S v Bailey* 2007 (2) SACR (1) (C) as follows:

“Just like a right to a fair trial is not violated every time when the evidence of a single witness or an accomplice is allowed, such right is, in my view, not violated where an identification parade is held that may be regarded as less than perfect. At worst, the weight to be attached to such parade identification may be affected.”

The senior public prosecutor indicated that the evidence of the identification parade was inadmissible, because the people on the parade were not more or less the same in height, age, build, appearance and clothing. There was

no evidence to indicate that the suspect was informed of their rights to legal representation. There were statements inside the dockets of the people who guarded and escorted the witnesses before and after going to the parade.

The docket analysis showed that in 30% of case dockets where the right suspect was pointed out, the evidence was admissible in court, while 70% was inadmissible in court.

To the question: "What is admissibility?", the samples responded as follows:

- Eight said it is all relevant evidence that is admissible in court.
- Four investigators said it is a legal rule accepted according to the law.
- Eight investigators said it is statements and exhibits that comply with all requirements to satisfy the court.
- Six said it is evidence that was found during the investigation process that will be tested in a court of law, to ensure a fair trial for an accused.
- Two said it is the acceptance of any evidence by a court of law.
- Two investigators said it is when a court accepts certain evidence.

The majority of the samples' responses are in line with Bennett and Hess (2001:42) who explain that not all evidence is admissible in court, but only that evidence which meets specific criteria, i.e.

- Identify the evidence as that found at the crime scene.
- Describe exactly where it was found.
- Establish its custody from discovery to the present.
- Voluntarily explain any changes that have occurred in the evidence.

The senior public prosecutor agrees with the majority of the samples and the case docket analysis.

### **3.4 SUSPECT**

According to the SAPS National Instruction 1/2007 (SAPS, 2007:4) on identification parades, a suspect is a person suspected of having been involved in the commission of an offence. Bennett and Hess (2001:139) define a suspect as a person considered to be directly or indirectly connected with a crime, either by an overt act or by planning or directing it. The authors advise investigators not to overlook a suspect as a chief source of information. However, in *S v Sebajan* 1997(1) SACR 626 (W) the court made the incidental remark that it would appear that a suspect is one about whom there is some apprehension that they may be implicated in the offence under investigation and, it may further be, whose version of events is mistrusted or disbelieved.

Section 37(1)(b) of the Criminal Procedure Act 51 of 1977 states that any police official may make a person referred to paragraph (a)(i) of (ii) of section 37 of the Act available or cause such a person to be made available for an identification parade in such condition, position or apparel as the police official may determine.

The docket analysis indicated that in the majority of the cases the people placed on the identification parade were already under arrest.

To the question: "How do you define a suspect?", the samples responded as follows:

- Thirteen investigators said a suspect is a person suspected to have committed a crime and that the person must not have been charged yet.
- Nine investigators said it is a person who is believed to have committed a crime.
- Six investigators said it is any person arrested but not charged.

- Two investigators said it is a person alleged in a criminal activity.

The samples mentioned a suspect as a person suspected to have committed a crime, a person believed to have committed a crime, a person arrested but not yet charged, and a person alleged in criminal activity. This shows that the samples have the same understanding of the meaning of a suspect.

Bennett and Hess (2001:139) and the SAPS National Instruction 1/2007 (SAPS, 2007:4) agree with *S v Sibanyoni* 1997(1) SACR (W), in that a suspect is one about whom there is some apprehension that they may be implicated in the offence.

From the above discussion it shows that the samples and the literature have the same understanding.

### **3.5 PROCEDURES FOR CONDUCTING AN IDENTIFICATION PARADE**

Zeffertt et al. (2003:146) explain that the procedures for conducting a parade are largely a matter of police practice, but that judges have occasionally suggested rules which should be observed if the accused is not to be prejudiced and the parade is to have maximum probative value.

According to Bennett and Hess (2001:179), police have adopted line-up procedures to ensure accurate, fair identification and to meet the standards established by Supreme Court decisions in England and Wales. In *S v Du Toit* at 3-24, Kriegler J and Kruger J (2002:78) developed the 18 rules of police practice to be followed in conducting an identification parade. These rules are as follows:

- Rule 1: The proceedings at the parade should – at the time of the parade - be recorded (preferably on form SAPS 329) by the police in charge of the parade.

- Rule 2: The police official in charge of the parade should not be the investigating officer. For example, an official investigating a case cannot hold an identification parade for that particular case.
- Rule 3: Suspects should be informed of the purpose of the parade and the allegations against them, and they should be given the opportunity to obtain legal representation at the parade.
- Rule 4: A suspect should be informed that his refusal to take part in a parade can at a possible later trial be adduced as evidence against him and, further, that the court might draw an adverse inference from such refusal or non-compliance.
- Rule 5: A parade should, in principle, consist of at least eight to ten people, but a greater number is desirable.
- Rule 6: It is generally undesirable that there should be more than one suspect on the parade; and if a second 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.
- Rule 7: If the same identifying witnesses are involved in two parades, then the suspect should not be the only person appearing in both; nor should a suspect be added to a parade, already inspected by the identifying witnesses, for purposes of a second parade.
- Rule 8: The suspect and other people on the parade should be of more or less the same build, height, age and appearance, and should have more or less the same occupation and be more or less similarly dressed.
- Rule 9: It is extremely desirable that at least one photograph be taken of all the people (including the suspect) at the parade. This photograph should depict them as they appeared in the line-up and standing next to each other.

- Rule 10: The official in charge of the identification parade should inform the suspect that he may initially take up any position and change his position before any other identifying witness is called.
- Rule 11: The suspect should be asked whether they are satisfied with the conduct of the identification parade and whether they have any requests to make.
- Rule 12: This is the logical and reasonable next step - namely, that the official in charge should agree to any reasonable requests made by the suspect.
- Rule 13: The witnesses should be kept separate, should not be allowed to discuss the case while waiting to be called upon to attend the parade, should not be allowed to see the parade being formed, and should be kept under the supervision of a police official who is neither the one in charge of the parade nor the investigating officer.
- Rule 14: Witnesses should be prevented from seeing any member of the parade before they are brought in for purposes of making an identification, and, in particular, should not be allowed any opportunity of seeing the suspect in circumstances which indicate that he is the suspect, before or after the parade.
- Rules 15 and 16: These are both aimed at isolating the witnesses from police officials who may be able to influence their identification of a suspect, and from other witnesses, after an identification parade. Rule 15 provides that witnesses should be escorted from the place where they were waiting (under supervision by a policeman who is not the investigating officer or the official in charge of the identification parade), and should afterwards be taken to a place where they will not have any contact with witnesses who have not yet attended the parade.
- Rule 17: This provides that the policeman in charge should inform each identifying witness that the person whom the witness saw may or may not be on the parade, and further, that if they cannot make a positive identification, they should say so.

- Rule 18: This state that the officiating police official should request the witnesses to identify suspects by touching their shoulders, and those acts of identification should be photographed.

Gilbert (2004:532) has the same understanding as the 18 rules of practice. He states that an identification parade must follow the procedure outlined below:

- All line-ups (identification parades) should include a reasonable number of participants in addition to the suspect. Generally, five to nine people, including the suspect, can be used in this procedure.
- Individuals placed in the line-up must be of the same sex and race, and of approximately the same age as the suspect. They should also be of similar body build.
- The suspect should be randomly placed in the line-up, so that position will not indicate guilt.
- The witness should never be told which individual is suspected. Each witness should view the line-up separately.
- The witness should identify the suspect by the number. Numbered positions should be assigned by the police during the procedure, rather than have the participants addressed by name.

The investigator should prepare a line-up report, indicating who was present at the line-up and who the participants were. Time and place should be stated, and a detailed description of all participants, including

The identification parade forms indicated that in 39 cases the identification parade was held in police cells, and 11 were held in a designated identification parade facility which is 50km from Middelburg.

The senior legal officer mentioned the procedure exactly as it is outlined in *S v Du Toit* at 3-24 (18 rules), and mentioned further that identification parade must be held out of sight in a designated parade room.

The senior public prosecutor indicated the following: the officer in charge of the parade should identify himself properly to the suspects, explain the purpose and procedures of the parade to them, and see to it that they are able to follow the language spoken. Secondly, the senior public prosecutor also agreed on the rules mentioned in *S v Du Toit* at 3-24.

To the question: "What procedures are to be followed in conducting an identification parade?", the samples responded as follows:

- Three said: organise a member of the SAPS in charge and members who will help, and inform the suspect of his constitutional rights.
- Four said: get people from the cells that can almost fit the description of the suspect by the victim or witness, and arrange for a lawyer and photographer to be present.
- Three said: in a dignified and constitutional way.
- Two said: by appointing another police official as a member in charge, who is not involved in the investigation, and arrange the time, date and place.
- Two said: make sure that all the role players of the parade are available at the required time - the member in charge, the suspect, witnesses, legal practitioner, police photographer, guards and escorts.
- Four said the suspect must be placed together with at least seven other people.
- One said: by lining up the suspect in a row.
- Three said there must be a person responsible for conducting the identification parade.
- Four said it must be held in a cell and the suspect must be placed among other prisoners.
- Two said the identification parade must be held "out of sight" of the public.
- Two of the investigators said that they don't know how the identification parade is conducted. They claim that, as investigators, they have never held an identification parade by themselves, but they also ask the officers in the police to hold identification parades for them.

The case docket analysis indicated all the proceedings of the identification parade was recorded on (SAPS 329) form as it is required by rule 1 of the 18 rules of police practice held in *S v Du Toit* at 3-24. The suspects were at 80% not represented by the legal representative. The identification parade consisted of eight and more people who are not more or less the same height, built, age and appearance.

The majority of the samples agree with the literature and the rules developed in *S v Du Toit* at 3-24. The six samples indicated that the identification parade was held inside a cell. These samples are in line with what was discovered on the identification parade forms. There was no mention in the literature as to where the identification parade must be conducted. The docket analysis indicated that the police did not comply with rules 3 and 8 of the 18 rules of police practice developed in *S v Du Toit* at 3-24.

### **3.6 THE PRESENCE OF THE INVESTIGATING OFFICER AT THE IDENTIFICATION PARADE OF HIS INVESTIGATION**

According to Cole (1996:92), once it has been agreed to hold an identification parade, the matter is taken out of the hands of the investigator, and both he and any other person working with him are prohibited from involvement. Zeffertt et al. (2003:147) mention that the prosecution should eliminate, as far as possible, the chance that someone may have told the witness which person to pick out. It is therefore undesirable that the investigating officer of the case should take charge of the parade.

In the case of *S v Mbuli* 2003(1) SACR 97 (SCA), the appellant's counsel submitted that it was irregular for the investigating officer to be at the police station while the identification parade was being held, and, moreover, for the officer to consult with the captain conducting the identification parade. Van Heerden (1982:24) agrees with the view expressed by Cole (1996:92), emphasising that the officer responsible for the investigation of the case may under no circumstances be involved in the proceedings, nor may any officer with a special interest in the identity of the offender, and further gave the

example of England, where the holding of an identification parade is exclusively the task of the uniformed branch as the branch with the least interest in the identification parade.

According to the Detective Learning Programme module (SAPS, 2004:4), the investigating officer should request an impartial police official, who has not been involved in the relevant investigation, to take charge of and hold an identification parade.

The senior public prosecutor and the senior legal officer both agreed that the investigating officer cannot be present at the identification parade of his own investigation.

National Instruction 1/2007 on identification parades (SAPS, 2007:2) states that a member who is the investigating officer, or who forms part of the team that has investigated the case, may not be in charge of the parade. Kebbell (2000:309) supports the above view when he writes that for England and Wales, paragraph 2.2 of code D relates to this issue, which states: “[t]he arrangement for, and conduct of, these types of identification shall be the responsibilities of an officer in uniform not below rank of inspector who is not involved with the investigation (the identification officer). No officer involved in the investigation of the case against the suspect may take part in these procedures.”

In terms of Rule 2 of the 18 rules of police practice developed in *S v Du Toit* at 3-24, the police official in charge of the parade should not be the investigating officer. The purpose of this rule is to minimise the possibility of collusion, whether deliberate or not, between the investigating officer and the witness, as this is likely to prejudice the person who is pointed out.

The researcher perused the copies of the SAPS 329 forms in the dockets where an identification parade was conducted, and found, on some forms, that the investigating officer appeared as the person assisting in the identification parade. This is very regular.

To the question: "Can the investigating officer be present at the identification parade of his investigation?", the samples responded as follows:

- Twenty investigators said "no", and further explained that a neutral person must hold the identification parade.
- Ten investigators said that he can assist, but must not be in charge of the identification parade.

The sample differs regarding the presence of the investigating officer. Twenty said the investigating officer must not be present, while ten said the investigating officer can assist, but must not be in charge of the parade in his own investigation. Twenty are in line with the literature, while the SAPS 329 forms support the ten samples' viewpoints. The literature in England, Wales and South Africa also supports the twenty samples' viewpoint, in that the investigating officer of the investigation, or any person having an interest, cannot conduct identification parades in their own investigations.

### **3.7 DUTIES OF THE MEMBER WHO CONDUCTS THE PARADE**

Conradie (1994:114) mentions that the member who conducts the parade must complete all the available details on form SAPS 329 before commencing with the identification parade.

According to Cole (1996:93), the identification officer ensures that everything he says is within the suspect's presence and hearing. He reminds the witness of the purpose of the parade before instructing him to walk along the line twice, tells him that the person he is trying to recognise need not necessarily be present, and he must state explicitly if he is unable to recognise the suspect. Adams (1990:92) agrees with this view, and suggests that the member in charge of the parade should always tell the witnesses who are about to observe the line-up that the person who committed the crime may or may not be among those present.

The docket analysis indicated that the identification parade forms (SAPS 329) were completed by the member in charge of the parade. The investigation

diary indicated that the arrangements of the witnesses and the suspect were made by the investigating officer.

Bennett and Hess (2001:180) emphasise the need to give witnesses clear instructions before the line-up, and let them know that they need not necessarily identify anyone in the line-up.

According to the module on identification parades for the Detective Learning Programme module (SAPS, 2004:4), the duties of the member who conducts the parade are as follows:

- Arrange for a date, time and place to hold the identification parade.
- Consult with the accused, legal practitioner, probation officer and witnesses.
- Make arrangements to ensure that the following police officials and people attend the parade :
  - a police photographer
  - a police audio camera operator
  - a police official to escort the witnesses to the parade room
  - a police official to escort the witnesses from the parade
  - a police official to supervise the witnesses who have already attended the parade interpreter
- Make arrangements for at least eight people other than the accused, to be available for the parade:
  - Ensure that they are in possession of a number and an SAPS 329 form.
  - Arrange the parade and complete the SAPS 329 form.

- Explain the accused's rights to him in, terms of s35 of the Constitution.
- Explain the purpose of the identification parade to the accused.
- Ensure that the SAPS 329 form is properly completed.

In terms of the police rules of practice developed in *S v Du Toit* at 3-24, the duties of the member in charge of the parade are as follows:

- Rule 1 is to the effect that the proceedings at the parade should, at the time of the parade, be recorded (preferably on form SAPS 329) by the police official in charge of the parade.
- Rule 10 states that the official in charge of the identification parade should inform the suspect that they may initially take up any position before any other identifying witness is called.
- Rule 11 is to the effect that the suspect should be asked whether they are satisfied with the conducting of the identification parade and whether they have any requests to make.

In paragraph 34 of form SAPS 329, the police official in charge of the parade is required to certify that the particulars which have been completed on the form are correct, and that it is a just report of the procedures which took place.

To the question: "What are the duties of the member holding the parade?", the samples responded as follows:

- Two investigators said: to find out whether the suspects' constitutional rights are being upheld, and that the witnesses do not see the suspect before the parade.
- Seven investigators said that the identification officer must complete the identification form SAPS 329, allow witnesses in

and out of the parade, explain the purpose of the parade to the witnesses and make them feel at ease.

- Eleven investigators said he must arrange the time and date of the parade, and arrange all the people who must be at the parade.
- Three investigators said he must ensure that the place for the parade is available and is suitable for its purpose.
- Four investigators said he must ensure that the identification parade is well handled and that it is conducted in a fair way.
- One investigator said that the member must inform the suspect of their constitutional rights, make sure that the witnesses do not come into contact with one another, and make sure that the parade is conducted according to the rules.
- Two investigators said that the member must follow the right procedure, and ensure that the requests of the suspects are addressed and that the parade is fair to the accused.

The majority of the samples are in line with the 18 rules of police practice formulated in *S v Du Toit*, at 3-24. The docket analysis indicated that the member in charge of the parade complied with the prescripts on the SAPS National Instruction 1/2007.

### **3.8 RIGHTS OF THE SUSPECT ON THE PARADE**

Sec 35(1)(c) of the Constitution of South Africa Act 108 of 1996 states that everyone who is arrested for allegedly committing an offence has the right not to be compelled to make any confession or admission that could be used in evidence against that person. In terms of s35(2)(b) of the Constitution, everyone who is detained, including every sentenced prisoner, has the right to choose and to consult with a legal practitioner, and to be informed of this right promptly.

In terms of s36(1) of the Constitution, the rights listed in the Bill of Rights may be lawfully limited only if the limitations are:

- contained in law of general application
- reasonable and justified in an open and democratic society based on human dignity, equality and freedom

Rule 3 of the 18 rules of police practice that have been developed in *S v Du Toit*, at 3-24 states that suspects should be informed of the purpose of the parade and the allegations against them, and that they should be given an opportunity to obtain a legal representative to be present at the parade.

Sec 37(1)(b) of the Criminal Procedure Act authorises the police official to conduct an identification parade and to make any such person, who has been arrested upon any charge, or released on bail or warning, available for identification in such a condition or position as the police official may decide.

Sec 35(5) of the Constitution reads as follows: “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”. According to Marais and Van Rooyen (1994:107), the fundamental principle of the identification parade is that of fairness to the suspect. Van Heerden (1982:24) adds that the cardinal principle of the identification parade is fairness to the accused – a fairness which is apparent in the procedure as a whole and not in terms of the suspect in particular.

It was ruled in *S v Mathebula and other* 1997 (1) SACR 10 (W) that the accused was entitled to legal assistance at an identification parade which he was obliged to attend and at which only his mute cooperative presence was required. J van Deventer agreed with the ruling of *S v Mathebula and other* 1997 (1) SACR 10 (W) and in *S v Mhlakaza en andere* 1996 (2) SACR 187 (C) by excluding evidence of an identification parade because the accused had not been given a reasonable opportunity or sufficient time to obtain legal representation.

In *S v Huma and another* 1995 (2) SCAR 411 (W) the court held the following: “the privilege against self-incrimination does not apply to procedures relating to the ascertainment of bodily features such as the procedures involved in identification parades, the taking of finger- and footprints...”. In *S v Mokoena* 1998 (2) SACR 642 (W) it was ruled that evidence from an identification parade does not affect an accused’s right to silence and his right against self-incrimination. If an accused was not advised of his relevant constitutional rights before an identification parade, this will affect the evidentiary weight of any evidence of admissions, but not the admissibility of these admissions.

The senior public prosecutor outlined the rights as follows:

- to have his lawyer present if applicable
- to choose his position and clothing in the parade
- to be assisted by an interpreter in his mother tongue
- not to look substantially different from other participants regarding height, build, sex, race and clothing
- not to be forced to appear in any parade if not arrested or charged, unless the suspect agrees voluntarily to such appearance

The senior legal officer only mentioned that the suspects must be informed of their rights, and agreed with the senior public prosecutor on the presence of the lawyer, if applicable. The senior public prosecutor mentioned further that the suspect must be allowed to choose the position and clothing at the parade.

To the question: “What are the rights of the suspect on the parade?”, the samples responded as follows:

- Seven investigators said: the suspect may require their lawyer to be present at the parade, and to change clothes and position.
- Two investigators said: s37(1) (b) of the Criminal Procedure Act gives the police power to hold an identification parade.

- Three investigators said: s35(3) of the Constitution states that the accused has a right to a fair trial.
- Seven investigators said: the people to be identified must be almost identical to the suspects.
- Eight investigators said that the accused should be informed of their rights.
- Two investigators said: it is fair and just to the accused.
- One investigator said: a docket with a case number.

According to Joubert (2001:277), a suspect should be informed of the purpose of the parade and be given the opportunity to obtain a legal representative to be present at the parade. The majority of the samples have the same understanding as the literature.

The researcher found that on most of the copies of the identification parade forms (SAPS 329), the section on the particulars of the legal representative had been filled in with the word “none”. The case docket analysis showed that there was no entry which showed whether the suspect made any request to have legal representation present, change clothes or position. The literature and the samples agree on the rights of the suspect, while the docket analysis showed that the suspects were not informed of their rights.

### **3.9 REASONS WHY WITNESSES SHOULD BE KEPT SEPARATE FROM THOSE STILL GOING INTO THE PARADE**

According to Bennett and Hess (2001:180), witnesses are kept away from one another, in order for them not to confer with any other witnesses. Conradie (1994:115) agrees with the views expressed by Bennett and Hess (2001:180), stating that witnesses are kept separate to prevent them from discussing the parade and the suspect. Rule 13 of the 18 rules of police practice developed in *S v Du Toit* at 3-24, states that witnesses should be kept separate, should not be allowed to discuss the case while waiting to be called upon to attend the

parade, and should not be allowed to see the parade being formed. The reasons for this are to avoid collusion and to increase the integrity of the process and the reliability of its results. The Detective Learning Programme module (SAPS, 2004:6) puts forward the same argument as the above authors, suggesting that the witnesses are kept separate so that they do not obtain information about what is happening in the parade room, and so that they do not discuss the case – especially the description of the accused. *R v Nara Sammy* 1956 (4) 629 TD extends this argument by concluding that the member supervising the witnesses prior to attending the parade must warn the witnesses that they may not discuss the merits of the case or the appearance of the accused. It was submitted in *S v Mbuli* 2003 SACR 97 (SCA) that the witnesses were required to remain together in a room which was out of sight of the parade room, so that they did not discuss the matter among themselves.

The statements in the dockets showed that the members who guarded the witnesses and accompanied them to the parade were instructed to prevent the witnesses from talking to one another.

Zeffertt et al. (2003:147) state that the prosecution should eliminate, as far as possible, the chance that someone may have told the witness which person to pick out. 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.

To the question: "Why should witnesses be kept separate from each of those still going into the parade?", the samples responded as follows:

- Eleven investigators said it is to prevent them from discussing the case during the identification parade.
- Nine investigators said it is to prevent them discussing the suspect, because they might influence one another.
- Five investigators said it is to prevent the witnesses from discussing what was happening on the parade.

- Five investigators said they hadn't known that witnesses should be kept separate from one another.

Twenty-five samples and the above authors all indicate that the reason for keeping witnesses separate has to do with preventing the witnesses from discussing or sharing information about the case or the description of the suspect. The statements in the dockets indicated that the witnesses were prevented from talking to one another, while five investigators said they didn't know – showing a lack of knowledge on their part.

### **3.10 NUMBER OF PEOPLE TO FORM THE IDENTIFICATION PARADE**

Rule 5 of the 18 rules of practice developed in *S v Du Toit* at 3-24, states that a parade should, in principle, consist of at least eight to ten people, but that a greater number is desirable.

According to Zeffertt et al. (2003:146), the parade should consist of at least eight people who are similar to the accused in general appearance. Hoffmann and Zeffertt (1988:616) agree with Zeffertt et al. (2003:146) on the number of people on the parade. According to Bennett and Hess (2001:179), at least five individuals of comparable race, height, weight, age and general appearance should appear in line-up identification, and they further mention that the line-up may have from five to ten people. For Gilbert (2004:532), generally, five to nine people - including the suspect - can be used in the line-up. Becker (2000:154) differs from the view expressed by Gilbert (2004) and Bennett and Hess (2001:179), by lowering the bottom of the range of participant numbers to four.

Van Heerden (1982:25) agrees with what is specified in Rule 5 of the police practices on identification parades, claiming that the parade should present at least eight - and at most 12 - people of more or less the same appearance. Joubert (2001:278) argues that there should preferably be only one suspect and at least another eight people in the line-up of the parade.

The Detective Learning Programme module (SAPS, 2004:3) is in line with Joubert (2001:278), in that it indicates that at least eight other people must be present on the parade. Adams (1990:96) differs in opinion from the other authors – he mentions that at least six people, including the suspect, should be included in the line-up. This view is also supported by Palmiotto (2004:39), who also favours there being at least six people in the line-up. In *S v Mbuli* 2003 (1) SACR 97 (SCA), 12 men were placed on the parade. (They included three accused and nine men who happened to be in the police cells.)

Both the senior public prosecutor and the senior legal officer agreed with Rule 5 of the rules developed in *S v Du Toit* at 3-24, saying there should be between eight and ten people.

On the copies of the identification parade forms (SAPS 329), the researcher found the names of eight or more people when there was more than one suspect. The statements of the members in charge of the parade indicated that more than eight people were placed on the identification parade.

To the question: “How many people should be on the parade?”, the samples responded as follows:

- Thirty-five investigators said that at least eight people should be present.
- Five investigators said that it depends on the number of suspects; if there is one suspect, there should be at least eight other people on the parade.

There was a difference on the number of people, in the views of foreign literature and South African authors. Gilbert (2004:532) and Bennett and Hess (2001:179) both agree with the number of people on the parade starting from five. The samples agree with the South African authors, i.e. the Detective Learning Programme (SAPS 2004:3), Van Heerden (1982:25), Joubert (2001:278) and Zeffert et al. (2003:146), that at least eight other people must be on the parade. This shows that the samples have a good understanding on this matter.

### **3.11 REQUIREMENTS IN THE SELECTION OF PEOPLE TO STAND WITH THE SUSPECT ON THE PARADE**

Rule 8 of the 18 rules of police practice developed in *S v Du Toit* at 3-24, states that the suspect and people in the parade should be more or less of the same build, height, age and appearance, and should have more or less the same occupation and be more or less similarly dressed. Dempsey (2003:279) states that an important aspect of the line-up is the placing of a suspect with a group of other people of similar physical characteristics. Authors such as Bennett and Hess (2001:154), Dempsey (2003:279), Gilbert (2004:532), Becker (2000:154) and Palmiotto (2004:39) believe that people should have similar characteristics in terms of sex, race, age, build and clothing.

According to Van Heerden (1982:25), the composition of the parade is extremely important, for if the element of suggestion is in any way present, the value of the parade will diminish – if not wholly fall away. In summary, the people on the parade must be of more or less the same appearance, height, build, age and occupation as the suspect, and attention must be paid to homogeneity of the clothing.

In *S v Mbuli* 2003 (1) SACR 97 (SCA) the appellant was described as being 6' 3" tall, and photographs taken at the parade showed that he was taller than any other man on the parade. Captain Hanekom continued with the parade after being instructed to do so by the investigating officer. The appellant's counsel submitted that it was irregular for the investigating officer to be present at the police station when the parade was being conducted. The court ruled that the mere presence of the police officers in those particular circumstances was insufficient grounds upon which to doubt the probity of the identification evidence. The identification evidence was allowed.

The photo album showed that people placed on the identification parade were not more or less the same in height, complexion, appearance, age and clothing. There was no case where the suspect brought his own people. In

five cases the selection of people on the parade was inconsistent with the suspect, and in all those cases the evidence was inadmissible.

To the question: “What are the requirements in the selection of the people to stand on the parade?”, the samples responded as follows:

- Fourteen investigators said that the people should be more or less of the same age, build and complexion.
- Eleven said they must be of the same height, physical appearance, structure and colour as the suspects.
- Five investigators said they must appear in a single line against the wall.

Five samples said they must appear in a single line, showing a lack of knowledge. The researcher perused the dockets and checked on the copies of the completed SAPS 329 forms, and found that the age, build and complexion of the line-up samples mentioned on the forms were very different from one another. The photo album supported what was found in identification parade forms (SAPS 329). There was a difference in the samples’ viewpoints and the case docket analysis on what the suspect on the parade should look like.

### **3.12 THE ROLE OF THE LEGAL REPRESENTATIVE IN THE PARADE**

According to Joubert (2001:277), the legal representative in the parade is only allowed to observe. Their presence does not place an obligation on the defence to ensure that the parade is conducted properly. Palmiotto’s view (2004:40) differs from that of Joubert (2001:277), mentioning that if counsel is present, they should be allowed to make suggestions. Adams (1990:91) agrees with the view expressed by Joubert (2001:277), emphasising that if the suspect does have an attorney there to observe, a prosecuting authority should also attend the line-up to represent the state’s interests. In *S v Melani* 1996 (1) SACR 335 (4), Froneman J expressed himself as follows: “the purpose of the right to counsel has everything to do with the need to ensure

that an accused is treated fairly in the entire criminal proceedings: in the 'gatehouses' of the criminal system (that is in the interrogation process), as well as in its 'mansions' (trial court)". Rule 3 of the rules developed in *S v Du Toit* at 3-24, states that the suspect should be informed of the purpose of the parade and the allegations against them and should, further, be given an opportunity to obtain a legal representative to be present at the parade. In *S v Mhlakaza en andere* 1996 (2) SACR 187 (10) 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. The court in this case held that the accused was constitutionally entitled to legal representation at the parade.

The copies of the SAPS 329 forms showed that there was no legal representative at the majority of the identification parades. In five cases the legal representative was present, but the copies of the identification parade forms (SAPS 329) and the statements of the members in charge of the parade did not show if there were any comments, requests or objections made by the legal representative.

To the question: "What is the role of the legal representative on the parade?", the samples responded as follows:

- Eleven investigators agreed with the argument put forward by Joubert (2001:277), saying that the legal representative is there to monitor, and they further mention that they can make notes.
- Five investigators said it is to ensure that the rights of the suspect are not violated and that procedure has been followed.
- Four investigators gave different responses, saying it is to advise the accused of their legal rights and to give legal advice to the accused.
- Five investigators said it is to monitor and check on the legal requirements.

- Three investigators said it is to make sure that the requests of their client are adhered to.
- Two investigators said it is to represent the accused person and also to see that the parade is legal.

The majority of the samples and the literature say that the legal representative is just there as an observer, and the holding of identification parades is a police function. The legal representative may only take notes of the events. The case docket analysis did not show whether the legal representative made any objections, comments or requests.

### **3.13 INSTRUCTIONS TO BE GIVEN TO THE WITNESSES ENTERING THE PARADE ROOM BY THE PERSON CONDUCTING THE IDENTIFICATION PARADE**

Bennett and Hess (2001:171) mention the instructions given to those viewing the line-up, that they need not make an identification. Adams (1990:92) agrees that the member in charge of the parade should always tell the witnesses

- to keep an open mind
- that the person who committed the crime may or may not be among those present
- that just because the person is in custody does not mean that they are guilty of a crime
- not to discuss the identification with any other witness

According to the Detective Learning Programme module (SAPS, 2004:6), the witness should be informed as follows:

“You are now on an identification parade where a number of people are present in order to determine whether the accused is present. You are requested to point out the person, should he be present on the parade. You need only refer to the number displayed by him. You do not have to touch the

person. Remember you are not compelled to point out anyone. You may now walk through the parade.”

The instructions on the copies of the SAPS 329 forms are similar to the ones in the Detective Learning Programme module (SAPS 2004:6). There were no notes by the investigating officer to the member in charge of the identification parade.

Rule 17 of the police practice developed in *S v Du Toit* at 3-24 on identification parades, provides that the police official in charge should inform each identifying witness that the person whom the witness saw may or may not be part of the parade, and further, that if they cannot make a positive identification, they should say so. In *R v Nara Sammy* 1956 (4) 629 TD, Dowling J explained the purpose of this rule when he held that a failure to add the disclaimer that the suspect may or may not be present may make a witness, particularly one who is illiterate, think that it is his duty to point out somebody, and an act of disrespect towards – or criticism of – the police if he is not able to do so. In *S v Mbuli* 2003 (1) SACR 97 (SCA), Captain Hanekom followed the *R v Nara Sammy* 23 (23) explanation and asked the witnesses to select the person or people who had robbed the bank, if they were on the parade. Conradie (1994:115) supports the suggestion in *S v Mbuli* 2003 (1) SACR 97 (SCA) that the witness be asked pertinently to point out the person they saw, by touching their shoulder if they are present.

To the question: “Which instructions should be given to the witnesses entering the parade room?”, the samples responded as follows:

- Eleven investigators said the witness should be told to point out the person(s) who, for example, robbed them, if they are in the parade room, by touching their shoulders. These investigators differ from the module on identification parades, which states that the witness need not touch the suspect/s.
- Seven investigators said the witness should be encouraged to feel at ease and to look at all the suspects, and, if the witness

could identify the suspect, to touch the suspect on the shoulder, for a picture.

- Five investigators said that the people behind that glass don't see anyone, so one can relax and not be afraid. One need only refer to the number above a person if one happens to point them out, and one is not forced to point out anyone.
- Three said the witness should be asked to observe the parade and decide whether or not they are able to identify the suspect.
- Four investigators said they don't know what instructions should be given to the witness.

The majority of the samples' responses are in line with the SAPS National Instruction 1/2007 and decided cases, and agree with Adams (1990:92) who suggests that the witnesses be informed that the person who committed the crime may or may not be among those present. Four of the samples said they don't know what instructions should be given to the witness. That showed a lack of knowledge on their part. On most of the copies of identification parade forms (SAPS 329), the researcher found that the instructions were the same as mentioned in the Detective Learning Programme module (SAPS 2004:6).

### **3.14 COMPLETION OF THE IDENTIFICATION PARADE FORM (SAPS 329)**

Rule 1 of the 18 rules of police practice developed in *S v Du Toit* at 3-24, is to the effect that the proceedings at the parade should, at the time of the parade, be recorded, preferably on form SAPS 329, by the police official in charge of the parade. Gilbert (2004:532) differs from Rule 1, arguing that the investigator should prepare a line-up report in which he indicates who was present at the line-up and who the participants were. The time and place should also be stated, and a detailed description of all participants, including the line-up positions, should be given.

*S v Monyane & others* 2001 (1) SACR 115 (T) 132 states that recording is essential, in order to ensure that an accurate account of the event can later be furnished to the court. It was mentioned in *S v T* 2005 920 SACR 318 (E) that, in fact, human memory cannot retain all the detailed information which would be required at the subsequent trial.

The Detective Learning Programme module (SAPS, 2004:5) gives the responsibility of completing the identification parade form SAPS 329 to the member in charge of the parade.

The senior public prosecutor and the senior legal officer agree that the member in charge of the parade should complete the identification parade form (SAPS 329).

The copies of identification parade forms (SAPS 329) showed that the member in charge of the identification parade personally completed the SAPS 329 forms and placed their signatures on the forms.

To the question: "Who should complete the identification parade form (SAPS 329)?", the samples responded as follows:

- Twenty-seven said the member in charge of the parade should do so.
- Three investigators said they didn't know.

The senior public prosecutor further stated the following as the value of the parade form:

- It serves as a very good memory-refreshing tool for the officer conducting the parade, while on the witness stand.
- It assists the officer to conduct the parade in a structured, chronological and orderly fashion.

Twenty-six of the samples gave similar responses to that of the senior public prosecutor and the senior legal officer, saying that the member in charge of the parade must complete the identification parade form (SAPS 329). Their

views were also supported by the SAPS Detective Learning Programme module. The samples who said they didn't know indicated that they had not attended, or been part of, any identification parade.

### **3.15 THE VALUE OF THE IDENTIFICATION PARADE FORM (SAPS 329)**

According to the Detective Learning Programme module (SAPS, 2004:12), the original SAPS 329 must be preserved for the purpose of rendering evidence, and the module further mentions that it is used for recording the following:

- particulars of the parade attendants
- particulars of witnesses attending the parade
- particulars of the accused
- the requests of the accused
- the reaction of the witnesses
- whether or not the witnesses identified the accused
- everything that happened on the identification parade

It was held in *Shabalala v Attorney General of Transvaal & another* 1995 (2) SACR 761 (cc) that an accused's right to have access to form SAPS 329 stems from their constitutional right to a fair trial and the right to have an adequate opportunity to prepare for a trial.

Joubert (2001:277) mentions that the record on the SAPS 329 is essential, in order to ensure that an accurate account of events can be furnished to the court, and that the accused is entitled to have access to the completed SAPS 329. Conradie (1994:115) agrees with Joubert (2001:277) and adds that the original form SAPS 329 may not be destroyed under any circumstances, as it has testimonial value.

The docket analysis revealed that in seven of the case dockets the SAPS 329 forms were not completed with the particulars of the legal representative,

reaction by the witness and the exact words by the witness. In the cases in which the SAPS 329 forms were incomplete, their evidence was inadmissible in court, the reason being that they did not give a clear picture of what happened at the identification parade. There were no indications which showed whether the witnesses made any remarks to the suspects.

Joubert (2001:277) states that the record on the form SAPS 329 is essential, in order to ensure that an accurate account of events can be furnished to the court.

The senior public prosecutor indicated that the evidence of incomplete SAPS 329 forms was not admissible in court, because it did not reflect the true events of what happened at the identification parade. There were no remarks made by the witnesses about the identification parade forms.

The senior legal officer and the senior public prosecutor agreed with Joubert (2001:277), saying that the parade form is essential for evidential purposes.

To the question: "What is the value of the identification parade form (SAPS 329)?", the samples responded as follows:

- Ten investigators said that the SAPS 329 is presented as physical evidence in court.
- Seven investigators said that the value of the form is to note everything – all the activities that happen during the parade.
- Six investigators said the value of the parade form SAPS 329 is that it is admissible in court.
- Seven investigators said they didn't know the value of the identification parade form.

The majority of the samples agreed with the senior public prosecutor and the senior legal officer, saying that it is used to give the court a picture of what happened at the parade. The record and photograph can give a clear picture of the identification parade. The researcher found that most of the copies of the completed identification parade forms (SAPS 329) were not properly

completed, as certain portions were not filled in – i.e. those regarding the particulars of the legal representative and the exact words said by the witnesses. Seven investigators showed a lack of knowledge on this matter, saying they didn't know the value of an identification parade.

### **3.16 THE ROLE OF THE INVESTIGATING OFFICER DURING THE PARADE**

Cole (1996:92) claims that once it has been agreed to hold the parade, the matter is taken away from the investigator, and neither he nor anyone working with him is allowed to be involved. This means that the investigating officer does not play any role during the identification parade.

The senior legal officer agrees with Cole (1996:92), in that the investigating officer does not play any role during the identification parade. The senior public prosecutor also agrees with Cole (1996:92), when saying that the investigator should distance himself from being present at the parade, to ensure objectivity and proper value of evidence.

In terms of Rule 2, formulated in *S v Du Toit* at 3-24, the police official in charge of the parade shall not be the investigating officer. The purpose of Rule 2 is to avoid the possibility of any deliberate or inadvertent collusion between, firstly, the investigating officer and any identifying witnesses, and secondly, the investigating officer and the official in charge of the parade. Van Heerden (1982:24) mentions that the officer responsible for the investigation of the case is under no circumstances to have any share in the identification proceedings.

The case docket analysis indicated that the investigating officer was not part of the identification parade, but the investigation diary showed that he was the one who arranged the presence of the witnesses, photographer and the accused on the identification parade.

To the question: “What is the role of the investigating officer during the parade?”, the samples responded as follows:

- Thirty investigators said the investigating officer does not have any role to play during the identification parade.
- Seven investigators said the investigating officer must ensure that the parade is conducted accordingly.
- Five investigators said that the role of the investigating officer is to monitor the proceedings.
- Five investigators said they didn't know.

There was a different understanding among the samples. This showed that there was a lack of knowledge when it came to the role of the investigating officer in the parade. The literature makes it very clear that the investigating official has no role during the identification parade.

### **3.17 SUMMARY**

Identification is an important technique in forensic investigation. The evidence of an identification parade is admissible in court. A suspect is a person suspected to have been involved in the commission of a crime. The investigating officer must know that their presence is not required at the identification parade. The identification parade is conducted by a person who is not involved in the investigation. The member who conducts the identification parade must complete the identification parade form (SAPS 329) to present to the court an accurate account of what happened at the identification parade. The people on the parade should be of the same height, age and appearance. The right procedure should be followed in conducting the identification parades.

## **CHAPTER 4**

### **FINDINGS AND RECOMMENDATIONS**

#### **4.1 INTRODUCTION**

The aim of the research – namely, the critical analysis of the procedures for conducting identification parades held by the SAPS, in order for them to become more effective in their investigations, was achieved. It is of the utmost importance that the procedures followed in conducting an identification parade are the most effective, and this report gives guidelines and procedures to the investigators regarding the use of the identification parade in criminal investigations.

The following research purpose was achieved, namely:

- to evaluate the procedures followed by investigating officials in conducting identification parades, with the aim of determining the strengths and weak points of the procedures, with the aim of improving them
- to explore national and international sources in finding new information on how an identification parade should be conducted
- to develop good practices which would address the problem and enhance the performance of the individuals when conducting identification parades
- to empower investigating officials by providing them with the right procedures for conducting an identification parade

The following research questions were formulated and addressed in this study, namely:

- What is the purpose of an identification parade?
- How should an identification parade be conducted for evidence to be admissible in court?

The application and practice of the following findings and recommendations by the investigators can have a positive effect on forensic investigation in general.

## 4.2 FINDINGS

The findings are based on information obtained from viewpoints of national and international sources and from the samples interviewed.

### 4.2.1 Research question 1: What is the purpose of an identification parade?

#### 4.2.1.1 Primary findings

##### **Purpose of the identification parade**

In this research, based on information from the literature and the samples, it was found that the **purposes of an identification parade** are:

- to increase the accuracy of identification by circumventing the errors of suggestibility that could result from a single-suspect viewing
- to determine whether the witness has, in fact, a true picture of events
- to ensure accurate, fair identification and to meet the standards established by the decisions of the Supreme Court of England and Wales
- to test justly, and accurately determine, the ability of the witness to recognise the offender, and to eliminate the possibility of suggestion as a deciding factor in the identification

##### **Advantages of an identification parade**

In this research, based on information from the literature and samples, it was found that the **advantages of an identification parade** are:

- It enables the investigating officers to obtain identification evidence that provides more information than that contained in a witness's verbal description of the culprit.
- It restricts legal and human error to a minimum in identification.
- It ensures accurate, fair identification.
- It adds sufficient evidence to the existing evidence.
- It confirms the identity of the suspect.

### **Disadvantages of an identification parade**

In this research, based on information from the literature and samples, it was found that the **disadvantages of an identification parade** are as follows:

- Evidence of an identification parade is approached by the court with some caution.
- It consumes a great deal of time and space.
- Innocent people are convicted each year because of mistaken eyewitness identification.
- If the witnesses are of a different race from that of the culprit, it is always difficult for them to point out the right culprit.
- There are often no external factors against which evidence can be tested.
- The suspect might intimidate the witness after the parade.
- It reminds the witness of the painful incidents.
- The witness becomes nervous and fails to identify the suspect.

#### **4.2.1.2 Secondary findings**

##### **Forensic investigation**

In this research, based on information from the literature and samples, it was found that the meaning of **forensic investigation** is as follows:

It is the discovery of the relevant facts, the making of inferences from these facts, the gathering of relevant information from those who are involved and who claim to have knowledge of the incident under investigation, the construction of the crime scene, the identification and the apprehension of the offender, and the preparation of the case for prosecution and trial of the accused.

“Forensic” means relating to, and devoting the application of scientific methods and techniques to, the investigation of crime.

It was discovered that the samples don't know the meaning of forensic investigation.

## **Criminal investigation**

In this research, based on information from the literature and samples, it was found that the meaning of **criminal investigation** is:

- the collection of evidence and presenting the case in court;
- the search for the truth through various investigation methods.

## **The objectives of investigation**

In this research, based on information from the literature and samples, it was found that the **objectives of investigation** are:

- to determine if there is sufficient factual evidence to support or defeat each element of all causes of action, to accumulate the necessary factual evidence to prove or defeat a case at trial or to form the basis for a settlement, to locate leads to additional evidence, to locate people or property, and to find evidence that might be used to discredit a witness or the opponent.

Some samples did not know the objectives of investigation.

## **Identification**

In this research, based on information from the literature and samples, it was found that the meaning of **identification** is as follows:

- It is the process of using class characteristics to identify a particular object.
- Identification involves determining whether a specific fact was seen at the scene or at some other places.
- Identification rests on the theory that everything in the universe is unique in that it has certain distinctive, individual and class characteristics.
- The investigators differ from the module on the identification parade, which states that the witness need not touch the suspects on the shoulder for a picture.

- If the people on the parade are behind the glass, the witness need only to refer to the number above a person if one happens to point out.

### **The difference between identification and individualisation**

In this research, based on information from the literature and samples, it was found that **the difference between identification and individualisation is** as follows:

- Identification has no value in criminality, because it means that an expert would identify an object as a piece of glass without comparing it to the surface of origin, while individuality means that a piece of glass is positively compared with the surface of origin.

### **Different identification techniques**

In this research, based on information from the literature and samples, it was found that **the different identification techniques** are:

- identification parade
- photographic identification
- voice identification

### **Factors that may influence the abilities of a witness or victim to do a pointing out on an identification parade**

In this research, based on information from the literature and samples, it was found that **factors that may influence an identification parade** are as follows:

- the effects of lighting and distance on the accuracy of the eyewitness's memory, which can influence the identification parade
- poor lighting
- witnesses having heard misleading information
- personal drives and interests, emotions, prejudices, past experiences and conditioning
- external perception factors such as weather

There were different views on the samples' responses

### **The necessity of identifying during forensic investigation**

In this research, based on information from the literature and samples, it was found that **the necessity of identifying during forensic investigation** is:

- to eliminate the element of suggestion as a determining factor
- It is unsatisfactory to rely on evidence of identification given by a witness who is not well acquainted with the accused, if that witness has not been tested by means of a parade.
- to test accurately the ability of the witness to recognise the offender
- to make sure that the suspect is the right person
- to have a link between the crime and the culprit

### **Circumstances in which to conduct an identification parade**

In this research, based on information from the literature and samples, it was found that **the circumstances in which to conduct an identification parade** are as follows:

- there was difference between the samples answers and views of the authors. .

### **Procedures for conducting an identification parade**

In this research, based on information from the literature and samples, it was found that **the procedures for conducting an identification parade** are as follows:

- It was established that the identification parade should include a reasonable number of participants in addition to the suspect.
- Individuals placed on the parade must be of the same sex and race and of approximately the same age as the suspect.
- The suspects should be informed of the purpose of the parade and the allegations against them.

Some samples didn't know how an identification parade is conducted.

**4.2.2 Research question 2:** How should an identification parade be conducted for evidence derived from it to be admissible in court?

#### **4.2.2.1 Primary findings**

##### **Admissibility of a parade**

In this research, based on information from the literature and samples, it was found that the **admissibility requirements of a parade** of an identification parade are as follows:

- The evidence of an identification parade is admissible, even if the accused's attorney was not present at the parade.
- If an accused was not advised of their relevant constitutional rights before an identification parade, it will affect the evidentiary weight of identification evidence.
- The right procedures must be followed for its evidence to be admissible.

#### **4.2.2.2 Secondary findings**

##### **The presence of the investigation officer at the identification parade of his investigation**

In this research, based on information from the literature and samples, it was found that **the presence of the investigation officer at an identification parade of his investigation** is as follows:

- The matter of the identification parade is taken out of the hands of the investigator; both they and any other person working with them are prohibited from involvement.
- The prosecution should, as far as possible, eliminate the chance that someone may have told the witness which person to pick out.

##### **When an identification parade should be conducted**

In this research, based on information from the literature and samples, it was found that an identification parade should be conducted when

- the samples didn't know when to conduct identification parade.

### **Duties of the member who conducts the parade**

In this research, based on information from the literature and samples, it was found that **the duties of the member who conducts the parade** are as follows:

- They must complete all the available details on the form SAPS 329.
- They must ensure that everything they say is within the suspect's presence and hearing.
- They must give the witnesses clear instructions.
- They must make all the arrangements for the identification parade and ensure that the required officials form part of the parade.
- They must consult with the accused, legal practitioner, probation officer and witnesses.

### **The persons to be at the parade**

In this research, based on information from the literature and samples, it was found that **the persons to be at the parade** should be as follows:

- the member in charge of the parade
- at least eight other people who are of the same appearance, social background, age, race, sex and physical structure
- the legal practitioner of the accused, if required
- a police photographer
- In the event that a juvenile appears on an identification parade, their parent or guardian must be present.

### **Rights of the suspect**

In this research, based on information from the literature and samples, it was found that **the rights of the suspect** are as follows:

- In terms of s35(2) (b) of the Constitution of the Republic of South Africa Act 108 of 1996, everyone who is detained, including every sentenced person, has the right to choose and to consult with a legal practitioner, and to be informed of their rights promptly.

- Sec 37(1)(b) of the Criminal Procedure Act 51 of 1977 authorises police officials to conduct an identification parade and to make such a person, who has been arrested upon any charge, or released on bail or warning, available for identification in such a condition or position as the police official may decide.
- The suspect may require their lawyer to be present at the parade, and to change their clothes and position.

In the case docket, the particulars of the legal representative on the identification form (SAPS 329) were filled in with the word “none”.

### **Reasons why witnesses should be kept separate from one another before going into the parade**

In this research, based on information from the literature and samples, it was found that **the reasons why witnesses should be kept separate from one another before going into the parade** are as follows:

- in order for them not to confer with any other witnesses.

Some samples didn't know that witnesses should be kept separate from each other.

### **Number of people to form the identification parade**

In this research, based on information from the literature and samples, it was found that the **number of people to form the identification parade** are as follows:

- at least eight other people, if there is one suspect

### **Requirements in the selection of people to stand with the suspect on the parade**

In this research, based on information from the literature and samples, it was found that the **requirements in the selection of people to stand with the suspect on the parade** are as follows:

- They must be of more or less the same appearance, height, build, age and occupation as the suspect.

The SAPS 329 forms revealed that the age, build and complexion of the people on the identification parade were different from one another.

### **Role of the legal representative at the parade**

In this research, based on information from the literature and samples, it was found that the **role of the legal representative at the parade** is as follows:

- there was a lack of knowledge among some samples when it came to the role of the investigating officer during the parade.
  
- The majority of the samples viewed the role as that of representing the suspect and ensuring that the rights of the suspect are not violated.

### **Instructions to be given to the witnesses entering the parade room**

In this research, based on information from the literature and samples, it was found that the **instructions to be given to the witnesses entering the parade room** are as follows:

- The person they are trying to recognise need not necessarily be present, and they must state explicitly if they are unable to recognise the suspect.
  
- The witness was requested to point out the person, should he be on the parade and you not have to touch the person.

### **Completion of the identification parade form SAPS 329**

In this research, based on information from the literature and samples, it was found that the **completion of the identification parade form SAPS 329** are as follows:

- The SAPS 329 form must be completed by the member in charge of the parade.
  
- It was found that in most of the identification parade forms (SAPS 329), the section on the legal representation was filled with the word “none “.

### **The value of the identification parade form SAPS 329**

In this research, based on information from the literature and samples, it was found that **the value of the identification parade form SAPS 329** is as follows:

- The record on the SAPS 329 is essential in order to ensure that an accurate account of events can be furnished to the court.
- The identification parade forms (SAPS 329) were not properly completed regarding the exact words said by the witnesses.

### **Role of the investigating officer during the parade**

In this research, based on information from the literature and samples, it was found that **the role of the investigating officer during the parade** is as follows:

- The investigating officer does not have any role during the identification parade.

There was a lack of knowledge among the samples when it came to the role of the investigating officer.

### **The suspect on the parade**

In this research, based on information from the literature and the samples, it was found that **the suspect on the parade** must be:

- The suspect and the other people on the parade should be more or less of the same build, height, age and appearance.

There was difference between the samples' responses and the case docket analysis.

## **4.3 RECOMMENDATIONS**

These recommendations are the suggestions which, according to the researcher, can improve and address the shortcomings identified in this study:

- It is recommended that the investigators be familiarised with the concept of forensic investigation.
- The investigators must be made aware of the importance of an identification parade.

- It is suggested that there must be a specific course presented to the investigators on the factors that may influence the abilities of a witness or victim to do a pointing out on an identification parade.
- It is suggested that the investigators familiarise themselves with the procedures of when and how to conduct an identification parade.
- The persons placed on the parade must comply with Rule 8 of the police practice, as developed in *S v Du Toit* at 3-24, in relation to having more or less the same build, height, age and appearance.
- The person in charge of the identification parade should make sure that the identification parade form (SAPS 329) is properly completed.
- The investigating officers must be made aware that they have no role during the identification parade.
- The investigating officers must be taught about the objectives of investigation.
- The investigators should be made aware that the witness need not have to touch the suspect on the identification parade.
- The identification parade should be held in the parade room where there is one-way glass.

#### **4.4 CONCLUSION**

The high rate of crime in South Africa relates to the research of investigation techniques. In this research the focus was on the identification parade, which is the most important tool in forensic investigation, as its evidence can be presented in a court of law. The identification of shortcomings, and the recommendations suggested, can be of great importance in the improvement of the procedures according to which an identification parade can be conducted, for evidence gained in that way to be admissible in court.

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## ANNEXURE A

### INTERVIEW SCHEDULE

**TOPIC: A CRITICAL ANALYSIS OF THE PROCEDURES FOLLOWED TO CONDUCT IDENTIFICATION PARADES**

**RESEARCH QUESTIONS:**

1. What is the purpose of an identification parade?
2. How should an identification parade be conducted for the evidence gained in this way to be admissible in court?

You are kindly requested to answer the following questions in this interview schedule, for the researcher. The questions, responses and the results will be revealed.

The researcher is bound to his assurances and guarantees by the ethics code for research of the University of South Africa. The information you provide will be used in a research project for a Master of Technology degree registered with the Programme Group: Police Practice at the University of South Africa. The analysed and processed data will be published in a research report.

Your answers will be noted by the interviewer himself, on paper. Should any question be unclear, please ask the researcher for clarification. Only one answer per question is required. When answering the questions, it is very important to give your own opinion.

Written permission has been obtained from the South African Police Service in advance, for the interview to be conducted.

I hereby give permission to be interviewed and that information supplied by me can be used in this research.

YES / NO

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## **SECTION A: HISTORICAL INFORMATION**

1. Are you an investigator?

YES / NO

2. How long are you an investigator?

1 – 5 yrs

5yrs – 10 yrs

10yrs and above

3. Do you make use of identification parade?

YES / NO

4. Did you undergo basic detective training?

YES / NO

5. Did you receive training in identification parade as a technique in investigation?

YES / NO

## **SECTION B: WHAT IS THE PURPOSE OF AN IDENTIFICATION PARADE?**

1. How will you define forensic investigation?
2. How will you define criminal investigation?
3. What is the difference between forensic and criminal investigation?
4. What are the objectives of forensic investigation?
5. What is identification?
6. What is individualisation?
7. What is the difference between identification and individualisation?
8. What is an identification parade?
9. What is photographic identification?
10. What is voice identification?

11. What is the purpose of an identification parade?
12. What are the advantages of the identification parade?
13. What are the disadvantages of the identification parade?
14. What are the factors that may influence the abilities of a witness or victim to do a pointing out on an identification parade?
15. Why is it necessary to identify during forensic investigation?
16. When should an identification parade be conducted?
17. Which procedures are to be followed in conducting an identification parade?
18. Can a suspect refuse to stand on the parade?

**SECTION C:            HOW SHOULD AN IDENTIFICATION PARADE BE  
CONDUCTED FOR EVIDENCE GAINED IN THIS WAY  
TO BE ADMISSIBLE IN COURT?**

1. What is evidence?
2. What is admissibility?
3. How do you define a suspect?
4. Can the investigating officer be present at the identification parade of his investigation?
5. What are the duties of the member holding the parade?
6. What are the rights of the suspect on the parade?
7. Why should witnesses be kept separate from each of those still going into the parade?
8. How many people should be on the parade?
9. What are the requirements in the selection of people to stand on the parade?
10. What is the role of the legal representative on the parade?
11. Which instructions are to be given to the witnesses entering the parade room?
12. Who should complete the identification parade form?
13. What is the value of the identification parade form (SAPS 329)?
14. What is the role of the investigating officer during the parade?