

**MAINTAINING THE CHAIN OF EVIDENCE: A SOUTH AFRICAN CASE STUDY OF  
BLOOD SAMPLES IN CASES OF DRIVING UNDER THE INFLUENCE OF  
LIQUOR**

**by**

**GEORGE ANTHONY PRINS**

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## DECLARATION

I, George Anthony Prins, student number 36781479, declare that "Maintaining the chain of evidence: A South African case study of blood samples in cases of driving under the influence of liquor" is my own work and that all sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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I wish to pay special tribute to my late grand mother who has been my inspiration and the driving force behind my academic achievements throughout the years. I also want to thank my supervisor for his constant inspiration, support and guidance during my research. Above all I want to thank my Creator for strength, wisdom and mercy during my research.

## **ABSTRACT**

The research attempts to evaluate the maintaining of the chain of evidence as a process of effective collection, handling and preservation of evidence.

The concept "chain of evidence" refers to the process of collecting, handling and preservation of evidence until its presentation in court, as part of the investigation process.

Evidence is anything that tends logically to prove or disprove a fact at issue in a judicial case. Evidence essentially consists of oral evidence, documentary evidence and real evidence. The value of evidence cannot be underestimated as evidence can make or break a case. It is therefore important that evidence is correctly and properly collected, handled and preserved to establish a strong link between an individual and a specific act.

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# **CHAPTER 1**

## **GENERAL ORIENTATION**

### **1.1 INTRODUCTION**

Alcohol is a drug that world wide has been identified as one of the major causes of traffic accidents. In South Africa, 10 000 fatal casualties due to traffic accidents happen every year, of which 60% are caused directly or indirectly by the use of alcohol (Van den Berg & Pretorius, 2001:130).

The researcher is a member of the South African Police Service (SAPS) and his duties involve conducting inspections of case dockets at detective units at police stations in the Gauteng Province. The focus of these inspections is to evaluate the standard of investigation in case dockets at detective units to ensure effective investigations. During June 2004, the researcher conducted an inspection at the Detective Unit at the Randfontein Police Station and case dockets of driving under the influence of liquor were also inspected. During the inspection a total of fifty (50) cases of driving under the influence of liquor which was reported between November 2003 and May 2004 were inspected by the researcher, who noted that in 20 of these cases the accused had been acquitted or the case had been withdrawn in court.

Among these “driving under the influence of liquor” cases dealt with in court it was established that a high number of acquittals and withdrawals took place at court. It was evident during the inspection of the case dockets that no records had been kept in the investigation diaries of the police officials who had handled the blood samples of the accused persons in these cases.

\*In a South African context this crime is officially known as “driving under the influence of intoxicating liquor or drug having a narcotic effect or with excessive amount of alcohol in blood”. The researcher will use the layman’s term “driving under the influence of liquor” for the rest of this document.

This included a record of who had obtained the blood sample and the progress of the sample from the time of collection from the accused person up to when the sample was submitted at the laboratory for analysis. The information in the case dockets also did not reflect anything about the labelling and marking of a blood sample after the blood sample had been collected by a medical practitioner and handed to the police officials.

The researcher realised that there are other role players involved in the handling of blood samples in cases of driving under the influence of liquor, such as laboratory personnel. However, in this study the researcher only focused on how police officials maintain the chain of evidence of blood samples in such cases during the handling of these blood samples. Rather than focusing on the handling of blood samples by laboratory personnel in cases of driving under the influence of liquor, the researcher focused on the handling of these blood samples by police officials from the time that they receive the samples from the medical practitioner until the samples are submitted to the laboratory for analysis. The focus was on cases that had been acquitted and withdrawn in court as a result of the fact that police officials were unable to prove their part of the chain of evidence. The researcher did not focus on bad investigation skills in the investigation of driving under the influence of liquor cases but only focused on the handling of blood samples and the recordkeeping by police officials in assessing the maintaining of the chain of evidence of these samples. During the inspection of these cases no other reason could be found for these cases not being successfully prosecuted except that police officials were unable to prove their part of the chain of evidence.

According to the nine police officials who were questioned during the inspection at the Randfontein Police Station, no proper guidelines exist regarding the correct procedures for handling blood samples in cases of driving under the influence of liquor. The current national basic training learning programme for police officials, which is used nationally

for the basic training of police officials in South Africa, was checked by the researcher. The basic training learning programme does not cover the handling of blood samples in cases of driving under the influence of liquor in detail and only mentions the stipulations of section 37(1) (c) of the Criminal Procedure Act, 51 of 1977 (South Africa, 1977). Section 37 deals with the powers of police officials to obtain bodily or physical features of an accused person (SAPS, 2006:98-101).

## 1.2 RESEARCH AIM

The aim of the research was to gather data about the maintaining of the chain of evidence with regard to police officials of the SAPS. Data was collected at Randfontein Police Station concerning the handling of blood samples in cases of driving under the influence of liquor, in order to determine whether there were interesting patterns in the data (Mouton, 1996:103). The researcher gathered data on the maintenance of the chain of evidence in the handling of blood samples in cases of driving under the influence of liquor. On the basis of this data, the researcher formulated the following aim to address the identified problem:

to research the correct procedure that needs to be followed by the police officials of the SAPS in maintaining the chain of evidence of blood samples in cases of driving under the influence of liquor, after collection from the accused person by a district surgeon or medical practitioner and handed to the police until is the sample is submitted to the laboratory for analysis to ensure admissibility of such evidence in court.

## 1.3 PURPOSE OF THE RESEARCH

In simple terms, the purpose of the research is discovered by asking the question: “what is my research for?” (Mason, 2002:20). According to Denscombe (2002:27), the main driving force behind research is sometimes the desire to solve a practical problem or to improve procedures.

The purpose of this research was to:

- evaluate the existing procedure of handling blood samples from cases of driving under the influence of liquor by the SAPS police officials at Randfontein Police Station in order to determine the strengths and weaknesses of this procedure, with the intention of improving the procedure
- to explore national and international literature in an attempt to discover new information regarding the maintaining of the chain of evidence of blood samples in cases of driving under the influence of liquor, which information can be used to improve the handling of blood samples by the South African police in cases of driving under the influence of liquor
- develop good practice by arriving at recommendations for addressing the problem and enhancing the performance of police officials during the handling of blood samples in cases of driving under the influence of liquor

#### 1.4 RESEARCH QUESTIONS

Research questions specify exactly what is to be investigated. They are the broad goals of the research that are directly investigated by the research, specific aspects that are to be observed, measured, and interrogated in order to shed light on the broader topic (Denscombe, 2002:3).

With the problem of the police officials of the SAPS at Randfontein Police Station not maintaining the chain of evidence in the handling of blood samples in cases of driving under the influence of liquor and the research aim in mind, the researcher decided on the following research questions:

- What is meant by the concept “forensic investigation”?
- What is the evidential value of blood samples in criminal cases of driving under the influence of liquor?

- What are the correct procedures to follow in handling blood samples in cases of driving under the influence of liquor after collecting the samples from the district surgeon or medical practitioner?

## 1.5 KEY CONCEPTS

In defining a term or concept a researcher begins by declaring the term to mean “whatever you want it to mean throughout the research” (Berg, 2004:29). The key terms of the research are defined below.

### 1.5.1 Chain of Custody

The chain of custody is the witnessed, unbroken, written chronological history of who had the evidence from the time of collection until it is presented as evidence in court (Swanson, Chamelin & Territo, 2003:33).

### 1.5.2 Evidence

Evidence is material submitted to a judge or legal experts to resolve disputed questions or facts. Evidence includes all the means by which an alleged fact, the truth of which is submitted to scrutiny, is established or disapproved (Dempsey, 2003:107 & 108).

### 1.5.3 Blood Sample

A blood sample is blood that is drawn from a person who is suspected of being a drunk driver, in order to determine the amount of alcohol in that person’s blood (Barone, 2003:5).

### 1.5.4 Driving under the Influence of Liquor

Internationally the crime of driving under the influence of liquor is known as “drunken driving” and can be defined “as any operation of a motor vehicle by a person impaired by alcohol and/or drugs, to the extent that his or her ability to operate the vehicle safely is diminished” (Cohen & Green, 1997:2).

In a South African context the crime is nationally known as “driving under the influence of intoxicating liquor or drug having a narcotic effect or with excessive amount of alcohol in blood” and is stipulated as such in section 65 of the National Road Traffic Act No 93 of 1996 (South Africa, 1996b).

## 1.6 RESEARCH APPROACH AND DESIGN

A research design is “the complete strategy of attack on the central research problem. It provides the overall structure for procedures that the researcher follows” (Leedy & Ormrod, 2001:91). An empirical research design was used to collect data. This research design was deemed most suitable for this research because the researcher wanted to look for the necessary information regarding the handling of blood samples in cases of driving under the influence of liquor directly from police officials, based on their own experience. Empirical research “is the production of knowledge based on experience or observation” (Maxfield & Babbie, 1995:4).

The researcher gathered multiple forms of data by consulting literature sources, conducting interviews and examining documents that were relevant to the research topic rather than relying on a single data source, as explained by Creswell (2007:38).

Literature or publications pertaining to the topic of maintaining the chain of evidence of blood samples in cases of driving under the influence of liquor were found in South African legislation and decided cases. However, the researcher was able to find few South African textbooks regarding the research topic. The researcher conducted in-depth interviews with police officials, in which their conclusions were based on their experiences (for this study, their experiences of handling blood samples in cases of driving under the influence of liquor), as explained by Maxfield and Babbie (1995:4).

A combined qualitative and quantitative approach was used in this study. The researcher conducted qualitative research by personally collecting data through interviewing police officials and conducted quantitative research through personally analysing documents (case dockets), as explained by Creswell (2007:38). The analysis of these documents (case dockets) was carried out with a questioning guide compiled by the researcher.

The researcher also made use of purposive sampling as this sampling method was appropriate to the investigation of the research problem. The researcher wanted specific information regarding the research problem and therefore chose particular participants from among those who represent a diverse perspective on the problem. Leedy and Ormrod (2005:206) explain that, in purposive sampling, people or other units are chosen for a particular purpose.

The researcher wanted maximum insight into the situation at Randfontein SAPS and therefore interacted directly with the participants and collected information from them regarding the research topic. This interaction allowed participants to verbally express their own views and experiences regarding the research topic, as is recommended by Taylor (1994:208).

## 1.7 POPULATION AND SAMPLING

The population for a study consists of a group of persons from whom the researcher is able to draw conclusions (Maxfield & Babbie, 1995:107). According to Gray (2004:82), a population can be defined as “the total number of possible units or elements that are included in the study”.

The population in this research consisted of police officials in South Africa. The researcher did not use the entire population as the purpose was to research the situation at Randfontein SAPS. The Randfontein Police Station members thus formed the target population from which

respondents were selected. The time it would have taken to reach all police officials in the country would have encumbered the progress of this research. The researcher therefore used all 214 police officials (158 uniform members and 56 detectives) at the Randfontein Police Station as a target population, because, during the inspection of cases of driving under the influence of liquor, a problem regarding withdrawals and acquittals of cases was discovered at the Randfontein Police Station. The selection of Randfontein Police Station was thus a non-probability selection.

In non-probability sampling, the researcher has no way of forecasting or guaranteeing that each element of the population will be presented in the sample. Furthermore, some members of the population have little or no chance of being sampled (Leedy & Ormrod, 2005:206).

A target population is the population to which one wishes to generalise the results of a research study, as explained by Mouton (1996:135). The target population in this study is not representative of the population of police officials in South Africa. There is, however, a high probability that the findings of this study might be relevant for all police officials and detectives in South Africa. All police officials and detectives in South Africa handle blood samples after collection in cases of driving under the influence of liquor in the same way. The reason for this is that the basic training of all police officials in South Africa regarding the handling of blood samples in cases of driving under the influence of liquor is the same and, in the researcher's experience, all police officials are currently following the same procedure when handling these blood samples. The organisational directives and guidelines of the SAPS are also the same for all police officials and police stations in South Africa.

All police officials and detectives are selected by using the same selection criteria during the recruiting process. The basic training of all police officials in South Africa regarding the handling of blood samples



in cases of driving under the influence of liquor is the same and all police officials are currently following the same procedure when handling these blood samples.

Gray (2004:83) explains that an ideal sample is the miniature of the population – just like it, only smaller. A sample of 56 police officials (40 uniform members and 16 detectives) was selected from the target population. The sample is regarded as representative of only the target population namely the police officials stationed at Randfontein Police station. The sample is furthermore proportionally representative of the number of uniform members and detectives stationed at Randfontein SAPS. The findings of this study will thus be valid for all police officials stationed at Randfontein since all of them had an equal chance of being included in this study (random sample); a relatively large sample was selected (23%) namely 56 of the 214 police officials stationed at the station; all of these police officials received the same basic training and were under the same management at the police station; and all of these police officials were suppose to follow the same procedures in handling blood samples in cases of driving under the influence of liquor and regulated and prescribed by the same organisational policies, guidelines and directives. There is also a high probability that these findings might also be true as far as the rest of the members of the South African Police Service nationally are concerned due to them also having received the same training and working under the same organisational policies, guidelines and directives. It is, however, only an assumption since the sample size is too small to be representative of the entire police service(150 000) and did the police officials from other police stations not stand a chance of being included in the sample.

The researcher used simple random sampling, as described by Leedy and Ormrod (2005:201), as a method of sampling. In a random sample each person in the universe has an equal probability of being chosen for the sample, and every collection of persons of the same size has an equal probability of becoming the actual sample, as long as they are

members of the same universe. All that is required to conduct a random sample, after an adequate sampling frame is constructed, is to select persons without showing bias for any personal characteristics (Bailey, 1987:87). Simple random sampling, involves a selection process that gives every possible sample of a particular size the same chance of selection. Each element of a population must be able to be identified and numbered. The selected numbers then determine which population elements are to be included in the sample (Blaickie, 2003:168).

The researcher compiled two separate alphabetical name lists of 158 uniformed members and 56 detectives, respectively. The alphabetical name list of 158 uniformed members was numbered from 1 to 158. The numbers “1” to “158” were each written on a piece of paper and each number were cut out and were placed in a basket. The basket was shaken and numbers were drawn from the basket to select a sample of 40 uniformed police members. The uniformed member sample was named sample “A”. The alphabetical name list of the 56 detectives was numbered from 1 to 56. The numbers “1” to “56” were written each on a piece of paper and each number was cut out and placed in a basket. The basket was shaken and numbers were drawn from the basket to select a sample of 16 detectives. The sample from the detectives was named sample “B”.

The selection of the sample is only representative of the target population, namely police officials at Randfontein SAPS. The selection of a random sample gave the police officials and detectives in the target population an equal probability of being selected, as described by Creswell (2009:148). The findings or results of this research can be generalised to the target population on the basis of the following reasons:

- All the police officials at the Randfontein Police Station went through the same selection procedures and criteria when recruited

- All the police officials at the Randfontein Police Station received the same basic training in the handling of blood samples in cases of driving under the influence of liquor
- All police officials at the Randfontein Police Station handle blood samples in cases of driving under the influence of liquor
- The working procedures regarding the handling of blood samples in cases of driving under the influence of liquor are prescribed by the same policies, guidelines and directives
- All police officials at the Randfontein Police Station are currently following the same procedure when handling blood samples in cases of driving under the influence of liquor
- All the police officials at Randfontein Police Station stood the same chance of being included in the sample

## 1.8 DATA COLLECTION

According to McMillan and Schumacher (2001:428), there are a number of strategies available in a qualitative approach, namely participant observation, in-depth interviews and artefact collection. The researcher used a review of current literature, in-depth interviews and case docket analysis to collect information concerning the research topic. Leedy and Ormrod (2005:99) explain that triangulation is the collection of data from multiple sources. According to Denscombe (2003:133), triangulation involves locating a true position by referring to two or more other coordinates. The researcher used different methods to collect data on the research topic to get information from different angles and from each method's own distinct perspective. Apart from these methods, the researcher also used his personal experience in the field of the maintaining of the chain of evidence of blood samples in cases of driving under the influence of liquor in the evaluation and interpretation of the data gathered.

### 1.8.1 Literature

The researcher visited various university libraries in search of literature and publications relevant to the research topic. The catalogues at these university libraries were checked for literature or publications relevant to the research topic. Limited literature and publications relevant to the research topic were found in investigation of crime text books. The researcher also consulted a number of reported/decided cases (case law) available in South Africa, as well as literature on the Internet that contains information relevant to the research topic. In order to obtain additional relevant literature, the researcher broke up the topic and research questions into concepts, and based the search on the following concepts: “blood samples”, “blood tests”, “blood collection” and “handling of blood alcohol specimen”, “collection and preservation of evidence”, “chain of evidence”, “drinking driver”, “drunk driver” and “evidence handling”.

The researcher extracted information which could assist in providing data for the current research from literature by using the topic card method. These topic cards, which were compiled by the researcher, included information about a literature source such as the author's name, the date of publication, a brief topic label and a short verbatim excerpt. According to Berg (1994:24), using cards provides the means for developing systematic literature. In reading the literature the researcher looked for repetitive patterns in the collected materials and focused on finding answers to the research questions.

### 1.8.2 Interviews

Leedy and Ormrod (2005:147-149) provide the following guidelines for conducting interviews in a qualitative study:

- Identify some questions in advance
- Make sure your interviewees are representative of the group.
- Find a suitable venue
- Obtain written permission

- In the interview, establish and maintain rapport
- Focus on the actual rather than the abstract
- Do not put words in people's mouths
- Record responses verbatim
- Keep your reactions to yourself
- Remember that you are not necessarily obtaining the facts
- When conducting a focus group, take group dynamics into account

The researcher applied the guidelines provided by Leedy and Ormrod (2005:147-149) as follows:

- An interview schedule was compiled which contained questions that had been identified in advance
- The interviewees were selected to be representative of the target population and the sample also included a sufficient number of people, as specified by Leedy and Ormrod (2005:147)
- The interviews were conducted in a suitable and convenient venue free from any disturbance
- Written permission was obtained from the South African Police Service (SAPS) Head Office to conduct the research
- The researcher established and maintained rapport by being courteous and respectful towards interviewees
- During the conducting of the interviews, the focus was on the actual handling of blood samples by police officials in cases of driving under the influence of liquor
- The researcher did not put words in the mouths of the interviewees and recorded their responses verbatim
- The researcher kept his reactions to himself while conducting the interviews
- The researcher was aware that he was not necessarily obtaining the facts and also took the group dynamics of the interviewees into account during the interviews

The researcher personally conducted the interviews and during the interviews the researcher applied the guidelines prescribed by Leedy and Ormrod (2005:147-149) to ensure productive interviews.

The researcher did not pilot the interview schedule but after compiling the schedule he had the schedule edited and sent to his supervisor for comments and the identification of shortcomings. The identified shortcomings by both the supervisor and editor were rectified before the interviews were conducted.

The researcher used structured interviews by asking a standard set of questions with police officials and detectives included in the sample. According to Leedy and Ormrod (2005:184), a standard set of questions is asked during structured interviews. An interview schedule was designed with a set of predetermined, open-ended questions, as described by Miller and Whitehead (1996:181) so as to allow interviewees to answer more explicitly. The questions were structured and based on the research topic and the research questions. The answers of the respondents were recorded in writing. The nature of the study was explained to all the respondents and their participation was voluntary and their consent given. All the participants were informed and assured that all information collected would be dealt with using the necessary confidentiality. A number was allocated to each of the participants instead of using names, to ensure confidentiality and anonymity.

### 1.8.3 Purposive Interviewing

In purposive sampling, people or other units are chosen, as the name implies, for a particular purpose. For instance, we might choose people who we have decided are “typical” of a group or those who represent diverse perspectives on an issue. Purposive sampling may be appropriate for certain research problems. However, the researcher should always provide a rationale explaining why he or she selected

the particular sample of participants (Leedy & Ormrod, 2005:206). In the current research the head of the traffic department in Randfontein was selected purposively as he and the traffic officials under his command and supervision arrest people who are driving under the influence of liquor, which made him appropriate for this research.

The head of the traffic department was requested to describe the procedure that the traffic officials under his command and supervision follow, after they arrest people for driving under the influence of liquor. This request was made in order to get clarity on specific issues regarding the handling of blood samples in cases of driving under the influence of liquor.

#### 1.8.4 Personal Experience

The researcher of this study is a detective with 22 years of experience in the Criminal Investigation Department of the South African Police. During the first eight years as a detective he investigated in excess of 6000 cases, ranging from petty crime such as assault to high profile murder cases. His duties as a detective entailed the following: gathering of evidence, executing warrants of arrest or search warrants, using investigative techniques, preparing case dockets for court proceedings, attending crime scenes, tracking and arresting suspects, searching premises and seizing evidence, investigating reported crime, and serving summonses and subpoenas.

For 14 years as a detective the researcher was involved in the investigation of criminal cases of the types mentioned above in his capacity as commander of the detective units at various police stations in South Africa. His duties and responsibilities entailed the managing, supervision and monitoring of cases that were investigated by detectives under his command with regard to the aspects, such as those mentioned above. As a commander he also gave guidance and advice regarding the investigation of cases to detectives under his command to ensure the effective investigation of cases.

### 1.8.5 Case Analysis

According to Berg (2004:251), case studies involve the systematic gathering of enough information about a particular person, social setting, event, or group to permit the researcher to understand effectively how the subject operates or functions. On the same basis as a case study, the researcher undertook a case analysis with selected identified cases.

Simple random sampling was used to select a sample of 50 finalised cases of driving under the influence of liquor at Randfontein police station. A total of 80 cases of driving under the influence of liquor were finalised at court for the period 1 January 2005 to 31 December 2005. The researcher was of the opinion that most of the cases that are finalised would be filed and therefore chose this period. A list of these finalised case numbers was drawn up for each month from the Crime Administration System database of the SAPS. The lists of all the months for this period were consolidated into one list of 80 case numbers. A series of numbers was allocated to the case numbers on the list. The numbers "1" to "80" were written on a page, cut out and placed in a basket. The basket was shaken and numbers were drawn from it to select the 50 case numbers for analysis. Simple random sampling was used in the selection process of the finalised cases, which gave every case in the sample the same chance of being selected, as explained by Blaickie (2003:168). The sample was representative of the finalised cases at Randfontein SAPS for the period. The researcher did not include all 80 finalised cases in the sample because the time it would have taken to analyse all finalised cases would have encumbered the progress of this research.

The researcher intended to gain the following information from the finalised cases of driving under the influence of liquor:

- What the outcomes of the cases were in court
- If there were any reasons for these acquittals or withdrawals



- What the identified shortcomings were; and
- How the blood samples were handled

## 1.9 DATA ANALYSIS

The collected information was analysed by applying the following strategies, as suggested by Creswell (1998:249):

- Analysis: The data was categorised and interpreted in terms of common themes
- Synthesis: An all-over portrait of the cases was constructed by the researcher
- Induction: The researcher searched for meaning units that reflected various aspects of the respondents' work-related experiences and integrated the meaning units into typical experiences
- Deduction: The data was coded into categories and interrelationships were identified

The researcher sorted and categorised the information collected during the interviews. The information was broken down into a small set of themes. The researcher determined specific characteristics after scrutinising the information and searched for meaningful characteristics. The literature was compared with theoretical perspectives on the topic and general trends were described. General themes that run throughout the literature were identified.

The researcher organised specific details about the cases in logical order. The information was categorised into meaningful groups. Specific case dockets were examined for the specific meanings they might have in relation to the cases, in order to correctly interpret the meaning of the data. The data and interpretations were scrutinised for underlying themes and patterns that characterised the cases more

broadly. An overall portrait of the cases was constructed and conclusions were drawn about the cases that were analysed.

The information from the interviews, literature sources and case docket analysis was compared, integrated and analysed to determine trends and best practices, and to reveal problem areas as explained by Creswell (1998:249). The research findings were used to evaluate the current procedure for the maintaining of the chain of evidence in cases of driving under the influence of liquor, as well as the development of a well-researched procedure for the maintaining of the chain of evidence of blood samples in cases of driving under the influence of liquor for all police officials.

#### 1.10 METHODS TAKEN TO ENSURE VALIDITY

Validity concerns the accuracy of the questions asked, the data collected and the explanation offered (Denscombe, 2002:100). The interview schedule that was used for all the respondents ensured consistency and stability because it measured maintaining the chain of evidence of blood samples in cases of driving under the influence of liquor, which it was intended to measure, as accurately as possible.

Leedy and Ormrod (2001:98) explain that content validity is the extent to which a measuring instrument is a representative sample of the content area being measured. The selection of the sample and the cases can be considered valid, as they were selected from police officials and cases, which constituted the content area being measured.

The same questions were asked of all the respondents (excluding the head of the traffic department) during the interviews and the questions were asked in the same manner to ensure consistency and stability. The questions were based on the research questions to ensure that they measured what they were intended to measure as accurately as possible, as prescribed by Mason (2002:188).

The researcher used finalised cases relevant to the topic as case studies. The same criteria were used during the analysis of cases to obtain information from the selected cases. The sampling method that was used gave all the finalised cases an equal opportunity of being selected.

All the interpretations, analysis and conclusions were made on the basis of data gathered from the interviews, literature and case studies, as explained by Mouton (2001:110). In order to ensure trustworthiness and authenticity of data, information obtained from interviews, literature and case docket analysis was used in a combined manner to establish patterns and trends (Bouma, 1993:47). The researcher looked for common themes in the information collected through the following three methods:

- Interviews
- Literature studies
- Case docket analysis

Leedy and Ormrod (2001:99) explain that a multitrait-multimethod is made use of when two or more different characteristics are each measured using two or more different approaches. The researcher used a triangulation approach to collect data, which constitute a multitrait-multimethod, whereby data is collected from multiple sources. This, according Leedy and Ormrod (2001:99), does not guarantee the validity of a measurement instrument; it does, however, increase the likelihood of such validity.

#### 1.11 METHODS TAKEN TO ENSURE RELIABILITY

Reliability relates to the methods of data collected and the concern that they should be consistent and not distort the findings. Generally it entails an evaluation of the methods and techniques used to collect the data (Denscombe, 2002:100). The logic is that if one measures the

same phenomenon more than once with the same instrument, one should obtain the same measurement (Mason, 2002:187).

The researcher ensured that the data collected was consistent and that the findings of the research were not distorted in any way, by administering the use of instruments in a standardised manner in order to increase reliability. The answers to the questions posed during the interviews were written down to provide a proper record for analysis. The interview schedule that was used for all the respondents ensured consistency in measurement.

The interviews were conducted in private to ensure confidentiality and anonymity. No leading questions were asked during the interviews nor were the answers influenced in any way. This ensures that when different researchers use the same interview schedule as a measurement, they will obtain the same result. The literature that was used in the research is acknowledged throughout the research report. The cases that were analysed were subjected to the same criteria to ensure consistency in the data collection.

#### 1.12 ETHICAL CONSIDERATIONS

Social researchers need to be ethical in the collection of their data, in the process of analysing the data, and in the dissemination of findings (Denscombe, 2003:134). According to Leedy and Ormrod (2005:101-102), most ethical issues in research fall into one of four categories:

- Protection from harm: The respondents were not exposed to undue physical or psychological harm during the research. The participants were not exposed to the risk of losing life or limb nor were they subjected to unusual stress, embarrassment, or loss of self-esteem.
- Informed consent: The participants were informed of the nature of the research and were given the choice of participating or not. The participants were told that if they agreed to participate, they

had the right to withdraw from the research at any time and that participation in the research was voluntary.

- Right to privacy: The participants' right of privacy was respected and all information provided by them was treated as confidential.
- Honesty with professional colleagues: The researcher reported the findings of this research in a complete and honest manner, without misrepresenting what he had done or intentionally misleading others about the nature of the findings. The researcher did not fabricate data to support a particular conclusion. The use of another person's ideas or words was acknowledged by the researcher.

### 1.13 CHAPTER AND LAYOUT

The arrangement of the report is as follows:

- Chapter Two – Forensic Investigation: In this chapter the meaning of the terms “forensic investigation” and “criminal investigation”, and the objectives and purpose of investigation, the mandate to investigate, the powers of traffic officials, driving under the influence of liquor as a crime, the arresting procedure of persons driving under the influence of liquor, and the ascertainment of bodily features of an accused are discussed.
- Chapter Three – The evidential value of blood samples in criminal cases of driving under the Influence of liquor: This chapter deals with the role of evidence in criminal proceedings, unconstitutionally obtained evidence, the meaning of evidence , the different types of evidence, the admissibility and relevance of evidence, and the chain of custody of evidence
- Chapter Four – The correct procedure for handling blood samples: This chapter deals with the taking of blood samples, the handling of blood samples, presentation in court, the proof of certain facts by an affidavit or certificate in criminal proceedings, the precise identification of specimens, the current procedure followed with regard to the collection and handling of blood

samples during the investigation of cases of driving under the influence of liquor, the correct procedure for handling blood samples during the investigation of driving under the influence of liquor cases, problems experienced by police officials during the handling of blood samples in cases of driving under the influence of liquor, case docket analysis on finalised cases of driving under the influence of liquor, and guidance by commanders.

- Chapter Five – Findings and Recommendations. This chapter deals with findings made by the researcher regarding this research as well as recommendations based on these findings.

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## **CHAPTER 2**

### **FORENSIC INVESTIGATION**

#### **2.1 INTRODUCTION**

The purpose of criminal investigation is to gather information or facts about a criminal incident. During the investigation process all information pertaining to a specific crime is collected. The facts collected must link the perpetrator to the crime that has been committed in order to bring an investigation to a successful conclusion. It is important that, during the investigation process, an investigator understands the basic techniques of collection and preservation of evidence. The criminal investigator must have a fundamental understanding of criminalistics or forensic science and must be well conversant with the legal requirements regarding the collection of information or facts to ensure a successful prosecution in criminal investigation.

The lack of science in criminal investigations was recognised by Hans Gross, an Australian Magistrate between 1847 and 1915. Gross was the first person to regard criminal investigation as a science and started to develop a system of investigation in which science was to play an important role (Kenney & More, 1994:7).

This chapter focuses on the meaning of the concepts of forensic investigation, criminal investigation, forensic investigation versus criminal investigation, the goals and objectives of the investigation process, the purpose of an investigation, the mandate to investigate, the powers of traffic officials, driving under the influence of liquor as a criminal offence, the arresting procedure of a person driving under the influence of liquor and the ascertainment of bodily features of an accused.

## 2.2 THE MEANING OF FORENSIC INVESTIGATION

Within the criminal investigation process, investigators frequently use various scientific methods found in criminalities to help identify suspects, gather evidence and collect information, all of which is undertaken in the effort to convict criminal offenders (Swanson, Chamelin & Territo, 2003:3). According to the Oxford English Dictionary (2004:118), “forensic” means relating to the application of scientific methods and techniques to the investigation of crime, relating to courts of law. The Collins Cobuild student’s dictionary and grammar (1995:116) explains that the term “forensic” is used to describe the scientific examination of objects in order to discover information about a crime. The Oxford Advanced Learners Dictionary (2005:607) explains that the term “forensic” means “connected with the scientific tests used by the police when trying to solve a crime”.

With the rapid advances in forensic techniques, the value of forensic science in criminal investigation is recognised as significant or even critical (Lee & Harris, 2000:4&5). According to Lambrechts (2001:93), forensic investigation is regarded as an investigation aimed at instituting court proceedings, criminal as well as civil proceedings, and where some or other scientific knowledge is applied to a legal problem. According to Swanson et al. (2003:3), the dictionaries, Lee and Harris (2000:4-5) and Lambrechts (2001:93), forensic investigation is aimed at instituting court proceedings and scientific knowledge is applied to investigate an incident with the view to providing impartial evidence on issues to the court. Virtually all investigations are nowadays referred to as “forensic investigations” (Lambrechts 2001:93). It is clear to the researcher that these court-orientated investigations can be applied in the investigation of any type of crime, which means that a prima facie case is presented in court in order to prove that the perpetrator had committed a crime.



The respondents from both samples were requested to define the concept “forensic investigation” from their experience. The respondents from sample “A” reacted as follows:

- Nineteen respondents mainly regarded forensic investigation as a process whereby evidence and exhibits are gathered and scientifically analysed
- Nine respondents defined forensic investigation as the connecting of suspects to the commission of a crime
- Eight respondents defined forensic investigation as the collection and analysing of evidence to scientifically connect the suspect to committing of a crime
- Four respondents regarded forensic investigation as the scientific analysing of evidence for presentation in a court

The respondents from sample “B” reacted as follows:

- Six respondents mainly regarded forensic investigation as a process whereby evidence and exhibits are gathered and scientifically analysed
- Three respondents regarded forensic investigation as a method to obtain more information from evidence
- Four respondents defined forensic investigation as the collection and analysing of evidence to scientifically connect the suspect to committing of a crime
- Four respondents regarded forensic investigation as the scientific analysing of evidence for presentation in a court

All the respondents had their own definitions of the concept “forensic investigation” and all of them had the same interpretation, that forensic investigation is a process whereby suspects are scientifically connected by means of evidence to the crime through analysis.

If the answers of the respondents are compared with the viewpoints of the different authors, there is no real difference. This means that they are in agreement that the concept “forensic investigation” is the

application of scientific techniques on evidence through analysis to connect the criminal to the crime.

### 2.3 CRIMINAL INVESTIGATION

There are many definitions of the term “investigation”, depending on individual interpretation. Concepts like “probe”, “inquest”, “inquisition”, and “research” are integral components of the term “investigation” (Burnstein, 1999:22). The term “investigation” means “to observe intensely, to question systematically and to gather information that will reveal the truth” (Van Rooyen, 2001:50).

The Cambridge Advanced Learners Dictionary (2003:662) describes “investigate” as “to examine (something such as an event or situation) carefully” (to discover the truth about it). Van der Westhuizen (1996:1) and Kenney and More (1994:9) are of the opinion that criminal investigation is a methodical probing for the truth in order to solve crime and consider the accumulation of facts as the basis of criminal investigation. Criminal investigation is a process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who is responsible (Bennet & Hess, 2004:4)?

The respondents from both samples were asked what their understanding of criminal investigation is.

The respondents from sample “A” reacted as follows:

- Seventeen respondents regarded criminal investigation a systematic search for the truth
- Eight respondents regarded criminal investigation as the collection of facts and evidence
- Three respondents regarded criminal investigation as the gathering of evidence to establish what happened
- Twelve respondents answered that criminal investigation is to establish the truth about a crime that was committed

The respondents from sample “B” reacted as follows:

- Nine respondents regarded criminal investigation as the systematic search for the truth through the collection of facts and evidence
- Seven respondents regarded criminal investigation as a search for the truth to establish what happened by collecting information and facts about a crime

The responses from both samples “A” and “B” indicate that the respondents believe investigation of crime to be a systematic search for the truth and the collection of information to determine what happened and who the suspect is.

The responses of the respondents also indicate that they know what criminal investigation means. Their responses indicate that they are in agreement with the views of Van der Westhuizen (1996:1), Kenney and More (1994:9), Burnstein (1999:22), Van Rooyen (2001:50) and Bennett and Hess (2004:4) with regard to the meaning of criminal investigation.

#### 2.4 FORENSIC INVESTIGATION VERSUS CRIMINAL INVESTIGATION

When the two concepts “forensic investigation” and “criminal investigation” are compared with one another, it is clear that there is no real difference between the two concepts. With forensic investigation, there is an emphasis on the use of scientific knowledge and the fact that an investigation is intended at instituting court proceedings. The conducting of a criminal investigation also requires that the investigation should be intended at instituting court proceedings, even though this is not at all times clearly reflected in the way it is defined. Swanson et al. (2003:3) explain that, within the criminal investigation process, investigators and detectives frequently use various scientific methods found in criminalities to help identify suspects gather evidence

and collect information – all of which is carried out in the effort to convict criminal offenders.

The researcher is of the view that forensic and criminal investigations are investigations geared up to using techniques that stand the examination of a court, in other words court-driven investigations.

The respondents from both samples were asked whether there is a difference between forensic and criminal investigation. The respondents from sample “A” reacted as follows:

- Twenty-three respondents answered that they do not think there is a difference between the two concepts because during forensic investigation evidence or exhibits are analysed in order to gather or collect evidence to connect a criminal with a crime and that the aim is mainly to get a conviction in court
- Ten respondents answered that evidence is analysed during forensic investigation to strengthen the case during presentation in court
- Seven respondents regarded forensic investigation as the analysing of evidence for presentation in a court and are not sure whether there is a difference between the two concepts

The responses of the respondents from sample” A” indicated that they are not certain whether there is a difference between the two concepts; however, all the respondents in this sample mentioned the analysing of evidence and exhibits, which indicates that they are aware that during forensic investigation science is applied to analysing evidence during the investigation. If the answers of the respondents are compared with the viewpoints of the above-mentioned authors, there is no real difference, which means that the respondents are in agreement concerning the two concepts, “forensic investigation” and “criminal investigation”.

The respondents from sample "B" reacted as follows:

- Ten respondents answered that there is no real difference between the two concepts and that evidence is scientifically analysed during forensic investigation to get scientific evidence to strengthen the case during presentation in court
- Six respondents indicated that there is basically no difference between the two concepts because in both investigations evidence and facts regarding the commission of a crime are very important to present in court

The responses from the respondents from sample "B" indicated that the respondents are aware that there is no real difference between the two concepts, which means that the respondents are in agreement with the viewpoints of the different authors mentioned above.

It is clear to the researcher that the concepts "forensic investigation" and "criminal investigation" contain no real difference in that forensic investigation is a process which unfolds during the criminal investigation process, and which entails the application of science as part of the investigation process.

## 2.5 OBJECTIVES OF THE INVESTIGATION PROCESS

Bennett and Hess (2004:14), Joubert (2001:5), Lyman (2002:14), Swanson et al. (2003:28) and Van der Westhuizen (1996:4), list the objectives of criminal investigation as to:

- decide whether a crime has been committed (all the respondents agreed that the committing of a crime should be determined)
- identify the crime
- individualise the crime
- find information
- gather evidence to identify the suspect
- arrest the suspect

- retrieve stolen property
- become involved in the prosecution process to ensure that the prosecutor receives the best possible case. (According to all the respondents the main objective of investigation is to ensure a conviction in court)
- determine the truth and ensure obedience to the law

The finding of facts to prove a statement or theory seems to be the basic objective of all investigations (Burstein, 1999:29). Burstein (1999:29) acknowledges, however, that there are differences in the motivation of criminal justice agencies and to a certain extent that of corporate security representatives and those employed by others. The only motivation should be to conduct an effective investigation and to reach a logical conclusion, in other words, a successful conviction in a court of law.

The respondents from both samples were requested to list the objectives of investigation. The respondents from sample "A" mentioned the following objectives:

- decide whether a crime has been committed
- identify the crime
- gather evidence to identify the suspect
- apprehend the suspect
- become involved in the prosecution process to ensure that the prosecutor receives the best possible case. (According to all the respondents the main objective of investigation is to ensure a conviction in court)

The respondents from sample "B" mentioned the following objectives:

- decide whether a crime has been committed
- identify the crime
- collect evidence to identify the suspect
- apprehend the suspect

- become involved in the prosecution process to ensure that the prosecutor receives the best possible case. (According to all the respondents the main objective of investigation is to ensure a conviction in court)

The respondents from both samples did not mention the following objectives:

- individualise the crime
- find information
- retrieve stolen property
- determine the truth and ensure obedience to the law

The respondents from both samples could not mention all the objectives of investigation as listed by Van der Westhuizen (1996:4), Swanson et al. (2003:28), Lyman (2002:14), Bennett and Hess (2004:5), and Joubert (2001:225). However, all the respondents from both samples mentioned that the main objective is to get a conviction in court.

## 2.6 PURPOSE OF INVESTIGATION

Van der Westhuizen (1996:1) states that the purpose of investigation can be seen as the identifying and arresting of possible criminals and the collection, safekeeping and presentation of evidence related to their alleged crimes. Sennewald and Tsukayama (2001:3) agree with this argument and suggest that the purpose of investigation can be seen as the searching, tracking and collecting of facts that have to be examined in order to find answers and to solve problems. Bennet and Hess (2001:3) and Sennewald and Tsukayama (2001:4) conclude that the investigative process is mainly concerned with the gathering of information.

Olivier (1997:228) explains that:

...ondersoek van misdaad die beste voorkomingstegniek is en is ook van mening dat goeie ondersoek misdadigers afskrik. Deur doeltreffende ondersoek, arrestasie en die bystaan van die aanklaer om die saak suksesvol deur die hof te stuur, vervul die ondersoekbeampste 'n tersiere voorkomingsrol.

The researcher agrees with Olivier's (1997:228) view that the purpose of investigation is to prevent crime because, based on his experience as a detective and later as a commander and supervisor of detectives, the researcher has found that, through effective investigation, the arrested suspect will be convicted in court, sentenced and imprisoned. The further commission of crime by the same individual will be prevented as the criminal will be in prison.

The respondents from both samples were asked what the purpose of investigation is. The respondents from sample "A" reacted as follows:

- Thirteen respondents answered that the purpose of investigation is to trace and arrest the suspect and to bring him or her before a court
- Ten respondents indicated that the purpose of investigation is to collect evidence, to trace the suspect, and to determine the truth of what happened
- Eight respondents stated that the purpose of investigation is to find information, arrest the suspects, gather evidence and bring the perpetrators before a court of law
- Nine respondents indicated that the purpose of investigation is to collect evidence and to arrest the suspects

The respondents from sample "B" reacted as follows:

- Twelve respondents stated that the purpose of investigation is to find information, gather evidence, identify the suspects,



arrest the suspects, and bring the perpetrators before a court of law

- Four respondents answered that the purpose of investigation is to trace and arrest the suspect and to bring him or her before a court

The responses of the respondents in sample “A” revealed that they confuse the objectives of investigation with the purpose of investigation. The answers of the respondents also indicated that they are not aware of the purposes of investigation. It is clear to the researcher that the respondents are not aware that, by effective investigation and the apprehending and conviction of criminals, crime can be prevented.

The responses of 12 of the respondents in sample “B” indicated that they are aware that the purpose of investigation is to identify and collect facts and evidence and to arrest the perpetrators. The responses of four respondents in sample “B”, however, indicated that they also confuse the objectives of investigation with the purpose of investigation. The answers of these four respondents also indicated that they are not aware of the purposes of investigation.

## 2.7 THE MANDATE TO INVESTIGATE

Section 5 of the South African Police Service Act 68 of 1995 (South Africa, 1995) states that the powers of the police include the investigation of any offence or alleged offence. Section 205(3) of the Constitution of the Republic of South Africa, Act 108 of 1996 (South Africa, 1996a) states that the police have the powers to investigate crime. Burstein (1999:29) explains that it is not only detectives or government personnel that can carry out investigations, but that private-sector organisations or individual people also have this function. It is indeed true that any person may conduct an investigation. According to Sennewald and Tsukayama (2001:12), a private or corporate investigator has delegated authority from his or her senior

company management or client. The authority is mostly derived from statutory and case laws. Verdict was given against the SAPS to claim investigation of cases as their only domain in *S v Botha and others* (1) 1995 (2) SASV 598 (W).

Sennewald and Tsukayama (2001:12) further point out that the public investigation represents the sovereignty of government, whose authority is vested in constitutional and statutory law.

In terms of Chapter 9 of the Constitution, state institutions supporting constitutional democracy can also conduct investigations. Section 181 of the Constitution of the Republic of South Africa Act 108 of 1996 (South Africa, 1996a) stipulates as follows:

- (1) The following State Institutions strengthen Constitutional Democracy in the Republic:
  - (a) The Public Protector.
  - (b) The South African Human Rights Commission.
  - (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic communities.
  - (d) The commission for Gender Equality.
  - (e) The Auditor-general.
  - (f) The Electoral commission.
- (2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.
- (3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.
- (4) No person or organ of the state may interfere with the functioning of these institutions.

- (5) The institutions are accountable to the National Assembly and must report on their activities and the performance of their functions to the Assembly at least once a year.

The Act on Special Investigating Units and Special Tribunals, Act 74 of 1996 (South Africa, 1996c) authorises members attached to the special investigating unit of special tribunals to conduct investigations within their mandate. Act 74 of 1996 on Special Investigating Units and Special Tribunals specifies as follows:

(1) The President may, whenever he or she deems it necessary on account of any grounds mentioned in subsection (2), by proclamation in the Gazette -

- (a)
  - (i) Establish a Special Investigating Unit in order to investigate the matter concerned;
  - (ii) Refer the matter to an existing Special Investigation; and
- (b) Establish one or more Special Tribunals to adjudicate upon justifiable civil disputes emanating from any investigation of any particular Special Investigating Unit.

Other State Institutions such as the Independent Complaints Directorate, the South African Revenue Services and the Directorate of Special Operations (Scorpions) are also in terms of their respective legislation mandated by law to investigate.

The respondents from both samples were asked who has the right to investigate.

The respondents from sample "A" reacted as follows:

- Twenty-five respondents stated that any person has the right to investigate
- Fifteen respondents were of the opinion that only the police can investigate because they have the experience in investigation

The respondents from sample “B” reacted as follows:

- Ten respondents stated that the police and other state organs such as the Human Rights Commission can investigate
- Six respondents were of the opinion that the police, private investigators and other state institutions can investigate

The responses of the respondents from sample “A” indicated that not all of them were aware that investigations can be conducted by the SAPS, private investigators and other state organs and that it is not only the SAPS that can conduct investigations. None of the respondents mentioned other state organisations, such as the Scorpions and the South African Revenue Services, which can also conduct investigations. These responses indicate a lack of awareness that other state organisations can also investigate in terms of legislation which regulates the respective state organisations.

The responses from the respondents from sample “B” indicated that they were aware that not only the police but also other state organs and private investigators can investigate.

It is clear to the researcher that the SAPS has investigation powers but that this is not the only state organisation which is mandated to investigate crime. Other state institutions as well as private investigators also have the mandate to investigate. These state institutions have limited powers to investigate and are regulated in legislation in respect of the different organisations by law. Private investigators can also conduct investigations.

#### 2.7.1 Powers of Traffic Officials

Traffic officials has the power to arrest a person who is driving under the influence of intoxicating liquor or a drug having a narcotic effect, or with excessive amount of alcohol in blood or breath odour in terms of section 65 of the National Road Traffic Act, 93 of 1996 (South Africa, 1996b). The researcher considered it important to establish whether

traffic officials have powers to investigate because they arrest persons who are driving under the influence of liquor, which involve the handling of blood samples and the consequent investigation of these cases and assurance of maintaining the chain of evidence of such blood samples to ensure the admissibility of such evidence in court.

Section 1 of the National Road Traffic Act 93 of 1996 (South Africa, 1996b) stipulates as follows:

“In this Act, unless the context otherwise indicates – ‘traffic officer’ means a traffic officer appointed in terms of the laws of any Province and any member of the service as defined in Section 1 of the South African Police Service Act, 1995 (Act 68 of 1995), and for the purposes of Chapter V, IX and X and sections 74 and 78 of this Act includes a peace officer.”

Section 1 of the Criminal Procedure Act, Act 51 of 1977 (South Africa, 1977) defines a “police official” as any member of the of the Service referred to in section 5 (2) of the South African Police Service Act 68 of 1995 (South Africa, 1995)

Section 1 of the South African Police Service Act 68 of 1995 (South Africa, 1995) stipulates as follows: “In this Act, unless the context otherwise indicates – ‘member’ means any member of the service referred to in section 5 (2) and including –

- (a) except for the purpose of any provision of this Act in respect of which the National Commissioner may otherwise prescribe, any member of the Reserve while such member is on duty in the Service;
- (b) any temporary member while employed in the service;
- (c) any person appointed in terms of any other law to serve in the service and in respect of whom the Minister has prescribed that he or she be deemed to be a member of the service for the purposes of this Act; and
- (d) any person designated under section 29 as a member.”

Section 3 A of the National Road Traffic Act, 93 of 1996 (South Africa, 1996b) stipulates as follows:

- (1) “For the purpose of this Act – (a) the chief executive officer may upon such conditions as he or she may determine, appoint as many persons as – traffic officers as he or she may deem expedient (b) an MEC may, upon the conditions set by the chief executive officer, appoint for the province concerned as many persons as traffic officers as he or she may deem expedient.”

Section 3 I of the National Road Traffic Act, 93 of 1996 (South Africa, 1996b) stipulates the following regarding the powers and duties of traffic officers: “In addition to the powers and duties conferred upon him or her or under this Act, a traffic officer may, subject to the provisions of this act or any other law –

- (a) When in uniform, requiring the driver of any vehicle on a public road to stop such vehicle
- (b) Inspecting and testing any part and the functioning of such vehicle and its equipment, with the view to ascertaining whether such a vehicle complies with the provisions of this Act
- (c) Ascertain the dimensions and mass of the load on any vehicle to proceed to a mass meter or mass-measuring device, and if the mass exceeds the mass allowed in terms of this Act, prohibiting the operation of the vehicle until it has been reduced to comply with Act
- (d) Driving any vehicle where necessary in the performance of his or her duties if he or she is licensed to drive a vehicle of the class concerned
- (e) Regulating and controlling traffic on any public road and giving directions as may be necessary for the safe and efficient regulation of traffic
- (f) Requiring any person to furnish his/her address and other particulars which are required if the officer reasonably suspects that an offence in terms of this Act has been committed

- (g) At any time entering the vehicle of an operator and inspecting such vehicle
- (h) Inspecting any vehicle or part thereof and seizing/impounding any document in connection with the registration or licensing of such vehicle Where it is found that the engine or chassis (VIN) numbers of the vehicle differ from the numbers as specified on the documents, directing that the vehicle be taken to any police station to conduct the necessary inspections for police clearance
- (i) Requiring from the owner, operator or driver of a vehicle police clearance in respect of the vehicle before allowing the motor vehicle to be taken across the borders of South Africa”

This means that a traffic officer has the power to arrest a person who is driving under the influence of intoxicating liquor or a drug having a narcotic effect, or with excessive amount of alcohol in blood or breath odour in terms of section 65 of the National Road Traffic Act, 93 of 1996 (South Africa, 1996b) for not complying with the stipulations of this section. The powers and duties of traffic officers in terms of Section 3 I of the National Road Traffic Act, 93 of 1996 do not make provision for traffic officers to investigate crime, which means that traffic officers do not have powers to investigate crime.

The respondents from both samples were asked what the powers of traffic officers are in terms of the investigation of crime. The respondents from both samples “A” and “B” answered that traffic officers can arrest persons that are driving under the influence of liquor and that the police conduct investigations in these cases. The answers of the respondents indicated that they are aware that traffic officials are not authorised by legislation to investigate crime.

## 2.8 DRIVING UNDER THE INFLUENCE OF LIQUOR AS A CRIMINAL OFFENCE

The National Road Traffic Act 1996, Act 93 of 1996 (South Africa, 1996b) came into operation on 1 August 2000. Section 65 of the National Road Traffic Act 93 of 1996 prohibits driving while under the influence of intoxicating liquor or drugs having a narcotic effect, or with excessive amount of alcohol in blood or breath and the stipulations are as follows:

- “(1) No person shall on a public road -
  - (a) drive a vehicle; or
  - (b) occupy the driver’s seat of a motor vehicle the engine of which is running, while under the influence of intoxicating liquor or a drug having a narcotic effect.
- (2) No person shall on a public road -
  - (a) drive a vehicle; or
  - (b) occupy the driver’s seat of a motor vehicle the engine of which is running, while the concentration of alcohol in any specimen of blood taken from any part of his or her body is not less than 0,05 gram per 100 milliliters, or in the case of a professional driver referred to in Section 32, not less than 0,02 gram per 100 milliliters.

Section 65 (3) of the National Road Traffic Act, Act 93 of 1996 (South Africa, 1996b) stipulates the following regarding blood samples in cases of driving under the influence of liquor:

“(3) If in any prosecution for an alleged contravention of a provision of subsection (2), it is proved that the concentration of alcohol in any specimen of blood taken from any part of the body of the person concerned was not less than 0,05 gram per 100 milliliters at any time within two hours after the alleged contravention, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,05 gram per 100 milliliters at the time of the alleged contravention, or in the case of a professional driver referred to in Section 32, not less than 0,02 gram per 100 milliliters, it shall be



presumed, in the absence of evidence to the contrary, that such concentration was no less than 0,02 gram per 100 milliliters at the time of the alleged contravention.”

The State has to prove that a concentration of alcohol not less than 0,05 was present during the act of driving or occupancy. Section 65(3) contains a presumption which serves to alleviate the task of the State. It stipulates that if it is proved that the concentration of alcohol was not less than 0,05 within two hours after driving or occupancy, it shall be presumed that it also exceeded 0,05 during the act. This presumption obviates the leading of expert evidence in every case to prove the concentration of alcohol during the act. The accused person, if it is proved that the concentration was not less than 0,05 within two hours of the act, shall have to prove the contrary on a balance of probabilities (Nelson 2004:37).

Many factors have vital roles to play in this regard, such as time of drinking, physical characteristics of the accused, factors which may influence the absorption of alcohol in the bloodstream, time lapse between drinking and driving, or of the taking of a blood sample. If the blood sample was taken more than two hours after the act the presumption will not assist the State and expert evidence will have to be adduced(Nelson 2004:38).

The respondents from both samples were asked whether they were aware that driving under the influence of liquor is a criminal offence. The respondents from both samples indicated that they were aware of this and that they knew that driving under the influence of liquor is a criminal offence.

## 2.9 THE ARRESTING PROCEDURE

The arresting procedure as stipulated by Section 40 of the Criminal Procedure Act, Act 51 of 1977 (South Africa, 1977) is as follows:

“(1) A peace officer may without a warrant arrest any person -

- (a) Who commits or attempts to commit any offence in his presence.
- 2) If a person may be arrested under any law without warrant and subjected to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances”.

This means that a police official and traffic official may without a warrant arrest any person who is driving a motor vehicle whilst under the influence of liquor in terms of section 40 of the Criminal Procedure Act.

Police officials have the powers and duties of traffic officials but traffic officials do not have the powers and duties of police officials. Traffic officials’ powers and duties are regulated by the National Road Traffic Act, 93 of 1996 (South Africa, 1996b).

Section 42 of the Criminal Procedure Act stipulates as follows: “(1) any private person may without warrant arrest any person -

- (a) Who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence referred to in schedule 1”.

Driving under the influence of liquor is a schedule 2 offence and not a schedule 1 offence. A private person can only arrest a person for a crime mentioned in schedule 1 and not for driving under the influence of liquor.

Section 50 of the Criminal Procedure Act stipulates the procedure after a person has been arrested. Section 50 (South Africa, 1977) reads as follows:

- (1)(a) “Any person who is arrested with or without warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station, or in the case of an arrest by

warrant, to any other place which is expressly mentioned in the warrant.

(b) A person who is in detention as contemplated in paragraph (a) shall, as soon as reasonably possible, be informed of his or her right to institute bail proceedings”.

This means that a police official and traffic official, after the arrest of a person for driving under the influence of liquor, must take the arrested person to a police station for the registration of a case and detention.

## 2.10 THE ASCERTAINMENT OF BODILY FEATURES OF AN ACCUSED

Section 37 of the Criminal Procedure Act 51 of 1977 (South Africa, 1977) gives power in respect of prints and bodily appearance of accused persons to any police official. Section 37 (2) (a) of the Criminal Procedure Act stipulates that:

“any medical officer or any prison or any district surgeon or, if requested thereto by any police official, any registered medical practitioner or registered nurse may take such steps, including the taking of a blood sample, as may be deemed necessary in order to ascertain whether the body or any person referred to in paragraph (a) has any mark, characteristics or distinguishing feature or shows any condition or appearance.

(b) If any registered medical practitioner attached to any hospital is on reasonable grounds of the opinion that the contents of the blood of any person admitted to such hospital for medical attention or treatment may be relevant at any later criminal proceedings, such medical practitioner may take a blood sample of such person or cause such sample to be taken.”

Section 65 of the National Road Traffic Act, 93 of 1996 (South Africa, 1996b) authorises traffic officers to arrest people who are driving under the influence of liquor when contravening this section. Section 37 of the Criminal Procedure Act 51 of 1977 authorises police officials to take an

arrested person who is arrested for driving under the influence of liquor to a district surgeon or registered medical practitioner or a registered nurse and request the drawing of a blood sample from such person.

Traffic officers are appointed in terms of the National Road Traffic Act and not in terms of the South African Police Act. This means that traffic officers do not have the same powers as police officials. It is clear that section 37 of the Criminal Procedure Act authorises police officials only (and not traffic officers) to request a medical practitioner or nurse to draw a blood sample from people who are arrested for driving under the influence of liquor. This research revealed that traffic officials do not always adhere to the stipulations of section 37 of the Criminal Procedure Act because they often request medical practitioners or nurses to draw blood samples from people who they have arrested for driving under the influence of liquor. In terms of the Act, traffic officers should, therefore, after the arrest of a driver take the arrested person to a police station for detention. The responsibility is then on the police officials to ensure that a blood sample is obtained from the arrested person on the request of the police officials in terms of section 37 of the Criminal Procedure Act of 1977 (South Africa, 1977).

Schwikkard and Van der Merwe (2002:126-129) explain that section 37 (1) of the Criminal Procedure Act, 1977 (South Africa, 1977) authorises police officials to take fingerprints, palm-prints or footprints of any person who has been arrested or charged. The police are also authorised to take such steps as are necessary to ascertain whether the body of any arrested person has any mark, characteristic or distinguishing feature or shows any condition or appearance. Police officials are prohibited from taking blood samples. Any medical officer of any prison or a district surgeon may do this. If requested by a police official, a registered medical practitioner or registered nurse may take steps, including the drawing of blood samples, in order to ascertain whether the body of an arrested person has any mark, characteristics or distinguishing feature or shows any condition or appearance.

Evidence obtained as a consequence of the above steps may incriminate the accused.

Schwikkard and Van der Merwe (2002:126-129) further state that the question then arises as to whether section 37 is in conflict with section 35(1) (c) of the Constitution of the Republic of South Africa, Act 108 of 1996. Section 35 of the Constitution deals with the fundamental rights of individuals and requires that the state should respect, protect, promote and fulfill these rights. Section 35 (1) (c) stipulate that “(1) Everyone has the right – (c) not to be compelled to make any confession or admission that could be used in evidence against that person”.

Ascertainment of bodily features as authorised by section 37 of the Criminal Procedure Act may still survive a constitutional challenge. Although the ascertainment of bodily features against the will of the accused limits the privilege against self-incrimination, such limitation may well meet the requirements of section 36 of the Constitution as the court ruled in *S v R* 2000 1 SACR 33(W) that any blood test is an invasion of the right to privacy and the right to bodily security and integrity, but that section 35 (5) permits this practice for the admission of evidence.

The respondents from both samples were asked whether it is legal to obtain a blood sample from a person arrested for driving under the influence of liquor.

The respondents from sample “A” reacted as follows:

- Twenty-one respondents answered that section 37 of the Criminal Procedure Act, Act 51 of 1977 gives police officials the power to collect a blood sample from a person who has been arrested for driving under the influence of liquor

- Nineteen respondents did not mention the Act, but indicated that by law a blood sample can be obtained from a person accused of driving under the influence of liquor

The respondents from sample “B” reacted as follows:

- Thirteen respondents answered that section 37 of the Criminal Procedure Act, Act 51 of 1977 authorises police officials to collect a blood sample from a person who has been arrested for driving under the influence of liquor
- Three respondents could not mention the Act, but indicated that by law a blood sample can be obtained from a person accused of driving under the influence of liquor

Although 22 respondents could not mention section 37 of the Criminal Procedure Act, their responses indicated that all of them were aware that legislation prescribes and regulates the collection of blood samples from persons who are accused of driving under the influence of liquor.

The respondents were asked who is responsible for the collection of blood samples from persons who are arrested for driving under the influence of liquor.

All the respondents from both samples indicated that the police official who arrests the accused person must take the arrested person to a medical practitioner or district surgeon for the collection of a blood sample.

All the respondents from both samples were aware of who is responsible for the collection of the blood sample. They stated that the accused person must be taken to a medical practitioner or district surgeon by the arresting police official for the collection of such a blood sample by the district surgeon or medical practitioner.

Section 65 (3) of the National Road Traffic Act 93 of 1996 (South Africa, 1996b) creates a presumption in favor of the state to the effect that, where it is proved that the concentration of alcohol drawn within two hours after the alleged offence is not less than 0,05 gm/100 ml, it shall be presumed that it was also not less than 0,05/100 ml at the time off the offence. This presumption is only applicable to offences in terms of section 65(2) of the National Road Traffic Act 93 of 1996 (South Africa, 1996b).

The respondents from both samples were asked what the time frame is in which blood samples should be collected from the accused person after arrest. The respondents from sample "A" reacted as follows:

- Fifteen respondents stated that the blood sample must be collected within two hours from the time of arrest
- Twelve respondents were not sure about a time frame in which a blood sample should be collected from a accused person and their responses were as follows:
  - Three respondents said they were not sure but that they thought within three hours
  - Six respondents answered that they were not sure but that they thought within four hours from the arrest of the accused
  - Four respondents indicated that they did not know what the time frame is

The fact that not all the respondents from sample "A" were aware of the time frame in which blood samples should be collected revealed that the respondents in this sample were confused regarding the time frame in which a blood sample should be obtained from the arrested person. It is also evident to the researcher that not all uniformed members are conversant with the new legislation regarding the time frame factor, which changed in 1996 with the amendment of the National Road Traffic Act 93 of 1996 (South Africa, 1996b).

The respondents from sample “B” all indicated that a blood sample should be collected within two hours from the person accused of driving under the influence of liquor. The responses of the respondents in this sample indicated that they were aware of the time frame in which a blood sample should be collected from a person who is arrested for driving under the influence of liquor.

## 2.11 SUMMARY

It is of paramount importance that all investigators are familiar with the objectives and purpose of the investigation process as this will enable investigators to conduct successful and effective investigations, which will ensure good convictions in court. The investigators should have a clear understanding of what must be achieved and only then will they be able to achieve the set goals and objectives in their investigations. It is important for investigators to know and understand the value and importance of evidence for ensuring that the goals, objectives and purpose of the investigation are at all times achieved. It is thus expected that police officials should know the law. In the next chapter the evidential value of blood samples in criminal cases of driving under the influence of liquor is discussed.



**CHAPTER 3**  
**THE EVIDENTIAL VALUE OF BLOOD SAMPLES IN CRIMINAL**  
**CASES OF DRIVING UNDER THE INFLUENCE OF LIQUOR**

**3.1 INTRODUCTION**

Criminal cases are solved on the basis of sufficient evidence. Evidence must have been collected and processed properly, lawfully and in a manner that is above reproach and that proves the guilt of the accused beyond reasonable doubt. This is not an easy task and investigators therefore need to perform the task of collecting evidence with diligence. The impact that evidence can have in court can make a big difference with regard to the outcome of the case. In maximising the effectiveness of this evidence, correct collection and preservation techniques must be used by investigators.

Schwikkard, Skeen and Van der Merwe (1997:258) explain that the results of blood tests may be used in litigation. A blood test is usually carried out in cases when people drive under the influence of alcohol or drive with an excessive blood alcohol level. The results of blood samples may be used in the litigation process as evidence, meaning that the blood sample results can be used in a court of law to prove or disprove facts regarding the committing of the crime. In other words, the results of the blood sample can prove or disprove whether the alcohol concentration in the blood of the accused was over the prescribed limit or not.

Physical evidence can make or break a case. It is, therefore, important that an investigator knows how to collect and preserve this type of evidence correctly. Evidence that is properly collected and preserved can establish a strong link between an individual and a specific act. Evidence which is not handled correctly can weaken or destroy objective information in a case. Evidence is used for determining the

facts in a case for later laboratory examination and for direct presentation in court (Bennet & Hess, 2004:87).

This research is focused on the maintaining of the chain of evidence of blood samples in cases of driving under the influence of liquor, and in this study it is assumed that the results of blood samples may be used in the litigation process as evidence. Blood can be seen, touched and smelled and can therefore be categorised as physical evidence. This chapter focuses on the following aspects regarding evidence:

- the role of the law of evidence in criminal proceedings
- constitutionality of section 37 of the Criminal Procedure Act 1977
- different types of evidence
- admissibility and relevance of evidence
- chain of custody of evidence

### 3.2 THE ROLE OF THE LAW OF EVIDENCE IN CRIMINAL PROCEEDINGS

Schwikkard and Van der Merwe (2002:2) state that the law of evidence governs the proof of facts in a court of law and therefore forms part of the procedural machinery that makes substantive law effective. The general scope of the law of evidence can be determined with reference to its specific functions. The main function of the law of evidence is to determine which facts are legally receivable to prove the facts at issue.

Schmidt and Zeffertt (1997:1) explain that, although the law of evidence regulates the proof of facts generally and therefore covers a wider field than merely that of the abduction of evidence, the latter is its main concern. Evidence has been said to encompass all information given in a legal investigation to establish the fact in question. Referring to this definition, the court in *Starr v Rammath* 1954 2 SA 249 (N) adopted the definition as the ordinary legal meaning of the word (Schmidt & Zeffertt, 1997:1).

### 3.3 UNCONSTITUTIONALLY OBTAINED EVIDENCE

Section 225 of the Criminal Procedure Act 51 of 1977 (South Africa, 1977) stipulates that “(1) whenever it is relevant at criminal proceedings to ascertain whether any fingerprint, palm print or footprint of an accused at such proceedings correspond to any other fingerprint, palm print or footprint, or whether the body of such an accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, evidence of the fingerprints, palm prints or foot-prints of the accused or that the body of the accused has or had any mark, characteristics or distinguishing feature or shows or showed any condition or appearance, including evidence of the result of any blood test of the accused, shall be admissible at such proceedings.

(2) Such evidence shall not be inadmissible by reason only thereof that the fingerprint, palm print or footprint in question was not taken or that the mark, characteristics, feature, condition or appearance in question was not ascertained in accordance with the provisions of Section 37 of the Act, or that it was taken or ascertained against the wish or the will of the accused concerned.”

The question then arises (as briefly touched on in the previous chapter) whether section 37 is in conflict with section 35(1)(c) of the Constitution of the Republic of South Africa, Act 108 of 1996 (South Africa, 1996a), which states that ascertainment of bodily features as authorised by section 37 of the Criminal Procedure Act may still survive a constitutional challenge on the following basis: although the ascertainment of bodily features against the will of the accused limits the privilege against self-incrimination, such limitation may well meet the requirements of section 36 of the Constitution as the court ruled in *S v R 2000 1 SACR 33(W)* that any blood test was an invasion of the right to privacy and the right to bodily security and integrity but that

section 35 (5) permitted the admission of the evidence (Schwikkard & Van der Merwe, 2002:128).

In the case of *S v Britz* (1994:2) SACR 687 (W) the court ruled that the fact that the nurse taking the blood sample had not taken the appropriate sanitary precautions in drawing the blood specimen resulted in irrelevance to admissibility. The words “by reason only thereof” make it clear that evidence can be excluded on grounds other than non-compliance with section 37; at any rate, section 35 (5) of the Constitution will apply in cases where section 37 evidence is obtained in breach of the Bill of Rights (Schwikkard & Van der Merwe, 2002:129).

Section 225 (2) of the Criminal Procedure Act, Act 51 of 1977 (South Africa, 1977) allows such evidence to be admitted even if it was obtained improperly or against the will of the accused. In the case *R v Mathemba* 1941 AD 75 the court considered the admissibility of a palm print taken by compulsion. The court found that the privilege against self-incrimination applied only to testimonial utterances (Kriegler & Kruger, 2002:78). The authors are in agreement with the provisions of the Criminal Procedure Act 51 of 1977, regarding evidence that is not legally obtained. It means that if a blood sample of a person arrested for driving under the influence of liquor is obtained in terms of section 37 of the Criminal Procedure Act no 51 of 1997 against the wish or will of the accused the blood sample evidence will not be inadmissible. Section 225 of the Criminal Procedure Act no 51 of 1977 therefore makes evidence obtained in breach of section 37 of the Act valuable because the facts regarding the condition and appearance of the driver can be determined.

### 3.4 EVIDENCE

Kriegler and Kruger (2002:78) explain that blood samples are evidence and fall under the same category as fingerprints and identification parades. According to Schwikkard and Van der Merwe (2002:21),

evidence is direct when a fact at issue is proved directly by such evidence. Schwikkard and Van der Merwe (2002:18-19) explain that there is a distinction between evidence and probative material. They further state that South African Courts are not entirely consistent in distinguishing between evidence and probative material.

Evidence essentially consists of oral evidence, documentary evidence and real evidence produced and received in court. Evidence, however, is not the only means of furnishing proof. It is acceded that the term “probative material” refers to real evidence but also to formal admissions, judicial notice presumptions and statements made in terms of section 115 of the Criminal Procedure Act and which do not amount to formal admissions. “Probative material” therefore refers to more than oral, documentary and real evidence. According to Schmidt and Zeffertt (1997:1), evidence has been said to encompass all the information given in a legal investigation to establish the fact in question.

Dempsey (2003:107-108) explains that the word “evidence” includes all means by which an alleged fact, the truth of which is submitted to scrutiny, is established or disproved. Sennewald and Tsukayama (2001:139) define evidence as “the state of being evident, something that makes another thing evident, such as a sign, a statement of witness and exhibit, etc, bearing on or establishing the point in question in a court of law. Gilbert (2004:58) explains that evidence is anything properly admissible in a court that will aid the function of a criminal proceeding in establishing guilty or innocent or establishing the point in question in a court of law. Bennet and Hess (2004:87) define evidence as “data on which a judgment or conclusion may be based”. Swanson et al. (2003:769) define evidence as “anything that tends logically to prove or disprove a fact at issue in a judicial case of controversy”. The authors explain that anything that might have the slightest bearing on the outcome of a case can be broadly classified as evidence, provided it has a logical tendency to relate to the outcome of the case. In a

criminal case, if the matter has a bearing on the guilt or innocence of the defendant, it is evidence.

The respondents from both samples were asked what they understood by the concept “evidence”. The respondents from sample “A” reacted as follows:

- Twenty respondents indicated that evidence means something that can be used in a court to prove a case
- Eleven respondents stated that evidence is facts that prove the guilt of the accused person
- Nine respondents explained that evidence is something that can help in proving a case in court

The respondents from sample “B” reacted as follows:

- Ten respondents indicated that evidence means anything or everything that can be used or presented in a court to prove a case against an accused
- Four respondents stated that evidence is collected facts presented to the court to prove the guilt of the accused
- Two respondents explained that evidence is something that can assist in proving a case in court

The responses of the respondents from both samples indicated that there is no real difference between their understanding of the concept “evidence” and the viewpoints of Bennet and Hess (2004:87), Dempsey (2003:107-108), Gilbert (2004:58), Sennewald and Tsukayama (2001:139), Kriegler and Kruger (2002:78), Schmidt and Zeffertt (1997:1), Schwikkard and Van der Merwe (2002:21), Swanson et al.(2003:769), which means they are in agreement on what the meaning of evidence is.

### 3.4.1 The Different Types of Evidence

Swanson et al. (2003:774) state that there are many ways of classifying evidence. The authors explain that the differences are immaterial as long as the principles are understood. The authors identify five types of evidence; namely, direct evidence, real evidence, demonstrative evidence, circumstantial evidence and opinion evidence. Bennet and Hess (2004:89) explain that evidence can be classified in different ways. One common classification is to distinguish between direct and indirect evidence. Dempsey (2003:108) supports the view of Bennet and Hess (2004:89) that there are three general types of evidence: direct evidence, circumstantial evidence, and prima facie evidence.

#### 3.4.1.1 Direct evidence

According to Bennet and Hess (2004:89), direct evidence establishes proof of a fact without any other evidence. Dempsey (2003:108) explains that direct evidence directly establishes the main facts at issue in a case. It is evidence that proves the facts at issue in a case. It is evidence that proves disputable facts directly, without an inference or a presumption being drawn from any other set of facts. According to Gilbert (2004:58 & 59), direct evidence is relatively important in a criminal trial and will usually prove the fact without substantiation. Swanson et al. (2003:774) explain that direct evidence is usually the testimony of witnesses, which ties the defendant directly to the committing of the crime. This testimony is based on firsthand knowledge of the witness regarding the guilt of the defendant.

This means that blood samples can be classified as direct evidence which shows a certain condition or appearance of an accused person during the committing of driving under the influence of liquor. Schwikkard and Van der Merwe (2002:21) explain that evidence is direct when a fact in issue is proved directly by such evidence. According to Schmidt and Zeffertt (1997:7), direct evidence makes direct assertions that a fact exists, or does not exist.

#### 3.4.1.2 Indirect evidence

Bennet and Hess (2004:89) explain that indirect evidence is evidence that merely tends to incriminate a person. Indirect evidence is also called “circumstantial evidence”, that from which inferences are drawn. According to Dempsey (2003:108), circumstantial evidence establishes a fact or circumstances from which a court may infer another fact at issue. Circumstantial evidence also includes physical evidence found at the crime scene. Gilbert (2004:58 & 59) explains that indirect evidence, does not directly prove a fact at issue, but may establish a strong inference as to the truth of that fact. Swanson et al. (2003:774) explain that circumstantial evidence is sometimes referred to as “indirect evidence”.

Circumstantial evidence is used in a criminal case by inferring, from a series of known facts, the existence of an unknown fact. Schmidt and Zeffertt (1997:9) explain that circumstantial evidence is a circumstantial fact from which an inference may properly be drawn as to the existence, or non-existence, of a fact at issue. According to Schwikkard and Van der Merwe (2002:21), circumstantial evidence often forms an important component of the information furnished to the court. The court is required to draw inferences. Circumstantial evidence furnishes indirect proof.

#### 3.4.1.3 Prima-facie evidence

According to Dempsey (2003:108), prima-facie evidence is evidence that, standing alone, unexplained or un-contradicted is sufficient to establish a given fact. Prima-facie evidence is sufficient to establish a given fact and is sufficient on its own to prove a fact unless or until it is overtaken by other evidence. Prima-facie evidence may be direct or circumstantial. Bennet and Hess (2004:89) explain that small items, such as hair or fibres, are a subset of direct evidence and are called “prima-facie evidence”.



#### 3.4.1.4 Physical or real evidence

According to Schwikkard and Van der Merwe (2002:366), real evidence may include any thing, person or place which is observed by the court in order that a conclusion may be drawn as to any fact at issue. Schmidt and Zeffertt (1997:100) explain that real evidence is presented when a material object is produced for inspection by the court. The term is usually applied to exhibits, such as clothing, a knife or a fingerprint, but has also been extended to cover a document presented as a chattel or a person in so far as his/her appearance or demeanour is to be observed.

According to Gilbert (2004:58 & 59), real evidence can be any kind of object associated with the investigation, but must be a physical tangible item. Swanson et al. (2003:774) explain that real evidence is sometimes referred to as “physical evidence” – real evidence is connected with the committing of the crime. If the different viewpoints of the various authors are compared with one another, it is clear that they are in agreement on the different types of evidence.

The respondents from both samples were asked to identify the types of evidence which exist in the crime investigation process.

The respondents from sample “A” could only identify physical evidence and direct evidence during the investigation process. The respondents did not mention indirect evidence, circumstantial evidence, or prima-facie evidence in their responses, which indicates that they are partially in agreement with the viewpoints of the various authors on the different types of evidence.

The respondents from sample “B” reacted as follows:

- Fourteen respondents were able to identify all the different types of evidence
- Two respondents did not identify indirect evidence

Although two respondents from this sample were unable to identify one type of evidence, the responses of respondents from this sample indicated that they were aware of the different types of evidence. This means that they were in agreement with the viewpoints of the various authors on the different types of evidence.

### 3.5 ADMISSIBILITY OF EVIDENCE

Schmidt and Rademeyer (2000: 369-370 & 383) explain that, when it is said that evidence is admissible, this means that the court must consider this evidence in settling the argument before the court. Before admission of evidence the court should be convinced that the evidence meets all requirements of admissibility for a specific purpose. In the case of *Lornadawn Investment (Pty) Ltd v Minister van Landbou* 1977 SA 618 (T) 622H, the court came to the following conclusion: "...gebruikmaking van getuienis bly beperk tot die besondere doel op grond waarvan dit toegelaat word" (Schmidt & Rademeyer, 2000:383 & 384).

Nokes (in Schmidt & Rademeyer, 2000:387), for instance, objects to the notion that relevancy is one of the precepts according to which permissibility is determined. He states: "Relevance depends on reasoning, but admissibility depends on law and to be received in evidence facts must be both relevant and admissible. Admissibility denotes that there is no rule of law or practice by which facts must or may be excluded. It is thus necessary to bear in mind a distinction between relevance and admissibility, or, more clearly, the distinction between relevance and inadmissibility".

Nokes (in Schmidt & Rademeyer, 2000:387) postulates: "Relevance depends on reasoning, but admissibility depends on law". This substantiates what has also been expressed in South African courts. For instance, in the case *R v Matthews* 1960 1 SA 752(A) A-B, the

appeal judge Schreiner declared: “Relevancy is based upon a blend of logic and experience lying outside the law”. It is true that the question as to whether evidence is relevant could be confirmed by merely establishing if the witness (being permitted) could contribute or refute the dispute. A preferable approach is to bear in mind that relevancy is one of the admissible requirements. It is a condition laid down by the law (Schmidt & Rademeyer, 2000:388).

In the case of *Hollingham v Head* (1858)4 CB (NS) 388, 27, LJP 241, 242, 140, ER 1135, judge Willes declared: “It may often be difficult to decide upon the admissibility of evidence, where it is offered for the purpose of establishing probability, but to be admissible it must at least afford a reasonable inference as to the principal matter in dispute” (Schmidt & Rademeyer, 2000:392).

According to Schmidt and Zeffertt (1997:4), the general rule is that no evidence as to any fact, matter or thing is admissible if it is immaterial or irrelevant, in all positive aspects. All facts of sufficient probative force are relevant and admissible unless their reception is prohibited by an exclusionary rule. In the case of *S v Boesman* 1990 SACR 389 (E), it was ruled that the court has an overall discretion, based on public policy, in order to exclude evidence which would otherwise be admissible (Schmidt & Zeffertt, 1997:4). According to Schwikkard and Van der Merwe (2002:20), there are no degrees of admissibility. Evidence is either admissible or inadmissible. Evidence cannot be more or less admissible. The court weighs or evaluates evidence to determine whether the required standard or proof has been attained.

Bennett and Hess (2004:121) state that to ensure admissibility of evidence in court one must be able to do the following: identify the evidence as that found at the crime scene, describe exactly where it was found, establish its custody from discovery to the present, and voluntarily explain any changes that have occurred in the evidence. Palmiotto (2004:35) explains that, after it has been determined that a

crime was committed and a chain of custody for evidence has been maintained, the next important question is the admissibility of evidence. To be admissible, evidence must be considered material, relevant and competent. Any evidence considered not to be of sufficient value will not be admitted. According to Swanson et al. (2003:769), one of the rules governing admissibility of evidence requires that the evidence be relevant. The evidence must have a bearing on the issues in the case being tried.

Brown (2001:50) explains that to be admissible, evidence must be relevant and it must have some probative value. The item of evidence must tend to prove the proposition of evidential value. Evidence must be legally significant to be admissible. Dempsey (2003:110 & 111) agrees with the view put forward by Palmiotto (2004:35) and explains that for evidence to be admissible it must be considered material, relevant and competent.

South African courts are inclined to state the rule in its positive form:

“All facts relevant to the issue in legal proceeding may be proved. Not all relevant evidence is necessarily admissible: The rule is that any evidence which is relevant is admissible unless there is some other rule of evidence which excludes it” (Schwikkard & Van der Merwe, 2002:45).

Evidence which is highly relevant, and even if it happens to be the only available evidence, must be excluded where, for example, it is privileged. Relevant evidence obtained in breach of Constitutional Rights may also be excluded. Relevance is therefore not the sole test for admissibility. The law of evidence does not allow untrammelled access to all relevant evidence (Swikkard & Van der Merwe, 2002:45 & 46).

### 3. 6 THE RELEVANCE OF EVIDENCE

Schmidt and Rademeyer (2000:388) explain that is it true that the relevance requirements are always regarded as the general rule for the admissibility of relevant evidence. In other words, relevant evidence is admissible unless there is some other rule of evidence which excludes it. The fact is that if evidence is irrelevant, it is inadmissible, and therefore has relevant relation to admissibility. The view of Nokes in (Schmidt & Rademeyer, 2000:388) that “relevance depends on reasoning, but admissibility depends on law” comes to the fore in a view uttered in the South African courts in the case of R v Matthews 1960 1 SA 752 (A) A-B. The appeal judge Schreiner, who was concerned with the case, for example, stated: “Relevance is based upon a blend of logic and experience lying outside the law.”

The ideal approach is that relevance is one of the admissibility requirements. It is a legal requirement (Schmidt & Rademeyer, 2000:388). The first requisite of legal relevance is that evidence has to be conducive to rational persuasion. This means that evidence must have some logical relevance. A decision on the relevancy of evidence in that particular case will depend, firstly, on whether the evidence is capable of inducing rational persuasion and, secondly on whether there are any legal rules or considerations of policy that would lead to its rejection as being legally irrelevant. To be legally relevant evidence must be sufficiently relevant to warrant its being received in the circumstances of a particular case. The concept involves the idea that it has to be worthwhile to admit the evidence. To determine whether evidence is relevant its value as evidence has to be considered (Schmidt & Zeffertt, 1997:5-6).

Schwikkard et al. (1997:42-45) explain that relevance is a matter of degree and is certainly easier to identify in practice than to describe in the abstract. It would be wrong to accept or assume that evidence is admissible simply because of its logical relevance. Relevance cannot

be decided upon in vacuity. The nature and extent of the factual and legal dispute must be considered. There must at least be some advance indication that the evidence, if received, would be of reasonable assistance to the court in the exercise of its ultimate fact-finding duty.

It should be borne in mind that the admissibility of evidence is in principle determined with reference to its relevance (Schwikkard and Van der Merwe, 2002:20).

Dempsey (2003:110) explains that relevant evidence tends to prove or disprove a fact in dispute. It explains or sheds some light on the issues involved in the case. It is evidence that logically, naturally and by reasonable inference tends to establish some fact.

According to Bennet and Hess (2004:92), relevant evidence is evidence that applies to the matter in question. Gilbert (2004:59) explains that relevant evidence is pertinent and relates directly to the matter under consideration. As long as a given item of evidence tends to prove or disprove any circumstance related to the criminal investigation, it is relevant to that proposition.

### 3.7 THE CHAIN OF CUSTODY

Dempsey (2003:64) defines the chain of custody as “the identification and control of evidence from the time it is collected at the scene until it is entered into evidence in court”. Bennet and Hess (2004:92) define the chain of custody as “what has happened to the evidence from the time it was discovered until it is needed in court, including every person who has had custody of the evidence and why”. According to Palmiotto (2004:34), the chain of custody traces the possession of the evidence from the moment the investigator gains control of it until its submission to court. Van Rooyen (2001:57) describes the chain of evidence as the safekeeping of exhibits from the crime scene to the court.

During the research the researcher noticed that all the authors consulted use the concept “chain of custody” apart from the authors Sennewald and Tsukayane (2001:142), who use both the concepts “chain of custody” and “chain of evidence” in a South African context. From what has been established thus far in the research it is realistic to accept that there is no difference between the two concepts, as both concepts deal with the handling of evidence from the time of collection until it is presented in a court of law.

Swanson et al. (2003:33 & 277) explain that at all stages of handling evidence the chain of custody or control of it must be established. The chain of custody is the witnessed, unbroken, written chronological history of who had the evidence when ensuring the integrity of the evidence by establishing and maintaining a chain of custody is vital to the investigation.

Lyman (2002:143) states that evidence that has been collected must be safeguarded until the time that the case goes to court. If, during the trial, it is determined that labels are missing, evidence has not properly been initiated, or evidence is either missing or has been altered, the evidence may be considered inadmissible, and the case might be thrown out of court. According to Brown (2001:89), the rules of evidence require that any evidence be presented to a jury in substantially the same condition in which it was found. This obliges the officer collecting evidence to establish the chain of custody. Lee and Harris (2000:268) explain that proper record should be kept concerning the chain of custody. Gilbert (2004:105) explains that when evidence is found at the scene the investigator must be able to account for it.

Accounting responsibilities begin when the item is first located and do not end until the evidence reaches the court room. Being able to account for the location and possession of evidence is known as “maintaining the chain of custody” (Gilbert, 2004:105). This accountability procedure is very important, for if a break in the chain

occurs, the item will not be admitted as evidence in court. By following strict accountability procedures the chain of custody remains intact.

According to Marais (1992:15 & 16), continuity of possession is the continuous safekeeping and identification of physical evidence and is essentially important in the individualisation of a particular sample. Individualisation indicates that a disputed object found on the crime scene and the standard of comparison is of the same origin. When the crime investigator fails to properly identify or safe keep samples this lowers the value of laboratory analysis to the minimum. The correct methods applied during collection, marking and packaging of evidence may be nullified if account cannot be given of the people who handled, evaluated or safeguarded the samples.

Marais (1992:15) further explains that, in order to preserve the integrity of physical evidence, the adherence to the following basic guidelines is a prerequisite:

- Limit the number of individuals who handle the evidence from the time it is found to the time it is presented in court
- If the evidence leaves the investigator's possession, record should be indicated in the investigator's notes as to whom the evidence was given; the time and date; the reason for being given to another person; and when and by whom the evidence was returned
- Ensure that the people handling the evidence affix their names, force numbers and assignment to the package
- Obtain a signed receipt from the person accepting the evidence.
- When the evidence is returned, the investigator should check for his or her identification marks affixed to the item and ensure that it is the same item
- Determine if it is in the same condition as it was when it was recovered



- Any change in the physical appearance of the evidence should be brought to the attention of the court

Marais (1992:16) further explains that proof of the “chain of custody” demonstrates that:

- the evidence offered is the same evidence as that found at the scene
- there has been no opportunity to replace or improperly alter the evidence
- any change in the condition of the evidence can be explained

Van Rooyen (2001:59) points out that if a crime investigator fails to properly identify or safe keep evidence, it lowers the value of laboratory analysis to a minimum.

Lee and Harris (2000:269) explain that it is also important for the investigator to ensure that the evidence is properly packaged for its safekeeping and preservation. According to Van der Westhuizen (1996:42), the importance of maintaining the physical and evidential integrity of samples at all times is generally acknowledged and the practice closely observed. If any doubt arises as to the crime situation, the scene of the crime and the offender, it may well render worthless all other efforts which may comprise the judicial individualisation of an offender. Van der Westhuizen (1996:206) further explains that the detection, preservation and handling of blood samples are for the most part the task of the criminal investigator. He also explains that blood examinations inevitably play an important role in cases where the alcohol content in the blood of offenders must be determined.

Marais (1992:13 & 14) explains that preservation of the integrity of the evidential value of physical evidence is a continuous responsibility from the time it is discovered until the time it is presented in court. Preservation implies maintaining evidence without altering, tampering,

contamination, loss or injury. The way in which it is collected and marked for identification is an essential part of preservation. In order to ensure that physical evidence is accepted in court, information concerning the location of the evidence, its condition and its connection with the crime scene is essential. Evidence concerning the handling of physical evidence is indispensable because the court must be convinced that the said evidence was not altered or tampered with from its collection until its presentation in court.

Preservation involves forwarding of evidence to the laboratory for examination and analysis, obtaining of evidence from the laboratory, and keeping the evidence safe under lock and key where the evidence cannot be tampered with until the evidence is delivered in court. Such testimony ensures the integrity of the chain of custody.

Dempsey (2003:64) explains that it is legally required to describe the location and condition of evidence at the time it was collected, to assist in establishing that from the time of its collection until presentation in court, the evidence was continuously kept in proper safe-keeping. This assists in describing any changes that may have occurred in the evidence between the time of collection and its subsequent introduction as evidence in court.

Sennewald and Tsukayama (2001:143) point out that the evidence storage must be completely secure in order to prevent the evidence from being altered, damaged or stolen. Ensuring the evidence storage integrity will keep the investigator from being forced to explain to the judge and jury why such poorly protected evidence should be relied upon.

Taking the viewpoints of the various authors as stated above into account, it is clear that a proper chain of custody must at all times be maintained concerning the blood samples in cases of driving under the influence of liquor from the time a blood sample is collected until the

time evidence concerning the blood sample analysis is presented in a court of law. It is imperative for the arresting officer to take the person arrested for driving under the influence of liquor to a medical practitioner, who must collect a blood sample from the arrested person. The blood sample must be sealed by the medical practitioner, after its collection and must be handed to the arresting officer. The blood sample must then be handed in at the Client Service Centre at the police station by the arresting officer. The commander of the Client Service Centre must ensure that the blood sample is safeguarded in a vault until it is sent for analysis to the Forensic Science Laboratory (Standing Order 23). Every person who has handled the blood sample from the time of collection must ensure that the integrity of the blood sample is protected at all times.

The respondents from both samples were asked why it is important to maintain the chain of evidence.

The respondents from sample "A" reacted as follows:

- Fourteen respondents stated that it is important to maintain the chain of evidence to ensure a conviction in court
- Twelve respondents were of the opinion that is important to maintain the chain of evidence to ensure that no persons have tampered with the evidence
- Eight respondents explained that, to prove the case beyond reasonable doubt, it is important for the chain of evidence to be maintained
- Three respondents stated that if there is any dispute regarding the chain of evidence the documentation regarding the handling will be crucial to prove to the court that the chain of evidence was maintained
- Three respondents stated that it is important to maintain the chain of evidence as the court needs to know who dealt with the evidence

The respondents from sample “B” reacted as follows:

- Nine respondents explained that to prove a case beyond reasonable doubt in court it is important that the chain of evidence is at all times maintained to ensure a conviction in court
- Seven respondents stated that it is important to maintain the chain of evidence to prove the guilt of the accused and ensure a conviction in court

If the answers of the respondents in both samples are compared to the views of Sennewald and Tsukayama (2001:142-143), Lyman (2002:98), Dempsey (2003:64), Palmoitto (2004:34), Bennet and Hess (2004:92), Van Rooyen (2001:57), Marais (1992:15&16), Van der Westhuizen (1996:206 & 421) Swanson et al. (2003:277), Brown (2001:89), Lee and Harris (2000:268) and Gilbert (2004:105), there is no difference regarding the importance accorded the maintenance of the chain of evidence, which means that the respondents from both samples are in agreement with the viewpoints of these authors.

### 3.8 SUMMARY

Evidence may have a tremendous influence on the outcome of a criminal trial. Investigators must remain alert to recover any type of evidence that might lead to the identification of a suspect or link a suspect to a specific crime. While the evidence is being processed, the investigator must remember the purpose of gathering evidence is to prove the truth about a suspect's guilt or innocence.

Evidence is of enormous value in a court of law during presentation. The value will, however, be determined by what has happened to the evidence after it has been collected. The evidence must not lose its value and integrity after collection because of improper handling. There must be a proper chain of evidence concerning what has happened to the evidence, from the time it was collected until it is presented in court.

The maintaining of a proper chain of evidence will ensure admissibility of evidence in court and will also identify the evidence as that collected on the crime scene, describe exactly where the evidence was found, establish the safe-keeping of evidence from collection to the present, and explain any changes that have occurred in the evidence. It is of utmost importance that a proper chain of evidence is at all times maintained to secure a successful presentation of evidence and ultimately a successful conviction in court.

**CHAPTER 4**  
**THE CORRECT PROCEDURE FOR HANDLING BLOOD SAMPLES IN**  
**CASES OF DRIVING UNDER THE INFLUENCE OF LIQUOR**

**4.1 INTRODUCTION**

The handling of blood samples in cases of driving under the influence of liquor from the time of collection until the blood samples are submitted to the laboratory for analysis and the subsequent presentation of the result of the analysis of these blood samples form an important part of the investigation of cases of driving under the influence of liquor. It is therefore necessary that these blood samples are correctly handled by police officials. Cases of driving under the influence of liquor involving blood samples are considerably complicated to litigate. The evidence of a blood sample in cases of driving under the influence of liquor can make or break a case and it is therefore important that the correct procedure is followed when blood samples are handled by police officials.

Properly collected and preserved blood samples can establish a strong link between the intoxicated driver and the act of driving under the influence of liquor. It is essential that police officials and investigators know how to collect and preserve blood sample evidence correctly. Blood sample evidence in cases of driving under the influence of liquor which is not handled correctly can weaken or destroy the investigation objective in such cases. The investigator will be forced to rely solely on the statements of eye witnesses or any other statements. The blood sample evidence can also be used either to bolster or to contradict witness statements or any other statements that the subject may make. Once police officials and investigators know how to collect and preserve blood sample evidence in cases of driving under the influence of liquor and the role this evidence can play in an investigation they will then approach the case with a view to solving it.

This chapter focuses on the taking of blood samples, the proving of certain facts by affidavit or certificate in criminal proceedings, the handling of the blood samples, the precise identification of specimens, the current procedure to be followed after the collection of the blood samples, the correct procedure for the handling of blood samples by police officials in the SAPS, the case analysis of finalised cases of driving under the influence of liquor, and the problems experienced by police officials in handling blood samples.

#### 4.2 THE TAKING OF THE BLOOD SAMPLE/SPECIMEN

Nelson (2004:41) explains that the provisions of sections 37 (2) and 225(1) of the Criminal Procedure Act (Act 51 of 1977) (South Africa, 1977) govern the circumstances under which a blood sample may be drawn from a person who is arrested for driving under the influence of liquor. It will have to be proved that the specific specimen was taken from the accused and it will have to be shown how the arm was cleaned and with what substance. Nelson (2004:41) further states that these aspects have often featured in South African Courts and that the principle is clear that no substance that could influence the analysis should be present on the skin of the accused.

In the case of *S v Glegg* 1973 (1) SA 34 (A), the evidence of the accused, that his arm was cleansed with liquid soap and had not been dried, was accepted. In the case of *S v Van Wyk* 1977(1) SA 412 (NK) 414 G, the judge said “ ....sonder waarskuwing dat sy aangebode getuienis in twyfel getrek word sou die staat ...nie verkwalik kan word dat hy niks verder voorlê nie.” According to Van der Heever J in *Van Wyk supra*, it is not a “geheime vaardigheid”. The policeman’s evidence, depending on the degree to which the taking of the specimen is disputed, could have sufficient evidential value.

Marais (1992:10 & 11) explains that documentation of where and how the evidence was obtained is a basic duty during investigations. Every item collected should be entered in the notes, recorded and kept by the

investigator. The date, time, exact location and circumstances of how each item of evidence was obtained should be included, as well as a full description of the item. The description must also state how the evidence was marked. Great care must be taken to collect all objects and samples intact. All instruments used to collect the blood samples and all containers holding the samples, such as bottles and test tubes, should be clean.

Kriegler and Kruger (2002:85) explain that, apart from finger, palm and footprints, other distinctive signs could be pursued or sought. Sub-article (1) (c) of section 37 of the Criminal Procedure Act of 1977 (South Africa, 1977) states that it can be established whether the body shows any distinguishing marks, peculiarities or unnatural conditions. In practice the condition or appearance of a person is mostly ascribed to drugs or inebriation. A police officer could carry out the investigation with the understanding that a blood sample will not be taken and that, if the suspect is female, only a female police officer will execute the investigation. The examination may also be carried out by a prison medical practitioner or a district surgeon.

At the request of a police official, any registered medical doctor or registered nurse may examine the suspect. Blood samples may only be taken on own recognisance by medical doctors, primarily by a prison medical official or a district surgeon. If a police official requests that blood samples be taken, a different registered doctor or registered nurse may take a blood sample. When someone is admitted to hospital and the practitioner is of the opinion that, on reasonable grounds, the person's blood sample could be of consequence in the judgement of crime, a blood sample may be taken. This authorisation is primarily meant for instances in which driving under the influence of liquor is suspected (Kriegler & Kruger, 2002:85).

The Northern Cape division of the court differed in opinion in the case of *S v Van Wyk* 1977 (1) 412 (NK) and furthermore, in this regard,



found that a police official is sufficiently competent to testify that a blood sample has been taken (Kriegler & Kruger, 2002:85). Kriegler and Kruger (2002:85) explain further that, in the case of a person being accused of driving under the influence of liquor, the state must prove that the alcohol in the blood sample did not derive from a different source – for example a purifying/cleansing lotion applied to the skin before a needle containing an illegal substance has been applied to the skin. The state is supported by the refutable supposition in article 64 (4) of the National Road Traffic Act 93 of 1996 (South Africa, 1996b), which entails that the needle and the blood sample were indeed pure. In the case of *S v Britz* 1994 (2) SACR 687 (W), the nurse who drew the blood sample failed to comply with all the instructions given in the pamphlet. The court ruled that this in itself did not mean that the blood sample was improperly drawn. There was no indication that the oversight to comply with instructions could affect the validity of the blood sample (Kriegler & Kruger, 2002:85).

#### 4.2.1 Specimen taken within two hours of driving

Nelson (2004:36) explains that many factors have vital roles to play regarding the taking of blood samples, such as the time of drinking, physical characteristics of the accused, factors which may influence the absorption of alcohol in the bloodstream, time lapse between drinking and driving, or of the taking of a blood sample. This means that for an accurate result the blood sample should be obtained from the accused person within two hours after committing the crime.

#### 4.2.2 Labelling or Marking

According to Marais (1992:12), each item should be marked as soon as possible after discovery. The evidence should be marked in a way that does not destroy its evidential value. The item should be placed in a clean container, properly sealed, and marked with the date and case number and the initials and name of the investigator on the container. Samples should as far as possible be packaged in separate containers.

Samples must be properly packaged, tied and sealed in such a manner that the parcel cannot be tampered with without breaking the seal.

#### 4.3 ASPECTS THAT NEED TO BE PROVED CONCERNING THE COLLECTION OF A BLOOD SAMPLE

According to Nelson (2004:40), section 65 (2) of the National Road Traffic Act 93 of 1996 (South Africa, 1996b) prohibits a driver from driving with more than 0,05 per cent alcohol in his/her blood or 0,02 for a professional driver. It therefore has to be proved that the concentration of alcohol ultimately represents the alcohol in the blood of the driver and not any other substance which might contain alcohol that was used to clean the skin, such as acetone and habitane. If any alcohol other than the alcohol in the blood of the accused were present, it would have an influence on the result, the blood sample/specimen would be contaminated, and the result therefore untrustworthy. It has, therefore, to be proved that the sample was taken, handled and analysed free from contamination. It is clear that the state has to prove the manner in which the sample was taken in order to show that it was taken free from contamination. This makes it vitally important that it is proved that the needle used, the skin of the accused's arm, and the bottle (container) for storing the blood were uncontaminated. It is also necessary to show how the specimen was safeguarded against intrusion of alcohol from outside the bottle (container). In *S v Van Tonder* 1976 (3) SA 391 (T), the usual procedure is described and Myburgh J holds that, if disputed, the state has to prove that the bottle (container) was properly sealed, that it reached the laboratory in the same condition as it had been when dispatched, and that it could not have been opened without breaking the seal (Nelson, 2004:40).

#### 4.4 PRESENTATION IN COURT

Blood sample evidence is presented in court by means of the provisions of section 212 of the Criminal Procedure Act, 51 of 1977 (South Africa, 1977). It means that an affidavit or certificate regarding

the result of the analysis of the blood sample and the alcohol concentration can be submitted as evidence in court. The affidavit or certificate is prima-facie proof concerning the alcohol concentration of the blood sample and can prove certain facts regarding the alleged driving under the influence of liquor.

#### 4.5 THE PROOF OF CERTAIN FACTS BY AFFIDAVIT OR CERTIFICATE IN CRIMINAL PROCEEDINGS

Section 212 of the Criminal Procedure Act, 51 of 1977 (South Africa, 1977) permits the proof of certain facts by affidavit or certificate during criminal proceedings. Section 212 (4) provides that, where any fact is established by an examination or process involving skill in biology, chemistry, physics, astronomy, geography, anatomy, human behavioural science, pathology, toxicology or the identification of fingerprints or palm prints, an affidavit from a person in the state or provincial service, or attached to the South African Institute for Medical Research, or in the service of any university in the country or any other body duly gazetted shall on its mere production be prima-facie proof of such fact.

Nelson (2004:39) explains that in terms of section 212(4) of the Criminal Procedure Act, 1977 (South Africa, 1977) an affidavit or certificate made by a person alleging that he is skilled in chemistry and in the service of the state is upon its mere production prima-facie proof of the facts contained in the document. He further states that legislature has alleviated the task of the state immensely. All that the prosecutor has to do is to check whether the document complies with the requirements of section 212(4), read it out in court, and hand it in, and there is prima-facie proof of the alcohol content of the blood before court. The document is admissible evidence whether the defence objects or not.

Section 212 (8) of the Criminal Procedure Act 1977 (South Africa, 1977) authorises the handing in of affidavits in which the handling of

exhibits and specimens is described. It is therefore not necessary for viva voce evidence. Nelson (2004:44) explains that section 212 (8) also makes provision for the receipt of the specimen. It is, however, not necessary that viva voce evidence be led of each person who handled the blood specimen or that the prosecutor should present section 212 (8) statements to the court in lieu of viva voce evidence. It is only necessary that the evidence was properly sealed after it was drawn and that it reached the analyst in a sealed condition. Section 212(4) of the Criminal Procedure Act, 1977 (South Africa, 1977) elevates the mere production of the relevant document to be prima-facie evidence. According to Schwikkard et al. (1997:170), this implies that the analysis is correct and therefore free from contamination.

This means that certain facts can be proved in court regarding a blood sample collected from a person arrested for driving under the influence of liquor by means of an affidavit or certificate in terms of section 212 regarding the alcohol concentration in the blood sample and the handling of such a blood sample.

#### 4.6 THE PRECISE IDENTIFICATION OF A SPECIMEN

Nelson (2004:43) explains that it is the task of the prosecutor to place evidential material before the court in such a way that there is no doubt that the statement pertains to the blood of the accused. In the case of *S v Du Plessis* 1972 (4) SA 31(A), the identifying mark that the doctor who obtained the blood sample from the accused placed on the blood sample, as well as the official police seal, was sufficient proof that it was the same blood sample that was analysed by the analyst.

According to the court, it was not necessary to prove how the blood sample arrived at the analyst. In the case of *S v Francis* 1976 (2) SA 70 (C), the court ruled that the fact that the identification number on the charge sheet and the number in the affidavit corresponded constituted prima-facie proof that there is no doubt that the affidavit pertain to the blood of the accused. (Nelson, 2004:43). According to Marais (1992:14), only physical evidence that has bearing on the committed

crime should be sent to the laboratory. It is sometimes necessary for the crime investigator to personally deliver physical evidence to the laboratory.

The respondents from both samples were asked whether it is necessary for experts who handle the blood sample by analysing it to give evidence in court. The respondents from sample "A" reacted as follows:

- Twenty-two respondents answered that they were not sure but they thought that each person who handled the blood sample should testify
- Twelve respondents answered that they thought that the person who analysed the blood sample must testify in court
- Six respondents answered that the experts need to give evidence because these are the people who analyse the blood sample

The answers of the respondents from this sample revealed that not all of them, apart from six respondents, were aware of the provisions of section 212 (4) and (8) of the Criminal Procedure Act, 51 of 1977 (South Africa, 1977) regarding the handing in of affidavits and certificates to prove certain facts during criminal proceedings involving blood samples in cases of driving under the influence of liquor.

All respondents from sample "B" answered that the expert (analyst) who analyses the blood sample provides an affidavit or certificate in terms of section 212 of the Criminal Procedure Act, which is presented as evidence at court. The responses of the respondents from this sample indicated that all of them were acquainted with the stipulations of section 212 of the Criminal Procedure Act.

#### 4.7 THE CURRENT PROCEDURE FOLLOWED WITH REGARD TO THE COLLECTION AND HANDLING OF BLOOD SAMPLES DURING THE INVESTIGATION OF CASES OF DRIVING UNDER THE INFLUENCE OF LIQUOR

The respondents from both samples were asked to describe the procedures that they currently follow when blood samples are collected in cases of driving under the influence of liquor. The respondents from sample "A" reacted as follows:

- Eleven respondents did not know which procedures to follow regarding blood samples after collection
- Ten respondents explained that after the collection of blood samples by a medical practitioner the blood samples are handed in at the charge office by the arresting officer at the police station, where they are recorded in the exhibit register (SAP 13)
- Seven respondents explained that after the collection of the blood samples they are placed in a crime-kit container in the charge office
- Six respondents stated that blood samples are kept in a safe in the charge office after collection
- Six respondents explained that after the collection of blood samples, the samples are sealed by the district surgeon and dispatched for analysis

The respondents from sample "B" reacted as follows:

- Five respondents explained that after the collection of blood samples, the samples are sealed by the district surgeon and handed in at the police station for safekeeping from where they are dispatched for analysis
- Eleven respondents explained that after the collection of blood samples by a medical practitioner they are handed in at the client service centre by the arresting officer at the police

station, where they are recorded in the exhibit register (SAP 13)

The various explanations from the respondents from both samples indicated that different procedures are followed during the handling of blood samples in cases of driving under the influence of liquor after the collection of the blood samples. It is also evident from the feedback of the respondents that they have no clarity on the procedure to follow when handling such blood samples. It is alarming that different procedures are currently followed by the respondents and that 11 respondents do not know the procedure that should be followed when handling blood samples in cases of driving under the influence of liquor.

The guidelines which prescribe the handling of blood samples in cases of driving under the influence of liquor after the collection are contained in Standing Order General 256. This standing order stipulates that:

The District Surgeon must, when examining a person charged with driving under the influence of liquor, seal the container containing the blood sample of that person. The charge office commander shall ensure that the container containing the blood sample, after it has been registered in the Exhibit Register (SAP 13), is locked away in a vault or another safe place, in the charge office, where it cannot be tampered with until it is sent for analysis. [The name “charge office” has nowadays been replaced with “community service centre”.]

The respondents from both samples were asked what the client service centre commander should do with blood samples after they have been handed to him or her.

The respondents from sample “A” reacted as follows:

- Twenty-one respondents explained that after having received a blood sample the commander must place the blood sample in a safe
- Eleven respondents indicated that the commander must record the blood sample in the exhibit register and place it in the safe
- Eight respondents indicated that the blood sample should be placed in a safe place where it cannot be tampered with

The respondents from sample “B” reacted as follows:

- Thirteen respondents indicated that the commander must record the blood sample in the exhibit register and place it in the safe place
- Three respondents explained that after having received a blood sample the commander must place the blood sample in a safe

Although not all the respondents mentioned the recording of the blood sample in the exhibit register, all of them indicated that the blood sample should be kept in a safe.

The respondents from both samples were asked whose responsibility it is to take blood samples for analysis after the blood samples have been handed in at the client service centre. The respondents reacted as follows:

- Twenty-nine respondents stated that it is the responsibility of the exhibit clerk to take blood samples for analysis
- Fifteen respondents indicated that they are not sure who is responsible for taking the blood samples for analysis
- Twelve respondents stated that it is the responsibility of the investigator to take blood samples for analysis



According to Marais (1992:13 & 14), preservation involves forwarding the evidence to the laboratory for examination and analysis, obtaining the evidence from the laboratory, and keeping the evidence safe under lock and key where it cannot be tampered with until it is presented in court.

Standing Order General 335 deals with the taking of custody of property by the police. This standing order stipulates the following: "If property or exhibits are handed over to the Station Commander or the responsible member, he or she shall check the property meticulously and check each item with the property register. He shall then make a clear note in the relevant column of the SAPS 13 in respect of those items taken charge of by him."

Standing Order General 333 deals with the handling of exhibits by the police. This standing order stipulates the following: "If an exhibit is taken away from the station for investigation purposes, the station commissioner or community service centre commander shall obtain a temporary receipt from the member investigating the case or other person taking it away".

Circular 10 of 1967 (par.4) issued by the Department of Health, which was issued as a result of an agreement between the Commissioner of the Police, the Secretary of Justice and the Secretary of Bantu Administration and Development, and which deals with the handling of blood samples in cases of driving under the influence of liquor, states that the investigation officer must arrange for the blood sample to be dispatched to the Medical Analyst Laboratory situated in the district in which the sample was taken.

The stipulations of Standing Order General 333 and Circular number 10 of 1967 indicate that the investigating officer is responsible for taking the blood sample to the laboratory for analysis. This means that the investigating officer of a case of driving under the influence of liquor

should take the blood samples to the Medical Analyst Laboratory for analysis. The investigating officer will, after the analysis of the blood sample, be provided with the result of the analysis in the form of an affidavit or a certificate in terms of section 212 of the Criminal Procedure Act, 51 of 1977 (South Africa, 1977) for use as evidence in criminal proceedings.

The Head of the Unit of Law Enforcement of the Traffic Department in Randfontein, Mr Mampondo (Mampondo, 2007), was asked to describe the procedure that traffic officials under his command follow after they arrest people for driving under the influence of liquor.

According to Mr Mampondo (2007), after a person has been arrested for driving under the influence of liquor by traffic officials under his command, the arrested person is taken to the police station for detention. The police officials on duty will then take the accused person for the collection of a blood sample to a registered medical practitioner. He further explained that when a person is arrested by his traffic officials after hours, the arresting officer contacts the registered nurse who is on stand-by and is employed by the local municipality. The registered nurse, at the request of the traffic official, obtains a blood sample from the accused. Mr Mampondo moreover mentioned that when traffic officials arrest people for driving under the influence of liquor and take them to the police station, traffic officials sometimes request the registered nurse to draw a blood sample from the arrested people while at the police station.

The explanation from the head of the traffic department indicated that traffic officials under his command do not follow the correct procedures relating to the collection and handling of blood samples at all times. Traffic officials are not authorised by section 37 of the Criminal Procedure Act of 1977 (South Africa 1977), to request a registered nurse to draw a blood sample from a person, arrested for driving under the influence of liquor. Section 37 of the Criminal Procedure Act 1977

authorise police officials only to make a request the drawing of a blood sample from a person arrested for driving under the influence of liquor.

#### 4.8 THE CORRECT PROCEDURE FOR THE HANDLING OF BLOOD SAMPLES DURING THE INVESTIGATION OF CASES OF DRIVING UNDER THE INFLUENCE OF LIQUOR

The handling of blood samples in cases of driving under the influence of liquor after the collection of these samples is prescribed by organisational guidelines in the SAPS. These guidelines have been implemented to ensure sound administration within the SAPS.

The guidelines which prescribe the handling of blood samples in cases of driving under the influence of liquor after the collection of the samples are contained in Standing Order General 256. This standing order stipulates that:

The District Surgeon must, when examining a person charged with driving under the influence of liquor, seal the container containing the blood sample of that person. The charge office commander shall ensure that the container containing the blood sample, after it has been registered in the Exhibit Register (SAP 13), is locked away in a vault or another safe place, in the charge office, where it cannot be tampered with until it is sent for analysis.

During this research the researcher enquired regarding guidelines or directives that prescribe the procedure which should be followed when handling blood samples during the investigation of cases of driving under the influence of liquor at the SAPS Head Office in Pretoria. The only information acquired besides Standing Order 256, regarding the procedure of the collection of blood samples of persons who are suspected to have driven under the influence of alcohol, was Circular 10 of 1967 issued by the Department of Health, Head Office on 24 April 1967 (par.4) and Circular 36/4/4 of 1967 (par.4) issued by the Commissioner of Police on 20 April 1967. The guidelines in this circular

regarding the procedure to be followed during the collection of blood samples in cases of driving under the influence of liquor are stated as follows:

- For identification purposes for the Medical Analyst Laboratory, the district surgeon must immediately and in the presence of the accused, label the bottle
- The investigation officer will arrange for the blood sample to be dispatched to the Medical Analyst Laboratory situated in the district in which the sample was taken

According to the practical guideline of Judicial Forensic Medicine (a practical guide that explains the effect of alcohol in a human body and the procedure to collect samples in this regard) (Schwar, Loubser & Olivier, 1984:347 & 348), the following details are necessary in order to ensure identification:

- the SA Police Services case reference number
- the name, address and practice number of the medical practitioner or nurse
- the date, time and place of when and where the blood sample was taken
- the name of the accused; and
- the signature of the medical practitioner or nurse

According to Schwar et al. (1984:347 & 348), the vial with its contents and label is placed in a wooden container. If the medical practitioner has an official seal, it can be used to seal the holder. The holder is then handed over to the police official. The police are responsible for dispatching the holder and issuing written proof of receipt. Administrative records entail retaining a record or register of investigations and blood samples, which include the following:

- full names of the accused
- age, gender, race
- SA Police Service case reference number

- the practice number of the medical practitioner
- the date, time and place that the blood sample was taken
- details of the official seal if the medical practitioner sealed the vial him/herself; and
- the signature of the official who received the blood sample, and the date of receipt

After comparing the stipulations of Standing Order General 256, Circular 10 of 1967, Circular 36/4/4 of 1967 and the practical guidelines of Judicial Forensic Medicine, the researcher came to the conclusion that the correct procedure for handling a blood sample during the investigation of cases of driving under the influence of liquor should be as follows:

- The police official or traffic official who arrested a person for driving under the influence of liquor must take the arrested person to the police station to register a case
- The arrested person must be taken to a district surgeon, registered medical practitioner or registered nurse by a police official, who must request a blood sample to be drawn from the accused person. The district surgeon, medical practitioner or nurse must, after the collection of the blood sample, seal it and hand it to the police official who requested the drawing of the blood sample
- The blood sample must be handed in at the police station to the commander of the community service centre
- The commander of the community service centre must register the blood sample in the exhibit register (SAPS 13) and lock it away in a safe or another safe place in the community service centre where it cannot be tampered with
- The investigating officer will collect the blood sample from the community service centre commander and acknowledge receipt of it in the exhibit register (SAPS 13) as prescribed by Standing Order General 333

- The investigator will dispatch the blood sample to the laboratory for analysis

#### 4.9 PROBLEMS EXPERIENCED BY POLICE OFFICIALS DURING THE HANDLING OF BLOOD SAMPLES IN CASES OF DRIVING UNDER THE INFLUENCE OF LIQUOR

The respondents from sample “A” were requested to explain the problems they were experiencing which were preventing them from following the correct procedure when handling blood samples in cases of driving under the influence of liquor after the collection of these samples. The responses of the respondents from this sample were as follows:

- Fifteen respondents explained that lack of training, lack of knowledge and skills, lack of experience and the lack of sharing information amongst experienced members and junior members regarding the correct procedure concerning the handling of blood samples were some of the problems that they were experiencing
- Twelve respondents answered that some of their colleagues simply failed to submit the necessary statements regarding the handling of blood samples. These statements are required from them after handling blood samples
- Eight respondents explained that proper guidance and advice were not given to junior members by their superiors and more experienced police officials regarding the handling of blood samples
- Five respondents explained that police officials simply neglect to do what is expected of them and that certain police officials are too lazy to follow the correct procedure when handling blood samples from the point of collection

The responses from the respondents of this sample indicated that there is a lack of guidance by supervisors and experienced members for

inexperienced members on the correct handling of blood samples in cases of driving under the influence of liquor. This allegation by some of the respondents was not investigated as it fell outside the purpose of this study. The standing order that prescribes the procedure which should be followed when blood samples are handled in cases of driving under the influence is clear. The existence of this standing order and the non-compliance with it indicated that on-the-job training is not presented to junior and inexperienced members by supervisors and experienced members.

The respondents from sample “B” were requested to explain the problems they were experiencing that were caused by uniformed members regarding the investigation of cases of driving under the influence of liquor and that led to the withdrawal and acquittal of cases in court.

The responses from all 16 respondents from this sample were basically the same; they all indicated that the seal numbers on the blood samples were not always reflected in statements submitted by uniformed members and that this caused problems in court. These respondents also stated that in various instances the statement of the person (medical practitioner or nurse) who had drawn the blood sample had not been submitted, which resulted in these cases being withdrawn in court.

#### 4.10 CASE DOCKET ANALYSIS ON FINALISED CASES OF DRIVING UNDER THE INFLUENCE OF LIQUOR

The researcher analysed cases of driving under the influence of liquor by conducting an analysis of cases which had been finalised in court. These cases revealed the following:

- Out of the 50 cases that were analysed, 31 cases had been withdrawn and only 19 cases had been convicted

- In 18 cases the reasons for the withdrawals were mainly that statements had not been submitted or obtained after the collection of blood samples, which indicated that no proper chain of evidence of blood samples had been maintained from the time that the blood sample had been collected
- In 13 of the withdrawal cases, statements of the medical practitioner who drew blood from the accused persons were not documented in the case dockets
- The cases also reflected that the cases had been remanded several times for further investigation for investigators to obtain these outstanding statements
- These statements had never been obtained and as a result of incomplete investigation the cases had been withdrawn

In 17 of the cases that had been withdrawn there was no indication (record) in the case dockets of the following aspects:

- that the blood samples had been received from the medical practitioner
- that the blood samples had been handed in at the community service centre at the police station
- that the blood samples had been locked away in a safe and by whom
- who had taken the blood sample to the laboratory

It is clear to the researcher having performed this case docket analysis that the cases were withdrawn from court because not all relevant statements were available to show that a chain of evidence had been maintained. The statements which would have indicated the sequence of the individuals who had handled the blood samples from the time that the samples were collected were simply not obtained by investigators and this resulted in these cases being withdrawn. The case docket analysis also indicated that no appropriate record had been kept in several cases concerning the handling of blood samples.



#### 4.11 GUIDANCE BY COMMANDERS

Standing Order (G) 29 prescribes the duties and responsibilities of commanders of investigation units. One of the duties and responsibilities of a commander is to conduct inspections of case dockets allocated to investigators. Commanders need to certify case dockets before they are sent to court by submitting a certificate in the investigation diary of the case docket certifying that the investigation has been completed.

Fifteen case dockets revealed that no inspection had been conducted by the commander or senior detective officer to certify that the investigation had been completed before these case dockets were sent to court. It became clear to the researcher, after the analysis of these case dockets, that the commanders and supervisors of the investigation units do not conduct inspections before the case dockets are sent to court.

#### 4.12 SUMMARY

It is important that from the time of the collection of the blood sample the correct procedures be followed because it will have to be proved that the specific specimen was taken from the accused. Affidavits and certificates in terms of the Criminal Procedure Act 1977 can be proof that police officials have followed the correct procedures at all times when handling blood samples. For police officials to be effective in applying the correct procedures when handling blood samples, it is important that police officials be trained regarding the correct procedures which should be followed and regarding the transferring of their knowledge and skills to other police officials. This will ensure that all police officials do what is expected of them. The training of these police officials will positively impact on the outcome of cases in court and the successful conviction of accused persons arrested in cases of driving under the influence of liquor.

## **CHAPTER 5**

### **FINDINGS AND RECOMMENDATIONS**

#### **5.1 INTRODUCTION**

The aim of the research was to establish the correct procedure to be followed for maintaining the chain of evidence of blood samples in cases of driving under the influence of liquor after collection from the accused person, until they are submitted to the laboratory for analysis to ensure admissibility in court. The researcher attempted to reach this conclusion by collecting and analysing data from literature and interviews and by analysing finalised cases of driving under the influence of liquor. The findings made by the researcher are listed in the section that follows.

#### **5.2 FINDINGS**

##### **5.2.1 Findings regarding Research Question 1**

The first research question is:

- What is meant by the concept “forensic investigation”?

The findings in relation to this research question follow:

5.2.1(a) Forensic investigation is a process within criminal investigation in terms of which scientific methods are used to gather evidence and collect information. This means that a prima-facie case is presented in court in order to prove the perpetrator had committed a crime.

5.2.1(b) The respondents are all familiar with the concept “ forensic investigation”.

5.2.1(c) There appears to be no difference between forensic and criminal investigation. Forensic investigation is a process which unfolds during the criminal investigation process, and entails the application of science as part of the investigation process.

5.2.1(d) The respondents are not familiar with all the objectives of the investigation process as described by the literature, as none of the respondents were able to list all the objectives of an investigation.

5.2.1(e) The purpose of investigation of crime is to prevent crime.

5.2.1(f) It is clear that the respondents are not familiar with the purpose of investigation as they confuse the objectives of investigation with the purpose of investigation.

5.2.1(h) Investigation can be conducted by the SAPS, other state organisations and private investigators. This means that not only the police have the right or mandate to investigate. Not all the respondents were aware that other state organisations and private investigators also have the mandate to investigate.

5.2.1(i) Traffic officers appointed in terms of the National Road Traffic Act 93 of 1996 (South Africa, 1996b) are not authorised by this Act to investigate crime. The respondents were aware that traffic officials are not authorised by law to investigate crime.

5.2.1(j) Section 65 of the National Road Traffic Act of 1996 (South Africa, 1996b) prohibits driving of a motor vehicle while under the influence of intoxicating liquor or drugs having a narcotic effect, or with excessive amount of alcohol in blood or breath. Driving under the influence of liquor is thus a criminal offence.

5.2.1(k) Driving under the influence of liquor is a criminal offence and a person who drives or is in control of a motor vehicle while he or she is intoxicated, contravenes section 65 of the National Road Traffic Act of 1996 (South Africa, 1996b) and such a person can be arrested in terms of section 40 of the Criminal Procedure Act 51 of 1977 (South Africa, 1977) for committing this offence.

5.2.1(l) Traffic officers can arrest drivers who contravene section 65 of the National Road Traffic Act 93 of 1996(South Africa, 1996b).

5.2.1(m) Section 37 of the Criminal Procedure Act of 1977 (South Africa,1977)authorises any police official to collect prints and bodily appearances, which include blood samples of an accused person who is arrested for driving under the influence of liquor.

5.2.1(n) Blood samples can be obtained from people arrested for driving under the influence of liquor in order to ascertain any characteristics or distinguishing feature or show any condition or

appearance of that person during the commission of the “driving under the influence of liquor” offence.

5.2.1(o) The respondents were all aware that legislation authorises the obtaining of blood samples from drivers who drive a motor vehicle while under the influence of liquor.

## 5.2.2 Findings Regarding Research Question 2

The second research question is:

- What is the evidential value of blood samples in criminal cases of driving under the influence of liquor?

The findings regarding this research question are outlined below.

5.2.2(a) Evidence is anything that has the slightest bearing on the outcome of a case which can be classified as evidence.

5.2.2(b) The respondents were familiar with the meaning of the concept “evidence”.

5.2.2(c) Section 37 of the Criminal Procedure Act authorises the taking of a blood sample from an accused person as evidence.

5.2.2(d) Blood sample evidence obtained in terms of section 37 of the Criminal Procedure Act of 1977 (South Africa, 1977) against the wish or will of the accused will be admissible. Section 225 of the Criminal Procedure Act 1977 (South Africa, 1977) makes evidence obtained in breach of section 37 of the Criminal Procedure Act valuable because it allows such evidence to be admitted as evidence.

5.2.2(e) There are two different types of evidence; namely, direct evidence and indirect evidence.

5.2.2(f) Blood samples are evidence and fall under the same category as fingerprints and identification parades. The 0,05gm/100 ml, or more concentration of alcohol in a specimen of blood from a person arrested for driving under the influence of liquor is direct or prima-facie evidence of intoxication in a South African context.

5.2.2(g) The respondents were not familiar with all the types of evidence.

- 5.2.2(h) Not all relevant evidence is necessarily admissible.
- 5.2.2(i) The admissibility requirements are that any evidence which is relevant is admissible unless there is some other rule of evidence which excludes it.
- 5.2.2(j) Relevant evidence obtained in breach of Constitutional Rights may also be excluded.
- 5.2.2(k) Relevance is not the sole test for evidence to be admissible.
- 5.2.2(l) The first requisite of legal relevance is that evidence has to be conducive to rational persuasion, which means that evidence must have some logical relevance.
- 5.2.2(m) The relevancy of evidence in a case will depend on whether the evidence is capable of inducing rational persuasion and whether there are any legal rules or considerations of policy that would lead to its rejection as being legally irrelevant.
- 5.2.2(n) To be legally relevant evidence must be adequately relevant to warrant it being received in the circumstances of a particular case.
- 5.2.2(o) The respondents were not familiar with the admissibility and relevance requirements for evidence.
- 5.2.2(p) The chain of custody of evidence means the handling of evidence from the time of the collection until it is presented as evidence in court. In other words all individuals who handled the evidence form the chain of custody.
- 5.2.2(q) There is no difference between the concepts “chain of custody” and “chain of evidence” as both concepts deal with the handling of evidence from the time of collection until it is presented in a court of law.
- 5.2.2(r) The respondents were familiar with the importance of maintaining a chain of evidence.
- 5.2.2(s) A proper chain of custody of the blood samples in cases of driving under the influence of liquor must at all times be maintained from the time that they have been collected until the time the result of the analysis is presented as evidence in a court of law.

### 5.2.3 Findings regarding Research Question 3

Research Question 3 is:

- What is the correct procedure to handle blood samples?

The findings relating to this research question are summarised below.

5.2.3(a) Standing Order General 256 consists of organisational guidelines for the SAPS which prescribe the handling of a blood samples in the community service centre after the collection of the blood samples.

5.2.3(b) The standing order stipulates as follows: “The District Surgeon must, when examining a person charged with driving under the influence of liquor or drugs, seal the container containing the blood sample of that person.

5.2.3(c) The charge office commander shall ensure that the container containing the blood sample, after it has been registered in the Exhibit Register (SAPS 13), has been locked away in a vault or another safe place, in the charge office, where it cannot be tampered with until it is sent for analysis.”

5.2.3(d) In 1967 the Commissioner of Police in conjunction with the departments of Health, Justice and Bantu Administration and Developments developed guidelines regarding the procedure that needs to be followed during the collection of blood samples in cases of driving under the influence of liquor.

5.2.3(e) These guidelines on cases of driving under the influence of liquor stipulate the following:

- The district surgeon must hand the blood sample to the investigator.
- The investigator must ensure that the blood sample is sent to the laboratory.

5.2.3(f) In a practical manual for Legal Medical Science, Schwar et.al. (1984: 347 & 348) explain that the blood sample should be handed by the medical practitioner to the police official. The police official is responsible for the dispatching of the blood sample for analysis.

5.2.3(g) The guidelines in Standing Order General 256, the guidelines compiled by the Department of Health and the SAPS, as well as the guidelines in the practical manual for medical science do not stipulate the responsibilities of all the individuals who handle the blood samples after the collection of these samples.

5.2.3(h) The guidelines do not state who must hand the blood sample to the community service centre commander at the police station.

5.2.3(i) Standing Order General 333 stipulates that the community service centre commander must hand the blood sample to the investigating officer, who should take it for analysis.

5.2.3(j) The respondents were not familiar with the procedure that needs to be followed in the handling of blood samples in cases of driving under the influence of liquor after the collection of these samples.

5.2.3(k) Different procedures are followed by the respondents during the handling of blood samples in cases of driving under the influence of liquor.

5.2.3(l) Although insufficient guidelines exist, the respondents were not familiar with these guidelines.

5.2.3(m) The respondents did not know who is responsible for taking the blood sample for analysis to the laboratory.

5.2.3(n) Blood sample evidence is presented in court by means of the provision of section 212 of the Criminal Procedure Act of 1977 (South Africa, 1977), which allows proof of certain facts by the submission of an affidavit or a certificate during criminal proceedings.

5.2.3(o) Traffic officers are not authorised by section 37 of the Criminal Procedure Act of 1977 (South Africa, 1977) to request the drawing of blood samples, as they are not police officials.

5.2.3(p) Traffic officers in Randfontein request blood samples to be drawn from persons arrested for driving under the influence of liquor, which is in contravention of the stipulations of section 37 of the Criminal Procedure Act of 1977 (South Africa, 1977).

5.2.3(q) Cases have been withdrawn in court because not all the relevant statements were obtained to indicate the sequence of individuals who handled the blood samples after collection.

5.2.3(r) The case docket analysis revealed that no court certificates are issued in case dockets by commanders to indicate that case dockets are inspected and completely investigated before case dockets are sent to court.

5.2.3(s) The current guidelines, although they are insufficient regarding the handling of blood samples, are not communicated to the police officials at grass-roots level for their compliance.

5.2.3(t) The respondents were not familiar with the current guidelines regarding the handling of blood samples and this was resulting in them not following the correct procedure when handling blood samples from the time of collection until evidence is presented in court. The following shortcomings were identified regarding the guidelines that are currently applied during the handling of blood samples in cases of driving under the influence of liquor:

- The guidelines, which relate to the handling of blood samples, do not specify the responsibilities of the different persons concerned.
- These guidelines are inadequate and could lead to confusion among police officials as the responsibilities of the different persons dealing with blood sample are not specifically and clearly stipulated.

5.2.3(u) During the analysis of case dockets it was clear that no proper guidance and advice are given to police officials regarding the correct handling of blood samples by supervisors and commanders.

5.2.3(v) The problem of poor supervision and guidance to members when handling blood samples has a negative impact on the outcome of cases of driving under the influence of liquor in court.

5.2.3(w) The investigating officer will receive an affidavit or certificate in terms of section 212 of the Criminal Procedure Act of 1977 (South Africa, 1977) from the laboratory after the analysis of the blood sample.



The affidavit or certificate will state the concentration of alcohol in the blood sample taken from the person concerned after the alleged contravention.

5.2.3(x) The affidavit certificate in terms of Section 212 will then serve as evidence to prove certain facts during Criminal Proceedings.

### 5.3 RECOMMENDATIONS

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

#### Research Question 1

- It is suggested that the term “forensic investigation” be used for all criminal and civil investigations aimed at instituting court proceedings.
- It is suggested that police officials be trained in the objectives and purpose of an investigation, as should be all individuals, institutions and other state organisations, which are mandated to conduct investigations.

#### Research Question 2

It is recommended that emphasis be placed on the following aspects during the training of police officials:

- the value and importance of evidence
- the different types of evidence
- the admissibility requirements and relevance requirements of evidence
- the value and importance of maintaining a chain of evidence of blood samples in cases of driving under the influence of liquor during the investigation of this crime

- The provisions of section 212 (4) and (8) of the Criminal Procedure Act, 1977 (South Africa, 1977) during court proceedings

### Research Question 3

The researcher recommends the following:

- that clear guidelines be issued which clearly stipulate the different responsibilities of persons who handle blood samples in cases of driving under the influence of liquor from the time they have been collected until they are submitted to the laboratory for analysis
- that during lectures these guidelines as well as legislation regarding the handling of blood sample evidence in cases of driving under the influence of liquor be emphasised to police officials in order to ensure the proper handling of blood samples during the investigation of cases of driving under the influence of liquor
- that commanders and supervisors should ensure that proper guidance and advice is given to police officials during the inspection of case dockets of driving under the influence of liquor
- that the correct procedure entailed in this research report with regard to the handling of blood samples in cases of driving under the influence of liquor should be followed during the investigation of cases of driving under the influence of liquor, to ensure admissibility in court
- that the correct procedure for handling blood samples during the investigation of cases of driving under the influence of liquor be applied as follows:
  - The police official who arrests a driver for driving under the influence of liquor should take the arrested person to the police station and register a case

- The arrested person should be taken to the district surgeon, registered medical practitioner or registered nurse by a police official, who must request a blood sample to be drawn from the accused person
- The district surgeon, medical practitioner or nurse should, after the collection of the blood sample from the accused person, seal the blood sample and hand it to the police official who requested the drawing of the blood sample
- The blood sample should be handed in at the police station to the commander of the community service centre
- The commander of the community service centre should register the blood sample in the exhibit register (SAPS 13) and lock it away in a safe or another safe place in the community service centre where it cannot be tampered with
- The investigating officer should collect the blood sample from the community service centre and acknowledge receipt of it in the exhibit register (SAPS 13)
- The investigator is to be held responsible for dispatching the blood sample to the laboratory for analysis
- that commanders and supervisors should ensure that case dockets of driving under the influence of liquor are fully and properly investigated before they are sent to court for criminal proceedings to ensure successful convictions
- that the findings listed under 5.2.3 are incorporated in the basic training curriculum for police officials and issued as clear instructions for compliance at station level

#### 5.4 SUMMARY

It is very important for police officials and investigators to know and understand the value and importance of evidence, to ensure that the goals, objectives and purpose of the investigation are achieved on time. Evidence is of inestimable value in a court of law during

presentation. The value will, however, be determined by what happened to the evidence after its collection.

It is of utmost importance that a proper chain of evidence is at all times maintained to secure a successful presentation of evidence and ultimately a successful conviction in court. For police officials to maintain a proper chain of evidence it is therefore important that the correct procedures are followed at all times when blood samples in cases of driving under the influence of liquor are handled. The correct handling of blood samples in cases of driving under the influence of liquor after their collection will positively impact on the outcome of cases in court and the successful conviction of people who are driving under the influence of liquor.

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S v Botha and others (1) 1995 (2) SASV 598 (W)

Starr v Rammath 1954 2 SA 249 (N)

S v R 2000 1 SACR 33(W)

S v Britz 1994 2 SACR 687 (W)

R v Mathemba 1941 AD 75

S v Boesman 1990 SACR 389 (E)

S v Francis 1977 (1) SA 643 (A)

S v Van Wyk 1977 (1) 412 (NK)

S v Du Plessis 1972 (4) SA 31(A)

S v Francis 1976 (2) SA 70 (C)

Lornadawn Investment (Pty) Ltd. v Minister van Landbou 1977 SA 618 (T)  
622 (H)

R v Matthews 1960 1 SA 752 (A) AB

Hollingham v Head (1858) 4 CB (NS) 388, 27, LJP 241, 242, 140, ER 1135

S v Glegg 1973 (1) SA 34 (A)

S v Van Tonder 1976 (3) SA 391 (T)

**Annexure 1**

**RESPONDENT NO:** .....

I hereby give my consent to be interviewed.

Name ..... Surname..... Signature.....

**INTERVIEW SCHEDULE FORM:**

**UNISA**

**MAINTAINING THE CHAIN OF EVIDENCE:  
A SOUTH AFRICAN CASE STUDY OF BLOOD SAMPLES IN CASES OF  
DRIVING UNDER THE INFLUENCE OF LIQUOR**

**SECTION A**

**Personal details**

1. Are you a police official?
2. How old are you?
3. What is your rank?
4. For how long have you been a police official?
5. Have you received any training in the handling of exhibits or evidence?

Yes	No
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6. Have you received training in the handling of blood samples in cases of driving under the influence of liquor after the collection of these samples?

Yes	No
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## **SECTION B**

### **Forensic investigation**

7. From your experience how would you define “forensic investigation”?
8. From your experience what is your understanding of criminal investigation?
9. What is the difference between forensic investigation and criminal investigation?
10. Can you list the objectives of investigation?
11. What is the purpose of investigation?
12. Who has the right or mandate to investigate?
13. What are the powers of traffic officers in terms of the investigation of crime?
14. Is driving under the influence of liquor a criminal offence?
15. Is it legal to obtain a blood sample from a person arrested for driving under the influence of liquor? Explain.
16. Who is responsible for the collection of a blood sample from a person arrested for driving under the influence of liquor?
17. What is the time frame in which a blood sample should be collected from the accused person?

### **Evidence**

18. What do you understand by the concept “evidence”?
19. Identify the different types of evidence.
20. Why is it important to maintain a chain of evidence when handling evidence?

### **Correct procedure for handling blood samples after collection in cases of driving under the influence of liquor**

21. Is it necessary for the experts (analysts) who have handled the blood sample to give evidence in court?

22. Describe the procedure that is currently followed after the collection of blood samples in cases of driving under the influence of liquor.
23. What should the client service centre commander do with the blood sample after it has been handed to him or her?
24. Whose responsibility is it to take blood samples for analysis after the blood samples have been handed in at the client service centre?
25. What problems are you experiencing which are preventing you from following the correct procedure when handling blood samples in cases of driving under the influence of liquor after the collection of these samples?
26. Explain any problems that you experience that are caused by uniformed members regarding the investigation of cases of driving under the influence of liquor and that lead to the withdrawal and acquittal of cases in court. (This question was only asked to the sample of detectives.)