

**POINTING OUT OF CRIME SCENES:
A TECHNIQUE USED TO LINK A SUSPECT WITH A CRIME**

by

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submitted in part fulfilment of the requirements
for the degree of

MAGISTER TECHNOLOGIAE

in the subject

Forensic Investigation

at the

UNIVERSITY OF SOUTH AFRICA

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OCTOBER 2008

SUMMARY

Crime in South Africa is very close to getting out of control. There is a dramatic increase especially in violent crimes such as murder, hijacking, business robberies, house robberies, rapes and armed robberies where innocent people get killed daily. This has the public shivering in fear.

The South African Police Service are responsible for the prevention and investigation of all crimes committed. The Detective Service has the unpleasant task of hunting down the criminals that are responsible for committing these crimes. When a crime is committed and a suspect is arrested, the detectives must use all techniques and methods available to them to connect the suspect with the crime. The positive linkage of a suspect with a crime can lead to a conviction in court and one less criminal on the streets of South Africa. One technique that can be used is pointing out of a crime scene. This research is all about the pointing out of crime scenes.

KEY TERMS

Forensic Investigation

Crime Scene

Pointings Out

Admission

Identification

Criminal Investigation

The Locard Principle

Identification Aids

Individualization

Evidence

ACKNOWLEDGEMENTS

I wish to thank GOD for giving me the intelligence, determination and help to complete my studies.

I would also like to thank the following people:

- My father (Grobbie) and mother (Marie) for all their help throughout my life and studies
- Lorraine Botha (Pommie) for deciphering my writing, all her hard work in front of the computer, her enthusiasm and help throughout my studies
- Dr Nick Olivier, my supervisor, for all his help, support and patience
- The respondents for participating in the interviews
- My employer, the SAPS, for giving me permission to conclude my studies
- Marlize, for being there with her support and encouragement

Thank you

Dirk van der Merwe

OCTOBER 2008

ABSTRACT

Serious and violent crimes in South Africa are escalating. These crimes consist of, amongst others, robberies, murders, rapes, hijackings and burglaries, where victims are brutally murdered. Every method and technique available to the South African Police Service (SAPS) must be utilised to solve these crimes. One of the techniques that can be used is a pointing out of a crime scene.

The study was carried out in the South African Police Service on the East Rand, in Gauteng Province. The research problem is how to conduct a pointing out of a crime scene successfully, to be admissible in a court of law.

The purpose of the study is to show that a pointing out of a crime scene, when done correctly, can link a suspect or accused to a crime committed. The research questions that were addressed are:

- What does forensic investigation entail?
- How should a pointing out be conducted for it to be admissible in court?

The population used in the SAPS were detective officers (commissioned officers). From a total of more than 3 000 commissioned officers, a sample of 30 officers were selected. A stratified systematic sample with random start was used.

Data was collected through structured interviews, case studies and literature. It was found that there was not much literature available on the topic of pointings out. After addressing the research questions the following conclusions were drawn from the results:

- Intensive training for all officers in the SAPS regarding pointings out is needed.
- Training of photographers (from Local Criminal Record Centres) is needed.
- Interpreters must be trained in what to do during a pointing out.
- Other members must also be trained concerning pointings out, e.g driving vehicles and what is expected of them during a pointing out.

The study revealed a lack of experience in conducting a pointing out.

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CHAPTER 1

GENERAL ORIENTATION

1.1 INTRODUCTION

Serious and violent crimes in South Africa are escalating. These crimes include, among others, robberies, murders, rapes, hijackings and burglaries, during which the victims are brutally murdered. Every method and technique available to the South African Police Service (SAPS) must be utilised to solve these crimes. One of the techniques that can be used is pointing out of a crime scene. A pointing out is done by a commissioned officer appointed in the SAPS, who holds the rank of captain or higher. A suspect or accused goes to the scene and shows the officer a place where a crime was committed — or something that was used in the commission of a crime. What is pointed out will be incriminating evidence. When a pointing out of a crime scene is done correctly, it can help achieve the conviction of an accused in a court of law.

Investigating officers should use all the tools at their disposal to solve a case. It is necessary to increase the rate at which crimes are solved. Solving a crime can be said to take place when a suspect is arrested for a crime committed, and found guilty of that crime in court. The focal area of this study will be the East Rand. It is estimated that five-and-a-half per cent of cases are solved (where a suspect is linked to and convicted of a crime committed), in the East Rand.

The East Rand is an area in the Republic of South Africa, situated in the province of Gauteng. The main cities in the East Rand area are Alberton, Bedfordview, Boksburg, Brakpan, Brackendowns, Duduza, Dunotter, Edenpark, Elsburg, Germiston, Heidelberg, Katlehong, Kwathema, Nigel, Primrose, Reigerpark, Thokoza, Vosloorus and Zonkizizwe. Each month the SAPS management releases statistics on conviction and detection rates. The conviction and detection rate comprises all crimes where a suspect was traced and later convicted in court.

The problems the researcher experienced when starting to do pointing out of crime scenes seem to be those which many officers experience. Having been a detective officer for

twelve years, the researcher attended various training courses, and only once was time set aside for training in the pointing out of crime scenes. About three hours were dedicated to the explanation of pointings out. Groups of five officers were assembled and given different tasks relating to pointing out of a crime scene. However, not one group did a whole pointing out of a crime scene. The lecturer did not go into any details of the process of pointing out of a crime scene. Moreover, the admissibility of evidence produced in pointing out of a crime scene was also not covered. Evidently there is no proper training or guidelines for inexperienced officers to do pointing out of a crime scene. This has been confirmed during discussions at detective commanders' meetings.

The researcher learned about some aspects of pointing out of a crime scene and how to do them, when he was a warrant officer driving officers to crime scenes during the pointing out of a crime scene. When the researcher did his first pointing out of a crime scene, he was unprepared for the actual giving of evidence in court. The defence tore apart the pointing out, raised many questions and disputed many points. After this the researcher decided to start reading up and gathering more information about pointing out of crime scenes, but was unable to find anything on the topic. While doing inspection, the researcher perused dockets and came to the conclusion that there is a necessity for training in holding of pointing out of crime scenes, as well as a need for more research on the topic.

1.2 PROBLEM STATEMENT

The problem that was researched is the failure of officers to do proper pointing out of crime scenes. There was also research into how pointing out of crime scenes can be used in forensic investigation as a technique to link the suspect with the crime, and how a pointing out of a crime scene should be done to be admissible in court.

There is not really any literature available on pointing out of crime scenes. This showed a necessity to research this area for future reference.

1.3 AIM OF RESEARCH

The aim of this research is to show that a pointing out of a crime scene, when done correctly, can link a suspect or accused to a crime committed.

1.4 RESEARCH PURPOSE

Maxfield and Babbie (1995:70) state that criminal justice research serves many purposes, such as exploration, description, explanation, and application of criminal justice issues. A given research study can have more than one of these purposes.

This study has the following purposes:

- **Evaluation**

To begin the research, the researcher evaluated the existing procedure of holding a pointing out of crime scenes that is followed by investigators, with the intention of weighing up its strengths and weaknesses and considering how pointings out might be improved (Denscombe, 2002:27). This is in regard to the effective holding of a pointing out. In addition, the commissioned officer, interpreter, driver and photographer will know precisely what is expected of them in order to document the link between the suspect and the crime committed, and then securing the suspect's conviction with this evidence.

- **Exploration**

Exploratory studies are undertaken when relatively little is known about something (Singleton & Straits, 1999:90). There is not much written about pointings out of crime scenes, and no books could be found about pointings out. In this research study the researcher intended to explore how a pointing out should be done, so that the evidence it yields is admissible in court. As part of the research process, interviews were conducted with detective officers in the SAPS, and docket schedules were completed by the researcher. International authors and literature were also perused to find information on the topic. Some information was gathered from literature on other topics which could be applicable to a pointing out of a crime scene. For example, it was found that more aids could be used in the investigation of crimes with pointings out. These aids are note taking, photography, videotaping and tape recordings (audio).

- **Application**

The main drive behind a piece of research is sometimes the desire to solve a practical problem or to improve procedures (Denscombe, 2002:27). It is a purpose of the

study to provide recommendations for good practice that will tackle a problem or enhance the performance of the organisation and individuals, and how to do a proper pointing out that is admissible in court.

1.5 RESEARCH QUESTIONS

Research questions specify exactly what is to be investigated. They are not the broad goals of the research that are directly investigated by the research, but are specific things that are to be observed, measured, or interrogated, in order to shed light on the broader topic (Denscombe, 2002:31). The research questions of this research are as follows:

- What does forensic investigation entail?
- How should a pointing out be conducted for it to be admissible in court?

1.6 KEY CONCEPTS

The bombardment of raw experience would be totally bewildering, were it not for the fact that the mind is able to organise its perceptions into a much smaller number of categories. A concept is thus a category of perceptions or experiences. We label concepts with words, and this allows us to think about them and communicate them to other people (De Vos, Strydom, Fouché & Delpont, 2002:29).

1.6.1 Forensic investigation

This is the application of scientific methods and techniques needed in the reconstruction of the circumstances of an illegal act (Geldenhuys, 2002:48).

1.6.2 Crime scene

A crime scene is a location at which a suspected criminal offence has occurred (Gilbert, 2004:01).

1.6.3 Pointing out of a crime scene

A pointing out is an admission by conduct — in other words, a physical indication or communication of the whereabouts of evidence that can be incriminating (*ABC of Human Rights & Policing*, 2001:79).

Kriegler (1993:562) refers to a pointing out as: “Dat die beskuldigde iets aangewys het, hetsy ’n plek of enige ander ding”. The accused or suspect points out a place where a crime was committed or a place where evidence was dumped or hidden. It can be a murder weapon, such as a firearm or knife, or it could be a vehicle used in a crime. It is generally assumed that the accused or suspect must have first-hand knowledge of a crime that was committed, in order to point out objects at a crime scene. It is shown that as a result of a pointing out, something incriminating was discovered. A pointing out is in essence a communication by conduct, and, as such, is a statement by the person who is doing the pointing out. The Appellate Division has in the clearest terms held that a pointing out is an admission by conduct (Sorgdrager, Coertzen, Bezuidenhout & Nel, 1997:356).

1.6.4 Admission

An admission is a statement or action by the accused which is to their disadvantage. It falls short of a confession, as it does not contain an admission of all the elements of the alleged offence. An admission is given voluntarily and in writing (*ABC of Human Rights & Policing*, 2001:12).

Admission is an acknowledgement that something is true or untrue. Admissions may be made in a criminal case, as well as in a civil procedure. Admissions are only admissible if proved by the prosecution to have been made freely and voluntarily (Claassens, 1975:54). Kriegler (1993:564) says: “Erkennings — ’n Verklaring teen eie belang is gewoonlik die waarheid en daarom word erkennings in beginsel toegelaat”.

1.6.5 Identification

The majority of physical evidence found at crime scenes can be identified. Identification means that the items share a common source. The items can be classified or placed into groups with all other items having the same properties (Fisher, 2004:5).

1.6.6 Criminal investigation

A criminal investigation is the process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who is responsible (Bennett & Hess, 2004:4).

1.7 METHODOLOGY

According to Babbie (2004:6), methodology might be called the science of finding out. Methodology deals with the characteristics of methods, the principles on which methods operate and the standards governing their selection and application (Payne & Payne, 2004:150).

1.7.1 Design

A research design is a plan of how the researcher aims to execute his research (Mouton, 1996:175). An empirical research design was adopted in this study. The decision to use the empirical studies and case studies suited this research. Empirical studies are usually qualitative in nature, and aim to provide an in-depth description of a small number of cases (less than 50) (Mouton, 2004:149). The context in which and purpose for which the collection of data took place should also be clearly spelled out. It is suggested that descriptions of participants, the research design, the sampling plan, data collection procedures as well as those of the apparatus and measuring instruments, be included (De Vos et al., 2002:225).

Qualitative methodology is based on the assumption that a valid understanding can be gained through accumulated knowledge acquired first-hand by a single researcher (De Vos et al., 2002:364). Firstly, a literature study involving current literature on the subject

of pointing out of a crime scene, was required. Following this, interviewing of detective officers (SAPS) on the topic, was necessary. The officers were interviewed and a structured interview schedule was compiled. This was followed by an analysis of case studies of SAPS dockets, in which pointings out were done. This involved the idea of getting out of the chair, going out of the office and purposefully seeking the necessary information “out there” (Denscombe, 2003:6). The researcher went out and conducted interviews, gathered literature and did case studies on dockets, to obtain more information on the topic, since there is not much literature available on this subject. The literature that was used is about crime scenes, the Locard Principle, identification and evidence, but not actually about pointings out. The aids in investigation of crime (Locard principle, different types of identification, evidence, information and other) can be used in pointings out and were implemented where they could be used.

1.7.2 Approach

A qualitative approach was used. Qualitative field studies can be used successfully in the description of groups, (small) communities and organisations. Qualitative field studies may lend themselves more aptly to studying cases that do not fit into particular theories (Welman & Kruger, 2001:178). Researchers have to generate the data themselves (for example, by administering tests or questionnaires) (Welman & Kruger, 2001:178). The researcher had to rely on the interviews conducted and case studies (dockets perused) completed. The strength of the qualitative paradigm is that it studies people in terms of their own definitions of the world (the insider perspective), it focuses on the subjective experience of individuals and it is sensitive to the context in which people interact with each other (Mouton, 2004:195).

During the interviews the officers will state how they see different concepts, how they do pointings out and how they feel they should be conducted. A lot of information will be gained from these detective officers.

Qualitative research refers to the meanings, concepts, definitions, characteristics, metaphors, symbols and descriptions of things (Berg, 1998:3). Qualitative research includes in-depth interviews and an extensive examination of documents, and is essential whenever previous research and theory yields scanty information about the topic and issues (Pope,

Lovell & Brandl, 2001:36). Qualitative researchers, in contrast to a fiction writer, poet or creative writer, owe their readers an explanation as to how their data was collected and interpreted (Taylor & Bogdon, 1998:168).

The researcher carried out in-depth interviews, looked at case studies, read up on the topic and directed personal experience in the research field, after which he was able to come to his conclusions. In the qualitative approach the researchers have generated the data themselves (for example, by administering questionnaires) (Welman & Kruger, 2001:178). The researcher drew up an interview schedule and executed the interviews to generate data for the research. As part of the qualitative approach, case study research has been used to study dockets containing pointings out. These dockets (case files) were to show where problems occurred during pointings out and how they could be rectified. It was also to see, in cases where pointings out were admitted in court, whether reasons were given if the pointings out were not admissible.

1.8 POPULATION

The population concerned was all detective officers in the SAPS. When the researcher speaks of detective officers during the research, this refers to commissioned officers, with the rank of Captain and higher. Due to unavailability of magistrates and prosecutors for interviews, only detective officers were used. Detective officers conduct pointings out when requested to do so by investigating officers. It is also part of their job to conduct pointings out. The population was too large to use all detective officers, so a target population of commissioned officers was used.

1.9 TARGET POPULATION

A lot of pointing out of crime scenes are conducted on the East Rand since a great deal of serious crime occurs there. In practice, pointing out of crime scenes are conducted when a suspect is arrested. There are 24 stations in the East Rand, with six specialised units not situated at station level. The stations differ in size, and some detective branches have only two officers, whereas the big stations have up to eight detective officers. The detective officers on the East Rand were counted and they numbered up to 150. Detective

officers comprise male and female officers from all races. The detective officers are all commissioned officers stationed in the East Rand.

1.10 SAMPLE

Consequently, a representative sample is a miniature image or likeness of the population (Welman & Kruger, 2001:47). A sample is a selection of elements (members or units) from a population, and is used to make statements about the whole population (Blaikie, 2003:161). From the target population, 30 detective officers in the East Rand were randomly selected to form the sample. Random selection implies that each element in the universe has an equal chance to be included in the sample, and that this chance is not equal to either 0 percent or 100 percent (Groenewald, 1988:15). The researcher considers this sample as an ideal sample because it provides a representation of the population, with all the relevant features of the population included in the sample (Blaikie, 2003:161).

1.11 SAMPLING

A stratified systematic sample with random start was used (Welman & Kruger, 2001:59). Each of the detective officers, irrespective of their sex or race, had an equal chance of being included. An alphabetical name list of all detective officers was obtained. The term 'sample' always implies the simultaneous existence of a population or universe of which the sample is a smaller section (De Vos et al., 2002:198). The name list consisted of all detective officers of all 30 stations. The names were put in alphabetical order on the list and samples were randomly drawn. The researcher blindly made a mark with a pencil on the table and selected the number closest to the pencil mark. After that, every fifth number was used. If the number marked was 8, then 13 (8 + 5), 18 (13 + 5), 23 (18 + 5) was used, etc., until 30 numbers were selected.

1.12 DATA COLLECTION TECHNIQUES

Literature, interviews and case studies were used in this study to collect data. Qualitative research was used, including structured interviews and extensive examination of document

studies (Pope et al., 2001:369). Qualitative research implies the collection of unstructured data as well as qualitative analysis of the data (Lewis-Beck, Bryman & Liac, 2004:92).

1.12.1 Literature

The researcher visited the library at Unisa (Goldfields) and also public libraries, to look for books and articles on the research topic, i.e. the pointing out of crime scenes. The researcher used various search engines on the Internet: <http://www.google.co.za> and <http://www.yahoo.com>, and also consulted the library catalogue in order to physically look for books and articles containing information on pointing out. On the topic of pointing out of crime scenes, there was not much available. Much of the literature relates to what a pointing out is. Little is written about the actual pointing out, and as far as the researcher could determine, at no stage did authors go into the details of its procedure. No literature shows who must be contacted by whom to do the pointing out. The functions of the person conducting the pointing out, the interpreter, the driver of the SAPS vehicle, the photographer to be used, if there are injuries to the accused beforehand, and their procedures, are not discussed. The aids that can be used, such as videotapings, and how evidence, or something applicable, must be shown, are also not discussed.

In the absence of literature on the topic, the researcher broke the topic up into relevant concepts in an attempt to find material. These concepts are: forensic investigations, crime scenes, Locard's principle, evidence, photography, note taking, tape- and video recordings, admissions, requirements for admissibility, the suspect's and the accused's rights before and during the pointing out; and, how the pointing out must be represented in court, to be accepted. Literature that was found to be relevant to the concepts was analysed to find answers to the research questions.

1.12.2 Interviews

Structured interviews were used. In a structured interview, the interviewer puts a collection of questions from a previously compiled questionnaire, known as an interview schedule, to a respondent, face to face, and records the responses (Welman & Kruger, 2001:160). Structured interviews were used to guide the interviewee in a certain direction and obtain information about the topic. This enabled the researcher to obtain a response from

different officers on the same issue (questions), and to then make comparisons of the answers given. Interviews were held in private and were strictly confidential. Questions based on the research questions were used to gather information in an attempt to solve the problem.

For successful handling of the interview, the followings steps were taken into consideration (Leedy & Omrod, 2005:147):

- **Identify some questions in advance.**
An interview schedule was compiled for the interviews and conducted with open-ended questions based on the research questions.
- **Make sure your interviews are representative of the group.**
A stratified systematic sample with random start was used, regardless of each respondent's background and experience.
- **Find a suitable location.**
Interviews were conducted in the interviewees' own offices, in order to make them feel comfortable by being in their own surroundings.
- **Get written permission.**
When the research was started, verbal permission was given by the Area Head of Detectives for the East Rand. Permission was also obtained from each participant.
- **Information gained from the interviewees was given as received from them.**
Information was reported as it was gained.
- **Focus on the actual rather than on the abstract or hypothetical.**
The researcher asked the interviewees what they would do in a specific situation.
- **Don't put words in people's mouths.**
The researcher let the interviewees express their own thoughts in their own way.

- **Record responses verbatim.**

What the interviewees said was written down on the interview schedules by themselves.

- **Keep your reactions to yourself.**

The researcher tried to keep a straight face during the interviews, meaning that he did not intimidate the interviewees during the interview by any facial expressions or body language which could prevent the interviewees from giving their own personal opinions. The researcher was aware that he was not necessarily obtaining the facts.

1.12.3 Case studies

In case studies the research is directed at understanding the uniqueness and idiosyncrasies of a particular case in all its complexity. Usually its objective is to investigate the dynamics of some single bounded system (Welman & Kruger, 2001:21). We can identify a core meaning of the term 'case study' as referring to research that studies a small number of cases, possibly even just one, in considerable depth, although various other features are also often implied (Lewis-Beck et al., 2004:92). Permission to use these dockets had been granted. Written permission to continue and finalize the research, including the use of the dockets, was obtained from the Station Commissioner of Elsburg. He submitted the application for permission to the Provincial Commissioner of Gauteng, whom in turn did not have any objections.

Forty dockets with pointings out conducted in them, from different police stations, were used. The investigators at the Serious and Violent Crime Units (SVC) use officers to do pointings out. Cases are reported at different police stations (serious crimes, like murders, highjackings and house robberies) and then taken and signed for by investigators of the Serious and Violent Crime Units. They then investigate these cases. When the cases are finalized they are then filed back at the station of origin. There can be up to 80% of pointings out that are done by officers, which are done for the Serious and Violent Crime Unit. This unit investigates all serious crimes, murders, etc. that occur in all 24 police precincts in the East Rand. This was done to establish whether the evidence generated at pointings out was accepted in court — and if not, why not. All cases done by Serious and Violent Crime Units are serious cases, and there is a possibility that any of those

cases can involve a pointing out. Initially, fingerprint registers (SAP 184) from the Serious and Violent Crime Unit: East Rand were used. A fingerprint register is used to record all names of charged suspects. This register is kept in a monthly sequence. The fingerprint register was used to obtain case numbers where suspects were arrested and there was a possibility that a pointing out was conducted in those cases. The case number of each accused was used for the research. All case numbers of suspects charged between June 2002 and July 2006 were recorded and researched. There were more than 500 case numbers obtained. The researcher drew these dockets from several police stations. These dockets were then studied — especially the pointings out that were done — to look for shortcomings and problems that were encountered. Out of the 500 cases, 40 dockets had pointings out done in the investigation. All cases where a pointing out of a crime scene was done was used in the study.

1.13 METHOD OF DATA ANALYSIS

Ultimately, all fieldwork culminates in the analysis and interpretation of some set of data. Analysis involves “breaking up” the data into manageable themes, patterns, trends and relationships (Mouton, 2004:108). The Tesch approach to data analysis was used (De Vos, Strydom, Fouché, Poggenpoel, Schurink & Schurink, 1998:343). By using this approach the researcher:

- Read through all the interview schedules carefully to get a sense of the whole. He jotted down some ideas as they came to mind. The topic was broken down into concepts. The literature and interviews were then studied.
- Selected one interview and went through it, asking, “What is this about?” and thought about the underlying meaning in the information. He wrote up his thoughts in the margin. He went through the interviews to compare the different views of each interviewee.
- Clustered together similar topics and formed them into columns that were divided into major topics, unique topics and leftovers. Interviewees whose answers had agreed one with the other were grouped together.
- Found the most descriptive wording for the topics and turned them into categories. He reduced the total list of categories by grouping together topics that related to one

another. Lines were drawn between the categories to show interrelationships. The literature was sorted out with concepts and notes made.

- Used no abbreviations. Interviews, field notes and various types of unobtrusive data are often not amenable to analysis until the information they convey has been condensed and made systematically comparable.
- Used the data material belonging to each category and assembled it in one place, after which a preliminary analysis was performed.

1.14 METHODS TAKEN TO ENSURE VALIDITY

The primary aim of research in the social sciences is to generate valid findings, i.e. the findings should approximate reality as closely as possible (Mouton & Marais, 1990:15). According to Mouton (1996:24) if the research is valid, it means that you are observing, identifying or measuring what you say you are. Validity demonstrates that your concepts can be identified, observed, or measured in the way you say they can. You therefore need to work out how well a particular method and data source might illuminate your concepts, whatever they are.

To ensure validity the researcher did the following:

- **Population**

A stratified, systematic sampling with a random start was used. Each of the detective officers, irrespective of race and gender, had an equal chance of being interviewed for population validity (Welman & Kruger, 2001:120).

- **Data collection**

Questions based on the research question were used to gather information on the topic. This was captured both in an interview schedule and in a docket schedule. Case studies, literature and interviews were used as multiple sources of data. Triangulation was thus used in an attempt to corroborate findings according to at least three different approaches (Welman & Kruger, 2001:184).

- **Literature**

Libraries were consulted to look for books and articles on the topic. When writing up the findings, the researcher referenced the literature in appropriate places to give validation to the accuracy of the findings. Different authors and literature were compared to validate the findings. Only information from literature that was relevant to the topic was used.

- **Case studies**

In parallel with the use of multiple methods, the case study approach fosters the use of multiple sources of data. This, in turn, facilitates the validation of data through triangulation (Denscombe, 2003:38). Literature and interviews were used to corroborate findings made in the case studies done. Only docket with pointings out done in them were eventually used.

- **Interviews**

The researcher checked with interviewees that facts were given correctly and that the researcher received the correct information. He checked the interview data with other sources of information on the topic. Key players (interviewees) were picked because they and other detective officers are specialists in their field of work, highly experienced and their testimony carries a high degree of credibility. Without the interviews there was not much information available. The interviews gave the researcher the information to fill in gaps and give a more explanatory value.

1.15 METHODS TAKEN TO ENSURE RELIABILITY

“Will the same methods used by different researchers and/or at different times produce the same results?” This is the requirement: that the application of a valid measuring instrument to different groups under different sets of circumstances should lead to the same observation (Mouton & Marais, 1990:79).

- **Sampling**

Random sampling is the only technique available that will ensure an optimal chance of drawing a sample that is representative of the population from which it was drawn (De Vos et al., 2002:201). A stratified, systematic sample with a random start was

used. Each of the detective officers, irrespective of race and gender, had an equal chance of being interviewed for population reliability. Other researchers could come up with the same sample if they use the same method to do research on the topic chosen by the researcher, starting with the same number which the researcher started with.

- **Data collection**

Data was collected by reading books (literature) on the topic, holding interviews (to collect information on the topic), case studies (dockets drawn from the storeroom, containing pointings out) and completion of docket schedules. This was done to address the research questions. When interviews were conducted with the officers and the dockets perused, the necessary information was gained to help finalise the research.

- **Literature**

Throughout the sections of a research report, references should document claims, statements and allegations (Berg, 1998:261). The topic was broken down into concepts to gather literature and use it for the research. Literature is aimed at contributing towards a clearer understanding of the nature and meaning of the problem that has been identified (De Vos et al., 2002:127). All applicable literature that was found was used. Acknowledgement was given to all literature used, for future reference. The literature was evaluated to find answers to the research questions.

- **Case studies**

The fingerprint register (SAP 184) from the SVC Unit: East Rand was used to look for dockets with suspects arrested. This made it more likely to find that a pointing out was done. Firstly, all case numbers between June 2002 and July 2006 were recorded. More than 500 case numbers were obtained, with suspects arrested. These were cases from all over the East Rand area. The researcher went and drew all these cases and then looked for dockets with pointings out conducted in them. Forty (40) cases with pointings out conducted in them were identified and used in the research. The researcher then compiled the docket schedules.

- **Interviews**

The researcher did not intimidate the interviewees and the answers to the questions were written down by interviewees while the interview was conducted. The purpose of interviews with experts is to bring unknown perspectives to the fore or to confirm or reject the researcher's own views (De Vos et al., 2002:213). The detective officers are seen to be experts in their own field of work.

1.16 ETHICAL CONSIDERATIONS

As stated in De Vos et al. (2002:62), anyone involved in research needs to be aware of the general agreement about what is proper and improper in scientific research. To adhere to ethical issues, the researcher did the following:

- The researcher took cognisance of the guidelines in the *Unisa code of conduct for researchers at Unisa*, (2004:128).
- Supervision was done when the researcher's proposal was approved. A supervisor was appointed by Unisa.
- The researcher had no sponsorship. Recognition was given to all material used and people who participated.
- Sources were acknowledged, i.e. books, articles read and used, interviews held, and cases studies (dockets with pointings out).
- The researcher obtained consent and approval. Before the interviews, consent was received from the interviewees and they wrote their answers down themselves on interview schedules. The interviews were conducted privately and consent was given by the SAPS in the form of a letter by Snr Supt Khuzwayo the Station Commissioner as well as confirmation of consent from the Provincial Commissioner.

The researcher also adhered to the critical issues that are mentioned by Leedy and Omrod (2005:101–102) and De Vos et al. (2002:74):

- **Protection from harm**

Participants were not exposed to psychological harm. Participants were interviewed in the safety of their own environment (their own offices) and in privacy.

- **Informed consent**

Interviewees were informed that completing the interview schedule and being part of the research was of their own free will, and they did it in their own handwriting. Interviews were conducted by the researcher, but the interviewees wrote the answers on the interview schedule themselves. They were informed what the nature of the study was; no written consent was obtained from interviewees.

- **Right to privacy**

No particulars or names of participants were mentioned in the research. The respondents were informed by the researcher that their identity would remain anonymous — except to the researcher.

- **Honesty with professional colleagues**

All the researchers' findings were reported in an honest fashion. Credit was given where credit was due and the use of other people's ideas or words was acknowledged by inclusion of that author by name and reference.

1.17 RESEARCH STRUCTURE

To cover the research questions and aims, the report was divided into the following chapters:

- **Chapter 2 — Forensic investigation**

In this chapter the researcher will address concepts of crime from the commission of the crime, the crime scene itself and criminal investigation; the kind of forensic evidence found at a crime scene. The purpose of examining a crime scene, the Locard Principle and ways to identify a suspect will be discussed. The researcher will explore what evidence is and the different kinds of evidence that can be found to form a chain of evidence to be presented in court.

- **Chapter 3 — Admissibility of pointings out**

This chapter will discuss concepts such as admissions, the requirements for admissibility in court, the distinction between a suspect and an accused, and their rights in terms of the Constitution of South Africa. The researcher will give a detailed explanation

as to what a pointing out is and how a pointing out should be conducted, and what aids can be used during a pointing out of a crime scene. As mentioned earlier, these aids are note taking, photography, videotaping and tape recordings.

- **Chapter 4 — Findings and recommendations**

Everything, both positive and negative, that was found during the research, will be discussed in the last chapter.

CHAPTER 2

FORENSIC INVESTIGATION

2.1 INTRODUCTION

The Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution) is the highest law of the country and describes how the government is elected and describes its powers and functions. It also details the rights, freedom and duties of citizens (*ABC of Human Rights & Policing*, 2001:31). Chapter II of the Constitution of South Africa deals specifically with security services, such as the police, defence force and intelligence services. The main responsibilities and functions of the SAPS, according to chapter II, is to prevent, combat and investigate crime. It is accepted that the prevention and investigation of crime may lead to the limitation of human rights. However, members need to know the laws so that these limitations remain lawful and within the members' authority (*ABC of Human Rights & Policing*, 2001:31).

Investigation of crime is where the detectives become involved — it is their core function. Members are regularly sent on courses to keep them in line with the law and investigation of crime. The scene of crime is the starting point of any crime investigation and is almost always the most important source of evidence when solving a crime. It is therefore of the utmost importance that it is managed in the correct manner. The focus of any crime investigation should not be on the suspect, but on investigating the crime (*ABC of Human Rights & Policing*, 2001:33).

The *ABC of Human Rights & Policing* (2001:45) states that in terms of the South African Police Service Act 68 of 1995 (SAPS Act) the SAPS is responsible for investigating every crime. The Criminal Procedure Act 51 of 1977 (CPA) is after the 1996 Constitution, the most crucial piece of legislation. It also outlines basic principles for proceeding during criminal trials. Police conduct, such as search and seizure, arrest, confessions and admissions, is regulated by the CPA (*ABC of Human Rights & Policing*, 2001:34). It is thus necessary that detectives are guided by detective officers in the investigation of crime, so that they learn more about investigation of crime. In this research the topics covered will include crime scenes up to admissions/confessions, when a pointing out is conducted,

and how a suspect/accused points out a crime scene or something that connects them to the crime scene.

2.2 CRIME SCENES

The location or “locus” of an “incident” is usually called the crime scene (Horswell, 2004:2). A crime must first be committed before a pointing out can be conducted. What is found at a crime scene can lead to the arrest of the suspect/accused. From there a pointing out will be conducted if the suspect/accused wants to do so out of their own free will.

A crime scene is the location where an illegal act took place, from assault to burglary to murder, and it comprises the area from which most of the physical evidence is retrieved (Ramsland, 2001:1). The scene of a crime is the starting point of any crime investigation and is almost always the most important source of evidence when solving a crime. It is therefore of the utmost importance that it is managed in the correct manner (*ABC of Human Rights & Policing*, 2001:79). Any place could become a crime scene, and it is usually a place where a crime or an incident that may end in legal proceedings, has occurred (Horswell, 2004:3). A crime scene is a location at which a suspected criminal offence has occurred. Processing the crime scene is normally one of the most important phases of the investigation. It is here that the investigator focuses on the search for physical evidence (Gilbert, 2004:91).

According to Lee, Palmbach and Miller (2001:2), a crime scene is the original location at which the crime was committed. The homicide crime scene is, without a doubt, the most important crime scene to which an officer or investigator will be called upon to respond. Because of the nature of the crime (death by violence or unnatural causes), the answer to “What has occurred?” can only be determined after a careful and intelligent examination of the crime scene, and after professional and medical evaluation of bits and pieces of evidence gathered by the criminal investigator (Adams, Caddell & Krutsinger, 2004:10). So, when they enter the crime scene, they are looking for evidence of a direct or indirect nature to answer the question posed next — whether a crime has actually occurred (Adams et al., 2004:10).

“Crime scene investigation is not a mechanical process relegated to ‘technicians’ who go through a series of steps to ‘process a crime scene’. It is a dynamic process that requires an active approach by the scene investigator who must be aware of the linkage principle of the evidence, use scene analysis and definition techniques, and be able to offer an opinion on the reconstruction of the scene” (James & Nordby, 2005:169).

A crime scene is the place of the crime, including any adjoining entry or exit area (place where the perpetrator gained entry or left the crime scene) (Weston, Lushbaugh & Wells, 2000:18). When a robbery takes place at a bank, for instance ABSA bank in Germiston, the bank premises will constitute the crime scene. The place where the crime is committed is the crime scene. The viewpoint of all respondents is that the crime scene is the place “where a crime was committed”. When all versions were looked at, regarding to what a crime scene is, the following stood out. A crime scene is a location where a criminal act occurred, where evidence can be located and is the starting point of a criminal investigation.

Based on experience, the researcher is of the opinion that there could be different crime scenes — for instance, a primary crime scene where the victim was killed and a secondary crime scene where either the body, or the vehicle that was used to transport the deceased, was dumped. Every crime scene has a story to tell, and it is for the investigator to read the story, thus collecting all available evidence to bring the perpetrator to justice. When the crime scene is properly managed, a pointing out can later lead to that.

2.2.1 Primary crime scene

The concept ‘primary scene’ is often used to refer to where the original or first act occurred (Lee et al., 2001:3). The primary crime scene is an area, place or thing where the incident occurred or where the majority or a high concentration of physical evidence will be found, e.g. where there has been a sudden suspicious death (Horswell, 2004:3). The primary crime scene is the location where the initial offence was committed (Swanson, Chamelin & Territo, 2003:35). The primary crime scene according to the above is where the first criminal act occurred and the starting point of the criminal investigation. In a case of suicide by hanging or shooting, the primary crime scene would be where the body was found hanging from a rope or where the person shot him/herself.

When a hijacking occurs, the site of the original (or first) criminal activity as the primary crime scene, is where the hijacking occurred, or where the victim was shot when her vehicle was hijacked. When a pointing out is conducted and the suspect goes and points out where the hijacking occurred, it will be at the primary crime scene. When the suspect points out where they hid the firearm, it will be at the secondary crime scene or where the vehicle was later recovered.

2.2.2 Secondary crime scene

Any crime scene that is not a primary crime scene is a subsequent crime scene. Any subsequent scenes are considered to be secondary scenes (Lee et al., 2001:3). That will be any scene which is not the primary scene. It could be after a vehicle was stolen from a particular place (the primary crime scene) and then found at another location (the secondary crime scene). The primary crime scene is the bank itself where the bank was robbed, while the secondary crime scene is where the bags of money were dropped and where the getaway vehicle was recovered. Secondary crime scenes are places or things where physical evidence relating to the incident may be found. The potential physical evidence will usually be transported away from the primary crime scene (Horswell, 2004:3).

Swanson et al. (2003:35) and James and Nordby (2005:167) are in agreement that the locations of all subsequent connected events are secondary scenes. These extracts explain that where a crime is committed and anything (evidence) is moved to another place, that place then becomes a secondary crime scene — or any place where evidence is recovered. This evidence could be a firearm, a body or stolen goods.

2.2.3 Outdoor crime scenes

Outdoor crime scenes can be large and challenging to search, as well as exposed to detrimental elements and conditions. Evidence is often disposed of or hidden in the ground or in water, thereby requiring special equipment and techniques to locate and recover the evidence (Lee et al., 2001:233). The outdoor scene may be a very large area, such as a park or wooded area, or a smaller area, such as a residential backyard. A difficult outdoor crime scene would be the World Trade Centre, the mass murder scene of September 11,

2001 (Gilbert, 2004:92). In South Africa a big outdoor crime scene was the murder of Leigh Matthews. Her body was recovered in an open field.

2.2.4 Indoor crime scene

The indoor crime scene is normally located within a residence or commercial building (Gilbert, 2004:92). With an indoor scene, the physical limitations of the building can help determine where the inner and outer boundaries should be (Swanson et al., 2003:52).

2.2.5 Conclusion

A crime scene can either be a primary or secondary crime scene, but they can't be both at the same time. Indoor and outdoor crime scenes may be either primary or secondary crime scenes, but may contain both.

2.3 CRIMINAL INVESTIGATION

Criminal investigation is a logical, objective, legal inquiry involving a possible criminal activity (Gilbert, 2004:37). Criminal investigation is the process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who is responsible (Bennett & Hess, 2004:4).

Crime scene investigation is more than the processing or documentation of crime scenes, and it is not merely the collection or packaging of physical evidence. It is the first and most crucial step in any forensic investigation of a possible criminal act. The foundation of all forensic investigation is based on the ability of the crime scene investigator to recognise the potential and importance of physical evidence, great and small, at the crime scene (Lee et al., 2001:1).

A crime is investigated by a detective who should first establish if a crime was indeed committed. The detective must then identify witnesses, obtain statements, recover evidence and follow up all clues to identify and apprehend the suspect. The investigation must be conducted in such a way that the suspect can be successfully prosecuted in a court of law.

Investigations serve to identify victims, recover evidence, discover witnesses, discover the cause, manner, location and time of the crime, and identify and apprehend perpetrators. Investigation of crime includes the interviewing of witnesses, victims and suspects, personal searches, searches of vehicles and premises, pointing out of evidence, ascertainment of bodily features, seizures, observation, pursuit, and the interception of correspondence and documentation. The focus should always be on establishing the facts. The focus should not be on the suspect but on the crime (*ABC of Human Rights & Policing*, 2001:65).

2.4 OBJECTIVE OF INVESTIGATION OF CRIME

The goals of criminal investigation are to determine whether a crime has been committed, legally obtain information and evidence to identify the responsible person, arrest the suspect, recover stolen property and present the best possible case to the prosecutor (Bennett & Hess, 2004:5). Questions (objective) that will be answered by criminal investigation are (Gilbert, 2004:38):

- Did a criminal violation as described by code or statute occur?
 - Who were the individuals involved in the planning, execution and after effects of the violation?
- Is a witness to the criminal activity present?
 - Is there evidence of the criminal offence?
 - In what manner or by what method was the crime perpetrated?
 - Is there an indication of guilt or innocence to aid judicial officials in determining a just solution to the case?

The objective of crime investigation is to determine the truth, as far as it can be discovered in any inquiry (Weston et al., 2000:2). When a crime is investigated, such as house robbery, the objective will be to see if a crime was actually committed (house robbery). Then the detective will have to establish whether there is a witness available — someone who saw what happened. The detective will look for clues, evidence at the crime scene — fingerprints, for instance — or something that was dropped or left behind that can identify the perpetrator who committed the crime. The detective will look at how entrance was gained to the premises, and whether there is a certain modus operandi which can

connect the perpetrator(s) with similar or other cases. The objective is to gather all information that could lead to the arrest and successful conviction of the perpetrator(s).

2.5 FORENSIC INVESTIGATION

According to Geldenhuys (2002:48), forensic investigation is the application of scientific methods and techniques needed in the reconstruction of circumstances of an illegal act or omission in court. According to Horswell (2004:3), 'forensic' is pertaining to, connected with or used in courts of law or public discussions and debates, adapted or suited to argumentation. Investigation is the act or process of investigating a searching inquiry in order to ascertain facts, or a detailed or careful examination.

Forensic investigation is an investigation aimed at instituting court proceedings (apparently criminal, as well as civil proceedings and apparently not as the sole purpose in a disciplinary hearing), and where some or other scientific knowledge is applied to a legal problem (Lambrechts, 2001b:93). According to Pepper (2005:109), the forensic examination of a crime scene starts with the first crime scene investigator (CSI) attending to the scene. The role of the CSI is to take photographs at the crime scenes or at road traffic accidents, of suspects and victims, and to search for and recover physical forensic evidence. CSIs are responsible for the location and recovery of fingerprints at crime scenes, on property and from cadavers, identifying and collecting all evidence at the scene. The CSI interviews complainants, witnesses and have a lot of other tasks on the crime scene.

In the Enrique Camerena case (Saferstein, 1995:55) it is also said that forensic investigation is the search of premises (crime scenes), looking for any sort of evidence. According to Adams et al. (2004:xi), the crime scene investigator collects evidence, takes photos and prepares the reports, and eventually presents them in court. This is forensic investigation.

The respondents were in two minds as to what constitutes forensic investigation. Eighteen respondents (60%) were of the opinion that it is "a systematic search for the truth by collecting evidence of the crime scenes" and "to prove that a certain crime was committed and who was responsible". On the other hand, twelve respondents (40%) felt it was "investigation relating to biochemical tests". All the respondents were correct, since forensic investigation is a court-related investigation that includes chemical tests in laboratories.

Forensic investigation is basically the investigation of a case (crime) reported in such a way that the suspect is traced and successfully apprehended and tried in a court of law. This means court-related investigation, for which pointing out is one of the techniques used.

2.6 LOCARD PRINCIPLE

Edmund Locard (1910) is attributed with an important basic principle of forensic science, in essence being that “every contact leaves a trace” (White, 1999:3). The value of “trace” or “contact” evidence was, as previously stated, first recognised in 1910 when Edmund Locard introduced his theory of interchange. It is the finding, recovery and scientific investigation of these traces which can provide the link in a chain of evidence that is essential in assisting the investigator (White, 1999:15). Edward Locard was born in 1877 and died in 1966. According to Gilbert (2004:26), Horswell (2004:47), Pepper (2005:5) and Saferstein (1995:6), the Locard principle (exchange of evidence) basically states that when any two objects come into contact, there is always transference of material from each object to the other. In other words, every contact leaves a trace that investigators can use to build connections between people, objects and locations.

When a housebreaking occurs and the perpetrator gains entrance through the door, window or roof, on most occasions a fingerprint imprint is left where entrance is gained. This is where the Locard principle will come into effect. When objects are touched on the premises where a housebreaking has occurred, fingerprints could be left on the object. The same can be said for parts of clothing, hair or anything that comes into contact with something else — a trace is left behind. Less obvious things that are left behind are, for example, fingerprints, hair, DNA traces and shoeprints. Sometimes more obvious things such as blood, a knife, a firearm and clothes are left behind. Less obvious things can also be marks inflicted by a scratch, hair, and, again, more obvious things such as the belongings of the victim — for instance, diamonds, a cell phone and a vehicle. When a crime scene is examined properly, all the above are ways and means to solve a crime when brought together, linking the suspect, the victim and the crime scene.

2.7 PURPOSE OF EXAMINING A CRIME SCENE

The purpose of the crime scene search is to obtain physical evidence useful in establishing that an offence has, in fact, been committed, to identify the method of operation employed by the perpetrator, to reduce the number of suspects and to identify the perpetrator (Swanson, Chamelin & Territo, 2000:48). Lee et al. (2001:12), Fisher (2004:48) and Swanson et al. (2000:17) agree with the above author that the primary purpose of examining a crime scene is to look and obtain clues, and link or exonerate a suspect or a witness to a crime. When an armed robbery occurred at First National Bank in Wadeville, for example, and shots were fired, the first police officials on the scene cordoned off the area. This action is so that evidence at the crime scene can be protected and witnesses identified, and if suspects are still at the scene, to link them with the crime and execute arrests. All evidence will be located, marked and handed in as exhibits, for later dispatch to forensic science laboratories and eventual use in court. Witnesses will be identified and statements obtained to find out what exactly occurred during the crime, and to link suspects with the crime, along with identifying the position, etc. of evidence found at the scene.

In the search for evidence at crime scenes, one should never alter the position of, pick up or even touch any object before it has been minutely described in an official note, and a photograph taken (Weston et al., 2000:21). Evidence likely to be found at a crime scene and amenable to scientific analysis is divided into seven major groups (Weston et al., 2000:21): (1) weapons; (2) blood; (3) imprints or impressions (traces of a person or a vehicle); (4) marks of tools used to gain access to locked premises or containers; (5) dust and dirt traces; (6) questioned documents; and, (7) miscellaneous trace or transfer evidence.

2.8 IDENTIFICATION

According to Horswell (2004:6), the process of identification of any object is one of establishing the fact that it belongs to a large group or class. Prior to identification by use of fingerprints, the 1840 methods of identification of criminals were very limited, such as an artist's impression with a rough description, or the branding of repeat offenders (recidivists) with a hot iron. The addition of photography in the 1840s aided this identification process (Pepper, 2005:4).

The examination of physical evidence by a forensic scientist is usually undertaken for identification or comparison (Saferstein, 1995:63). Identification has, as its purpose, the determination of the physical or chemical identity of a substance with as near absolute certainty as existing analytical techniques will permit (Saferstein, 1995:64). For example, the crime laboratory is frequently requested to identify the chemical composition of an illicit drug preparation that may contain heroin, cocaine and also "Tik", a drug found especially in the Cape Province.

The majority of physical evidence found at a crime scene can be identified. Identification means that the items share a common source. The items can be classified or placed into groups with all other items having the same property (Fisher, 2004:5).

When a piece of window is taken from a crime scene, intentionally or unintentionally, it can later be identified as coming from the window that was broken. It can be identified as sharing the common source. The process of identification of any object is one of establishing the fact that it belongs to a large group or class (Horswell, 2004:6). A more successful development in personal identification was to come from fingerprint examinations (White, 1999:2).

The identification of forgeries is one of the oldest of the forensic sciences, with references made to it in Roman law in the 3rd century AD. The forensic scientist who specialises in the examination of documents will have a number of areas of expertise. These areas include the identification of handwriting and signatures (White, 1999:105). When a cheque, for example, has been fraudulently written out while there was no money in the account holder's account, the writer had no intention of having funds available in the account when the cheque was due. Then a fraud case is opened. The cheque, with an explanatory letter, is sent to the forensic science laboratory (FSL). First the handwriting and secondly, the signature, is compared with the account holder's and the writer's handwriting. The experts at FSL then issue the investigating officer with a report (finding) that the handwriting and signature is either that of the account holder, or not. Even when the suspect's identity is known, identification procedures may be required to confirm information furnished by victims or witnesses.

There are two basic types of suspect identification: positive and tracing (Gilbert, 2004:513). The positive way is when a witness points out a suspect in an identification parade. Tracing is used when addresses of suspects are visited, when they have been identified by means of name and description (known to complainants or witnesses). According to the interviewees, identification is when a suspect is identified as being similar to one seen at the crime scene.

2.8.1 Different types of identification

Many of the cases referred to be investigated are of the unknown suspect category — the suspect's actions are known, but personal identification has not been made. Even when the suspect's identity is known, identification procedures may be required to confirm information furnished by the victims or witnesses (Gilbert, 2004:513).

2.8.1.1 Fingerprint identification

Latent fingerprints recovered from a crime scene are compared by fingerprint experts, to locate similar points of identification. The suspect's prints might have been obtained in past arrests (Gilbert, 2004:525). The investigator, when arresting the suspect, must take a proper set of fingerprints from the suspect and forward them to the Local Criminal Record Centre for safekeeping and comparison. Fingerprint identification relies on the premise that detail contained in the friction ridges is unique and unchanging (Horswell, 2004:165). There is no standard requirement of print size for positive identification. It is necessary only that the partial print be large enough to contain the necessary points of individuality (Swanson et al., 2003:83).

It was only in the first years of the 20th century that police began to appreciate and accept a system of identification based on the classification of finger ridge patterns known as fingerprints. Today the fingerprint is the pillar of modern criminal identification (Saferstein, 1995:412). There are three kinds of crime scene prints: (1) visible prints are made by fingers touching a surface after the ridges have been in contact with a coloured material such as blood, paint, grease or ink; (2) plastic prints are ridge impressions left on a soft material, such as putty, wax, soap or dust; and, (3) true latent or invisible prints, which are

impressions caused by the transfer of body perspiration or oils present on finger ridges, to the surface of an object.

Locating visible or plastic prints at the crime scene normally presents few problems to the investigator, because these prints are usually distinct and visible to the eye. Locating latent or invisible prints is obviously a much more difficult task and does require the utilisation of techniques that will visualise the print. These prints are found on glass, mirror, tile, painted wood, papers, cardboard, cloth, etc., and different techniques must be utilised by the investigator to retract prints (Saferstein, 1995:425).

2.8.1.2 Voice identification

The only voice identification method that is legally acceptable in some courts, as proof of identity, is known as the voiceprint or spectrograph. The voiceprint has developed into an important suspect identification tool. Only when the suspect's voice has not been recorded or when a comparison recording has not been obtained, is its use precluded (Gilbert, 2004:528).

The investigator will have to record the voice of each suspect who is arrested, and these recordings will have to be filed. The way this will be done is not known at this stage. Voice recordings will benefit blind people, and they will be able to identify a suspect more easily. Telephoned bomb threats, obscene phone calls and tape-recorded kidnap ransom messages have all become frequent enough occurrences to warrant the interest of law enforcement officials in scientific techniques capable of transforming the voice into a form suitable for personal identification (Saferstein, 1995:488).

In the 1970s the voiceprint or voice spectrogram was used in courtrooms to prove identification through the uniqueness of individual voices. Using a computer to analyse the sounds, a graphical display would plot the frequencies contained within these voice sounds (phonemes) that make up words. This was found to be reliable enough to prove identification and is generally not used solely in evidence for courts (Horswell, 2004:392). "A voice cannot fail, but is included in this category of a "mark, characteristic or distinguishing feature or any condition or appearance" (Sorgdrager et al., 1997:54).

2.8.1.3 *Eyewitness identification*

When victims or eyewitnesses state that they have seen the suspect, they should be asked to provide a physical description without delay. Witnesses should be separated. The following items pertaining to identification should be systematically covered during questioning (Gilbert, 2004:529–531):

- (i) Name — the officer should never assume that the witness will furnish the suspect's name automatically.
- (ii) Race — the officer should ask for detailed descriptions with regard to skin colour, hair and eye colour and facial features.
- (iii) Gender — if in any doubt, it should be noted.
- (iv) Age — the officer should suggest different age groupings in increments of five years. For example, "Was he 30 to 35? Or 35 to 40?".
- (v) Height and weight — witnesses generally perceive suspects to be taller and heavier than they actually are.
- (vi) Colour of hair and eyes — suspect may have a distinctive hair colour or style that may be noted.
- (vii) Complexion — description should include skin tone (pale, ruddy, fair, flushed, dark, etc.) and apparent skin marks, such as scars, acne, birthmarks and burns.
- (viii) Miscellaneous data — includes facial hair, a limp, absence of teeth, tattoos, etc.
- (ix) Clothing — the officer should not ask the general question, "Can you describe the suspect's clothing?" Rather, each basic clothing item from head to foot should be systematically covered.
- (x) Objects worn or carried — photographs or drawings illustrating the difference between a revolver and a pistol, or a rifle and a shotgun, should be shown to the witness.

Experts distinguish a number of factors that limit a person's ability to give a complete account of events or identify people accurately. The following are among those factors (Swanson et al., 2000:127):

- The significance or insignificance of the event
- The length of the period of observation
- Lack of ideal conditions

- Psychological factors internal to the witness
- The physical condition of the witness
- Expectancy

Questions designed to elicit items of information commonly encountered in criminal cases, but easily forgotten by many subjects (Gilbert, 2004:123) are as follows:

- (i) Physical appearance — did the suspect remind the subject of anyone?
- (ii) Names — name spoken but cannot remember — try going through the alphabet to determine the first letter of the name.
- (iii) Numbers — was it a high or low number? How many digits might there have been?
- (iv) Speech — was there anything unusual about the voice?
- (v) Conversation — were any unusual words or phrases used?

A potential witness should not be overlooked or ignored. However, history has shown that all too often an individual's perception of a particular act or event they witness through one or more of their five senses, is not totally consistent with reality (Lee et al., 2001:23).

2.8.1.4 In-the-field identification

Courts have held that allowing a witness to view a single suspect shortly after a crime, is permissible. This type of identification has been allowed. It is believed that a witness can best identify an offender shortly after the crime, while the memory of the person is still fresh (Gilbert, 2004:531).

An accused was convicted and sentenced on a charge of robbery. The conviction was based on the testimony of a single witness. No identification parade was held. The witness merely pointed out the accused as one of the persons who had robbed him, while the accused was standing in the dock (Sorgdrager et al., 1997:270).

2.8.1.5 Line-up identification

Line-up identification is called 'identification parades' in legal terms (Sorgdrager et al., 1997:56). The line-up, as a means of identifying the perpetrator of a crime, has been used

for centuries. In a line-up, a number of persons, including the suspect, are viewed by a crime victim or witness. The witness attempts to identify one of the individuals positively as the perpetrator. If an identification by this procedure is to be admissible in court, certain legal requirements, determined by the Supreme Court in the Wade decision, must be met (Weston et al., 2000:167):

- (i) All line-ups should include a reasonable number of participants, in addition to the suspect. Five to nine persons, including the suspect, can be used in this procedure.
- (ii) Individuals placed in the line-up must be of the same sex, race and approximate age as the suspect. They should also be of similar body build.
- (iii) The suspect should be randomly placed in the line-up, so that position will not indicate guilt.
- (iv) The witness should never be told which individual is suspected. Each witness should view the line-up separately.
- (v) The witness should identify the suspect by number. Numbered positions should be assigned by the police, during the procedure, rather than addressing the participants by name.
- (vi) A photograph of each of the participants in the line-up should be taken, to demonstrate the fairness of the procedure.
- (vii) The investigator should prepare a line-up report, indicating who was present at the line-up and who the participants were. Time and place should be stated, and a detailed description of all participants, including line-up position, should be given (Gilbert, 2004:532).

The major objective in placing a suspect in a line-up with other persons for viewing and possible identification by an eyewitness, or several witnesses, is to make certain the suspect is the perpetrator of the crime. The witnesses are asked, "Is any one of them the man or woman who committed the crime?" A line-up format is common throughout the country. Between four and six persons are used. They are allowed to select their position. They are then placed in line under a numeral against a wall marked to indicate clearly their descriptions and physical characteristics. They should be photographed for the record.

The researcher is of the opinion that when holding an identification parade, there is a prescribed form that must be completed, namely, SAP 329. It is also suggested that with one suspect, there should be eight other persons of the same sex, build, height, features, race, etc., on the parade. When there are two or more suspects, it is suggested that twelve people with the approximately same features should be on the parade.

2.8.1.6 Photograph identification

The investigator often has occasion to show a victim or witness a series of photographs, in an attempt to identify the perpetrator. A photograph of the suspect is displayed along with photographs of other individuals. All photographs must be similar in shape, colour and subject matter. There should be at least ten photographs, including the suspect's photo. When a witness makes an identification, they should mark the photo in some identifying manner (Gilbert, 2004:533).

The fact that the police spend time putting together a photographic line-up may suggest that they have identified a perpetrator whose picture will be among those presented, regardless of whether such a suggestion is intended by the police or not. The police may not even have a suspect (Swanson et al., 2000:128).

"A search through modus operandi records often provides photographs of suspects made at the previous arrest. These photographs, called 'mug shot', are available, and if the crime being investigated has been witnessed, the investigation has an opportunity to ask an eyewitness to view them. Usually, it is a casting-out process. The witness is not asked to identify any photo but is requested to scan no less than a half dozen photographs and to cast out those that offer no resemblance to the perpetrator. When one or more photographs appear to resemble the perpetrator, further inquiry is conducted. The investigator concentrates on the whereabouts of the persons selected as possible. When a photograph of only one person is exhibited to an eyewitness, or when the other photos in the group are of such a nature that a single suspect is isolated by some physical or racial characteristic, the future testimony of the eyewitness is compromised" (Weston et al., 2000:106).

2.8.1.7 Mechanical and computerised identification aids

Various devices are currently being used in police agencies to mechanically produce a likeness of a suspect through witness description. For example, the identikit developed by a retired police official more than twenty years ago, is widely used by hundreds of agencies. The kit consists of more than 500 acetate overlays of hairlines, eyes, noses, chins, eyebrows, scars, beards and many other identifying features. These are super-imposed, one at a time, to create a composite drawing that resembles the suspect. Each overlay has an individual number, allowing one investigator to telegraph or phone the entire code for an image to another investigator (Gilbert, 2004:537).

Many larger police agencies are switching their victim and witness identification systems to computer programs utilising special software. Computer-aided identification uses software that stores more than 100,000 different pre-designed images of facial features. After a generally accurate image of the suspect has been produced by the victim or witness, further details are added by key comments or by the use of a computer mouse. When the finished image is ready for reproduction, it can be electronically composed and printed by dot-matrix printers in a matter of seconds. This printed image can then be reproduced by photocopying, or photographed for wider distribution (Gilbert, 2004:537).

When photographs are not available, the victim and any witnesses may be asked to collaborate with a police artist in developing a composite sketch of the suspect. Identikit is another visual means of identification through co-operation of victims and witnesses. An identikit is a system of several hundred plastic slides containing photo reproductions of one small portion of a human face, hairstyle, forehead, eyes, nose, mouth, chin, ear, glasses, and so on. Police personnel trained in the use of an identikit can work with a victim or witness in developing a composite sketch in accordance with the description and trial and error viewing (Weston et al., 2000:107).

A likeness of the suspect should be created as soon as possible. Many police departments use Smith and Wesson's manual identikit, which relies on a system of over 600 facial transparencies with different features that are 'sandwiched' together to form a likeness of the offender. An experienced operator can produce a likeness of a suspect in as little as twenty minutes, because each overlay has its own designation and the

numbers can be transmitted by any means. A trained operator receiving the numbers can quickly assemble the same image.

Smith and Wesson also produce a computerised, mouse-operated identikit with a number of excellent features, such as eyes, nose, lips, hair — all of which can be quickly changed. The “paint brush” command allows the operator to add scars, moles, and other distinguishing features. “Blend brush” provides the capacity to move the hairline back to reduce the height of the suspect’s hair. “Reverse” allows the victim to immediately see what the robber would look like if his or her hair was parted on the opposite side. A notepad function allows the operator to add notes to the file automatically, if the witness makes important statements about the suspect while working with the operator (Swanson et al., 2000:382).

A professional dancer was convicted of unlawfully exposing herself during a dance performance. The state’s case rested, inter alia, on a videotape and photographs that were taken during the show. One of the grounds of appeal was that the trial court had erred by admitting this evidence. The appeal was dismissed and the conviction and sentence were confirmed (Sorgdrager et al., 1997:330).

2.8.1.8 Face recognition technology (forensic photograph analysis)

As closed-circuit television captures an image of a person’s face, computer software then analyses contours and various bone structures, converting the image into a code. The digitalised code is then compared to a database of suspects, with automatic notification given when a match is made (Gilbert, 2004:538). Criminal identification technology of this kind also has wider application than just facial recognition. Licence plate numbers can be scanned and compared through databases (Gilbert, 2004:539).

Security surveillance cameras are commonplace. They are seen in banks, motels, convenience stores and other types of businesses. In one case, a police department received reports that police officers were shaking down drug dealers. A “drag den”, staffed by undercover investigators, was established. Subsequently, three officers were arrested after they were videotaped breaking into the apartment, beating the undercover investigators, searching for drugs and stealing cash (Swanson et al., 2003:454). Even when robbers

wear masks, the analysis of forensic photographs may yield useful information such as the height of the suspect and defects in clothing. The clothing worn during a robbery is shown next to clothing found in possession of the suspect. The paint spot on the leg and the crease in the jacket appear in both pictures (Swanson et al., 2003:455).

In *S v Baleka* 1986 (4) SA 192(T) various videotapes were handed in as evidence. The court admitted the tapes after objections were overruled. They were regarded as real evidence which was not subject to the rules of evidence dealing with documents (Sorgdrager et al., 1997:336).

2.9 INDIVIDUALISATION

Individualisation is the establishment of the uniqueness of an item through examination and experimentation, showing that no other item is exactly like the one in question. The objective form is individualistic (James & Nordby, 2005:724). Individuality or uniqueness are those attributes that make one thing different from all others that are similar to it. In relation to the identification of persons, fingerprint comparisons and DNA profiles are the most likely to establish the individuality — and therefore the identity — of a person (Horswell, 2004:6). A person's fingerprints are unique, and no person's fingerprints are the same as those of another person.

Individualisation is unique to forensic science. It refers to the demonstration that a particular sample is unique, even among members of the same class. It may also refer to the demonstration that a questioned piece of evidence from a crime scene and a similar known sample of evidence, have a common origin (Lee et al., 2001:275). In addition to class characteristics, objects and materials possess individual characteristics that can be used to distinguish members of the same class (Lee et al., 2001:275). Evidence that can be associated with a common source with an extremely high degree of probability, is said to possess individual characteristics. Examples of this are the matching ridge characteristics of two fingerprints, the comparison of random striation markings on bullets or tool marks, the comparison of irregular and random wear patterns in tyre or footwear impressions, the comparison of handwriting characteristics, and the fitting together of irregular edges of broken objects in the manner of a jigsaw puzzle (Saferstein, 1995:65).

Fingerprints can identify and link a certain person (individual) with a crime scene, making it physical evidence that can be used for individualisation. Some other pieces of evidence that can be individualised are random striation markings on bullets or tool marks, comparisons of handwriting characteristics, etc.

Individual characteristics are those features that distinguish one item from another of the same type. For example, chips and wear patterns in the blade of a screwdriver may leave marks that are distinguishable from those of any other screwdriver (Bennett & Hess, 2004:97).

2.10 DIFFERENCES BETWEEN IDENTIFICATION AND INDIVIDUALISATION

Identification	Individualisation
Items share a common source (Fisher, 2004:5).	A particular sample is unique, even among members of the same class (Lee et al., 2001:295).
By identification it could be determined that a piece of glass comes from a certain window, but there are many pieces of glass comprising the window.	Every fingerprint in the world is unique and so each person's fingerprint is unique to that person.
With identification it can be determined that blood found at a crime scene is from a human, as opposed to a dog or cat (Saferstein, 1995:64).	With individualisation the blood can be used for DNA profiles and they are likely to establish the individuality — and therefore the identity — of a person (Horswell, 2004:6).
The process of identification of any object is one of establishing the fact that it belongs to a large group or class (Horswell, 2004:6).	Individuality or uniqueness are those attributes that make one thing different from all the others that are similar to it (Horswell, 2004:6).
Identification of a person starts with using properties such as weight, height, size, race, hair and eye colour, to include or eliminate someone (Lee et al., 2001:274).	Dental records may be used by forensic odontologists in making individualisations (Lee et al., 2001:275).

When evidence is identified it can be proven from it comes, but when it is individualised it can be proven to whom it belongs. For instance the suspect in the crime.

2.11 EVIDENCE

The Criminal Procedure Act 51 of 1977 (CPA) outlines the basic principles for proceedings during criminal trials. The CPA regulates the seizure of articles with or without a search warrant, admissibility and inadmissibility of confessions, admissions and pointings out. Section 22 of the criminal procedure act 51 of 1977 addresses when an article can be seized without a search warrant. In *Nel v Deputy Commissioner of Police, Grahamstown* 1953 (1) SA 487(E), Reynolds J 488 held that the delay in obtaining a search warrant would defeat the object of the search (Sorgdrager, Coertzen & Maree, 1988:15). Section 23 of the CPA deals with search of arrested persons and seizures of articles. In *S v Nader* 1963 (1) SA 843(O) on appeal, Hofmeyer J 843 held that the accused was in possession of stolen goods and confirmed sentence (Sorgdrager et al., 1988:16). Section 217 of the CPA handles admissibility of a confession by the accused, including pointings out (Sorgdrager et al., 1988:171).

The effective use of evidence from crime scenes will increase the successful investigation of crimes and can restrict the focus of investigation on suspects. This can also help reduce the inclination to commit human rights abuses (*ABC of Human Rights & Policing*, 2001:34). The law of evidence governs how facts must be proved in court. 'Proved' means the grounds on which the court will come to a finding regarding a factual point of dispute (*ABC of Human Rights & Policing*, 2001:45). Evidence in a criminal case is something that makes certain contested issues more evident and allows one to get closer to the truth of a matter. It is something that relates to — or attempts to support — an issue in question, and in a criminal trial is almost always presented to a jury of one's peers (Houck, 2004:124).

Evidence can be defined as anything that tends logically to prove or disprove a fact at issue in a judicial case or controversy. Simply put, 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 word 'anything'

should be emphasised, because in its broadest sense, anything can be evidence (Swanson et al., 2003:769).

Evidence is anything properly admissible in a court that will aid the function of a criminal proceeding in establishing guilt or innocence (Gilbert, 2004:58). When a murder is committed, to connect and convict a suspect with the crime, evidence is needed. Evidence could be anything from the knife or firearm that was used to kill the victim, to fingerprints found on the knife or firearm that was used in the crime. If there is CCTV, even the recordings of the crime is evidence and must be treated as such.

2.11.1 Direct evidence

Direct evidence is relatively important in a criminal trial and will normally prove a fact without support. Such evidence has been obtained from the physiological senses of the individual, giving direct personal knowledge of what is being testified to. When a witness describes how he saw a suspect reach into a jewellery showcase, grasp a ring and place the ring in his pocket, the witness's testimony is direct evidence (Gilbert, 2004:58–59).

Direct evidence is generally eyewitness testimony by the victim or witnesses who were at the scene at the time of the event and can relate the details from their personal experience. Unfortunately, direct evidence is often flawed; victims and witnesses make honest mistakes (Adams et al., 2004:5). Direct evidence usually refers to the testimony of witnesses that ties the defendant directly to the commission of the crime, such as the testimony of an eyewitness who can positively state that the defendant committed the crime. It is based on the first-hand knowledge of the witness regarding the guilt of the defendant (Swanson et al., 2003:774). Therefore, any witness who actually perceived some portion of an incident with any of these senses, should be questioned in great detail. A witness's ability to relate minute details can only be corroborated through physical evidence (Lee et al., 2001:24).

When a murder is committed and two females observed the crime, their statements will be obtained to identify the suspect (or to describe the suspect). This will then be used by the investigating officer to trace the suspect and for evidence against the suspect in a court of law. A pointing out is also evidence and is described by the *ABC of Human*

Rights & Policing (2001:79) as an admission by conduct — in other words, a physical indication or communication of the whereabouts of evidence that can be incriminating.

2.11.2 Indirect evidence (circumstantial evidence)

Indirect evidence is also known as circumstantial evidence, and does not directly prove a fact at issue, but may establish a strong inference as to the truth of that fact. Circumstantial evidence is generally added to other types of evidence and may or may not be used during the trial, depending on the inference drawn. If various witnesses testify that the suspect spoke to them of having stolen a ring from a jewellery showcase, their testimony is considered to be indirect evidence (Gilbert, 2004:59).

It is a myth that one cannot be convicted of a crime solely on circumstantial evidence. The broad definition of circumstantial evidence encompasses all evidence other than direct evidence, provided that it logically relates the defendant to the crime. Circumstantial evidence is sometimes referred to as indirect evidence, for this reason Swanson et al. (2003:774) and Lee et al. (2001:29) agree. For example, the fact that the defendant's fingerprints are detected on a weapon found at the scene of a homicide, does not necessarily mean that the defendant committed the crime. The fingerprints tie the defendant to the gun, and finding the gun at the scene of the crime may be a circumstance relating the gun to the commission of the crime. Likewise, testimony that the defendant was seen near the scene of the crime shortly after its commission does not necessarily constitute guilt, but, again, it may lead the jury to infer guilt (Swanson et.al., 2003:774).

Information or facts that are used to imply a reasonable conclusion, are considered circumstantial. Consider the the example of the robbery: if the suspect's hands rested on the glass counter top during the crime, and if fingerprints were removed from the counter top and used to make identification, it is implied that the person who left the fingerprints is the one and the same person who held up the establishment. It may be asked, "What about the innocent customer who left a set of fingerprints at the same location on the glass counter top immediately before or after the robbery?" However, if the clerk testified that he wiped the counter clean immediately prior to the robbery and that no one touched the counter after the robbery, the fingerprint evidence might hold. Therefore, no evidence is perfect. In reality, criminal investigations often include a variety

of evidentiary items that, when put together, make a case provable beyond a reasonable doubt (Adams et al., 2004:6).

2.11.3 Physical or real evidence

Real evidence, sometimes referred to as physical evidence, is connected with the commission of the crime and can be produced in court. Items of physical evidence found at a crime scene, such as a weapon used to commit a homicide, a crowbar used to pry open a window, and fingerprints, all constitute real evidence that can be observed by the jury (Swanson et al., 2003:774).

Physical evidence can best be described as any evidence that can provide useful information for investigation in solving cases (Lee et al., 2001:25). It can be found in the following forms, according to Lee et al. (2001:26): Transient evidence is temporary and can be easily changed or lost, i.e. odours, temperatures, temporary markings. Conditional evidence is produced by an event or an action that includes lighting conditions, smoke or fire, or the condition of the victim's body. Pattern evidence is in the form of imprints, identifications, striations, blood spatter or stain patterns, glass fracture patterns, powder or residue patterns. The patterns commonly found at different crime scenes are blood spatter or stain patterns, glass fracture patterns, fire burn patterns, projectile trajectory patterns, clothing or article patterns, and tyre or skid mark patterns (Lee et al., 2001:28).

Transfer evidence, also referred to as trace evidence, is produced by physical contact between persons or objects or between persons and objects. Locard's theory of exchange best states this phenomenon by declaring that any time two or more surfaces come into contact with one another, there is a mutual exchange of trace matter between those surfaces (Lee et al., 2001:28).

In one case, confronted with counterfeit coins and the names of three suspects, Locard urged the police to bring the suspects' clothing to his laboratory. Upon careful examination, he located small metallic particles in all the garments. Chemical analysis revealed that the particles and coins were composed of exactly the same metallic elements. Confronted with this evidence, the suspects were arrested and soon confessed to the crime (Saferstein, 1995:6).

Evidence likely to be found at a crime scene and amenable to scientific analysis is divided into seven major groups: (1) weapons; (2) blood; (3) imprints or impressions (traces of a person or a vehicle); (4) marks of tools used to gain access to locked premises or containers; (5) dust and dirt traces; (6) questioned documents; and, (7) miscellaneous trace or transfer evidence. Weston et al., (2000:21) and Gilbert (2004:38) agree that evidence is likely to be found at a crime scene. Common types of physical evidence are: (1) blood, semen, saliva; (2) documents; (3) drugs; (4) explosives; (5) fibres; (6) fingerprints; (7) firearms and ammunition; (8) glass; (9) hair; (10) impressions; (11) organs and physiological fluids; (12) paint; (13) petroleum products; (14) plastic bags; (15) powder residues; (16) serial numbers; (17) soils and minerals; (18) tool marks; (19) vehicle lights; and, (20) wood and other vegetative matter (Saferstein, 1995:61–63).

Physical evidence, in general, is any type of evidence with an objective existence; that is, anything with size, shape, and dimension. Physical evidence can take any form. It can be as large as a house or as small as a fibre. It can be as fleeting as an odour or as obvious as the scene of an explosion (Fisher, 2004:1). For the first time, evidence at the crime scene, in the form of a finger mark, could be compared against a data bank of known criminals and provide the investigator with a named individual. The value of trace or contact evidence was, as previously stated, first recognised in 1910 when Edmund Locard introduced his theory of interchange (White, 1999:15).

2.12 COLLECTION OF PHYSICAL EVIDENCE

The way evidence is collected directly influences its later value. When collecting evidence, it should be photographed and sketched. All objects identified as possible evidence should be collected, and a decision regarding the relevance thereof left to the prosecutor. To avoid cross-contamination, care must be taken not to mix evidence together (Bennett & Hess, 2004:93).

Investigators should not rush to pick up evidence, for its significance may be destroyed in the process. The investigators' field notes should record its discovery and recognition. In addition, photographs and accurate measurements are necessary to show its original position and its nature. In searching for evidence at a crime scene, never alter the position of, or pick up, or even touch any object before it has been minutely described in an

official note and a photograph taken (Bennett & Hess, 2004:93; Lee et al., 2001:67). When a murder is committed and the police arrive at the scene, the first task is to cordon off the crime scene, so that no evidence will be destroyed, disturbed, stolen, removed, etc. The detectives are then called to the crime scene. All evidence that is found will be marked, cones placed there (so that they are easily noticeable) and then photographed. Videotaping of the scene will also be done, when possible. The crime scene and evidence will be properly recorded, so that it can be reconstructed in a court of law.

2.13 CHAIN OF EVIDENCE

The witnessed, unbroken, written chronological record of everyone who had an item of evidence, and when each person had it, also accounts for any changes in the evidence (Swanson et al., 2003:33). 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 courtroom. Being able to account for the location and possession of evidence is known as “maintaining the chain of custody” (Gilbert, 2004:105). Other authors agreeing on this are Bennett and Hess (2004:92), Gilbert (2004:104) and Horswell (2004:26). They also add that the date, time and place of collection of the evidence must also be specified. When a murder is committed, all evidence (including firearm, knife, clues and clothes) must be collected at the scene. Proper record keeping (note taking, photography, videotaping, etc.) must be done where, when and how the evidence is found, so that it can be correctly accounted for in a court of law.

2.14 INFORMATION

Basic leads suggest lines of enquiry likely to provide an investigator with information. Active information leads to the establishment of a group of suspects. Passive information often confirms suspicions against a person as a prime suspect who can be associated with the crime scene or the victim. These basic types of information lead by two routes to sufficient evidence to reveal the person or persons guilty of the crime being investigated (Weston et al., 2000:98).

According to Weston et al. (2000:109), informants have long been a source of information to investigators seeking basic leads to a crime under investigation. If an investigator (I/O)

has a proper informer network, for instance in Wadeville, and a hijacking occurs in that area, the I/O can contact his/her informers to gain information about the suspects who committed the crime. The information received can lead to the identification and arrest of the suspects. The reasoning of the researcher is in agreement with Weston et al. (2000:109).

The business of the police is people. Every facet of police work is concerned with problems of people. The job of the criminal investigator is no exception. People and the information they supply help accomplish the investigative task of police work. Roughly ninety per cent of an investigator's activity involves gathering, sorting, and compiling evaluatory information. Interviews are conducted in criminal cases for the purpose of gathering information from people who have no other relationship to the criminal activity than being where they were (Swanson et al., 2003:121). When information is properly processed, it can become evidence.

There are various types of information which can be used for solving crimes: information from victims, information from the crime scene, information from suspects, information from databases (DNA profiles and fingerprint identification), information from records, criminal records, firearm sales and transfer records, judicial and correction records, motor vehicle related files and financial records (Lee et al., 2001:19).

Information is absolutely essential to the investigative process. Sources of information have always been the structural framework on which the investigation is built (Gilbert, 2004:150). In addition to obtaining information through interviewing, investigators must be skilled at gathering data from other sources. Information can be obtained from human, documentary and physical sources (Gilbert, 2004:174). When witnesses or complainants are interviewed, everything they convey to the police official is information — that is, what the neighbour saw and heard before, during and after the crime was committed. It includes the person sitting on the street corner and the flower-seller in the street. All the people who were in the vicinity at the time of the crime must be interviewed, to gain an insight into what they saw or heard. All this information must be processed to see how the crime was committed, by whom, etc., and to identify the perpetrator.

When a pointing out is conducted, and also during the interviewing of the suspect by the officer, a great deal of information is received. Information is also received when the suspect points out a certain place, object, and something of note. All this information must be properly documented. This information is later used as evidence in the court proceedings, when the officer testifies in court.

2.15 PHYSICAL EVIDENCE AND INFORMATION

Most solved cases rely on both physical evidence and information obtained by interviewing and interrogation. Physical evidence can provide a basis for questioning people about a crime, and questioning can provide leads for finding physical evidence. Either or both provide the knowledge required to end an investigation successfully (Bennett & Hess, 2004:128). Information can be gained from people booking in and out of a hotel, the hotel manager or the doorkeeper (Bennett & Hess, 2004:129). For example: if there was a robbery in the hotel, the hotel registers can be checked, and the hotel manager or doorkeeper interviewed. If the suspects were seen entering the hotel or staying there, then the room where the robbery took place, or where the suspects stayed, can be checked for fingerprints, clothing, credit cards, etc. that would then form evidence. Information gathered from a multitude of sources is essential for identifying and prosecuting an offender (Gilbert, 2004:150). When witnesses or informers are interviewed, information can be obtained to connect a suspect with a crime.

Fibres, hair, liquids, bodily fluids and latent fingerprints are regularly encountered at crime scenes, and constitute physical evidence (Gilbert, 2004:150). Physical evidence is tangible and includes all physical things. The crime scene investigator will have to consider the presence of physical evidence, but the absence of physical evidence may be just as important in relation to the overall case (this is usually the case in verification of what is being stated by witnesses or complained of by complainants) (Horswell, 2004:5). The latter is information received from witnesses and the complainant, that must be followed up after a crime has been committed. People and the information they supply help accomplish investigative tasks; collecting information is the key investigative task of police work. Roughly ninety per cent of an investigator's activity involves gathering, sorting, compiling and evaluating information, and information cannot be obtained without help from people.

Interviews are conducted in criminal cases for the purpose of gathering information from people who have or may have knowledge needed in the investigation. The information may come from a victim or from a person who has no other relationship to the criminal activity other than being where they were (Swanson et al., 2000:123). Items of physical evidence found at a crime scene, such as a weapon used to commit a homicide, a crowbar used to pry open a window, and fingerprints, all constitute real evidence that can be observed by the jury (Swanson et al., 2000:663).

2.16 SUMMARY

According to the *ABC of Human Rights & Policing*, (2001:31), the Constitution is the highest law in the country and instructs the SAPS to investigate crime. Detectives in the SAPS collect evidence, gather information and solve crimes committed. The investigation process includes forensic investigation, that is, court driven; investigation of crime is identifying the culprit. The investigation process starts at the crime scene where all possible evidence and information is gathered to prove that a crime was committed, how, by whom, etc.

The Locard principle is one of the leading principles in solving crimes — which is that “every contact leaves a trace”. Fingerprints, hair, blood, semen, etc. can be found at different crime scenes such as murder, rape, robbery, etc. The evidence is collected and used to link the suspect with the crime. The primary crime scene is where the first incident (crime) is committed, e.g. a murder, and from there secondary crime scenes can occur. That could be where a firearm or vehicle is recovered, a body found, stolen goods are recovered, etc.

When fingerprints are found at a crime scene, a suspect can be identified, and when checked by the Criminal Records Centre, individualisation occurs through identification of a person. When evidence is collected from a crime scene, the chain of evidence must be properly kept, in order to use the evidence in a court of law. Proper recording of where, by whom and when the evidence was found, and photos taken or video recordings made, needs to be done.

Evidence was discussed in great detail in this chapter. In the words of the judge in "*Harris v United States*, 5,331 US 145 (1947)": "Wherever he steps, whatever he touches, whatever he leaves, even unconsciously, will serve as silent evidence against him! Not only his fingerprints or his footprints, but his hair, the fibres from his clothing, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen that he deposits or collects — all these and more bear mute witness against him. This is evidence that does not forget. It is not confused by the excitement of the moment. It is not absent because human witnesses are. It is factual evidence. Physical evidence cannot be wrong, it cannot perjure itself; it cannot be wholly absent. Only its interpretation can err. Only human failure to find it, study and understand it, can diminish its value" (Gilbert, 2004:111). What the judge said forms a very good conclusion and summary to this chapter. The evidence must be identified and collected, and the chain of evidence kept and presented against the accused in court.

When a pointing out is conducted — and during the interview by the officer with the suspect — information is received. All this must be properly documented so that it can later lead to a successful prosecution.

CHAPTER 3

ADMISSIBILITY OF POINTINGS OUT

3.1 INTRODUCTION

Pointing out of a crime scene is a technique in forensic investigation to link a suspect with a crime scene. By pointing out the crime scene, the suspect places him- or herself at the crime scene and acknowledges first-hand information about where a crime was committed. The pointing out must be done correctly and in such a way that it will be admissible as evidence in a court of law. A pointing out must be done voluntarily and without force or violence inflicted on the person (suspect/accused) doing the pointing out. Section 35 of the 1996 Constitution must always be dealt with accordingly when a pointing out is done.

Serious crimes are being committed every minute of every day, but most go unnoticed in a society besieged by crime and violence (Adams et al., 2004:1). When a crime is committed, some sort of evidence is needed to connect the suspect with the crime; this means an investigation must be conducted. A pointing out is an admission by conduct — in other words, a physical indication or communication of the whereabouts of evidence that can be incriminating (*ABC of Human Rights & Policing*, 2001:79). The pointing out must be done in such a way that it is admissible in court.

In this chapter other aspects will also be looked at. For instance, the role players, procedures and preparation are aspects involved in a pointing out, that must be noted. The use of videotaping and audio recording during pointings out were also looked at, and how to conduct a pointing out so that it could be admissible in court.

3.2 ADMISSIONS

According to the *ABC of Human Rights & Policing* (2001:12), an admission is a statement or action by the accused which is to their disadvantage. It falls short of a confession as it does not contain an admission of all the elements of an alledged offence. An admission is given voluntarily and in writing. Section 35(1)(c) of the 1996 Constitution states that an arrested person has the right “not to be compelled to make any admission that could

be used in evidence against that person” (*ABC of Human Rights & Policing*, 2001:12). Section 35(5) states that “evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of the evidence would render the trial unfair or otherwise be detrimental to the administration of justice” (*ABC of Human Rights & Policing*, 2001:12).

An admission is given voluntarily and in writing (*ABC of Human Rights & Policing*, 2001:12). An admission is an acknowledgment by the accused of certain facts that tend to incriminate him or her with respect to a particular crime, but that are not sufficiently complete to constitute a confession. The burden of proving that an admission was obtained involuntarily is on the defence, should they seek to have it suppressed, and various authors agree on this (*ABC of Human Rights & Policing*, 2001; Bennett & Hess, 2004; Swanson et al., 2000 and Weston et al., 2000).

An admission is a statement that can lead to a negative derivation against the person making the statement (Nel & Bezuidenhout, 1998:236). When an admission is made outside the court, it can be done at any time, even before a person is charged. An admission can be made in writing or verbally (Nel & Bezuidenhout, 1998:236). Section 25(2)(c) of the Constitution states: “Any person arrested for committing an alleged offence has the rights of an arrested person, and the right not to be forced to make an admission or a confession which can be used as evidence against them” (Nel & Bezuidenhout, 1995:223).

In *S v Sheehoma* 1991(2) SA 860(A) the court reaffirmed on p327d that a pointing out by the accused constitutes an admission. Pointing out is an informal admission (Lambrechts, 2001a:93).

3.3 REQUIREMENTS FOR ADMISSIBILITY OF ADMISSIONS

Section 219(A) of the Criminal Procedure Act (SA) 51 of 1977 outlines the essentials for the admissibility of an admission:

- The admission must be made freely and voluntarily by the accused.
- It must be ensured that no pressures are exerted that may interfere with the person’s choice to make an admission — for example, torture.

- The name on the document must correspond with the person making the admission.
- If an interpreter was used, a certificate stating that the interpreter interpreted truly and to the best of their ability must appear with the admission.
- A pointing out is an admission by conduct (*ABC of Human Rights & Policing*, 2001:12).

The essentials for the admissibility of an admission are that it must be made freely and voluntarily, and the person doing it must be able to think clearly and without any undue influence (Nel & Bezuidenhout, 1998:248). The requirements of an admission must be adhered to and the pointing out must be done voluntarily, to be admissible (Attorney-General, in *Natal v Khumalo*, in Nel & Bezuidenhout, 1998:254).

In the United States of America, to determine if the admission was voluntary, the courts will review the characteristics of the defendant, including age, education, mental capacity, physical impairment and prior dealings with the police. Trial courts evaluate the circumstances surrounding a confession, to determine if it was voluntary and free from duress. The Supreme Court requires a warning at the time of the interrogation, to make sure that individuals know that they are free to remain silent at all times. In a court case in America in 1994, the Supreme Court (USA) held that during an interrogation, when a suspect agrees to answer questions without an attorney present, the police are not required to discontinue questioning. In Palmiotto (2004:37) the Supreme Court clarified this by the following statement: "If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him" (*Davis v United States*, 1145.Ct. [1994]). Since the Miranda decision, law enforcement officers have been reading suspects their constitutional rights: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish". Suspects should be asked whether they understand their rights and understand that they are free to talk if they want to or refuse to answer any questions (Palmiotto, 2004:37).

In *S v Sheehama* 1991 (2) SA 860(A) the court held that the state is required to show beyond reasonable doubt that such an admission (pointing out) was made: (1) freely; (2) voluntarily; (3) without undue influence being brought to bear upon the accused, and

that during the pointing out the accused was (4) in his sound and sober senses (Lambrechts, 2001:93). Section 35(1) of the 1996 Constitution states: “Everyone who is arrested for allegedly committing an offence has the right —

- to remain silent;
- to be informed promptly —
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent”.

Section 35(3) of the constitution states: “Every accused has a right to a fair trial, which includes the right —

- not be compelled to give self-incriminating evidence”.

This would include pointing out.

Section 35(5) states: “Evidence obtained in a manner which violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the Administration of Justice” (*ABC of Human Rights & Policing*, 2001:79).

Section 218(1) of the Criminal Procedure Act, 1977 states that evidence must be led, even if something was determined due to a non-admissible admission or confession (Nel & Bezuidenhout, 1998:254). When an officer conducts a pointing out, the officer will first interview the suspect to find out if the suspect is going to do the pointing out. This must be of his own free will, the suspect not being forced by the investigating officer, and with no promises made to the suspect for doing the pointing out. When the pointing out is done, the suspect must also sign all notes made by the officer, or the suspect’s thumbprint must be put on the notes in the presence of witnesses. The notes must also be read back to the suspect. The interviewees all agreed that a pointing out should be voluntary, without due influence, and done by the accused. The accused must also be sober in order for the pointing out to be admissible in court and the suspect must be informed of their rights.

It can clearly be seen that an admission is some sort of action/statement by a suspect/accused to their disadvantage, and incriminating them to a criminal deed that was committed. It must always be kept in mind that no force may be applied to obtain an admission

and that it must be done voluntarily and out of the free will of the suspect/accused. Section 35 of the 1996 Constitution must always be adhered to. The suspect/accused must always be informed of their right to remain silent and say nothing to incriminate themselves. All the above will be applicable to doing a pointing out of a crime scene, that will be discussed in detail further on in this chapter. According to the literature found and interviews conducted, pointings out done freely and voluntarily under no undue pressure (threats to the person mentioned), must be done the same way in the document.

3.4 CONFESSIONS

A confession is an unequivocal admission of guilt which, if made in court, would amount to a plea of guilt. All the elements of the offence are admitted and all grounds of justification are excluded. Section 35(c) of the 1996 Constitution states that an arrested person is not to be compelled to make any confession that could be used in evidence against that person (*ABC of Human Rights & Policing*, 2001:30). Section 217(1) of the Criminal Procedure Act, 1977, states the essentials for the admissibility of a confession or admission that could be used in evidence against that person: (i) The confession must be made by the accused; (ii) The confession was made freely and voluntarily; (iii) The confession was made without undue influence; (iv) The accused was in his sound mind and sober senses when he made the confession. Confessions are inadmissible, unless they are done in writing and confirmed in the presence of a magistrate or justice of the peace (*ABC of Human Rights & Policing*, 2001:30).

A confession is an unequivocal admission of guilt which, if made in court, would amount to a plea of guilt. According to Swanson et al. (2003:162), a confession is defined as an acknowledgement by an accused that she/he has committed a crime. It includes an acknowledgement of the commission of all the elements of the crime and the individual's involvement in their commission. The burden is on the prosecution to prove that a confession was obtained freely and voluntarily (Weston et al., 2000:145; Bennett & Hess, 2004:149).

When a suspect commits a murder and wants to confess to the crime, the investigating officer will make an appointment with the magistrate and take the suspect to the magistrate. The magistrate then will interview the suspect and, if necessary, use an interpreter. The magistrate will take down the confession on paper; this confession will then later be handed

in at court proceedings as evidence. The magistrate will give evidence that the confession was voluntarily obtained from the suspect out of his/her own free will, and that the person mentioned in the confession is the same as the accused and the suspect who signed the confession.

3.5 SUSPECTS AND ACCUSED

Some of the players in crime are called suspects and accused, due to their involvement in crime. A suspect is seen as a person against whom there is a suspicion that she/he committed a crime or is involved in a criminal activity. This person may or may not have been arrested (*ABC of Human Rights & Policing*, 2001:93). An accused is a suspect who has been arrested and formally charged for a certain crime and will appear in a court of law (*ABC of Human Rights & Policing*, 2001:11).

3.5.1 Suspects

A suspect is a person considered to be directly or indirectly connected with a crime, either by an overt act or by planning and/or directing it (Bennett & Hess, 2004:336). A suspect is a person who has committed a crime, but is not yet positively linked to that crime, identified, and can be unknown at this stage. The suspect can also be suspected of being the person who committed the crime but with not enough evidence to be charged for that specific crime.

When obtaining a suspect, the person must be charged within 48 hours and brought before court or released if not positively linked with the crime committed. All the respondents see a suspect as “one who has not yet been charged”.

In terms of section 35 of the 1996 Constitution, the following rights are afforded to suspects or arrested persons:

- The right to remain silent and not to give a statement on arrest.
- They cannot be forced to make a statement or a confession that can be used in evidence against them.
- The right to apply for bail and to be brought to court within 48 hours.

- The right to speak to a lawyer.
- To be treated with respect and dignity.
- The right not to be tortured (*ABC of Human Rights & Policing*, 2001:93).

When a police official arrests a person without a warrant of arrest (section 40 of the Criminal Procedure Act), the official must have reasonable grounds that the arrested person committed a crime or was going to commit a crime (Nel & Bezuidenhout, 1998:177). According to section 35(1)(a), (b)(i) and (ii), the arrested person must be informed in a language she/he understands, of the right to remain silent, and what the consequences will be if a statement is made (Nel & Bezuidenhout, 1998:187).

Linking the suspect to the scene, the victim, or physical evidence associated with the investigation, is vital to solving the case. A more extensive background check can be conducted, focusing on information that would associate the suspect with the victim, or help in establishing a reasonable motive and opportunity. Also, it may be beneficial merely to place the suspect at the scene of a crime or in contact with a piece of significant physical evidence (Lee et al., 2001:30). In this scenario nobody is arrested or known, and the person who committed the crime is referred to as the suspect.

3.5.2 Accused

An accused person is someone who has been arrested, charged with committing a criminal offence and appears in court to face charges against him (*ABC of Human Rights & Policing*, 2001:11; Swanson et al., 2003:760; Bennett & Hess, 2004:556). Section 35(3) of the 1996 Constitution states that all people accused of committing a crime have certain rights which must be protected by the state. Every accused person has the right to a fair trial. Section 74 of the Criminal Procedure Act, 1977 compels the arresting officer to warn the parent or guardian of an accused of under 18 years to attend the relevant criminal proceedings. They must be informed of the place, date and time that the accused is to appear (*ABC of Human Rights & Policing*, 2001:11).

Section 35(3) of the 1996 Constitution states that all people accused of committing a crime have certain rights which must be protected by the state. Every accused person has the right to a fair trial. Under the law, an accused person is presumed innocent until

proven guilty. While detained, the accused still has the right to be treated with dignity and respect. The accused person has all the rights of an arrested and detained person. Section 35 of the 1996 Constitution is not an absolute right and may be limited by section 36 and section 37 (State of Emergency) (*ABC of Human Rights & Policing*, 2001:11).

According to section 35(3) of the 1996 Constitution, every accused has the right to a fair trial, including (a) to be informed of the charge against him/her; (b) to have sufficient time to prepare for defence; (c) a public trial in a normal court of law; (d) a speedy trial; (e) to be represented by a lawyer (if necessary, appointed by the state); (f) assumed to be innocent; (g) to lead evidence; (h) not forced to give incriminating evidence; (i) given a trial in a language she/he understands, and, (h) an appeal — sentence to be reviewed by a higher court (Nel & Bezuidenhout, 1998:180).

An accused is the person arrested and charged with committing a specific crime, who will be brought before a court of law the same day she/he was charged or the next court date. The accused can also apply for bail or be released on their own responsibility. A suspect and accused have their rights set out in section 35 of the 1996 Constitution.

All the respondents see an accused as a person who is formally charged. When a person is formally charged, she/he becomes an accused. When a robber is arrested by the SAPS and there is sufficient evidence to connect the robber with the robbery, the robber is charged and brought before a court of law. When this robber is charged she/he is an accused and also has all the rights of an accused person, as previously mentioned.

3.6 POINTING OUT OF A CRIME SCENE

A pointing out is an admission by conduct — in other words, a physical indication or communication of the whereabouts of evidence that can be incriminating. At every stage of the investigation where the accused persons or suspects may incriminate themselves, the police member should inform them of their rights. A police member should not merely rely on a pointing out to solve a case, but continue with investigations (*ABC of Human Rights & Policing*, 2001:79). Section 218 of the Criminal Procedure Act mentions admissibility of facts discovered by means of an inadmissible confession (Sorgdrager et al., 1988:173). In *S v Ismail* 1965 (1) SA 446(N), the judge said: “It seems to follow then that,

even if it is quite clear that a statement, not amounting to a confession, was obtained by a policeman as a result of acts of physical violence committed upon the accused, such as to render the statement itself inadmissible, the evidence as to the pointing out, forming part of the statement, would nevertheless be admissible". The appeal was dismissed (Sorgdrager et al., 1988:174).

Pointing out is an informal admission (erkenning) and it must accordingly confirm with all the legal requirements for an admission (Lambrechts, 2001:93) An example of a crime that shocked the community of Springs in 1988 involved the son who killed his mother, who took the police to point out the scene of the crime, as well as the place where he had buried the body. Initially the case filed against Stephen Carter was one of murder, but despite his confession and the evidence against him it was impossible to prove intent. The police, however, had enough evidence at their disposal to support a trial for manslaughter. On 6 August 1998 Stephen Carter was sentenced to 6 years' imprisonment for culpable homicide (Blacher, 2006:26).

An example of a pointing out involved an officer who chased a suspect and ordered him to stop. While frisking Charles (the suspect), the officer discovered an empty shoulder holster. After handcuffing him, the officer asked Charles where the gun was. Charles nodded in the direction of some empty cartons and stated, "The gun is over there". After retrieving the gun, the officer formally placed Charles under arrest (Swanson et al., 2003: 148). The above constitutes a pointing out. After obtaining a confession, one may go with the suspect to the crime scene and re-enact the crime (the crime scene is set up as it was the day the crime was committed) and what happened during the time of the crime occurring, before witnesses. Take pictures or films of the re-enactment. Go over the confession and the pictures with the suspect to verify their accuracy (such confessions and re-enactments can also be used for police training). Even though a confession is highly desirable, it may not be true, it may later be denied, or there may be claims that it was involuntary (Bennett & Hess, 2004:150).

All the respondents agreed that a pointing out is done by a suspect/accused who shows a place where a crime was committed. There are certain role players involved in doing a pointing out. According to the respondents, the following people are role players in a pointing out: the officer, suspect/accused, interpreter, driver of SAPS vehicle and the photographer.

Looking at all the information available it seems that the following people are involved in a pointing out:

- Justice of the peace (includes any magistrate/police officer). It is normally a police officer (captain or higher) who conducts the pointing out. The officer must not have first-hand knowledge of the incident (crime committed), or should not be involved in the investigation, as far as possible.
- The suspect or accused.
- The legal representative of the suspect/accused if requested.
- Interpreter, if necessary, in the language that the suspect/accused requests. This ensures that there is fluent conversation between the officer and the suspect or accused.
- Driver (SAPS member) for the vehicle that is going to be used in the pointing out.
- Photographer.
- When using a video camera, the operator.
- When using a tape recorder, the operator.
- Medical practitioner to examine the suspect/accused to see if she/he can continue with pointing out (not always necessary).
- The investigating officer who will find a member or officer to contact the officer who is going to hold the pointing out.
- The member or officer contacting the officer (justice of the peace) who is going to conduct the pointing out (respondents who were interviewed).

The docket analysis done leads one to come to the conclusion that the following role players are involved: SAPS officer (detective), suspect/accused, interpreter, photographer, and the driver of the SAPS vehicle.

3.7 AIDS THAT CAN BE USED IN POINTINGS OUT

According to the respondents, the following are aids that can be used during a pointing out: Videotaping, tape recording, camera, pen and paper. According to the literature, note taking, photography and tape recordings can be used as aids.

3.7.1 Note taking

Note taking is one of the most important aids used when a pointing out is conducted. The note taker/writer will at a later stage (perhaps years later) give evidence in court about the notes she/he took down. The researcher's experience indicates that notes must be specific and in detail. When completed, the notes must be signed by the note taker, the suspect/accused and the interpreter. The main aim in taking notes is to provide an accurate and comprehensive record of events and observations which will still be meaningful months and even years later. For this reason it is preferable to write detailed notes at the time, rather than attempting to save time by using abbreviations which, although readily understood when being written, might be insufficient to refresh the crime investigator's memory after several months (Horswell, 2004:13).

Some basic principles for notes include making the notes permanent (by using ink writing instruments and by not editing the notes), legible, and each page identified with sequential numbers, case numbers and the note taker's name. The notes include a detailed description of the scene and any items of physical evidence determined to be relevant to the scene (Lee et al., 2001:74, 77). Effective notes are complete, accurate, specific, factual, clear, well organised and legible. Original notes are legally admissible in court, and officers may use them to refresh their memories. Officers should take to court only those notes that pertain to the particular case. However, a copy of the original may be used to testify from; the reason for failing to produce the original should be clearly explained (Bennett & Hess, 2004:38).

The three most widely accepted means of keeping notes during an interrogation are mental notes, written notes, and notes taken by a third party. Written notes are more advantageous, in that they permit the interrogator to document salient information. Making written notes requires thought and concentration. The interrogator may not fully concentrate on what the suspect is saying, and may thus miss something important. Note taking may also distract the subject, who may be hesitant to convey the truth, knowing that the information is being taken down (Swanson et al., 2003:160).

A clipboard with graph (A4) and pencils (ink pens), used for drawing items such as vehicles, furniture and other items commonly depicted in crime and accident scene sketches, can

be used (Adams et al., 2004:33). In the researcher's experience it is a very good idea to use a clipboard, because when doing a pointing out, the officer will often be writing inside a vehicle at the scene (standing, with nothing to lean on), and in other uncomfortable places. Most witnesses/suspects are not intimidated by note taking on the investigator's part. In fact, the witness/suspect normally expects this note taking — it concurs with the media image of the investigator. During the initial telling of the event, the officer should make basic notes. After the initial telling, the notes serve as a guide for the detailed statement (Gilbert, 2004:121).

Accurate note taking of the examination of the scene of the crime (pointing out), completion of Criminal Justice Act (CJA) labels, and the completion of the statement, cannot be emphasised enough. It is necessary for both the prosecution and the defence to disclose any material that may undermine the case. Therefore, all the evidence, including the paperwork that the CSI completes, can be required to be produced before a court of law (Pepper, 2005:17).

3.7.2 Photography

A CIS (Crime Investigation Serviceman) may also be asked to photograph crime suspects, perhaps recording injuries to them or clothing they are wearing at the time of their arrest. Occasionally a CIS may also be asked to photograph a parade to record how representative the parade is in relation to the suspect (Pepper, 2005:34). The researcher has experienced that it is the same when a pointing out is held: the photographer takes photos of the suspect to show injuries, or the absence thereof, the scene/place that the suspect points out to the officer, etc. Keep an accurate log of all the photographs taken. Bring with you all the photographs you took at the scene and also bring the negatives. You should be able to account for every single numbered shot that you took, although you may show only some of those photos (Adams et al., 2004:196).

An example of the use of photography is an instance when a shootout took place at a wedding reception. Many in the wedding party were gang members and took chase, shooting an innocent bystander whom they mistook for a shooter, simply because he was running away and hiding behind a car. Later, during the investigation, photos were discovered of a member of the wedding party posing with a gun in his waistband with the

wooden grip clearly exposed. The photos had been taken just hours before the shooting at the reception. The gun was subsequently recovered during a warrant search, and ballistics matched the gun to the bullet recovered from the victim. Close examination of the gun showed unique individual characteristics visible in the wooden grip. The photo also showed a great amount of detail, because the photo was taken by an expert photographer. The gun was then photographed under lighting conditions similar to those when the photos were taken of the gang member carrying the weapon in his waistband. The two images were then merged using Adobe Photoshop, a computerised imaging program. By overlaying the photos taken of the gun in the laboratory over the photo taken at the wedding, the individual characteristics were matched up. The wood grain pattern in the grip also matched, showing that the recovered gun was the same gun the gang member posed with just hours before at the reception. The use of photography and digital imaging aided greatly in putting the murder weapon in the possession of the suspect (Adams et al., 2004:197).

“Photograph” includes any picture, usually a recorded image, depiction or any other similar representation of the person concerned (*ABC of Human Right & Policing*, 2001:79). Section 10 and section 14 of the Constitution state: “Everyone has inherent dignity and the right to have their dignity respected and protected” and “Everyone has the right to privacy”, respectively (*ABC of Human Rights & Policing*, 2001:79). The taking of photographs can sometimes infringe these rights. Section 37(1)(d) of the CPA states that any police official may take or cause a photograph to be taken of a person:

- arrested upon any charge.
- of any such person released on bail or warning (*ABC of Human Rights & Policing*, 2001:79).

The basic purpose of crime scene (pointing out) photography is to record the scene permanently. Pictures taken immediately, using proper techniques to reproduce the entire crime scene, provide a factual record of high evidentiary value. Photographs and videotapes reproduce the crime scene in detail for representation to the prosecution, defence, witnesses, judge and jury in court. They are used in investigating, prosecuting and police training.

The advantages of photographs, according to Bennett and Hess (2004:40), are that they can be taken immediately, accurately represent the crime scene and evidence, create interest, and increase attention to testimony. The disadvantages of photographs (Bennett & Hess, 2004:40) are that they are not selective, do not show actual distances and may be distorted and damaged by technical errors in shooting or processing.

The purpose of crime scene (pointing out) photography is to provide a visual record of the scene and related areas, to record the initial appearance of the crime scene and physical evidence, to provide investigators and others with a permanent record for subsequent analysis of the scene, and to provide the permanent record to the courts. Crime scene (pointing out) photography is one of the most important steps in the entire investigation process. Overall photographs of the outside of the crime scene should also include views of the exterior of any buildings where the crime occurred, the windows, doors, pathways, walkways, or other means of entry/exit. The value of overall photographs of a crime scene is found in the ability of the photographs to be compiled to illustrate the approach to the crime scene by victim(s) or suspect(s), the entrance to the scene, commission of the crime and, finally, the exit from the crime scene. The large number and types of photographs that are taken as part of crime scene/pointing out documentation must be chronologically recorded. The common procedure used for this purpose is the maintenance of the photo log (Lee et al., 2001:80–89).

Photography is the first means by which the crime scene is processed and, in many ways, the most important. Proper photographs provide a permanent record of how the scene appeared after the offence was discovered. Photographs support the investigator's testimony during a trial. Each photograph taken at the crime scene (pointing out) must be fully identified. Identification data includes the following, according to Gilbert (2004:91–97):

- (i) Data to identify the subject of the photograph.
- (ii) Data to identify the location of the photograph.
- (iii) Data to identify the photographer.
- (iv) The case number, if known at the time of marking.
- (v) The time the photograph was taken.
- (vi) The date the photograph was taken.
- (vii) The series number if applicable.
- (viii) Data to describe weather conditions.

3.7.3 Videotaping

The use of videography at the crime scene has become routine procedure for crime scene documentation in recent years according to Lee et al. (2001:78). The use of videotapes and digital ideography has widespread acceptance in the law enforcement community today. The biggest influence leading to accepting the use of videographic documentation of crime scenes comes from juries expecting videotaping of crime scenes. They want and expect crime scene investigation to include a form of video documentation. Begin the crime scene videotaping with a general view of the areas surrounding and leading into or away from the crime scene (Lee et al., 2001:78).

Recording an interrogation is the best means of documentation. Audio, video or a combination of both may be used, but because of the absence of case law to serve as a legal guide, local requirements should be checked. Because the law is constantly evolving concerning the use and admissibility of videotaping, many courts allowing its use require the testimony of a qualified technician or operator as a condition of admissibility (Swanson et al., 2003:160–161).

The video recording of what is referred to as a re-enactment, should be attempted only after the suspect has been interviewed and only after an invitation has been made which the suspect accepts, with the video being taken while the suspect is under caution. Experience has shown this to be a very successful tool in presenting the prosecution case in court. The court will also be able to see if the suspect is under stress or duress at the time of the re-enactment video, along with his/her general demeanour and that of the interviewing officer. Experience has shown that powerful evidence can be gained from using this technique (Horswell, 2004:132).

Videotapes reproduce the crime scene in detail for the prosecution, defence, witnesses, judge and the jury in court. They are used in investigating, prosecuting and police training. Videotaping is now well established as an investigative tool. Lightweight, handheld video camcorders are easy to use at a crime scene. Taking videos is similar to taking still pictures. The photographer can use the sound capability to describe the procedure being used to make the video and to explain what is being taped. Videotapes can also be made of witness testimony, depositions, evidence, line-ups and even trials (Bennett & Hess, 2004:40).

In the case *S v Wians* (3) SA 841(T) videotaping is addressed. The appellant, a professional dancer, was convicted of unlawfully exposing herself during a dance performance. The state's case rested, inter alia, on a videotape and photographs that were taken during the show. One of the grounds of appeal was that the trial court had erred by admitting this evidence. O'Donovan AJ 842 held that the objection raised by the appellant was more concerned with the weight (value) attached to the evidence, rather than the admissibility thereof. The judge held that the strict requirements applying to the admissibility of public records were not applicable here. The appeal was dismissed and the conviction and sentence were confirmed (Sorgdrager et al., 1997:330). In *S v Ramgobin* 1986 (4) SA 117 (N) in a trial within a trial, the court held that the tapes could be admitted only if they were proven to be originals and that there was no reasonable possibility that they had been tampered with (Sorgdrager et al., 1997:336).

Videotaping is the most recent addition to the use of graphics at the crime scene. Its pictorial storytelling provides substantial benefits for investigators. Likewise, the videotape may be equally useful to defence attorneys in court (Weston et al., 2000:37). The videotaping of suspects is a natural outcome of the availability of video cameras and television sets. Thousands of law enforcement agencies videotape interrogations and confessions of major crime suspects. Usually the video camera is out in the open and the suspect is informed of the planned taping. It is likely that the videotaping will foster many pleas of guilty, and be more compelling than written statements or verbal testimony.

In New York's Central Park "wilding" case (a gang of youths running wild in the park were accused of assault, rape and attempted murder), the videotapes of the defendants and their questioning were compelling evidence in court. In addition, it is likely that the suspects will not be questioned as vigorously as in the past; after all, the videotape is a graphic portrayal of the interrogation. To gain the maximum integrity for this technique, the camera should be turned on when the suspect is read his/her rights (to inform the person of his/her constitutional protection against self-incrimination), and not turned off until the session is completed. This start-to-finish rule is better than any partial taping, which is wide open to challenge by defence attorneys (Weston et al., 2000:147).

It seems that a video recording can be used as a back-up to notes taken during a pointing out. The video recording cannot replace the note taking, since after a pointing out is done, the notes are read back to the suspect/accused and she/he must then sign each page. That

is to later prove that she/he agreed to everything that was noted down. The interpreter who was used must also sign a certificate that she/he translated correctly. The officer also must sign the notes she/he took. It can be suggested that the driver of the SAPS vehicle sign at the place where the notes state what vehicle was used.

The same procedure can also be followed with the photographer, where it is mentioned that she/he took photos. The video recording can complement the note taking by showing that the suspect/accused does not have injuries, his/her willingness to co-operate, and by showing properly what was pointed out and how the officer and others involved reached that destination. It is suggested that written permission from the suspect/accused be obtained before using a video recording.

In *S v Ramgobin* 1986 (4) SA 117(N) a trial was held to determine the admissibility of certain audio- and videotapes. The court held that the tapes could be admitted only if it were proved that the tapes were originals and that there was no reasonable possibility that they had been tampered with (Sorgdrager et al., 1997:336).

In the case *S v Mpinlo* 1986 (3) SA 485 (E) ten accused were trialled for murder and public violence. The question arose as to the admissibility of a videotape. The tape was used as evidence by the state. Judge Mullins J 486 held that a video film was real evidence rather than documentary evidence. Video evidence is thus seen as real evidence and is distinguished from documentary evidence. Such evidence may be tendered if it is relevant. If a dispute should arise over its authenticity, or any inferences which could be made in respect thereof, it does not affect the admissibility, but rather the probative value (Sorgdrager et al., 1997:338).

A photograph or film does not have to measure up to some theoretical and possibly unattainable standard of perfection as a record, before it can be admitted as evidence (Sorgdrager et al., 1997:331).

3.7.4 Tape recording (audio)

Recording an interrogation is the best means of documentation. Audio, video, or a combination of both may be used, but because of the absence of case law to serve as a legitimate guide, local requirements should be checked (Swanson et al., 2003:160).

If a tape recording is tendered by the state in evidence, it cannot be excluded as evidence simply because there is interference on the tape. Because there is a possibility that interferences are an indication of a distorted account, they should be checked. Any interference, whether unintentional or intentional, is not necessarily an indication of a false statement. The probative value might be affected by such interferences, but it remains admissible evidence (Sorgdrager, 1997:335).

With regard to the authenticity of a tape recording used by the state in evidence, the question is whether the state rules out the reasonable possibility of a false recording. The state is not required to eliminate every factor which counts in favour of the appellant, but simply to consider the cumulative effect of all available evidence. The court must therefore decide the matter on the totality of the evidence, including expert evidence and the court's own knowledge (Sorgdrager, 1997:336).

Audio documentation is the second best method for recording. According to Swanson et al. (2003:161), its introduction in court necessitates establishing the identity of the people involved in the interrogation and what each had to say. A disadvantage is that the individual is likely to point out things or make statements that an interrogator can see but no one else will be able to identify from the audio recording. For example, the suspect may hold up a knife and say, "I held it like this." The interrogator knows what is meant, but to a third party listening to the recording later, the words may be meaningless (Swanson et al., 2003:160–161). Tape recording notes at a crime scene can be advantageous. Detailed notes can be taped much faster than they can be written. Another method of recording notes is by narrating a videotape of the crime scene (Saferstein, 1995:35).

In the same way that note taking and tape recording is used, videotaping is used to capture the crime scene so that it can be used when conducting a pointing out, with the suspect indicating certain points.

Some police departments use tape recorders extensively, because of the definite advantage of recording exactly what was stated, with no danger of misinterpreting, slanting or misquoting. However, tape recorders do not replace the notebook. Despite their advantages, they also have serious disadvantages. The most serious is that they can malfunction and fail to record valuable information. Weak batteries or background noises can also distort

the information recorded. In addition, transcribing tapes is time consuming, expensive and subject to error. Finally, the tapes themselves, not the transcription, are the original evidence and must thus be retained and filed (Bennett & Hess, 2004:38).

Confessions of suspects, when taken, are similar to the statements of witnesses. The modern method of taking a statement is to be non-directive, to allow the suspect to write the story in his or her own words or to dictate it onto a tape recorder. A verbal transcript of the recording should be signed, as the handwritten story would be, and witnessed by the investigator (Weston et al., 2000:145).

In *S v Niewoudt* 1990 (4) 217 (A) it was held on appeal that with regard to the authenticity of the tape recording used by the state in evidence, the question is whether the state ruled out the reasonable possibility of a false recording (Sorgdrager et al., 1997:335). Tape recordings have been suggested as appropriate to record accurately a statement made during an interrogation and also to record accurately the characteristics of the interrogation. A New Jersey Supreme Court decision established half a dozen guidelines for the admissibility of sound recordings (Weston et al., 2000:146):

- (i) The tape recorder must be capable of recording conversation.
- (ii) The operator must be competent.
- (iii) The recording must be authentic and correct.
- (iv) No changes, additions, or deletions may be made.
- (v) The operator should read into the tape the time the tape began and ended, and the recorder should be left on at all times during the interrogation. If the tape breaks during the recording, it should not be spliced, but a new segment should be started, with a new time of beginning.
- (vi) When the person being interrogated makes a statement amounting to a confession, it must be voluntarily and without inducement.

In SA law it was ruled by Milne RP that “[f]or recordings to be admissible, it must be proved that the exhibits sought to be put in (a) are the original recordings and (b) that, on the evidence as a whole, there exists no reasonable possibility of ‘some interference’” (Sorgdrager et al., 1997:333).

Audiotape recording offers a permanent record, and one that is complete in terms of the speech that occurs. It lends itself to being checked by other researchers. However, it captures only speech, and misses non-verbal communication and other contextual factors. This is the standard method of capturing interview data (Denscombe, 2003:175). If notes cannot be taken during the events, they should be written up as soon as possible thereafter, so that as much as possible of the observations are preserved. The researcher may also consider taking along an audiotape recorder and to record his or her commentary on the activities while these are in progress. This can then be transcribed later (Welman & Kruger, 2001:187).

In *S v Mbatha* 1987 (2) SA 272 (A) written confessions were made by the appellants to the commanding officer of Westonaria Detective Branch. On appeal, Joubert JA 275 held that section 217(1)(a) empowers a police officer in his capacity as justice to take down confessions in relation to the commission of an offence. The state had proved that the confessions were made freely, voluntarily and without undue influence and that they were admissible as evidence (Sorgdrager et al., 1988:172). The interviewer may take notes of the participants' responses, and as an alternative, a tape recording may be made with a view to transcribing it later. In both cases the interviewer should still take notes of the participants' presumed non-verbal communication (Welman & Kruger, 2001:189).

When interviewing accused persons and during pointings out, some problems foreseen are given here by respondents: "Will have to prove that it is the people's individual voices. The tape wasn't started and stopped or even parts deleted". That means there was no interference with the recording. The respondents suggest using note taking together with tape recording during pointings out.

3.8 RIGHTS OF ACCUSED

An arrested person is a person who has been detained "for allegedly committing an offence". Such a person would therefore have the rights granted to detained persons, as well as those specified for arrested persons, in terms of section 35(1) of the 1996 Constitution. These are the rights:

- to remain silent.
- to be informed promptly of the right to remain silent and the consequences of not remaining silent.
- not to be compelled to make any confession or admission that could be used in evidence against that person (*ABC of Human Rights & Policing*, 2001:16).

This means that when a suspect/accused wants to do a pointing out, she/he must be informed of the right to remain silent, and to not say or show anything. When she/he is pointing something out, it is a confession or admission (depending on what is shown or said). This can be incriminating and she/he must be warned of that.

Section 35(3) states that every accused has a right to a fair trial which includes the right to not be compelled to give self-incriminating evidence. A person cannot be compelled to participate in any form of pointing out. Section 35(5) states that evidence obtained in a manner which violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice (*ABC of Human Rights & Policing*, 2001:79). Pre-interrogation legal requirements guidelines require that after a person is taken into custody for an offence, and prior to any questioning by law enforcement officers, if there is any intent to use a suspect's statement in court, the person must first be advised of certain rights (Swanson et al., 2003:143). These rights include:

- The right to remain silent.
- The right to be told that anything said can and will be used in court.
- The right to consult with an attorney prior to answering any questions and the right to have an attorney present during interrogation.
- The right to counsel. If the suspect cannot afford an attorney, the court will appoint one.

When the suspects/accused are informed of their rights before a pointing out starts, they must be informed in such a way that they understand that they have a right to an attorney, and, if so desired, to procure one before the pointing out.

According to section 35(2) of the 1996 Constitution, everyone who is detained, including every sentenced prisoner, has the right:

- to be informed promptly of the reason for being detained.
- to choose, and to consult with, a legal practitioner, and to be informed of this right promptly.
- to have a legal practitioner assigned to the detained person by the state, and at the state's expense, if substantial injustice would otherwise result, and to be informed of his/her right promptly (*ABC of Human Rights & Policing*, 2001:36).

In the dockets analysed, it was noted that in all cases the suspect/accused was informed of those rights. It seems that it was done properly and according to the 1996 Constitution. The respondents agreed that the suspects/accused have the following rights: “to remain silent, have a lawyer present, not to be compelled to make a confession”. To see a case successfully through court and to obtain a conviction, the rights of the accused must always be adhered to, so that the case is not thrown out of court because of a technicality.

3.9 PREPARATION FOR CONDUCTING A POINTING OUT

The respondents and the researcher agree that when interviewing the suspect/accused, the officer (SAPS) must make sure of a couple of things: to see to it that the suspect/accused is going to do the pointing out, out of his/her own free will, and is not assaulted or influenced in the wrong way, to do the pointing out. This is all done before the pointing out actually starts (Researcher & Respondents).

The first notable incident of Supreme Court intervention in interrogation practices came about in *Brown v Mississippi*. In this 1936 case, the Supreme Court held that under no circumstances could a confession be considered freely and voluntarily given when it was obtained as a result of physical brutality and violence inflicted by law enforcement officials on the accused (Swanson et al., 2003:164).

In *S v Tsotsobe* 1983 (1) SA 856(A) the three appellants were convicted and sentenced on a charge of high treason. The appellants' counsel on appeal submitted that the evidence of a pointing out by the appellants was inadmissible, as the pointing out was

done under duress. Rabie CJ 861 on appeal concluded it seems that then, even if it is quite clear that a statement not amounting to a confession was obtained by a policeman as a result of physical violence committed upon the accused, such as to render the statement itself inadmissible, the evidence of the pointing out, forming part of the statement, would nevertheless be admissible. The appeal was dismissed (Sorgdrager et al., 1988:174).

A person cannot be compelled to participate in any form of pointing out (*ABC of Human Rights & Policing*, 2001:79). Investigators are also cautioned about making promises to the suspect that cannot be kept. It must be free and voluntary. This includes such conduct as threatening bodily harm to the suspect or members of the suspect's family, using psychological coercion, engaging in trickery or deceit or holding a suspect incommunicado. All these practices were condemned in *Miranda v Arizona*. What *Miranda* seeks is to abolish techniques that would prompt untrue incriminatory statements (Swanson et al., 2003:164).

In *S v Mbatha* 1987 (2) SA 172(A) the defence contested the admissibility of the confessions made to the police officer. The state had to prove that both were done freely, voluntarily and without undue influence. The trial court decided in favour of the state. On appeal it was found that the state had proved that the confessions were made freely, voluntarily and without undue influence and that they were admissible as evidence (Sorgdrager et al., 1997:190). When a suspect becomes co-operative, the amount of conversation can be increased. Once rapport is established, listen for words indicating that the suspect is in some way connected with the crime, such as, "I didn't do it, but I know who did". If the suspect is not implicated in the crime but has relevant information, attempt to obtain a statement. If the suspect is implicated, try to obtain an admission or confession (Bennett & Hess, 2004:148).

Interviewing, in a criminal investigation, is a face-to-face conversation with the purpose of obtaining information. Persons suspected of a crime are interrogated. The purpose of interrogation is to secure a confession of guilt. It is an offensive-defensive situation in which the investigator probes, pries, and pushes an investigation to its climax — a confession. The suspect, guilty or innocent, explains or stands mute (Weston et al., 2000:134).

Before a pointing out is conducted, an interview is held with the suspect. Thorough preparation is always necessary before the interview. Since the majority of suspect interviews take place at a location other than the crime scene, the investigator normally has ample time to prepare. The majority of suspect interviews are conducted in the police agency. In this case the formal setting of the police facility works to the investigator's advantage (Gilbert, 2004:125).

The respondents agree that suspects should be checked for injuries. That is why the photographer takes photos of the suspect beforehand and afterwards, to show that the suspect is injury-free. An interpreter must also be available so that the officer and suspect can understand each other.

“Not to be compelled to give incriminating evidence” (*ABC of Human Rights & Policing*, 2001:79) — this basically means that a proper interview must be done by the officer who is going to conduct the pointing out, with the suspect/accused verifying that she/he was informed of his/her rights and is going to do the pointing out of his/her own free will.

From the personal experience of the researcher, and in interviews conducted, the following was found:

- To start with, the investigating officer must ask a colleague or commander to organise an officer to conduct the pointing out; that is, after the suspect/accused has informed the investigating officer of his/her willingness to point out certain points connected to a crime scene.
- When the officer is requested to hold a pointing out, she/he must be informed where the suspect/accused is detained. This is part of the preparation that will be done before the pointing out is held.
- If the interview is conducted in a language that the officer does not understand, the officer must make sure that a translator is available and that the translator and the suspect/accused understand each other.
- An interview must be conducted in private in any office.
- Arrangements must be made for the availability of a photographer, video camera and operator (if it is to be used).
- Vehicle/s must be available to go to the crime scene/s, and a driver/s for the vehicle/s must also be appointed.

- Photographs must be taken of the suspect/accused to show there are no injuries, or that current injuries are old ones.
- If there are injuries, it must be mentioned how such injuries were received. If necessary, a doctor must examine the suspect/accused.

In Thirion J 418, (Sorgdrager et al., 1997:357), the judge, ruled that even if a confession is truthful, it will remain inadmissible unless it can be proved that it was made freely and voluntarily. There is a greater need for the accused to be protected against forced self-incrimination before the trial than during it.

3.10 SUMMARY

In this chapter it was discussed what a suspect/accused, etc. are, what a pointing out is, the rights of the suspect/accused, aids that can be used during a pointing out, and what the admissibility requirements of a pointing out are. The whole purpose of a pointing out is that a suspect/accused shows an officer where a crime was committed and where exhibits are hidden. That knowledge of the suspect/accused will show that she/he is somehow involved in the commission of the crime. When a pointing out is conducted, the officer doing it must always remember the findings of the Sheehama case, in which it was expressly ruled that the pointing out in suitable cases can be extra-judicial admissions, and as such they must comply with the admissibility requirements of the common law and section 219(A) of the Criminal Procedure Act 51 of 1977, in that it must be made freely and voluntarily in order to be admissible (Sorgdrager et al., 1997:362).

Experience has taught that when a pointing out is conducted, notes must be kept and can be backed up with video/audio recordings. The notes must be signed by the officer, suspect/accused and interpreter, after completion of the pointing out, and beginning when rights (section 35 of the Constitution, etc.) are explained to the suspect/accused. Where there is mention of vehicles, photos, etc., the driver and photographer can sign as well. When giving evidence in court, notes must be reliable and easy to use, to give evidence. The admissibility of a pointing out can be tested in court in a trial-within-a-trial. The objective of a trial-within-a-trial is to separately determine whether a piece of evidence, mostly of an incriminating nature, is admissible if it has been alleged that it has been obtained by means of force or undue influence (Sorgdrager, 1997:361).

CHAPTER 4

FINDINGS AND RECOMMENDATIONS

4.1 INTRODUCTION

This chapter is the conclusion of the dissertation, and recommendations are made on the findings of the research. It is obvious that in the South African Police Service the significance of a pointing out of a crime scene that was done properly is not appreciated. According to the researcher, when a pointing out of a crime scenes are done properly, it can affect the crime situation as a whole, in the country. This can have a significant impact in the solving of crime and the conviction of an accused in a court of law.

4.2 FINDINGS

The researcher found, after personal experiences and interviews conducted, that the procedure that can be followed during a pointing out is as follows:

- Suspect/accused be medically examined before and after pointing out. There is a greater need for the accused to be protected against forced self-incrimination before the trial than during it (Sorgdrager, 1997:358).
- Photos of suspect/accused before and after pointing out.
- All notes, corrections and changes must be signed by the suspect/accused, interpreter and the officer conducting the pointing out. The date must also accompany any signature or initial.
- From the start, where the interview is conducted in private by the officer with the suspect/accused, the interpreter must be present and the suspect/accused informed of his/her rights. Did the interpreter interpret the precise words of the appellant? (Sorgdrager, 1997:360).
- Every time the suspect/accused says or shows something incriminating, she/he must be informed of his/her rights, in terms of the 1996 Constitution, not to show or say anything that may be incriminating.

- When the pointing out starts, the kilometre reading on the vehicle must be noted, as well as the end reading. When the vehicle is stopped for something that must be pointed out, the kilometre reading must be noted again.
- When photos are taken, the suspect/accused, interpreter and officer must be included in each photo. Where the suspect/accused shows something, she/he must be shown pointing in that direction in the photo.
- Every person has the right to a fair trial which includes the right not to be compelled to give self-incriminating evidence (*ABC of Human Rights & Policing, 2001:79*).
- When driving, the suspect/accused must give directions where to go, to the interpreter. That is, if an interpreter is necessary.
- If the suspect/accused is a female, it must be suggested that a female officer be present, especially when there are photos to be taken, and a medical examination or searches are conducted.

Through interviewing the respondents, and personal experience, the researcher found that at every stage of the pointing out where the suspect/accused may incriminate themselves, the police officer should inform them of their right not to say anything to incriminate themselves. At every stage of the investigation where the accused person or suspect may incriminate themselves, the police member should inform them of their rights (*ABC of Human Rights & Policing, 2001:79*). Failure to do so may result in evidence being inadmissible in terms of section 35(5) of the Constitution. It must, firstly, be done freely, voluntarily and without influence; secondly, the suspect/accused must put him/herself at a crime scene — thus having first-hand information/knowledge about a crime that was committed. The officer doing the pointing out must use an interpreter (if necessary) to communicate with the suspect/accused in their own language. A photographer must take photos during the pointing out, of everything that is shown and pointed out.

In *S v W 1975 (3) SA 841 (T)* the decision was taken by Judge O'Donovan AJ that a photograph or film does not have to measure up to some theoretical and possibly unattainable standard of perfection as a record, before it can be admitted as evidence (*Sorgdrager, 1997:331*).

Photos must also be taken if the suspect/accused shows that she/he is free from injuries. This is to show that no force was used before or during the pointing out, or injuries inflicted

on the suspect/accused. An admission made under force is not admissible (Sorgdrager et al., 1997:362).

The officer must then later, when called upon, give evidence in court to have the pointing out admitted in court. When the pointing out is done, the officer, interpreter and suspect/accused must sign each page of pointing out and the date must also be put on the page. The interpreter must submit a certificate informing from which to which language she/he translated.

In *S v Dlamini* 1981 (3) SA 1105(W) the court found that it must be proved that the interpreter and magistrate to whom the admission was made are, in fact, the magistrate and the interpreter. This fact cannot simply be proved by the prosecutor handing in a document containing the magistrate's name and the interpreter's certificate. It was also found that the provision that the certificate should appear "on" such a document should be interpreted literally. In this case the certificate was only stapled to the document and the court ruled that this did not comply with the requirement of "on" (Sorgdrager et al., 1988:177).

In this research there are two research questions, namely:

- What does forensic investigation entail?
- How should a pointing out be conducted to be admissible in court?

Literature case studies and interviews conducted with detective officers were used to gather information in addressing the research questions.

4.2.1 What does forensic investigation entail?

It was seen that forensic investigation is basically the application of scientific methods and techniques needed in the reconstruction of circumstances of an illegal act or omission in court. It is an investigation aimed at instituting court proceedings.

The investigation starts at the crime scene, with identification and collection of evidence and individualisation of direct, indirect, physical or real evidence. The chain of evidence must be kept for presentation in a court of law.

- All members reacting to a crime committed must know that serious crime scenes must be cordoned off.
- Details of witnesses, and how the crime scene was found, must be compiled in statement form.
- Courses must be given to enlighten members on what to do when first arriving at a crime scene.
- The detective must be contacted for serious crimes and visitation of the scenes.
- Detectives must be able to: identify different crime scenes and to determine whether a crime has been committed, legally obtain information and evidence, identify the responsible person, arrest the suspect, recover stolen property and present the best possible case to the prosecutor.

According to the Locard principle every contact leaves a trace. This means that with every crime committed, some sort of trace evidence is left behind. The detective must know how to identify the evidence. There are many types of identification, as well, that can empower the detectives to solve cases.

4.2.2 How should a pointing out be conducted for it to be admissible in court?

A pointing out is an admission by conduct — in other words, a physical indication or communication of the whereabouts of evidence that can be incriminating. The essentials for the admissibility of an admission are that it must be made freely and voluntarily, and the person doing it must be able to think clearly and without any undue influence.

4.3 RECOMMENDATIONS

After the research was conducted and the findings studied, the researcher came up with recommendations towards the two research questions addressed.

4.3.1 Forensic investigation

Intensify training of all detectives to enable identification and collection of evidence of crime scenes. To maintain the chain of evidence and recognise that all crime scenes are unique. Anybody at a crime scene could be a witness or a suspect.

When at a crime scene, the detective must be able to identify what kind of crime scene it is and what he/she must be searching for. At this stage, courses are being presented by the South African Police Services, for example, detective courses. It is suggested that much more time be allocated to the practical aspects of the above and more in field training be given.

Courses must be presented to all members of the SAPS to stress the true value of the Locard Principle and what can be achieved when it is kept in mind. Training must also stress all aids available to members to solve crimes and detect the suspects. The value of the different types of identification must also be brought to the attention of all members. This can be a very effective tool to solve crimes through eye witnesses, fingerprints, voice identification, in the field, line up, photography identification and the recognition technology.

4.3.2 Pointing out of crime scenes

Pointing out of crime scenes are applicable to actions preceding conducting a pointing out of a crime scene. The following recommendations can be made before a pointing out is conducted:

- Intensified training of all members involved in pointing outs.
- Knowledge of what is required by a court for the pointing out to be accepted as evidence.
- Understanding by all involved of the differences between an admission and a confession.
- Using of aids available to the officer during the pointing out.
- Knowing what a suspect and an accused are.
- Knowledge of rights concerning detained persons, including the suspect and accused.
- Preparation and procedures involved in conducting pointing outs.

4.3.3 Steps recommended to ensure that a pointing out is conducted successfully

The following training for different officials involved in pointing outs can be recommended —

Step One:

Training for all officers in the SAPS regarding pointings out —

- How to do a pointing out.
- What is needed to have a pointing out accepted in court.
- Training in which aids can be used.
- Availability of officers to perform pointings out. It is suggested that a rotating duty list be drawn up.
- Recording of the pointing out.
- Knowledge of the rights of the suspect and accused.

Step Two:

Training of the photographers —

- Taking photographs during the pointing out which clearly show when and where.
- Including officer, interpreter and suspect/accused in all photos.
- Taking photos of the suspect/accused to show if they have any injuries.
- Taking photos of the vehicle used for the pointing out.
- Availability of the photographers for pointing outs should be drawn up on a rotating duty list.

Step Three:

Training the interpreters in what to do during a pointing out —

- Conveying everything said between the officer and the suspect/accused.
- Translate every word that is said, in order to exclude any misunderstandings.
- Availability of interpreters must be drawn up on a rotating duty list, to assure that all languages are covered at all times.

Step Four:

The training of non-commissioned officers regarding pointing outs —

- Training members in how to drive a vehicle and to listen only to the officer in charge and no one else.

- Informing members what to expect, and the use of a pointing out.
- To include basic training in pointing out in the Detective Learning Programme, making the member aware of such a procedure in his early training as a detective.
- Training an investigating officer in how to approach an officer if a pointing out must be conducted.
- What is required for the arrangement of a pointing out; for example, photographer, interpreter, driver, vehicle. This is the duty of the investigating officer.

4.4 CONCLUSION

This research shows what forensic investigation, crime scenes, criminal investigation, identification and individualisation entail. It also shows that whenever an object comes in contact with another object, a trace is left behind or taken with it. This is, in essence, the Locard principle. A suspect leaves evidence behind at a crime scene. This must be identified and retrieved as evidence by the detective. Different identification techniques can be used to connect a suspect with a crime committed. Fingerprint, voice, eyewitness, in-the-field, line-ups and photography identification can be used, as well as mechanical, computerised and face technology aids. The evidence collected at a crime scene can be direct, indirect, physical or real evidence. After collection of evidence, the chain of evidence must always be kept intact for court purposes.

All the above topics lead to the conducting of a pointing out. This is, after the commission of a crime and the suspect is arrested. With the arrest of a suspect, and the whole time thereafter, the rights of the accused must be kept in mind at all times. As stated in section 35(1)(c) of the 1996 Constitution, an arrested person has the right “not to be compelled to make any admission that could be used in evidence against that person”.

According to the *ABC of Human Rights & Policing* (2001:79), a pointing out is an admission by conduct — in other words, a physical indication or communication of the whereabouts of evidence that can be incriminating.

When a suspect/accused shows something that has to do with a crime that was committed, to an officer, it constitutes a pointing out.

It must be remembered that a pointing out is the same as an admission, and must be made freely, voluntarily and without undue influence being brought to bear upon the suspect/accused, and that during the pointing out the accused/suspect must be in his/her sound and sober senses.

If the recommendations are instituted, it could also see a rise in conviction rates (guilty findings of suspects/accused in court) of, especially, serious crimes committed. The training and information sessions can be held for every rank, including senior management. An officer never knows when she/he will be requested to do a pointing out, and it could be judged/evaluated on a national scale.

The study is important, since the lack of training in conducting pointing outs, and the experience of doing it, are identified. The study also shows that unsuccessful pointing outs are not recorded; this furthermore shows the need for extensive training. The management of the SAPS should focus on training the members — especially all officers. Members should be informed and trained, from the rank of constable upwards, in what a pointing out is and how it is conducted. A constable, sergeant, inspector or any rank can drive the vehicle, take photographs, and be used as an interpreter (if it is a language the officer understands), when pointing outs are conducted. Those members can learn from each other by observing what each one does. The above members must be informed of the value of a properly conducted pointing out.

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INTERVIEW SCHEDULE

A. HISTORICAL INFORMATION

1. NAME:
2. ARE YOU A DETECTIVE OFFICER?
3. HOW LONG HAVE YOU BEEN A DETECTIVE OFFICER?
4. DID YOU UNDERGO SPECIFIC TRAINING IN POINTINGS OUT? (Y/N)
5. DID YOU EVER CONDUCT A POINTING OUT?
6. HOW MANY POINTINGS OUT HAVE YOU DONE?
7. HOW MANY OF THESE WERE ADMITTED AS EVIDENCE IN COURT?
8. HOW MANY TIMES DID YOU GIVE EVIDENCE IN COURT ON POINTINGS OUT DONE?

B. HOW SHOULD POINTINGS OUT BE USED TO LINK A SUSPECT WITH A CRIME?

1. WHAT, ACCORDING TO YOUR EXPERIENCE, IS THE MEANING OF FORENSIC INVESTIGATION?

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2. WHAT IS THE MEANING OF "POINTING OUT"?

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3. WHAT ACCORDING TO YOUR KNOWLEDGE IS THE MEANING OF A CRIME SCENE?

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4. WHAT IS THE PURPOSE OF EXAMINING THE CRIME SCENE?

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5. WHY ACCORDING TO YOUR EXPERIENCE WILL THERE BE EVIDENCE OR INFORMATION ON THE CRIME SCENE?

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6. WHAT IS THE LOCARD PRINCIPLE?

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7. WHAT RELATION IS THERE BETWEEN THE LOCARD PRINCIPLE AND THE CRIME SCENE?

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8. WHAT ACCORDING TO YOUR VIEW IS THE PURPOSE OF POINTING OUT?

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9. WHAT ACCORDING TO YOUR VIEW IS THE MEANING OF IDENTIFICATION?

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10. WHAT ACCORDING TO YOUR VIEW IS THE PURPOSE OF IDENTIFICATION?

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11. WHAT ACCORDING TO YOUR EXPERIENCE IS THE MEANING OF PHYSICAL EVIDENCE?

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12. WHAT IS THE USE OF COLLECTING PHYSICAL EVIDENCE?

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13. WHAT ACCORDING TO YOUR KNOWLEDGE IS THE DIFFERENCE BETWEEN PHYSICAL EVIDENCE AND INFORMATION?

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14. HOW SHOULD A POINTING OUT BE USED TO LINK A SUSPECT WITH A CRIME?

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C. HOW SHOULD A POINTING OUT BE CONDUCTED FOR IT TO BE ADMISSIBLE IN COURT?

1. WHAT ACCORDING TO YOUR EXPERIENCE IS THE LEGAL REQUIREMENTS FOR THE ADMISSIBILITY OF A POINTING OUT?

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2. WHAT IS THE DIFFERENCE BETWEEN A "SUSPECT" AND AN "ACCUSED"?

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3. WHEN SHOULD A POINTING OUT BE CONDUCTED?

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4. WHO ARE THE ROLE PLAYERS IN A POINTING OUT?

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5. WHAT PREPARATION SHOULD BE DONE BEFORE A POINTING OUT IS CONDUCTED?

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6. WHAT AIDS COULD BE USED DURING THE POINTING OUT?

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7. WHAT SPECIFIC PROCEDURE CAN YOU SUGGEST FOR CONDUCTING A POINTING OUT?

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8. WHAT ARE THE RIGHTS OF THE ACCUSED PERSON OR SUSPECT DURING A POINTING OUT?

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9. WHAT ASPECTS SHOULD BE NOTED DURING A POINTING OUT?

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10. CAN A VIDEO TAPE BE USED FOR NOTING PURPOSES INSTEAD OF NOTE TAKING DURING A POINTING OUT?

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11. CAN A TAPE PLAYER BE USED FOR NOTING PURPOSES INSTEAD OF NOTE TAKING DURING A POINTING OUT?

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12. HOW SHOULD A POINTING OUT BE CONDUCTED FOR IT TO BE ADMISSIBLE IN COURT?

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