

The Value of the Victim's Statement in the Investigation of Rape

by

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PREFACE

In today's world, technology and development make it easier to live and give us a sense of safety; but are we? Reading newspapers and watching television, we soon get another picture. It seems that criminals rule in modern day and still think that women are the weaker sex. As in most crimes, rape impacts on its victims not only physically but also emotionally by destroying their lives, even more so if the perpetrator walks free unpunished, owing to poor investigation and, in particular, if poorly taken statements contribute to the acquittal.

Successfully investigating a rape case is a challenge for any criminal investigator. The quality of the investigation significantly affects the outcome of the court case. However, in rape cases, the manner in which the investigation is conducted, including the communication with the victim and the way in which the victim's statement is taken down also has an effect on the victim's psychological well-being.

Unfortunately many investigators only have a limited awareness of the issues that emerge in the investigation of rape and are not prepared to address them as they arise. The general consensus among newly assigned rape investigators is that, although these investigations are sensitive, they are essentially the same as any other type of investigation. According to these investigators, the only difference is found in the necessity to console victims in an unusually sympathetic manner. Nothing could be further from the truth. By reading this research study investigators will become aware of the many aspects that are unique to rape investigations and will find that applying normal investigation techniques is a woefully inadequate approach.

SUMMARY

The purpose of this research was to evaluate the existing procedures that investigators in South Africa follow in utilising the information contained in the victim statement in the investigation of rape, with the intention of determining the strengths and weaknesses of the procedures and of considering how these procedures can be improved.

The researcher explored how investigators internationally use information contained in the victim statement in the successful investigation of rape and read extensively on the topic in international literature sources. The researcher also evaluated the current methods that investigators within the South African Police Service (SAPS) use.

The researcher made use of an empirical research design because of the limited information available on the topic of the research, and a qualitative research approach, which enabled real-life observations. Simple random sampling was used to select 20 uniform members as well as 20 investigators of rape incidents for interviewing. Purposive sampling was used to select two public prosecutors attached to the Sexual Offences Court. Data were obtained from their real-life experiences through interviewing them and data were further collected through case studies of case dockets.

Key terms

Rape; Victim; Contents of Statement; Information; Intelligence; Evidence; Prosecution; Investigation; Criminal; Interviewing; Investigator

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The Lord, for the ability and strength, His guidance and blessing.

DECLARATION

I Elmariè van der Merwe declare that “The Value of the Victim’s Statement in the Investigation of Rape” is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

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CHAPTER 1

GENERAL ORIENTATION

1.1 INTRODUCTION

In the day-to-day activities of the researcher at the detective service of the South African Police Service (SAPS), she experienced that complaints are often received from investigators about poor statements of rape victims. These statements were often taken by the member who did the first interview, mostly uniform personnel. When these statements were examined the researcher soon discovered that the victim's statement often contained the elements of the crime but did not describe what had happened during the time frame of the incident. The statement of the rape victim should have included what the victim saw, heard, and smelled as well as what was felt during the incident. In other words information about the sensory experience of the victim is vital.

This information is often only obtained by the investigator later. The reality is that the victim might block out this experience unconsciously owing to the traumatic nature of the crime. The victim would later re think the incident, repeating the ordeal, trying to come to terms with her feelings and emotions. Support structures like families, friends and psychologists might have been given this detailed information during formal and informal de-briefing, instead of the member who conducted the first interview and took down of the victim's statement. Inevitably if some of this information had been lost, it might be lost forever.

Insufficient information results in the fact that investigators often have to retake the statement because of the poor quality of the initial statement. During docket inspections by the researcher it was discovered that the victim statement did not always contain sufficient evidence to prove that a crime had been committed, or did not link the suspect with the crime. More often the docket inspections revealed that no descriptions of the suspect(s) were contained in the victim statement. Discussions with the Senior Public Prosecutor revealed that the low conviction rate of rape suspects could mostly be attributed to poorly taken

statements from rape victims. The information provided by a detailed statement of the rape victim can impact immensely on the investigation process and can ultimately influence the success of the whole prosecution process. It is therefore very important that the statement of the rape victim is taken down as soon as possible after the criminal incident and as thoroughly as possible.

1.2 AIM OF THE RESEARCH

The aim of the research is to establish what the value is of the information contained in the rape victim's statement. In the current study the researcher focuses on the value of the information specifically in terms of identifying, tracing and successfully prosecuting the perpetrator.

1.3 PURPOSE OF THE RESEARCH

The purpose of a research study encompasses the focus and direction of the research study and provides criteria against which the outcomes of the research can be evaluated (Denscombe, 2002:25). This research focused on the following purposes as described by Denscombe (2002:26-27):

- The researcher aimed to evaluate the existing procedures followed by South African investigators in utilising the information contained in the rape victim statement in the investigation of rape, with the intention of determining the strengths and weaknesses of the procedures and of considering how these procedures can be improved.
- The researcher aimed to explore how investigators internationally utilise information contained in the rape victim statement in the investigation of rape. To accomplish this, the researcher read extensively in an attempt to explore the field and found new information which could be used to address the problem under investigation.
- The researcher aimed to apply the new knowledge gained from this evaluation to develop good practice. This will be achieved by recommending new procedures to enhance performance and to improve the conviction rate of rape case in court.
- The researcher aimed to empower her and fellow officials with the new information

by making it available to them. The researcher intends to give lectures to investigators, to write a research article on the basis of this research, and to make the information available for the training of less experienced investigators.

1.4 RESEARCH QUESTIONS

“The purpose of formulating research questions is to focus on the research problem by breaking it down into questions” (Mouton, 2001:53). “Research questions specify exactly what is to be investigated” (Denscombe, 2002:31). With the problem statement and aims in mind, the researcher decided on the following research questions to focus the research.

1. What is a statement?
2. What is the value of the information contained in the rape victim statement?

1.5 KEY CONCEPTS

To understand this report, it is important to understand the key concepts outlined below.

1.5.1 Statement

A statement is something that you say or write that gives information or an opinion (*Oxford Advanced Learner’s Dictionary*, 2007:1443).

Bennet and Hess (2004:139) define a statement as “a legal narrative description of events related to a crime”.

1.5.2 Statement under Oath

A statement under oath is a written statement that is sworn to or confirmed before a commissioner of oaths (Schmidt, 1990:247).

1.5.3 Victim

A victim can be defined as a person who is harmed, injured, or killed as a result of a crime or accident (Marais & Van Rooyen, 1990:33).

1.6 METHODOLOGY

Leedy and Ormrod (2005:12) state that the methodology of a research project can be described as the approach in general that the researcher takes in carrying out his/her research project, to some extent this approach dictates the particular tools the researcher selects.

1.6.1 Research Design and Approach

“A research design is an exposition or plan of how the researcher plans to execute the research in investigating the research problem that has been formulated” (Mouton, 2001:175). Basically, it consists of a clear statement of the research problem as well as plans for gathering, processing and interpreting the observations intended to provide some resolutions to the problem (Creswell, 1998:14).

This study used an empirical research design. “Empirical research is that kind of research which seeks to answer those questions that can be answered by reference to sensory data” (Gay & Airasian, 2003:95). For the purpose of this research, empirical research was carried out because the research focused on the real life experiences of real people with the intention of formulating new guidelines.

In addition, the study used an empirical research design because an initial investigation revealed that there was limited information on the research topic. The researcher considered this design as the most useful in the circumstances for finding information. Real-world observations were made of uniform members and investigators of the SAPS so that it could be determined what information should be contained in the rape victim statement. This enabled the researcher to further determine the value of this information in the investigation process. This comes down to what Denscombe (2002:6) states about empirical research, “that it involves the idea of the researcher getting out of the chair, going out of the office and purposefully seeking necessary information”.

The study used a qualitative research approach. “Qualitative research focuses on phenomena

that occur in natural settings, which is the real world, and involves studying those phenomena in all their complexity” (Leedy & Ormrod, 2005:133). To meet these requirements, the researcher interviewed uniform members and investigators in practice to obtain a real understanding of the problem. In addition the researcher interviewed public prosecutors who work on a daily basis with rape cases in court. “Qualitative research involves the studied use and collection of a variety of empirical materials” (Creswell, 1998:15), which the researcher achieved by reviewing current literature on the topic and examining the statements of rape victims. In summary, the researcher used a case docket analysis, personal experience and interviews as instruments for collecting data.

1.6.2 Population

It would be ideal to conduct the research with all the police officials in South Africa in order to obtain the true answer to the research problem because these officials are the real population of this research (Welman & Kruger, 1999:46). Practically, it is not possible to interview all of these investigators owing to time, financial and geographic constraints. To represent the population the researcher decided to take as target population the officials of the five largest police stations in the Northern Free State (NFS): Welkom, Odendaalsrus, Thabong, Kroonstad and Sasolburg. This was because she was stationed in Welkom and the proximity of the other police stations made it easier for her to access officials from these stations. “The target population is the population to which the researcher ideally would like to generalise his or her results” (Welman & Kruger, 1999:122).

Table 1.1: Population of detectives and uniform members

	DETECTIVES	UNIFORM MEMBERS
TOTAL MEMBERS FOR THE FIVE LARGEST STATIONS IN NFS	228	356
WELKOM/stratum1	58	78
ODENDAALSRUS/stratum 2	47	74
THABONG/ stratum 3	43	64
KROONSTAD/ stratum 4	46	74
SASOLBURG/ stratum 5	34	66

Furthermore, to establish whether enough data could be obtained from these stations, the researcher utilised the Crime Administration System (CAS) of the SAPS and found that 472 rapes were registered within the NFS from 1 July 2005 to 31 December 2005. This data was further analysed and the researcher found that, out of the cases that were registered, there were 81 cases registered in Welkom, 75 cases in Odendaalsrus, 73 cases in Thabong, 69 cases in Kroonstad and 65 cases in Sasolburg, which results in a total of 363.

Table 1.2: Population of case dockets

	Rape cases
Total number of rape cases reported for NFS – 1 July 2005 to 31 Dec 2005	472
WELKOM – 58 detectives	81 / 17.1%
ODENDAALSRUS – 47 detectives	75 / 15.8%
THABONG – 43 detectives	73 / 15.5%
KROONSTAD – 46 detectives	69 / 14.6%
SASOLBURG – 34 detectives	65 / 13.8%

This represents 76.9% of the total rapes reported in the NFS. For this reason the researcher is of the opinion that the sample drawn from the target population in terms of the case dockets which were selected is representative of the target population.

The researcher considers the target population of the participants as representative of the population because SAPS members are all appointed under the Police Act, Act 68 of 1995; SAPS investigators use the same standards of investigation all over South Africa; and investigators in the NFS administer the same Acts, are bound to the same Constitution and process their cases through court under the same Criminal Procedure Act, Act 51 of 1977, as the rest of South Africa.

1.6.3 Sample

A sample is a selection of elements (members or units) from a population and is used to make statements about the whole population. “The ideal sample is one that provides a perfect representation of a population, with all the relevant features of the population” (Blaickie, 2003:161). The target population in terms of the human resources comprised 228 detectives and 356 uniform members in total. Alphabetic name lists with all the uniform members and detectives of the above mentioned stations were requested from the SAPS Human Resource Management Department and the sample population was selected from these lists.

Alphabetical lists were compiled separately for the detectives and the uniform members of each station. The researcher used the stratified random sampling technique to identify four participants per list randomly. This resulted in a total of 20 detectives – Sample A – and 20 uniform members – Sample B – respectively which made up the two samples for the interviews.

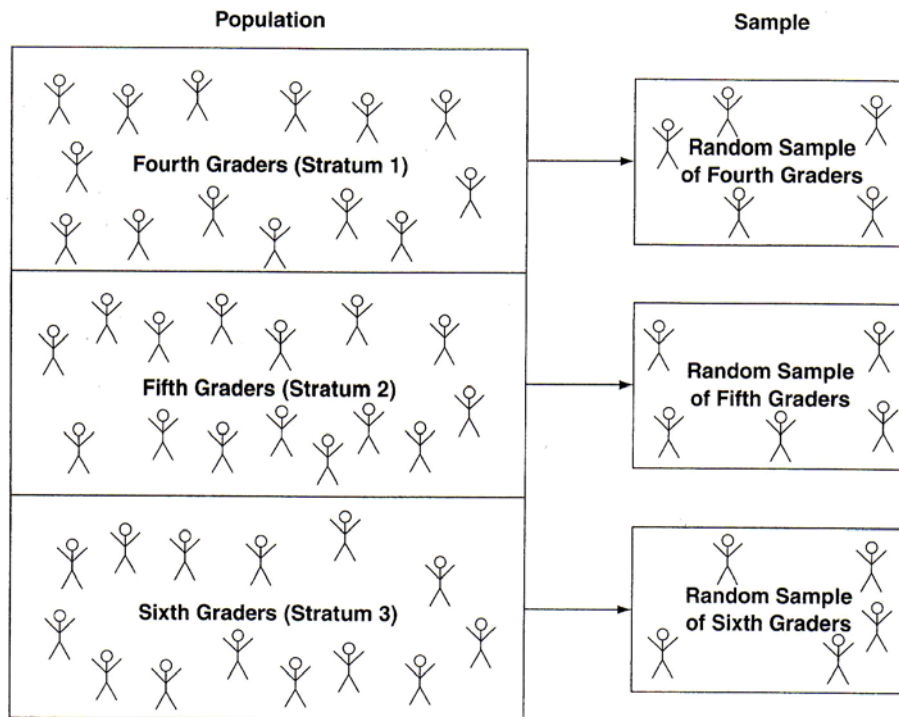
1.6.4 Stratified Random Sampling

This research used the stratified random sampling technique to obtain the sample. “In a stratified random sample each person in the research universe has an equal probability of being chosen for the sample, and every collection of persons of the same size has an equal probability of becoming the actual sample, as long as they are members of the same universe” (Leedy & Ormrod, 2005:211). All that is required to obtain a random sample, after an adequate sampling frame has been constructed, is to select persons without showing bias

for any personal characteristics. To explain stratified random sampling, the authors used as an example Grades 4, 5 and 6 pupils in a public school. This stratum could also refer to the detectives at the different stations.

This is a stratified population. It has three different layers (strata) of different individuals. In stratified random sampling, the researcher samples equally from each one of the layers in the overall population. In other words, if one was to sample a population of fourth-, fifth- and sixth-graders in a particular school, one would assume that the three strata are roughly equal in size and so one would take equal samples from each of the three grades. Figure 1.1 represents the sampling method visually.

Figure 1.1: Stratified random sampling



Source: Leedy and Ormrod (2005:203)

“Stratified random sampling has the advantage of guaranteeing equal representation of each identified stratum” (Leedy & Ormrod, 2005:202). By using the above technique the researcher carried out the steps outlined below. The target population consists of five stations (stratum) of which the numbers of members are 228 detectives and 356 uniform members. Separate alphabetical name lists were obtained for the detectives and uniform members of each station, making a total of ten lists. To draw four participants from each list, the total of each list was divided by four and that number written on the top of the list.

For example, to obtain four participants from Welkom’s detectives, 58 was divided by four, resulting in the number “14.5”. The numbers 1 to 14 were then placed in a hat and one number drawn. The number drawn in this case was six. Then starting at number six on the alphabetical list of Welkom detectives, every fourteenth name was picked until four participants had been selected. This method was used with every station until a total of 20 detectives and 20 uniform members had been drawn. That ensured that all five stations were represented equally.

Table 1.3: Target population

	DETECTIVES	UNIFORM MEMBERS
WELKOM/stratum1	58 / 4 DRAWN	78 / 4 DRAWN
ODENDAALSRUS/stratum 2	47 / 4 DRAWN	74 / 4 DRAWN
THABONG/ stratum 3	43 / 4 DRAWN	64 / 4 DRAWN
KROONSTAD/ stratum 4	46 / 4 DRAWN	74 / 4 DRAWN
SASOLBURG/ stratum 5	34 / 4 DRAWN	66 / 4 DRAWN
TOTAL PARTICIPANTS DRAWN:	20	20

1.6.5 Purposive Sampling

Leedy and Ormrod (2005:206) are of the opinion that in purposive sampling people or other units are chosen, for a particular purpose. For instance, the researcher might choose people who he or she has decided are “typical” of a group or those who represent diverse perspectives on an issue. “Purposive sampling may be very appropriate for certain research

problems. However, the researcher should always provide a rationale for why he or she has selected the particular sample of participants” (Leedy & Ormrod, 2005:206). “The basic assumption behind purposive sampling is that, with good judgement and an appropriate strategy, the researcher can handpick the cases to be included and thus develop samples that are satisfactory in relation to his or her needs. A common strategy of purposive sampling is to pick cases that are judged to be typical of the population in which the researcher is interested, assuming that errors of judgement in the selection will tend to counterbalance one another” (Hoyle, Harris & Judd, 2002:187).

Through the purposive sampling method, the researcher identified two public prosecutors who had more than 20 years’ prosecution experience. The prosecutors lead the prosecution in district courts and regional courts. They have, however, specialised, during the past five years, in the prosecution at the Sexual Offences Court in Welkom. These prosecutors actively handle all case dockets in the NFS area in which the police stations that are the target of this research fall. The interviews with the prosecutors were conducted in an effort to obtain expert information concerning evidence, problems experienced with rape cases and the prosecution of rape perpetrators. The prosecutors were not asked exactly the same questions as were Samples A and B and a different interview schedule was compiled for them in order to obtain specific data from them within their field of expertise. The two prosecutor participants were therefore Sample C.

1.7 DATA COLLECTION

Primary data are often the most valid, the most illuminating and most truth manifesting (Leedy & Ormrod, 2005:95). Leedy and Ormrod (2005) explain that further away is a layer consisting of secondary data, which are derived not from the truth itself but from the primary data instead. Triangulation is explained as when multiple sources of data are collected with the hope that they will all converge to support a particular hypothesis or theory. This approach is especially common in qualitative research (Leedy & Ormrod, 2005:99). The researcher used primary data in this research, which were obtained with the data-collection

techniques outlined below.

1.7.1 Literature

The researcher made use of the Goldfield Library at Unisa, Florida Campus. The researcher searched for literature that would assist her in answering the research questions. She looked for sources in the fields of Criminology, Sociology, Psychology, Law, Policing and Investigation of Crime, and by searching the Internet via the web-page of the Oasis Library on the Unisa Website at www.unisa.ac.za. None of these fields revealed literature directly relevant to the chosen topic and for this reason the researcher then broke the research topic down into the following concepts, and repeated the above method: “information”, “intelligence”, “evidence”, “investigation”, “statement”, “rape victim”, “prosecution”, “interview” and “criminal”. The researcher also consulted the Training Division Head Office of the SAPS in Pretoria for literature on the topic, but what was found was insufficient, and again the researcher broke down the topic into concepts and again found literature relevant to the field of study. Throughout the research, attention was given to similarities, differences and anomalies which addressed the research questions. The research questions were used to focus the search for relevant information during the study.

1.7.2 Interviews

“In a semi-structured interview, the researcher asks a standard set of questions with one or more individually tailored questions to get clarification about or probe a person’s reasoning”(Leedy & Ormrod, 2005:184).

All interviews took place in private, in a face-to-face situation, after the researcher had obtained verbal consent from each participant. During the interviews the researcher wrote down the answers provided by the participants. The semi-structured interview was used because this combination of scheduled and probing questions enabled the researcher to identify questions in advance, and at the same time provided the researcher with the opportunity to ask more questions to clarify specific areas touched on by the participant

during the interview. The research questions were kept in mind when the researcher compiled the questions for the interviews. Any topics not covered in the interview were dealt with at the end of the interview. The interview guide (schedule) was compiled from the research questions (Leedy & Ormrod, 2005:146-149).

During the interviews the researcher paid attention to what Leedy and Ormrod (2005:147-149) have specified about conducting interviews:

- Some questions were identified in advance
The researcher compiled an interview schedule prior to conducting the interviews.
- Participants were representative of the group
All participants were part of Sample A or B or were one of the public prosecutors.
- Interviews were conducted in a suitable location
The interviews were conducted in either the participant's office or the researcher's office, where there were no disturbances.
- Permission was obtained from participants
The participants gave their consent before the interviews started.
- Rapport was established and maintained
The researcher got the attention of each participant and did not allow interruptions or disturbances from other people.
- The actual, rather than the abstract or hypothetical, was focused on
The researcher used examples from facts and did not use unrealistic scenarios.
- Words were not put in participants' mouths
All participants were given the opportunity to answer and explain according to their own personal experience. The researcher did not lead the participants to a specific answer that the researcher wanted.
- Responses were recorded verbatim
The participants' answers were written down word for word during the interviews.
- Facts were not necessarily obtained
Some of the interviews provided extensive facts, whilst others confirmed previously

obtained facts and some interviews were non-productive.

None of the participants' names were made public during the research so as to ensure that they stayed anonymous and that their privacy was respected. No numbers were allocated to the participants. The researcher conducted a pilot test by giving the questionnaire to three of her colleagues and four members stationed at her unit to see if they experienced difficulties in understanding the questions. The responses the researcher obtained were satisfactory and more or less what the researcher had hoped for from the actual interviews.

1.7.3 Case Analysis

A case study is a type of qualitative research method in which in-depth data is gathered relative to a single individual, programme or event, for the purpose of learning more about an unknown or poorly understood situation (Leedy & Ormrod, 2005:108). As part of the case analysis the researcher concentrated on the rape cases registered in the five largest stations in the NFS, from 1 July 2005 to 31 December 2005. The reason for choosing this time frame was that it was considered most likely that the cases registered during this period had been completely investigated and that they were available in the archives for perusal, without being outdated.

According to the CAS, 472 cases for all the stations in the NFS were registered during that timeframe, of which 363 were from the five stations focused on in this research. This represents 76.9% of the total number of rapes reported in the NFS, which represents the cases investigated by the target population. Not all the cases could be perused because of time and logistical constraints and therefore a sample of 70 dockets was chosen to be perused. Again the sample was chosen through the use of the stratified random sampling technique. This technique entails that each docket from the specific time-frame has the same chance of being drawn.

Five separate lists with the case numbers of the rape cases were drawn from the CAS. A total of 363 dockets were made up of 81 from Welkom, 75 from Odendaalsrus, 73 from Thabong, 69 from Kroonstad and 65 from Sasolburg. To represent each station equally in the case analysis, 14 cases per station had to be drawn. The 81 cases from Welkom were divided by 14 and the number obtained was “5.7”. The numbers one to six were put in a hat and one number was chosen. The number chosen in this case was “four”, meaning that the researcher started at number four and picked every sixth case until 14 cases were drawn. The same was undertaken with the other four stations until 70 dockets were drawn for the research.

As part of the case analysis the researcher assessed whether the victim statement had been filed in the case docket and what the contents of the victim statement were. This was achieved by studying the investigation diary and the statement of the victim. The researcher analysed dockets which had been investigated in the past to gather specific information in an attempt to answer the research questions.

During the case docket analysis the researcher assessed:

- What steps, if any, were taken to ensure adequate rape victim statements in the case dockets to render successful rape investigations;
- What information was contained in each rape victim statement;
- Whether the information contained in the rape victim statement was sufficient to identify the perpetrator successfully;
- Whether the information contained in the rape victim statement was sufficient to trace the perpetrator successfully;
- Whether the information contained in the rape victim statement was sufficient to prosecute the perpetrator successfully.

1.8 DATA ANALYSIS

“Data analysis takes place whenever theory and data are compared” (Leedy & Ormrod, 2005:150). In the study the researcher made use of the data analysis spiral of Creswell as described in Leedy and Ormrod (2005:150). In accordance with the principles of the spiral, the researcher organised the data (which she had obtained through breaking down the research questions) with the use of index cards and by breaking down the large bodies of text into smaller units such as phrases. The researcher read the data several times to get a perspective and wrote down notes on the data. Themes and/or sub-themes were identified and the data organised according to these themes, which gave the researcher a general sense of patterns in the data. She then integrated and summarised the data for the reader.

1.9 VALIDITY

According to Leedy and Ormrod (2005:28), the validity of an instrument is defined as “the extent to which the instrument measures what it is supposed to measure”. Validity, according to Denscombe (2002:100) concerns the accuracy of the questions asked, the data collected and the explanation offered and generally it relates to the data and the analysis used in the research.

The research was conducted in a real-life setting. This was so that it would yield results with broader applicability to other real-world contexts. The sample that was used in the study was drawn through the use of the stratified random sampling technique. Random selection means choosing a sample in such a way that each member of the population has an equal chance of being selected. “When such a random sample is selected the researcher can assume that the characteristics of the sample approximate the characteristics of the total population” (Leedy & Ormrod, 2005:199). The sample consisted of 20 investigators and 20 uniform members who were representative of the target population who attend to rape victims in reality on a daily basis. The sample further contained two prosecutors who were selected because of their extensive experience and who daily attend to rape cases in the Sexual Offences Court. The

target population was therefore established to be representative of the population

Denscombe (2002:14) agrees with the above authors when he states that, generally, the components of the sample are chosen from the larger population by a process known as random selection. Random selection means choosing a sample in such a way that each member of the population has an equal chance of being selected. “When such a random sample is selected, the researcher can assume that the characteristics of the sample approximate the characteristics of the total population” (Leedy & Ormrod, 2005:199).

In terms of the validity of the data-collection instruments, the interviews that were used to collect data were held in private and the participants’ responses were written down personally by the researcher so as to ensure that the interviews were a true reflection of what the participants had to contribute to the research. The questions that the researcher asked during the interviews were formulated from the research questions, concepts that underpinned the topic, and the aims of the research. The interview schedules of Samples A and B were exactly the same, but the interview schedule of Sample C differed because not all questions were applicable to their field of expertise. All the questions were therefore relevant to the topic and thus valid. The data that were obtained during the interviews can therefore be considered as valid.

The literature study was conducted with regard to the aims of the research, the research questions and the topic, which was broken down into concepts. The literature study was conducted on South African as well as international literature sources. All literature obtained was therefore relevant to the topic, and can be considered as valid.

Steps were also taken to ensure that the case analysis as a data-collection instrument could be considered valid. The stratified random sampling technique was also used to identify the sample of rape cases that was analysed for the research. The case analysis was carried out

with the aim of assessing what information was included in the rape victim statement in each case docket and establishing if the information was sufficient to identify, trace and prosecute the perpetrator. Because the research was carried out in this way, the results obtained from the case analysis may be considered to be valid.

All data that were obtained by means of the literature study, interviews and the case analysis were merged to ensure trustworthiness. This came down to what Leedy and Ormrod (2005:99) describe as “triangulation”, which the authors explain as “the convergence of different information sources to support a particular hypothesis or theory”.

1.10 RELIABILITY

Reliability relates to the methods of data collection and the concern that they should be consistent and not distort the findings. Generally it entails an evaluation of the methods and techniques used to collect the data. “Reliability refers to the ability of the research process to provide results that do not vary from occasion to occasion and that do not vary according to the particular persons undertaking the research” (Denscombe, 2002:100).

To ensure reliability, the researcher conducted all the interviews personally and evaluated the results herself to ensure that the data collection and analysis were carried out consistently. The same attention was given to the literature study. To ensure that all results are valid and reliable, extensive time was spent in the field and there was a continuous search for evidence that either supports or contradicts the hypotheses. A negative case analysis was carried out that contradicts the hypothesis in order to revise the theory until all cases had been accounted for. A thick description was made of the situation so that the readers could draw their own conclusions from the data.

Feedback was sought from colleagues in the field of study to determine whether they agreed or disagreed that the research had made appropriate interpretations and had drawn valid

conclusions from the data. Conclusions were then taken back to the participants after the analysis to validate whether they agreed with the conclusions, and for them to evaluate whether the conclusions made sense in terms of their own experiences (Leedy & Ormrod, 2005:100).

1.11 ETHICAL CONSIDERATIONS

The researcher adhered to what Leedy and Ormrod (2005:101) and Mouton (2001:238) state about ethical issues. These authors confirm that most ethical issues fall into one of four categories, as explained below.

1.11.1 Protection from Harm

The researcher protected all participants from harm by not exposing them to undue physical or psychological harm. The nature of the study did not involve any psychological discomfort and no sensitive information regarding any victim of crime was revealed. None of the participants' names were made public during the research so as to ensure that they stayed anonymous and to respect their privacy. All sensitive and personal information of the rape victims was treated with the outmost confidentiality.

1.11.2 Informed Consent

Written permission was obtained from the SAPS Head Office in terms of National Instruction 1/2002 to conduct the research within the SAPS environment. Verbal consent was obtained from all the research participants after they were informed of the nature of the study and that their participation was voluntary and they could withdraw at any time they chose. All the participants agreed to participate in the study. The information was communicated to them individually during the interviews and was included in writing in the interview schedule.

1.11.3 Right to Privacy

The researcher respected every participant's privacy. The interviews were conducted in a safe and private location where the participants were put at ease. The information provided by each participant was kept confidential from other participants and no person was embarrassed during the research.

1.11.4 Honesty with Professional Colleagues

All findings were reported. No participant was intentionally misled about the nature of the findings. The data obtained were not fabricated to support a particular conclusion. Full acknowledgement was given to all material that belonged to other authors. The researcher did not commit plagiarism in any way.

In summary, the researcher was objective and conducted the research with integrity. All data were recorded and none was fabricated or falsified. The researcher conducted herself with accountability and undertook the research openly and transparently. All results were made available as public knowledge. During the research appointments were made with the individual participants and non-compulsory interviews were conducted in a safe and secure environment, where participants were put at ease. Ethical issues were discussed with the participants upon obtaining their consent, before the start of the interview. Own data were recorded. Acknowledgment was given to all sources.

1.12 RESEARCH STRUCTURE

To present the research report in a logical way and to ensure that all the research questions were addressed the researcher divided her argument in the following way:

Chapter 2 – The rape victim statement

In this chapter the researcher discusses “investigation of crime”, “forensic investigation” and “rape” as concepts. Attention is given to the interviewing of the rape victim, obtaining the

rape victim's statement, the format of a statement and the requirements for ensuring complete statements.

Chapter 3 – The value of the information contained in the rape victim statement

In this chapter the researcher discusses the topics of information, intelligence and evidence, interviewing the rape victim, the information contained in the rape victim statement, the value of the information contained in the rape victim statement and the role of the investigator in the rape investigation.

Chapter 4 – Findings, recommendations and conclusions

In this chapter the researcher draws the results of the previous chapters together and discusses the findings and conclusions. She also addresses shortcomings in the current procedure and makes recommendations.

CHAPTER 2

THE STATEMENT OF THE RAPE VICTIM

2.1 INTRODUCTION

Anyone new to the field of rape investigations will quickly learn that keeping an open mind to new and creative methods of investigation is vital to success. An effective unit will develop methods and techniques to deal with the many extraordinary situations that they are faced with on a daily basis. They will find that the day-to-day routine of handling serious cases is hindered by delays in reporting, lack of evidence, guilt and shame felt by victims, intoxication of victims, prior victim/perpetrator relationships, and many more challenges. Awareness that these situations are common gives investigators an appreciation for the need to develop new and different approaches, which are required in the investigation of criminal activity that involves rape investigations.

Many of the investigators who are experienced in homicide, robbery, burglary, and wiretap investigations are easily lulled into a false sense of security regarding their knowledge of the criminal investigation field. Although many similarities do exist, conducting a rape investigation requires different skills and a proficiency in areas that are unique to this type of investigation. Unfortunately many investigators have a limited awareness of the issues that emerge in rape investigations and are not prepared for addressing them as they arise.

Fundamentally information is the life blood of any criminal investigation. It is important that this information is not only documented in the investigation diary of the case docket but also contained within the statement of the rape victim. This information, however insignificant it might seem at first, can form an all-important picture of what happened during the time frame of the incident. Even more importantly the information provides valuable clues for resolving the investigation hypothesis successfully.

In this chapter the researcher discusses “investigation of crime”, “forensic investigation” and “rape” as concepts. Attention is given to the interviewing of the rape victim, the obtaining of the rape victim statement, the format of a statement and the requirements for ensuring complete statements.

2.2 INVESTIGATION OF CRIME

“The term “investigate” is derived from the Latin word *vestigare*, meaning to track or trace, a derivation easily related to that of criminal investigation” (Bennet & Hess 2004:4).

Caldwell (1965:317) states that “criminal investigation is a police activity which is directed towards the identification and apprehension of alleged criminals and the accumulation, preservation, and presentation of evidence regarding their alleged crime”. Moreover, Du Preez (1990:376) illustrates criminal investigation as a process that centres on the gathering of information, either from direct or indirect sources, whereby the whole truth of a crime situation can be revealed.

Marais (1992:1) goes a step further and states that “only humans can commit crime by using physical objects” (or not) and explains that investigation of crime is then the tracing of that human and the object directly or indirectly involved in the crime in order to reconstruct the crime scene and to reveal the truth about the alleged criminal incident. Thus one may infer that criminal investigation is the systematic search for the truth and its primary aim is to solve the criminal situation by using what Van Der Westhuizen terms as ‘objective’ and ‘subjective sources’ (1996:1). Van Heerden describes the objective sources as “the mute, indirect or circumstantial evidence, while the subjective sources are the people such as complainants, victims, eyewitnesses and perpetrators, who are directly or indirectly involved in the criminal incident” (1986:188).

In summary Gilbert (2004:37) describes criminal investigation as “a logical, objective, legal inquiry involving a possible criminal activity” which is supported by Bennett and Hess (2004:4) who state that “investigation is a patient, step-by-step inquiry of observation, a careful examination, a recording of evidence or a legal inquiry”.

The researcher could conclude from the authors that investigation of crime is a planned and systematic process. The criminal investigator has to find the truth through his/her endeavour and not jump to conclusions prematurely.

O’Hara and O’Hara (2003:5-6) state that “the criminal investigator is a person who collects facts to accomplish a threefold aim”, which they explain is to identify the guilty party, to locate the guilty party, and to provide evidence of his/her guilt. According to these authors, criminal investigation is an art and not a science; for this reason it must be discussed in terms of precepts and advice rather than laws and rigid theories.

The concept “solving a crime” does not satisfy the requirements of a completed investigation. Dienstein (1970:29) defines the term “investigate” as to “examine and inquire into something systematically and thoroughly”. Palmiotto (2004:1) adds that “the ultimate test lies in the presentation of the evidence in a court of law to warrant a conviction”.

In the current study, Samples A and B was asked what they believed the investigation of crime to be, and the following results were obtained:

- All 20 uniform participants stated that the investigation of crime is to solve the reported crime.
- Four of the 20 detective participants said that it is to arrest the perpetrator and convict him in a court of law.
- Eight detectives stated that investigation of crime is a search for the truth and to get to the truth behind an alleged offence.

- The remaining eight detectives went further by saying that investigation of crime is to collect information and sufficient evidence to prove an alleged offence against the accused.

The 40 respondents confirmed what the reviewed literature revealed about the concept “investigation of crime”.

From the interviews the researcher came to the conclusion that the 20 detective participants gave more detailed explanations than did the 20 uniform members. The researcher understood the results yielded by the interviews in terms of the fact that the detectives might be expected to know more about the investigation of crime than the uniform members owing to their day-to-day investigative duties. The case docket analysis did not contribute to the discussion on investigation of crime. The researcher did not question the prosecutors, Sample C, on this concept.

2.3 FORENSIC INVESTIGATION

According to Roberts and Zuckerman (2004:3), the term “forensic” is commonly known as “the shortened form of the term “forensic science evidence”, which refers to the analysis of samples by the Forensic Science Laboratory and the evidence that derives from that, but its original meaning is much broader. Deriving from the Roman forum where legal and other business was transacted, forensic literally means pertaining to legal proceedings”.

Van Rooyen (2004:7) joins the discussion in arguing that “the term forensic investigation has become a buzzword used by many people directly or indirectly involved in investigations and that widespread confusion exists within the investigation industry regarding the true meaning of forensic investigation”. The *Oxford Advanced Learner’s Dictionary* (2007:583) defines “forensic” as being connected with the scientific tests used by the police when trying to solve a crime, or connected with or used in court. The latter definition suggests that the investigation should be conducted with the objective of resolving a criminal hypothesis and

with the intention of finalising the outcome of an investigation in a court of law, where all evidence can be introduced and tested.

Van Rooyen's (2004:7) explanation confirms the definition of the *Oxford Advanced Learner's Dictionary* (2007:583) in that he suggests that the term "forensic" refers to courts of law, with juristic or court-directed application, and relates to the application of science to decide questions arising from crime or litigation, but that it also includes the function of examination or analysis.

Lambrechts (2001:93) agrees with the above definitions in his explanation that forensic investigation is "aimed at the instituting of court proceedings". The author is of the opinion that scientific knowledge must be applied to a legal problem for the enquiry to be classified as forensic investigation.

Samples A and B were asked to give their opinion regarding the meaning of forensic investigation. Their answers were as follows:

- Sixteen of the 20 uniform members did not have any idea of what the concept "forensic investigation" meant. The participants did not even hazard a guess at the meaning of the term.
- The four remaining uniform participants said that it had something to do with exhibits and their analysis at the Forensic Science Laboratory. They were, however, not very clear in their explanation.
- Two of the 20 detective participants stated that "forensic investigation" refers to conducting a court-driven investigation.
- The remaining 18 detective participants explained and understood the concept as physical evidence that must be identified, collected and sent to the Forensic Science Laboratory for analysis.

The viewpoint of 22 of the 40 participants concurred with the shorter commonly used definition as set out in the literature study. Only two detective participants mentioned that “forensic” also meant “pertaining to legal proceedings” or related to court-driven investigation. The case docket analysis did not contribute to the discussion on forensic investigation. The researcher did not question the prosecutors, Sample C, on this aspect of the study.

The researcher was able to come to the conclusion that scientific methods and techniques in criminal investigation are a pre-requisite for the investigation to be defined as a “forensic investigation”. Criminal investigation and forensic investigation have the objective of presenting the results of the investigation in a court of law. Criminal investigators should keep this in mind when they embark on an investigation. Forensic investigation is an aspect of criminal investigation; however, the utilisation of the information contained in the statement of the rape victim can be considered a method or technique of forensic investigation. The concepts are fundamentally related to each other.

2.4 RAPE

The crime of rape has become a widely discussed offence. In recent years, rape has generated more frequent examination in magazines, newspapers, books, and other communication media. The focus on this offence is in part due to a reversal of public attitude. In the past, rape was considered an unspeakable offence because of its sexual character. Until relatively recently, many viewed the rape victim with a mixture of suspicion and embarrassment.

In Zeffert, Paizes and Skeen (2003:244), rape is generally defined as an act of sexual intercourse with a female by force or against her will. Any sexual penetration, however slight, is sufficient to complete the crime. The court of law has wisely established the legal precedent that “against her will” need not be demonstrated by senseless physical resistance. Resistance is deemed unnecessary when it would be a futile or would endanger life. This was

the definition of rape prior to 16 December 2007, which was amended by the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, Act 32 of 2007 (South Africa, 2007). The Act was adopted by Parliament and came into operation on 16 December 2007. This implied that rape, which until then had been prosecuted under Common Law, would now be governed under Statutory Law by the criminal courts.

According to section 3 of the Act, “sexual penetration” (rape) is defined as to include any act which causes penetration to any extent whatsoever by –

- (a) the genital organs of one person into the genital organs, anus, or mouth of another person;
- (b) any other part of the body of one person or, any object, including any part of the body of an animal, into the genital organ or anus of another person; or
- (c) the genital organs of an animal, into the mouth of another person.

Section 3 of the Act (Act 32 of 2007) provides that a person is guilty of the offence of rape if he or she unlawfully and intentionally commits an act of sexual penetration with the complainant, without his or her consent. The Act provides that both a man and a woman can be the victim of rape. In terms of the Act, rape can also be committed by a man or a woman, even if the victim is of the same gender as the perpetrator. This means that persons of both genders may be perpetrators and victims of rape. In the past, it was legally impossible for a husband to rape his wife, although he could be charged in a situation in which he aided another in the rape of his wife. Now the concept of using marital privilege as a defence against rape is legally void.

Hazelwood and Warren (2003:587-598) state that “rape is an under reported crime, and victims of all ages do not readily identify themselves”. The authors further state that victims of sexual abuse (rape) suffer in silence, seek help reluctantly and do not volunteer information about their traumatic experience. According to the authors, rape is recognised as

a very serious felony that often injures the victim physically as well as emotionally. Many rape victims experience emotional disturbance that may persist for a lifetime.

Samples A, B and C were asked to define rape. The outcome was as follows:

- Twenty of the uniform participants responded that rape is unlawful and intentional sexual intercourse without the consent of the victim. Twelve of the uniform members in addition said that intercourse and lack of consent were important elements of the crime.
- The 20 detective participants stated that rape is unlawful and intentional sexual intercourse without the consent of the victim. Six participants in addition stated that both men and women could be victims. Twelve of the 20 detectives mentioned in their answer that the act of rape could be committed inside the marriage.
- The two prosecutor participants quoted section 3 of the Sexual Offences and Related Matters Amendment Act, 2007 (Act 32 of 2007) basically word for word. The prosecutors work with the Act on a daily basis. One of the participants commented that the big difference between the current Act and the prior legislation was that prior to the promulgation of the Act, rape had been defined in terms of Common Law whereas rape was currently prosecuted in terms of Statutory Law.

The researcher concluded that the big difference in the investigation of rape is that before 16 December 2007, rape was litigated in terms of Common Law, whereas after 16 December 2007 the crime is litigated under Statutory Law.

2.5 INTERVIEWING THE RAPE VICTIM

Gilbert (2004:114) defines an interview as “a communication involving two or more people, for the purpose of obtaining information”. The information-gathering process will vary in difficulty in direct proportion to the following factors:

- Cooperative attitude of the victim;
- Perceptive ability of the victim;
- Skills of the investigator;
- Emotional state of the victim; and
- Legal knowledge of the investigator.

Bennett and Hess (2004:23) state that “the rights of crime victims must be high on our list of law enforcement priorities. Unless police officers and first responders are taught the skill of compassion and are shown that sensitivity and sympathy are important tools in their arsenal for peace and safety, victims will remain victims”. Bennett and Hess (2004:131) state further that a victim is a person who is injured by crime when they state that “frequently the victim is the complainant, but also a witness. Their emotional involvement in experiencing anger, rage and fear might cause them to exaggerate or distort what occurred, and in the process unintentionally withhold important information from the interviewer”.

Gilbert (2004:114-115) explains further that “the degree to which a person is cooperative is of the greatest importance in the interview situation. Individuals have different reasons for hesitating to cooperate and these reasons vary from a fear of being apprehended for direct participation in the incident to ...” The human condition is such that our interpretation of events is coloured by such factors as our personal interests and emotional makeup. Finally, the skill and training of the officer conducting the interview, coupled with sound knowledge, are essential to the success of the interview. The author argues that, of the various types of interviews, those involving victims are the most common. The victim interview may be relatively simple, or a prolonged and difficult experience demanding maximum skill from the

officer. The emotional state of the victim will determine the degree of difficulty.

Bell (2002:112) prescribes that, “after the investigator has put the victim at ease, a general statement must be obtained of the events that surrounded the alleged crime. The rape interview is generally a traumatic experience for the victim. Regardless of the tact of the investigator, the victim will still find it difficult to recall the details of the offence”. The specific details of the rape are necessary for establishing the elements of the offence and the method of suspect operation. Since many rape offenders are recidivists, details concerning the specific actions of the rapist are essential for comparison with past and future crimes.

Hazelwood and Warren (2003:587-5927) are of the opinion that a victim of rape is usually first seen by the police officer or investigator who responds to the call or complaint. The treatment that the victim receives from the police officer or investigator will influence the victim for the rest of his/her life because it will influence the recovery process. According to the authors, apart from homicide, rape is the most serious violation of a person’s body, depriving him/her of both physical and emotional privacy and autonomy. The interaction during the first report interview is the most critical phase of the interviewing process.

In addition, Dienststein (1970:72) is of the opinion that “at least two interviews with the rape victim should be conducted. The first interview is typically conducted at the scene, or more likely at the hospital where the victim has been taken. The second interview is a more thorough interview that is conducted at the office of the investigator or any place where the victim feels most at ease”. Not all victims report the alleged rape to the police. In addition to making a police report, victims hate the option of turning to another for assistance (Sennewald & Tsukayama, 2001:11-12). This report also constitutes a first report and therefore a statement should be obtained from the person giving the assistance.

“Although many skills and talents are required of the criminal investigator, the ability to obtain information verbally ranks paramount. Verbal communication with victims, witnesses, suspects and others is certainly one of the most vital aspects of the investigator’s work, and one that demands constant involvement; thus, it has become a generally accepted principle that good interviewing ability is the mark of a successful investigator” (Gilbert, 2004:114).

According to O’Hara and O’Hara (2003:370-371), the victim should be interviewed as soon as possible after the incident. Another woman should be present during the interview if it will help to put the victim at ease. The victim should be questioned thoroughly concerning the occurrence, the circumstances surrounding it, and her movements before and after the commission of the offence. The authors provide the following points that could guide the investigator in questioning the rape victim.

Fresh complaint

The victim should be questioned concerning the manner in which and time at which she complained about the attack. In prosecution of sexual offenses, such as rape, evidence that the victim made the complaint a short time after the incident is admissible. Under this rule, evidence that the complaint was made, the offender identified, or other details may be given. The sole purpose of receiving the fresh complaint in testimony is the corroboration of the victim’s story. The investigator should verify this information through witnesses such as the person who first heard or received the complaint.

Consent

To establish lack of consent, it must be apparent from the statement that the victim resisted to the extent of her ability at the time and under the circumstances.

Relations with the accused

In many jurisdictions specific prior sexual act with the accused is admissible. The defence

may raise the possibility of the victim having consented to the act charged and thus bring into question her credibility.

Pepper (2005:24) states that “before any investigator interviews a victim to take the victim’s report statement, they must have skills such as the ability to talk to people (without condescension), to listen carefully to what is said, and at the same time to collate and compare what is being said with other information”. This must be undertaken in consent with the victim, and an attitude of ability, confidence and trustworthiness should be projected from the interviews. He further states that, when an investigator interviews a victim, it is particularly important to bear in mind that each victim responds differently. Each victim has his/her own unique background, personality and circumstances. Investigators are advised to refrain from judging the information obtained from the victim or applying their own sense of morality; they need to keep an open mind, regardless of gut feeling.

Van Rooyen (2004:191) argues that a successful investigator must possess an assortment of professional skills, including the ability to conduct effective interviews. In some situations, an interview is the only means available to acquire essential information. However, the reliability of this evidence may be considered relatively low, particularly when the investigator or statement taker lacks corroborating evidence. The author concludes that two potential problems are associated with interviews:

- Weaknesses in the interviewing skill on the part of the investigators, and
- Biases in the suspects’ responses.

“Much of an investigator’s time is spent interviewing persons such as victims, witnesses, informants, complainants and suspects. The purpose of the interview is to learn what a person has observed through his five senses (sight, smell, hearing, taste, touch). The person being interviewed is presumed to have certain knowledge that may have a bearing on the issue. If the interviewee does not possess knowledge of an incident, the interview should

establish that fact” (Van Rooyen, 2004:191).

Interviewing and re-interviewing the victim is also important because it gives an investigating officer the opportunity to build up a working relationship with the victim. This ensures that the investigator obtains the best possible information and it reduces the chances of the victim withdrawing the case and makes him/her more positive about attending an identification parade and later testifying against the accused in court.

Van Rooyen (2004:198-199) is of the opinion that every statement taker/investigator should follow four steps when interviewing a rape victim. He describes the steps as follows:

(a) Planning the interview

Establish the purpose of the interview. Conducting an interview without an established purpose will not prove effective and may be a waste of time for both parties involved. Write the purpose of the interview in the form of an objective statement. Place it at the top of a note pad, and occasionally look back at it during the interview just to stay on track. Take time to decide how particular questions will be phrased and make sure that the phrasing does not bias the question. Almost all unprepared interviewers tend to ask leading questions, which should be avoided in order to conduct effective interviews.

Samples A and B was both questioned about whether they use specific steps when interviewing the rape victim and they replied as follows:

- The 20 uniform participants stated that they ask the victim to start telling them what happened. They did not mention that they planned the interview as depicted in the literature.
- Seven of the detective participants stated that they would leave the victim to explain what happened during the incident. According to them, this would give them an

indication of what questions to ask and formulate a plan of action for conducting the rest of the interview.

- The remaining 13 detectives who participated stated that they merely start the interview by asking questions and wait for the reply of the victim. Their questioning comprised closed and open-ended questions.

During the case docket analysis the researcher could not find any indication that interviewers planned their interviews prior to taking statements. The researcher is of the opinion that the interviews are planned by only a small number of investigators, which is concerning. The researcher did not question the prosecutors, Sample C, on this aspect.

The researcher could come to the conclusion that a planned interview would assist the investigators greatly in obtaining as much information as possible from the victim.

(b) Opening the interview

The statement taker/investigator should conduct the interview as soon as possible. People have the tendency to forget or mix up information. Expediency is paramount. The statement taker/investigator should address the confidentiality issue. In this context the investigator may also explain that notes will be taken and why note taking is important. These discussions often help to build trust and establish personal contact between the investigator and the witness/victim.

Samples A and B was asked how they opened the interview and they replied as follows:

- Twelve of the 20 uniform participants stated that they identified themselves to the victim prior to the interview.
- The remaining eight participants said they take the victim to a victim room and then identify themselves prior to conducting the interview.

- Fifteen of the 20 detective participants stated that they would inform the victim that the information would be treated confidentially, identify themselves and take the victim to a private room prior to conducting the interview.
- The remaining five participants stated that they conduct the interview as soon as possible after the reporting of the incident. They mentioned that they preferred to be present when the uniform members were interviewing the victim, or to conduct the interview themselves.

The case docket analysis revealed in the investigation diaries that the interviews were conducted upon the reporting of the incident by the victim. The interviews were not unnecessarily delayed. Evidence of notes as described in the literature, however, could not be found in any of the case dockets. The researcher did not question the prosecutors, Sample C, on this aspect.

(c) Conducting the interview

The statement taker/investigator should introduce himself to the interviewee, orientate the interviewee as soon as possible about the aim of the interview, and tell the interviewee how the information will be used, e.g. for statements, in a court appearance, etc. Should victims being interviewed make any comments about being interviewed, allow them to talk. People feel more comfortable when they hear their own voice in a strange environment. The statement taker/investigator's reaction to this first encounter is extremely important because the victim will immediately decide whether he/she likes this person or not. Do not be authoritative, rude, over-efficient, bored or full of own importance. Make a concerted effort to put the victim at ease so that he/she is not likely to be on the defensive. Show interest in the victim; this will help to elicit more meaningful and useful information. The victim will open up and begin to trust the statement taker/investigator.

Samples A and B was asked how they conducted the interview and they replied as follows:

- Eleven of the 20 uniform participants stated that they conducted the interview as professionally as possible.
- The remaining nine participants said they take the victim to a private room, identify themselves prior to conducting the interview and tried to interview the victim with empathy.
- Seventeen of the detective participants stated that they would start the interview by asking the victim to tell them what had happened during the incident. Through follow-up questioning they would narrow the facts down to that what would be recorded in the statement.
- The remaining three participants stated that they use the same procedure as the other investigators but in addition would ask the victim if there was any other person they would want present during the interview. According to these participants, this helped the victims to relax and more information would be recalled during the interview.

During the case docket analysis the researcher could not find any indication of how interviews were conducted. The researcher could, however, assess that only the most important facts and elements of the criminal incident were mentioned in the statements. This confirmed what the researcher found on a daily basis. The researcher is of the opinion that interviews should be conducted in a planned fashion and investigators should make use of the guidelines as predicted in the literature. This will ensure the success of the interview. The researcher did not question the prosecutors, Sample C, on this aspect.

(d) Qualities of the statement taker/investigator

- Self-discipline – plan the interview;
- Self-control – stay calm and collected;
- Objectiveness – show no prejudices. Do not make any remarks about or act on any comment made by the victim;

- Empathy – place oneself in the shoes of the victim;
- Creative – do not force an idea on the victim.

Samples A and B was both questioned on what qualities the statement taker/investigator should have and their replies were as follows:

- Ten of the 20 uniform participants stated that they thought empathy is the most important quality that the interviewer must have.
- The remaining 10 uniform participants said the interviewer must be unbiased and professional during the interview.
- Fourteen of the detective participants also named empathy as a quality the interviewer should have.
- The remaining six participants mentioned professionalism, empathy and objectivity as paramount to the successful interviewing of the rape victim.

None of the participants in Samples A and B mentioned all the qualities as depicted in the literature. The researcher is of the opinion that the poor manner in which the interviews are conducted directly results in poor statements. The case docket analysis did not reveal any information on the qualities of the interviewer. The researcher did not question the prosecutors, Sample C, on this aspect.

2.6 STATEMENTS

Bennet and Hess (2004:139) define a statement as “a legal narrative description of events related to a crime”. The authors add that a statement is a formal, detailed account. It begins with an introduction that gives the place, time, date and names of the people conducting and present at an interview. The name, address and age of the person questioned are stated before the main body of the statement. The main body of the statement presents the person’s account of the incident.

The *Oxford Advanced Learner's Dictionary* (2007:1443) defines a 'statement' as something that one says or writes that gives information. Schmidt (1990:247) argues that a statement under oath is a written statement that is sworn to or confirmed before a commissioner of oath. Van Rooyen (2004:45) is of the opinion that statements form part of the administration of justice and therefore cannot be taken lightly. He states that "a considerable period of time may elapse between the time of an incident and the time the case is presented in court. It is important that the facts of the incident should as soon as possible be reduced to writing and safely kept until they are required in court or otherwise disposed of. Justice can only be done if the facts are correctly, objectively and truthfully submitted to the courts. This can only be achieved if the evidence or the facts are properly recorded in a statement and made available in court. Statements serve as the vehicle with which the investigator transfers evidence to the courts".

According to Buckles (2003:63), Hails (2005:3) and Blake (2005:321), statements can be classified under the grouping of documentary evidence, which the authors define as evidence that consists of "writings", e.g. affidavits, letters, typewriting notes etc. As with physical evidence, a proper foundation must be presented through the witness (victim) who can testify as to the authenticity of the documentary evidence. By testifying to the authenticity in court during the trial the testimony is referred to as "testimonial" or "oral evidence" by the authors.

Samples A and B were asked to define what a statement is during the interviews. The participants replied as follows:

- All 20 uniform participants stated that a statement is a written account of what happened during a criminal incident.
- Nine of the detective participants agreed with the response put forward by the uniform participants.
- The remaining 11 detective participants agreed with the views put forward by the other participants but added that the statement is a recollection of information of the

person from whom it was obtained. If other information is later recalled, an additional statement can be obtained from that particular person.

Sample C, the prosecutor participants, were asked what a statement is and they replied as follows:

- Both prosecutors stated that it is the written account of what happened during a criminal incident and contains information on what the person saw, heard, felt, smelled and said during the incident. The participants added that the statement would be used to lead the testimony of the person during the trial.

The researcher could assess that the case docket analysis confirmed the viewpoints of all the participants and the information provided by the literature. Statements of victims, witnesses and suspects were available in the case dockets.

2.7 FORMAT OF A STATEMENT

The format of the statement is of utmost importance and investigators should pay special attention in this regard. The following discussion will help to understand the aspects pertaining to the format of the statement (Berg & Horgan, 1998:6).

2.7.1 Preamble

A statement begins with the preamble. The purpose of the preamble is to identify the deponent and to be able to trace him/her at a later stage. The identification particulars form part of the evidence.

Van Rooyen (2004:47) states that when taking a written statement, the investigator should note that there is information that should be included at the beginning of every statement in order to identify the interviewee. The information can also be used at a later date to locate a witness should the witness skip town. Van Rooyen (2004:47) suggests that the beginning of

the statement should include the interviewee's:

- Full names and surname;
- Identity/passport number, sex, age and occupation;
- Residential and work address;
- Telephone numbers at home and work;
- Language the statement is taken down in and
- Any other relevant information that can be used by the investigator.

The case docket analysis revealed that all the statements contained the details in the preambles of the statements as specified in the literature reviewed. Not one statement was found that lacked a preamble or any of the details in the preamble.

2.7.2 Contents

The information contained in the body of the statement is of great importance as it is supposed to indicate to the investigating officer the type of crime that was committed. It also gives direction to the investigation process. The public prosecutor, by studying this part of the statement, will decide on a criminal charge as well the compilation of the charge sheet for the trial. If the investigating officer therefore wants to take a detailed and comprehensive statement, it is a prerequisite that he/she must know the juridical elements of that specific crime. The kind of crime that was committed should be clear from the information. Van Rooyen (2004:51) in addition states that “similar to the recording of the crime scene, the “WWWLHW-formula” (Who, What, When, Where, How and Why) is also applicable when taking a statement. If the investigating officer keeps this formula in mind while taking a statement, it increases the possibility that a very detailed statement will be taken. All these questions and their answers are intended ultimately to determine what happened and who should be held responsible for it”.

Gilbert (2004:114) feels that it is therefore important that the following information be clearly and accurately recorded when taking down a statement:

- When was the crime committed? Discovered? Reported?
- Who is the complainant? Victim? Witness? Who discovered the crime? Who reported the crime? Who searched the scene? Who traced, marked and forwarded the clues? Who had a motive?
- Where did the occurrence take place (detailed address)? Where was the complainant/victim? Where were the clues found? Where were the witnesses when they observed the offender? Where were the articles when they were stolen?
- What happened? What was used in the commission of the crime? What was stolen? What kind of injuries was sustained?
- How was the crime discovered? How was the crime committed? How was entry gained? How were articles removed from the scene?
- Why does the victim/complainant suspect a specific person? Why did the suspect commit the crime (motive)?

Furthermore, Pepper (2005:16) feels that the following additional information should be kept in mind by the investigating officer:

- In every statement the time, place and date of the incident are of utmost importance;
- The place where the crime was committed must be recorded at the earliest possible stage in the statement;
- The date as well as the specific day of the week must be determined. The case might be brought to trial a few years after the crime was committed. The date and specific day, such as, for example, Friday 13 June 1999, might be very valuable evidence in the trial;
- The time that the crime was committed can be of great importance for the same reason as the date and day. It is good practice to mention in the statement that the crime was committed at or around about a specific time. The time factor is normally

a point of dispute in the trial or even during the investigation process. The case could be lost because nobody can testify when the actual time of occurrence was;

- The names, addresses and other personal particulars of witnesses must be obtained. If the statement is by a witness, he/she must be encouraged to give a detailed explanation of what happened before the crime was committed, during the crime and after the crime was committed. Only what actually happened (only facts) must be recorded;
- Particulars regarding injuries must be recorded. Aspects such as wounds, injuries, harm as well as shock sustained as a result of the crime should be recorded in cases of assault, robbery, rape and other contact crimes. The emotional state of mind as well as the injuries sustained gives an indication of the intensity of the crime and certain deductions could be made from this type of information;
- Particulars of goods must be written down. Articles with monetary value are usually involved in crimes such as theft, robberies and arson. It is of utmost importance that aspects such as the shape, colour, serial number, size and type of each article are mentioned;
- Identification of property is important. It must be mentioned whether the complainant will be able to identify his/her property if it is recovered;
- It is also important to indicate in the statement whether the complainant will be able to identify the suspected offender if he/she sees that person again;
- Description of the offender. In cases such as assault and rape, the victim usually comes into face-to-face contact with the suspect. In such cases, a description of the offender should form part of the statement in the case docket. The habit of mentioning in the statement that the complainant is unable to give a description of the suspect is usually only a shortcut to avoid additional effort on the part of the investigating officer.

The case docket analysis revealed that when victims were asked during the interviews to describe the suspect the following results were obtained:

- Twenty-five victims could not describe the perpetrator at all.
- In 21 of the case dockets a description was found of the perpetrator, but only concerning his age, race, sex, colour of hair and clothing.
- Seven case dockets revealed ID-kits that had been compiled through the facial description of the perpetrator. In three of these cases arrests were affected after the ID-kits had been published with a press release, which had resulted in information being received from the community. Collaborative evidence was obtained through DNA results and one perpetrator was positively identified at an identification parade.
- In the remaining 17 cases the perpetrator was known to the rape victim and identified in the victim statement by name. No descriptions of the perpetrators were given in these victim statements.

The researcher is of the opinion that the information in the literature will enable the investigators to take down more complete statements. It has been found that the ID-kits in itself are a valuable tool available to the investigator in identifying the perpetrator.

2.7.3 Conclusion of the Statement

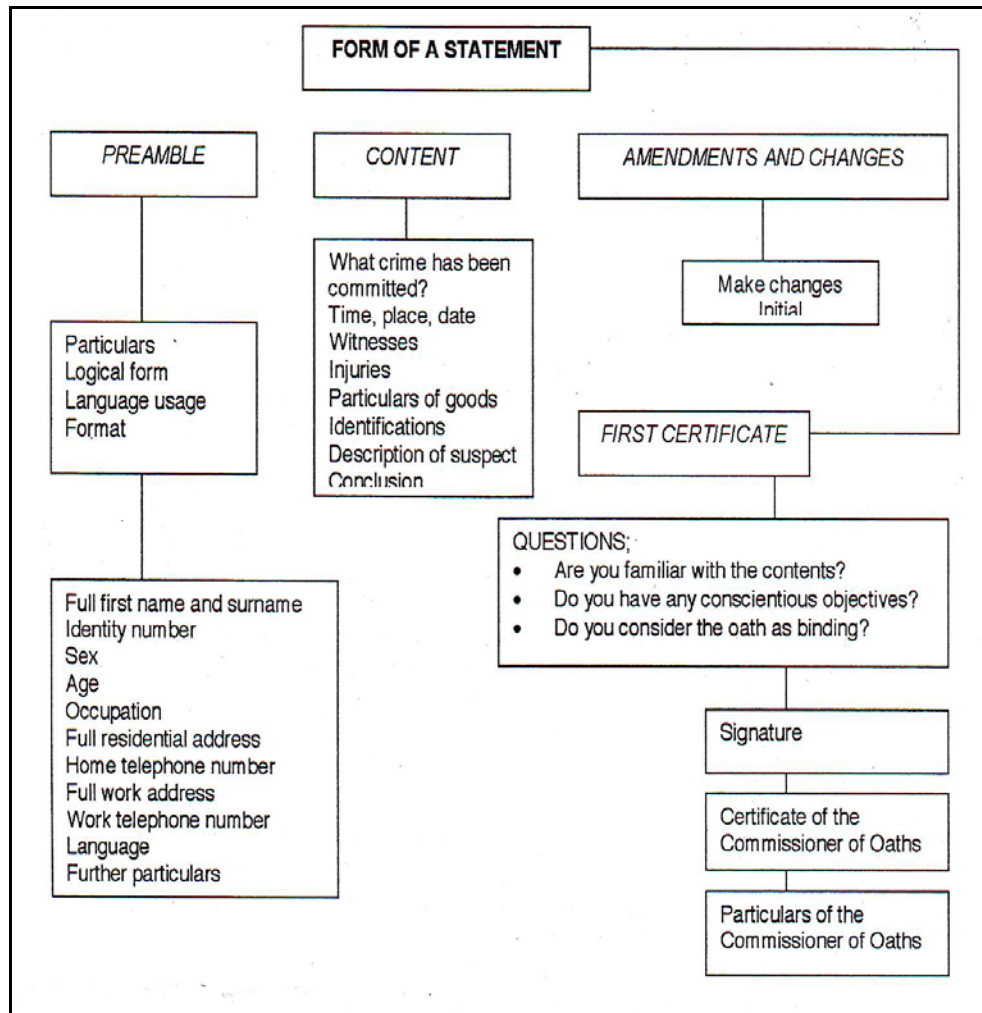
When the investigating officer has obtained all the information pertinent to the incident, the statement should conclude with a sentence such as the following: “The above statement consists of (number of pages) and is true and correct to the best of my knowledge.” The signature, thumb print or mark together with the name of the place, date and time and by whom the statement was recorded should now be recorded at the bottom of the statement. The interviewee should also read the statement or where he/she cannot read it should be read to him/her (Van Rooyen, 2004:48). The person taking down the statement must then swear to or affirm the contents of the statement. If, after the statement is written the interviewee refuses to sign the statement, the investigating officer should attempt to have the interviewee

at least initial the contents to attest to the fact that the contents are true.

2.7.4 Structure of the Statement

Figure 2.1 on page 45 outlines the phases and steps in taking down a proper statement as discussed by Van Rooyen (2004:47-53).

Figure 2.1: Structure of a statement



Source: Van Rooyen (2004:49)

Regulation 1 of the Justices of Peace and Commissioners of Oaths Act, 1963, Act 16 of 1963 (South Africa, 1963) differs from the discussion of Van Rooyen in terms of the questions that must be asked when the oath or affirmation is administered. According to regulation 1, before a Commissioner of Oaths administers the oath or affirmation he/she shall ask the deponent:

- Whether he/she knows and understands the contents of the declaration;
- Whether he/she has any objections to taking the prescribed oath; and
- Whether he/she considers the prescribed oath as binding on his/her conscience.

If the deponent acknowledges that he/she knows and understands the contents and has no objections to taking the prescribed oath, the Commissioner of Oaths may administer the oath. Should the deponent object to taking the oath, then an affirmation may be considered.

The researcher agrees with the questions that are stated in the Justice of Peace and Commissioner of Oaths Act (Act 16 of 1963), as she knows the Act from SAPS basic training and her experience within the SAPS. The researcher is of the opinion that investigators and SAPS officials should utilise the questions as depicted in the Act.

Samples A and B were asked to describe the format of a statement. The following results were obtained:

- The 20 uniform participants mentioned the preamble, contents and conclusion of the statement.
- Eleven of the detective participants mentioned the preamble and conclusion of the statement as a standard structure in the statement. They further stated that the body of the statement is the most important part, as it is the part that includes the information and evidential value of the statement.
- The nine remaining detective participants agreed with the format as described by the other detective participants. They were, however, of the opinion that each part of the statement is as important as the other, as each part serves a specific purpose.

The researcher questioned Sample C on the format of a statement and they answered as follows:

- Both participants named the preamble, contents and conclusion of the statement. The participants did not mention any other aspect that was not in the literature.

From the case study of 70 dockets the following results were found:

- Forty-one of the rape victim statements were taken by the investigating officer (a detective). Nine (22%) of those 41 statements had to be re-taken because the statement was insufficient and/or incomplete.
- Twenty-nine of the 70 rape victim statements were taken down by the uniform member at the community service centre. Twenty-three (79%) of those 29 statements had to be re-taken by the investigating officer because the statements taken by the uniform members were insufficient and/or incomplete.

In total 32 (46%) rape victim statements had to be re-taken because the contents of the statements were insufficient. This problem was more predominant with the uniform members, who took 23 of the 32 statements that had to be re-taken. It is alarming that nine statements taken by the detectives had to be re-taken.

2.8 REQUIREMENTS FOR ENSURING GOOD QUALITY STATEMENTS

Van Rooyen (2004:45-46) states that “if one keeps the following in mind the quality of statements taken down will always be good”.

2.8.1 Accuracy

The statement must be an exact, precise and reliable account of the occurrence. The investigator must know the meaning of the words used by the deponent, as the same word often has different meanings. The statement should convey exactly what the deponent means and not what the investigator thinks it should mean.

2.8.2 Completeness

Nothing must be missing or left out. All the relevant facts must be enclosed to ensure that the statement is complete. The investigator should ask him or herself the questions: WHO? WHAT? WHERE? WHEN? WHY? and HOW? (See the description of the “WWWWHW formula” given in 2.7.2 above.) The contents of statements will differ from crime to crime.

2.8.3 Conciseness

“Conciseness” means that the statement must be brief yet comprehensive and complete. The statement must be brief and to the point. Everything must be written in as few words as possible.

2.8.4 Objectiveness

Investigators may be influenced by their own feelings and emotions. Investigators should therefore write down what the deponent states, and not what they think happened or think the deponent is trying to say or what they think is a better way of saying something. (See 2.8.1 “Accuracy” above.)

2.8.5 Comprehensiveness

Anybody reading the statement should have no difficulty understanding what he/she reads. Every relevant issue should be covered. The investigator taking the statement must be conversant with the elements of the relevant crime: in other words, what is to be proved? In most cases the deponent is not familiar with these elements and, therefore, it is the duty of the investigator to draw evidence from the deponent in that respect by asking him/her relevant questions. Statements must convey the truth. The investigator should not withhold relevant facts and change the meaning of the statements. A lengthy interview will develop much information that is unnecessary in the sense of being irrelevant or immaterial. When the subject finally consents to make a written statement, the investigator must then decide what information he or she wishes to have included in the statement. The exercise of good

judgement at this point is important since the subject may subsequently refuse to make an additional statement to remedy any deficiencies in their first statement (O'Hara & O'Hara, 2003:169).

The question was asked: "What requirements ensure a good statement?" and the participants from Samples A and B answered as follows:

- Eleven of the uniform participants stated that details on the alleged crime will ensure a good statement.
- The remaining nine of the uniform participants said completeness of information and a neat handwriting will ensure good statements.
- Seven of the detective participants stated that the statement writer should be objective, to the point (concise) and accurate.
- Eight detective participants said that completeness and knowledge of the crime elements will ensure good statements.
- The remaining five detective participants said that the statement writer should always be objective and not allow personal feelings to interfere. All details of the incident should be included but the statement should not be a long drawn out narrative. In addition the statement should be accurate and comprehensive.

The researcher asked Sample C, the prosecutor participants, what the requirements of a good statement are and they replied as follows:

- Both participants emphasised that a good statement must contain all the elements of the crime. They clarified this by saying that the elements of the crime have to be proven during the trial for the incident to constitute an offence, in other words to prove that a specific crime was committed.
- The participants stated that the second requirement for a good statement is that the perpetrator has to be linked with the committing of the offence. According to them, this was the basis of the whole prosecution process.

The researcher is of the opinion that the answers that were given by Samples A and B were vague. None of the participants stated that all the elements of the crime should be contained in the statement or that sufficient information needed to be provided to identify the perpetrator or link the perpetrator to the committing of the crime, as stated by the prosecutor participants.

The researcher could conclude that it is only by providing a statement that identifies the perpetrator or links him to the committing of the crime that the evidence can be introduced in court and the accused successfully convicted. Unfortunately not all of the participants seemed to know this and therefore answered vaguely on the question. The case docket analysis revealed that a full description of the suspect could not be found. In seven case dockets ID-kits were found that were compiled through the facial description of the perpetrator, from which only three arrests were affected from the information.

2.9 SUMMARY

Criminal investigation is a search for truth through the utilisation of objective and subjective leads. The information that the victim can provide must be optimally used by the criminal investigator to ensure the successful identification and tracing of the perpetrator. The information provided will further enable the investigator to compile a crime hypothesis successfully, which will help to gather sufficient evidence to answer it and prosecute the perpetrator(s) successfully.

The investigator has to keep in mind that the results of the investigation process have to be tested in court, from the onset of the investigation. It will have a significant impact on the outcome of the trial. The obtaining of the rape victim statement should therefore be conducted as a planned process by experienced investigators, who should follow certain principles and guidelines to ensure the optimal extraction and utilisation of the information that the rape victim has.

The sequence and type of information contained in the rape victim statement will inevitably differ from one incident to another. However, if the investigating officer has obtained answers on all the important aspects of the statement mentioned above, the possibility is good that he/she will be able to submit a detailed statement. The admissibility and relevance of the collected information can, however, be influenced by aspects such as the difference between facts and hearsay, the difference between facts and own opinion and the difference between facts and own deductions or conclusions. The information contained in the rape victim statement must also adhere to the requirements of objectiveness, completeness, conciseness and accuracy. The following chapter will deal with the value of the information contained in the rape victim statement.

CHAPTER 3
THE VALUE OF THE INFORMATION CONTAINED IN THE RAPE VICTIM
STATEMENT

3.1 INTRODUCTION

Information drives the whole investigation process from the first report of the victim to the compilation of the case docket and the submitting of the docket to the prosecutor for prosecution purposes. Therefore it is imperative that all possible information is gathered, documented and processed into evidence to be submitted during the trial. The victim statement forms the foundation from which the process is derived and is essential for the whole criminal investigation process. The information that is contained in the rape victim statement is also crucial for the successful compilation of the offender profile. The unfortunate reality, as found by the researcher, is that in 46% of the cases the victim statements are poorly taken, which means that the foundation is not very sound. Inevitably the victim statements have to be re-taken if the investigator wants any chance of success.

Investigating a rape case is a challenge for any criminal investigator. As with other general crimes, the quality of the investigation will significantly affect the outcome of the court case. However, in rape cases the methodology of the investigation process will impact on the psychological well-being of the victim.

In this chapter the researcher discusses “information”, “intelligence” and “evidence” as concepts and the differences between the concepts. The researcher also looks specifically at the information contained in the statement of the rape victim and the role of the investigator in the investigation of rape incidents, with a view to assessing the value of the information that is contained in the rape victim statement.

3.2 INFORMATION

“Crime investigation is a consistent process of gathering information, whether it is objective or subjective in nature, to reveal the truth of what happened during a specific crime situation” (Du Preez, 1990:376). The term “information” is used to describe the knowledge which the investigating officer gathers from people or objects. “By the marvellous expedience of simply questioning a knowledgeable and often anonymous individual, the identity of the perpetrator, and usually his motive, are revealed” (O’Hara & O’Hara, 2003:7).

Bell (2002:194) defines information as “unevaluated but relative material of every description derived from observation, communication, reports, and rumours, imaginary and all other sources from which evidence is processed”. O’Hara and O’Hara (2003:7) enter the discussion by defining information as “knowledge which the investigator gathers from other persons and state that the investigating officer is no better than his or her information”.

Van der Westhuizen (1996:2) defines the gathering of information as “essentially part of the process in which the crime investigator gathers information, assigns it some value, sorts it, and finally utilises it to develop facts”. It is therefore important to evaluate all gathered information, not only to assess whether it is relevant and conclusive but also to assess whether it has a positive meaning to reveal evidence to prove a case. He further states that it is advisable to compare information obtained from witnesses with gathered information so as to evaluate the validity thereof.

Adding to this reasoning is Bell (2002:194) who voices his concern that the gathering of information is not enough. The investigating officer has to know how to analyse the information, put a value on the information and act on it. Usually this “knowledge” refers to the information of the investigating officer, but that is not all true. In the true sense it refers to all the sources of information which the investigating officer uses. “As long as the information is relevant to the crime that has been committed and investigated, no source of

information, or aspect of information, is more important than another” (O’Hara & O’Hara, 2003:7).

“The bottom line is that there are plenty of sources of information and every good investigating officer knows that information is power. Sorting through the obtained information can be cumbersome and sometimes tedious but is necessary if no stone is to be left unturned” (Inman & Rudin, 2001:152). Van Heerden (1986:188) states that it has to be kept in mind that not all information which has been gathered during the investigation process can be used as evidence during a trial. The evidence that is ultimately used during the trial is the result of tracing, following up, evaluating and examining relevant information. Criminal investigation therefore does not only comprise the gathering of information but also the processing thereof.

O’Hara and O’Hara (2003:7) define people as direct information sources. They state that “information” is knowledge which the investigator gathers from persons. Van Rooyen (2004:9) argues that the investigator cannot regard all information about the crime scene as evidence. “Information” refers to knowledge that has been acquired through observation, experience or word of mouth, and which could be of assistance to the investigator in directly or indirectly assisting in the reconstruction of a crime scene, the tracing of suspects, the recovery of missing property, or the identification of witnesses. The information value and the evidential value of the victim statement therefore cannot be over emphasised.

Samples A and B was asked what “information” as a concept means and the participants answered as follows:

- The 20 uniform participants said that information consists of leads or clues. Four of the participants in addition said that information is obtained from informants.
- The 20 detective participants stated that information consists of leads or clues which the investigating officer obtains throughout the duration of the investigation process

from different sources. Seventeen of the participants in addition commented that information does not prove anything and cannot be used during the trial. Only credible evidence can be used for this purpose.

The case analysis revealed the following:

- Eighteen case dockets were closed as undetected because the information and the evidence gathered were not sufficient to identify the suspect.

The literature, interviews and case docket analysis all confirmed that information is unevaluated material and that information in itself cannot be introduced during a trial as evidence. The researcher did not question the prosecutors, Sample C, on this concept.

3.3 INTELLIGENCE

The National Strategic Intelligence Act, Act 39 of 1994 (South Africa, 1994:1) defines criminal intelligence in section 1 (vii) as the product used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders, while the White Paper on Intelligence (1995:3) defines intelligence as the product resulting from the collection, evaluation, analysis, integration and interpretation of all information.

Haag, Cummings and McCubbrey (2002:420) argue that intelligence is the first step in the decision-making process, in which one finds or recognises a problem, need or opportunity. This implies that intelligence can be used to address a crime hypothesis; in other words, a criminal investigator can process information into intelligence, which as a product can be utilised to obtain credible evidence.

According to Ratcliffe (2004:5), “the intelligence cycle is a repetitive cycle of stages that has been used effectively within defence and military circles prior to its adoption by law

enforcement”. The author states that the basic intelligence cycle consists of five stages: direction, collation, analysis, dissemination, and feedback and review.

Samples A and B was asked to provide the meaning of the concept “intelligence” and the participants answered as follows:

- Ten of the 20 uniform participants stated that intelligence is the same as information.
- The remaining 10 uniform participants said that they do not know what intelligence is.
- Eight of the 20 detective participants stated that intelligence is a product of information.
- The remaining 12 detective participants stated that intelligence could be information, but that intelligence could also be evidence if the intelligence proved an element of the crime that was being investigated.

The researcher came to the conclusion that the participants were not conversant with “intelligence” as a concept. Only eight of the detective participants knew that intelligence was a product of information, although the other detective participants had an idea of the practical implications of intelligence. The researcher did not question the prosecutors, Sample C, on this concept.

3.4 EVIDENCE

Marais (1988:206) defines evidence as “all relevant information that, if admissible in court, can be presented”. Hails’ (2005:2) definition supports Marais’ definition and also states that evidence is something that proves or disproves allegations and assertions.

“Evidence in the legal sense includes only what is introduced at the trial. The key to evidence is that it must be presented. If evidence has not been brought before court and presented during the trial, it cannot be called evidence. The outcome of a case can ultimately depend on

the presentation of evidence before a judge, who will sort out the merits of the claims and defences and render a judgement” (Matson, Daou & Soper, 2005:5).

Gardner and Anderson (2004:54) define the concept more simply by writing that “evidence is a means of establishing and providing the truth or, for that matter, the untruth of any fact that is alleged”, while Berg and Horgan (1998:40) are of the opinion that evidence is any item that helps to establish the facts of a related criminal case. Gardner and Anderson (2004:54) conclude by confirming the importance of evidence and state that “the outcome of any case ultimately can depend on the presentation of evidence before a judge who will sort out the merits of the claims and defenses and render judgment”. They further quote the famous lawyer and writer Sir William Blackstone’s definition of evidence as “that which demonstrates, makes clear or ascertains the truth of the very fact or point in issue, either on the one side or the other”.

Buckles (2003:62) divides “evidence” as a concept into two basic types:

- Direct evidence (eye witnesses, victims); and
- Circumstantial evidence (a witness placing the accused on the scene with no other possible suspect present and proving or disproving a fact directly).

Buckles (2003:62) goes further by defining four forms of evidence:

- Testimonial evidence (oral evidence by witnesses);
- Physical evidence (murder weapon, blood, fingerprints);
- Documentary evidence (letters, typewriting, notes, printings); and
- Demonstrative evidence (sketches, photographs, sketch of scene).

According to Roberts and Zuckerman (2004:270), the legal system’s treatment of adult victims of rape and other serious sexual assaults has been a matter of great concern since the 1970s when feminists and other researchers drew attention to instances of appalling

experiences suffered at the hands of criminal justice professionals.

“Much of the problem resulted from the callous, stereotyping attitudes of the police, at a time when police forces were wholly unprepared for the needs and expectations of rape victims, but the trial process must also shoulder its fair share of the blame. The main grievance regarding the trial was that complainants could be exposed under cross-examination to wide-ranging attacks on their moral credibility. In particular, a cross-examiner might spin out the evidence of the complainant’s previous sexual conduct in lurid and embarrassing details” (Pepper, 2005:25).

Blake (2005:19) joins in the discussion by stating that:

“The evidence of promiscuity or other sexual ‘misconduct’ went to the issue of consent and/or to the complainant’s credit as a witness, but in reality, more often than not, the objective was to upset the complainant and lower her [or his – EvdM] moral standing in the eyes of the court. Over the years some strange notions of relevance have become embedded in the common law. For example, it was assumed that evidence of prostitution diminished the credibility of a rape complainant and increased the probability that intercourse was consented to, when, in reality, on a dispassionate appraisal; one might expect prostitutes to be the last people to make false allegations of rape, since sending customers to jail can hardly be good for business. Equally, a promiscuous person is not the most likely to concoct a false accusation of rape in order to protect her reputation, nor would one expect a sexually experienced person to be overcome by shame or remorse into falsely accusing her partners of rape. All-to-frequently it would appear that the real purpose of such cross-examination was to suggest that the complainant was herself too morally flawed to deserve the court’s sympathy or to justify punishing the accused”.

Samples A and B were asked what the concept “evidence” meant. The participants replied as follows:

- The 20 uniform participants stated that evidence was made up of objects that could prove the committing of a crime by the accused. The researcher could conclude that these participants mainly focused on real evidence.
- The 20 detective participants on the other hand all stated that evidence must be presented during the trial to prove each of the elements of the crime. The participants mentioned forms of evidence that included documentary evidence, testimonial evidence, physical evidence and demonstrative evidence. The researcher realised that the detective participants understood the concept of evidence much better than the uniform participants, rightfully so as they worked with the concept on a daily basis.

The case docket analysis revealed the following results:

- Fifty-two of the 70 case dockets were brought before court because in each case the suspect was positively identified and traced. The researcher found documentary evidence, results of physical evidence analysis, and demonstrative evidence in all these case dockets.
- In 15 of the 52 court cases the accused was convicted and sentenced. This meant that sufficient evidence was introduced during the trial to prove each of the elements of the crime, as well as to link the accused with the committing of the criminal incident.
- In 13 of the 52 court cases the accused was acquitted. On perusing the evidence in the case docket the researcher found that the accused could not be linked with the committing of the crime as the evidence was insufficient.
- Seventeen of the 52 court cases were withdrawn by the Senior State Prosecutor owing to a lack of sufficient evidence to link the accused with the committing of the crime.
- Seven of the 52 court cases were formally withdrawn by the victim in court. Criminal

proceedings were therefore stopped by the victim, even if there was sufficient evidence for a possible conviction.

The researcher asked Sample C, the prosecutors, what evidence was and they replied as follows:

- Both prosecutors said that evidence was the method in which a fact was proven in court. They stated in addition that the evidence had to be relevant and admissible to be introduced. One of the prosecutors added that the evidence had to prove the State's case beyond reasonable doubt.

From the literature study, the interviews and the case docket analysis it is clear that evidence must be introduced in court during the trial. The researcher could conclude that sufficient evidence had to be presented to prove each of the elements of the crime, as well as link the perpetrator with the committing of the offence to obtain a successful conviction.

3.5 THE DIFFERENCE BETWEEN INFORMATION, INTELLIGENCE AND EVIDENCE

“Information”, “intelligence” and “evidence” as concepts are the tools that the investigator utilises in the endeavour to search for the truth. Information and intelligence utilisation must, however, result in evidence collection, which is the proof that a criminal offence has been committed and that the accused was involved in the committing of the offence. This evidence must be presented during the trial to be scrutinised and tested. Information and intelligence can be seen as the indicators on the path to finding sufficient evidence for the trial. From experience the researcher has learned that information, intelligence and evidence can be gathered from the crime scene, objects and people, and that they play an equally important role in the investigation process. The investigator should, therefore, not discard information as useless or as being of less importance than evidence that is found during the investigation process. Table 3.1 shows the difference between information, intelligence and evidence.

Table 3.1: The difference between information, intelligence and evidence

<u>Information</u>	<u>Intelligence</u>	<u>Evidence</u>
<p>1. Definition: Unevaluated but relevant material of every description gathered from observations, communication, reports, rumours, imaginary and all other sources from which evidence is processed (Du Preez, 1990:376).</p> <p>2. Sources: Information can be gathered from direct (people) and indirect (objects) sources (Bell, 2002:194).</p> <p>3. Uses: Information points the investigating officer to the knowledge of what was seen, heard and/or experienced during the crime (O’Hara & O’Hara, 2003:7).</p>	<p>1. Definition: The product resulting from the collection, evaluation, analysis, integration and interpretation of all information (White Paper on Intelligence, 1995).</p> <p>2. Sources: Intelligence can be gathered from direct (people) and indirect (objects) sources (Ratcliffe, 2004:79).</p> <p>3. Uses: Criminal intelligence is the product used in the prevention of crime or the conducting of criminal investigations and for preparing evidence for the purpose of law enforcement and the prosecution of offenders (South Africa, 1994).</p>	<p>1. Definition: The means to establish and provide the truth or untruth of any alleged fact (Zeffert et al., 2003:703).</p> <p>2. Sources: Evidence can be gathered from direct (people) or indirect (objects) sources (Buckles, 2003:62).</p> <p>3. Uses: Evidence forms the proof which the court uses to reach a conclusion (Hails, 2005:2).</p>

During the interviews Sample A and B was asked what the difference was between information, intelligence and evidence and they answered as follows:

- The 20 uniform member participants did not know the difference between the three concepts. They only mentioned that evidence is the proof that an accused committed a criminal incident.
- All 20 detective participants stated that information could not be used during the trial to prove or disprove any of the elements of a specific crime and that only evidence could be used for this purpose. Seven of the detective participants in addition claimed that evidence was more important than information because only evidence could be presented in court during a trial.

The researcher asked the prosecutors what the difference between information, intelligence and evidence was and they replied as follows:

- Both prosecutors said that evidence is introduced during the trial to prove each of the elements of the crime as well as to link the perpetrator to the committing of the crime. One of the participants in addition stated that hear-say evidence, information and intelligence could be introduced during bail applications as they would be admissible for this purpose only, but not during the trial as evidence.

The viewpoints expressed by the 20 detective participants were fairly in line with what the literature suggested. Information must be gathered and analysed into intelligence that can be utilised to obtain evidence. The researcher could conclude that evidence is the final product that is introduced during the trial. If the investigator is successful in proving each of the elements of the alleged crime and in linking the perpetrator to the committing of the crime, a conviction could be achieved.

3.6 INFORMATION IN THE RAPE VICTIM STATEMENT

During the literature review the researcher obtained an abundance of information that authors suggested should be included in the rape victim statement. The researcher divided the information into three sections: questioning, categories and/or phases and checklists to organise the information.

3.6.1 Questioning

Matson, Daou and Soper (2003:7-8) make suggestions about what information needs to be obtained from the rape victim for the victim statement. The authors provide the following categories:

- Physical characteristics of the suspect;
- Detailed account of attack (*modus operandi*), which includes:
 - How the victim was approached;
 - Whether the suspect's demeanour changed during the course of the attack;
 - The physical appearance of the suspect, e.g. tattoos, scars, genitals, circumcised or not;
 - The suspect's clothing, e.g. neat, sloppy, etc.;
 - The hygiene of the suspect, e.g. shaved, clean or dirty, body odour or the smell of after-shave;
 - Statements and demands made by the perpetrator prior to, during and after the rape (often the same phrases are used during each attack);
 - The type of sexual activity that occurred and the order of that sexual activity;
 - Whether a condom was used;
 - The positioning of both the perpetrator and the victim;
 - Whether the perpetrator ejaculated into the victim's vagina, anus or mouth or removed his penis and ejaculated on specific parts of his/her body or on the floor/bed;
 - Whether he wiped himself and what he used to wipe himself;

- Whether the victim's body was wiped to remove DNA evidence and if so what was used or was taken by the suspect;
- Whether the suspect attempted to conceal his/her identity;
- Whether the perpetrator took items of clothing from the victim, e.g. panties;
- Whether the perpetrator stole anything from the victim, such as cash or jewellery;
- Whether the perpetrator removed only items that were not of significant value as trophies of the attack;
- Prior sexual activity: It is important to know if the victim has had consensual sex within 72 hours of the rape for physical evidence collected by the General Practitioner (GP) during the medical examination.

Van Rooyen (2004:52-53) distinguishes between general information and physical characteristics in the description of the offender provided by the victim. The details in this regard are set out below.

General information

The general information of people can be divided into the following categories:

- Names, aliases and nicknames;
- Past and present home addresses;
- Nationality/Population group;
- Personal history, such as education, professional and career background;
- Previous criminal convictions;
- Identity number and passport details;
- Clothing;
- Jewellery, such as watches, rings, etc;
- Make-up;
- Distinguishing marks such as scars, birthmarks, wrinkles, operation marks;

- Detailed localised descriptions;
- Personal habits such as drinking habits, activities, mannerisms, etc;
- Particulars of friends or acquaintances and the places usually visited, such as gambling houses, bars, hotels etc.

Physical characteristics

“A detailed description of the offender’s physical characteristics is a very important component in the identification of the offender. It is therefore necessary and important to question the victim/complainant in detail. In recording the physical description of a criminal, it is advisable to write this down in a logical sequence. This entails that the head of the criminal must be described first, and then the other body parts downward until the feet are reached” (Van Rooyen, 2004:54-55). According to Van Heerden (1985:23-25), Marais (1988:89-97) and O’Hara and O’Hara (2003:57-60), special attention should be given with regard to the following physical components:

- Race, sex and age
- Height
- Mass
- Build
- Posture
- Stomach
- Arms
- Hands
- Legs
- Feet
- Physical peculiarities, such as manner of walking, voice pitch and manner of talking
- Head

Stuart and Nordby (2005:167-169) support Van Heerden's (1985:21) view that a person's head forms the most important part of his/her body when it comes to personal description, because it is usually the part of the offender which the victim/complainant and witnesses see best and thus remember best. The following are the most important components which should be focused on through questioning:

- The size and shape of the head
- The hair (colour, length and style)
- The profile of the face
- The forehead
- Eyebrows
- Moustache and/or beard
- Eyes
- Ears
- Cheeks
- Nose
- Mouth
- Lips
- Teeth
- Chin
- Neck
- Complexion

The features mentioned above are variable, because age, mutilation or even plastic surgery can cause a remarkable difference in the total image. It is of utmost importance that the investigating officer keeps these factors in mind when questioning a victim/complainant or witness regarding a personal description (Van der Westhuizen, 1996:14).

Gilbert (2004:334) states that from the interview and questioning, the victim's answers should provide information about the following aspects, which must be contained in the victim statement:

- Lack of consent
- Amount of force
- Sexual penetration
- Extent and type of sexually deviant acts
- Method of suspect operation before the attack
- Method of suspect operation during the attack
- Method of suspect operation following the attack
- Acquaintanceships between suspect and victim
- Description of the suspect

Hazelwood and Burgess (2001:115-116) state that "over a period of 20 years they have reviewed thousands of rape victims' statements which contained details of the crime as well as a great deal of information about the offender's physical characteristics, but, according to them, there was a marked absence of information that could provide clues as to the motivation underlying the rape and the offender's behavioural characteristics and traits". Over a period of time, however, the authors were able to develop the following set of questions and directions designed to elicit the behavioural characteristics of the perpetrator:

- Describe the manner in which the offender approached and gained control over you;
- How did the suspect maintain control over you during the assault;
- Describe all physical force the suspect used and when specifically during the attack the force was used;
- Did you resist either physical, verbally, or passively? If so, describe each stage at which you resisted and how you resisted;
- What was the reaction to each act of resistance;
- Did the suspect at any time experience a sexual dysfunction? If so, describe in detail

what he/she did or demanded you to do to overcome these dysfunctions;

- Describe each sexual act you were forced to participate in or that was performed by the offender on him or herself. Please provide the sequence in which each act occurred and any repetition;
- As precisely as possible, detail everything that was said to you, including the tone of voice, and the attitude at the time the suspect spoke;
- If the suspect demanded that you answer questions, repeat phrases, or respond verbally in any manner whatsoever, tell specifically what he/she demanded that you say;
- When, if ever, did his or her attitude appear to change? In what manner did it change, and what occurred immediately prior to the change;
- What actions did the suspect take to ensure that you would not be able to identify him/her? Did the suspect take any precautions to ensure that the police would not be able to associate him/her with the crime;
- Did the suspect take anything when he/she left? Have you carefully inventoried your personal belongings since the assault;
- Did you receive any calls or notes from unidentified persons prior to (or since) the assault? Have you had any experience which would indicate that the suspect specifically targeted you for the assault and
- How do you believe individuals who associate with the rapist on a daily basis would describe the suspect as a person?

The authors further state that it is important to obtain the perpetrator's physical description, direction and mode of travel and any other critical details, such as the elements of the crime.

3.6.2 Categories and/or Phases

According to the SAPS Psychologically Motivated Crimes Course Learner Manual (South African Police Service, 2007:108), the information required in a rape victim statement can

primarily be divided into the categories described below.

(a) Physical behaviour of the suspect and victim

Investigators tend to focus only on what the suspect did during the whole event, but the behaviour of the victim is equally important. It does not help just to state that the suspect hit the victim. One needs also to look at whether the victim did anything that caused the suspect to use violence. For example, did the suspect only hit the victim after the victim had refused to cooperate? If so, this can indicate that the violence was only used to serve the purpose of getting the victim to cooperate. The type of violence will then be seen as functional violence as it served a specific, practical purpose. If a suspect used violence for no reason, meaning that there was no provocation from the victim, then it can be said that the violence was for the suspect's psychological need.

Physical behaviour is not only about violence but also about any other behaviour that the suspect showed during the whole event. Did the suspect have any habits such as a strange walk, or did he/she show signs of anxiety? Again, the same must be asked about the victim during the whole event. Did the victim behave in a passive manner or did he/she resist in some way? Did the suspect undress him/herself? Did the suspect undress the victim or did the suspect instruct the victim to undress him/herself? Did he/she place something on the ground for the victim to lie on? Did the suspect clean him/herself after the rape? One must remember that rape is an interaction between two people.

(b) Verbal communication of the suspect and victim

All the verbal communication must be noted from the time the suspect approaches the victim until the suspect leaves the victim. Because some rapists make use of con stories, there is often quite a bit of verbal communication. Investigators usually focus on the con story and a few words uttered during the rape. What is needed is a running commentary of all the verbal communication of both the victim and suspect. Since the use of the con story often implies

that the suspect journeys with the victim for quite a distance, it is necessary to focus on what is said during this in-between time.

If a victim and suspect walk together for say half an hour before the actual rape takes place, they are likely to speak about something. This is often useful for linking cases, as the suspect will most likely talk about the same topic with other victims. Some examples include the suspect asking the victim questions about him/herself such as where they live, where they went to school, what church he/she belongs to, etc. The suspect can also reveal some important information about him/herself during this phase.

What is said during the rape is also very important. For example: Does the suspect ask the victim questions about his/her sexual history? Does the suspect give instructions or make requests? Is the suspect demanding or does it sound like he/she is negotiating? Some rapists also speak about other victims that they have raped.

Investigating officers often tend to forget to include what was said after the rape is concluded. For example: Does the suspect threaten the victim not to go to the police? Does the suspect ask any other questions or say anything else?

(c) Sexual behaviour of the suspect and victim

When obtaining information about the sexual behaviour, it is important to know exactly what took place during the rape. The statement taker and the victim are often embarrassed to ask or to tell precisely what happened during the rape. It needs to be carefully explained to the victim that such information is necessary. The statement taker must be careful not to have a judgemental attitude or to show any shock or disgust at what took place. The order of the sexual behaviour is very important. Did the suspect have certain requests on what sexual activity he/she wanted and how it should be done? Were there any sexual dysfunctions? Each rape needs to be described in full detail. The victim cannot just report that the suspect had

raped him/her three times. Each time the suspect raped the victim will be different in some way.

(d) Description of the suspect

Often statements do not even contain any description of the suspect. All aspects of the suspect need to be described:

- Clothing of the suspect;
- Items carried by the suspect; for example, bags;
- Physical build of the suspect;
- Identifying features, such as scars, tattoos, missing teeth, etc.;
- How the suspect walked;
- Facial features;
- The smell of the suspect's breath; for example, alcohol, cigarettes, bad breath;
- Appearance of the suspect; for example, cleanliness, the state of his/her clothes and shoes;
- Hair type; and
- Skin colour.

If a victim says a suspect is tall, the investigator must ask the victim to show how tall. A small person or a child might describe someone as being tall but in comparison to other adults the suspect may be of average height. If necessary, the investigating officer must ask the victim to show someone else that is the same height, weight and build as the suspect. If the victim is not sure, state that in the statement; assumptions must not be made. The amount of trauma experienced by the victim must be taken into consideration when he/she gives a description of the suspect because the trauma can influence the description in various ways.

The investigation of a rape case calls for maximum tact and professionalism. According to the SAPS Psychologically Motivated Crimes Course Learner Manual South African Police

Service, 2007:107-109), the investigation of a rape case, interviewing and the taking down of the victim's statement is approached as a process which comprises phases. The manual describes these phases as shown below:

Phase 1: Before the victim met the suspect

In this phase the focus is on what the victim was doing before meeting the suspect. What was the victim doing just before he/she met the suspect? Where was the victim going just before he/she met the suspect? Where had he/she been just before meeting the suspect? What was the victim wearing at that time? Was that the victim's usual routine; what was he/she doing at that time; did the victim usually travel that way, or did he/she break his/her normal routine at that time?

Phase 2: From meeting the suspect until the victim realised something was wrong

Here the focus is on how the suspect approached the victim until he/she realised that something was wrong, in other words just before the rape process began. The length of this phase will depend on how the suspect approached the victim. If the suspect used a blitz attack, this phase will be extremely short. If the suspect used a con story, it could be as long as an hour. Questions about the following must be asked: How did the suspect approach the victim? Did the suspect use a con story or a sudden or surprise attack? If the victim and suspect talked, what did they talk about? If the suspect used a con story, what was it about? What did they do (physical behaviour)? How did the victim behave towards the suspect?

Phase 3: From the beginning of the rape until the rape was finished

This phase focuses on the actual attack, where the physical behaviour, verbal communication and sexual behaviour will be combined. What did the suspect ask/tell the victim to do? What sexual activities took place? How did the victim respond: was the victim submissive/did he/she argue/fight back? Did the suspect use any threats?

Phase 4: Once the rape had finished until the suspect left the scene

Investigators often fail to enquire about this phase, yet it can reveal much about the suspect for profiling purposes. Here the focus can be on the following:

- Did the suspect tell the victim to get dressed?
- Did the suspect leave the victim at the scene or walk with the victim to a certain point before leaving him/her?
- Did the suspect threaten the victim to keep quiet and not to go to the police?
- Did the suspect ask the victim if he/she could contact him/her again or ask for a phone number?
- Did the victim run or walk away from the scene.

3.6.3 Checklists

Gilbert (2004:116) provides a quick checklist to determine preliminary victimology (information about the victim), which has proven to be most useful in eliciting investigation information from the rape victim. According to the author, the checklist can be used to obtain the kind of information that should be gathered as soon as possible from the rape victim even if it means that it is obtained before the investigator reaches the crime scene:

- Does the victim know the perpetrator?
- Does the victim suspect any person? Why?
- Has the victim a history of crime? A history of reporting crime?
- Did the victim have a weapon?
- Has the victim an aggressive personality?
- Has the victim been the subject of any field (police) reports?

The SAPS Psychologically Motivated Crimes Course Learner Manual (2007:110-114) also suggests a checklist that will assist every statement taker in taking down the victim statement in an alleged rape case. The SAPS National Instruction 2 of 1998, Sexual Offences: Support to victims and crucial aspects of the investigation, Annexure C, confirms the suggestion that

a checklist should be used to obtain as much information as possible from the rape victim (South African Police Service, 1998:3). Unfortunately the Physiologically Motivated Crime course is only presented to members in specialised units of the SAPS and not investigators at the General Detective Service. The SAPS Psychologically Motivated Crimes Course Learner Manual (2007:110-114) provides the checklist shown in Table 3.2 below.

Table 3.2: Checklist for taking down rape victim statements

	Detail
1	Paragraph statements
2	Do not prime the victim – it must be his/her own statement. Never ask leading questions. Ask open-ended questions.
3	Full names Age and date of birth Identity number Residential address Telephone number and code Occupation Place of employment if applicable Telephone and/or facsimile number (work)
4	Detail of events leading up to the incident. These vary according to circumstances and there will be more information in some cases than in others.
5	Describe the scene of crime prior to the attack.
6	Fully describe the victim’s clothing and the victim’s description (this may assist the Forensic Science Laboratory and identification).
7	Describe other victims (if more than one victim has been involved).
8	Day and date of incident (specific day of the week).
9	Clarify time – how did the victim know what the time was?
10	Describe, if possible, any route taken by the victim prior to the attack.

11	Witnesses – any known to the victim, other witnesses’ descriptions and names that may link the victim to the suspect.
12	How did the suspect approach the victim?
13	How did the suspect maintain control over the victim?
14	If restraints were used, did the suspect bring them with him or did they belong to the victim?
15	Weapons, etc. used/displayed/mentioned?
16	Exact words spoken by the suspect – use direct speech.
17	Exact words spoken by the victim to the suspect – use direct speech.
18	If there is more than one suspect, briefly identify each by some distinguishing feature.
19	Detail of anything left at the scene by the suspect.
20	Describe anything touched by the suspect.
21	Did the suspect have an escape route prepared prior to the attack?
22	Continually describe the victim’s state of mind during the whole incident – what was he/she feeling/thinking in relation to each event as it occurred?
23	Threats made by the suspect.
24	Was there any resistance given by the victim? Include reasons for resisting or not resisting.
25	As the victim resisted, explain the suspect’s reaction (speech, facial expression, physical reaction).
26	Did the suspect force the victim into any particular physical position?
27	Did the suspect photograph the victim?
28	Describe if any and how clothing was removed and by whom, and in what order – where the clothing was placed or left.
29	Was the victim made to dress in any specific items of clothing?
30	Were these items brought to the scene by the suspect?
31	Were any items of clothing stolen by the suspect?

32	Did the suspect coerce the victim into using any specific words or sentences during the attack?
33	Describe in full detail, the sexual assault. Describe the acts, for example touching, kissing, use of instruments, beating, etc.
34	When the sexual intercourse took place, provide an exact description of how the victim felt.
35	How the object entered the body through describing the: position of bodies, position of hands, position of legs.
36	Was the suspect's penis erect? (if male)
37	Was any lubricant used?
38	Was the suspect circumcised?
39	Did the suspect have any difficulty in achieving erection or maintaining it, or experienced premature ejaculation?
40	Was the victim forced, manually, to masturbate the suspect to achieve or maintain his erection? (if male)
41	Did the suspect ejaculate? How did the victim know that the suspect had ejaculated? (if male)
42	Did the suspect use anything to wipe his penis after the offence? (if male)
43	Was anything done by the suspect to remove/stop semen being left behind on the scene, like forcing the victim to wash or using a condom?
44	If tissues (or anything alike) were used, what happened to them? Where did they come from in the first place?
45	If oral sex occurred, did the victim spit out the semen or vomit? If so, where?
46	Was the victim told to take any drugs/medication/alcohol by the suspect?
47	Was there any blood anywhere? Describe on the victim/suspect/scene of crime.
48	If any number of sexual acts were carried out, describe the exact order in which they were committed and the speech used to the victim prior, during and after.
49	Any specific threats made to the victim not to report the offence – the exact

	words used must be given.
50	Any actions or words used to prevent the victim from recognising the suspect.
51	Did the suspect take steps to avoid leaving fingerprints?
52	Was any of the victim's property taken to assist the suspect in locating the victim again? Was this taken to stop him/ her from reporting the incident? Was this mentioned specifically by the suspect?
53	Did the suspect suggest they meet again? Give specifics.
54	Was the suspect curious about the victim's life, family or previous relationships, sexual or otherwise?
55	Did the suspect pay any compliments to the victim?
56	Did the suspect make excuses for what he/she had done or apologise for it?
57	Did the suspect make any mention of police procedures?
58	How did the attack end?
59	How did the victim leave the scene?
60	How did the suspect leave the scene? Was it by foot/car/bicycle?
61	Did the victim tell anybody and when did he/she do so?
62	A full description of the suspect(s) from head to toe.
63	Include a description of the clothing – it may be necessary to state what the suspect was not wearing, for example a jacket.
64	Did the suspect speak in a language known to the victim? Clarify.
65	Did the suspect have an accent? Clarify.
66	Did the victim know the suspect? If so, give details. Would the victim be able to recognise the suspect again?
67	How was the matter reported to the police?
68	Permission from the victim for the examination of the scene, of their property and for the removal of items for evidence and forensic examination.
69	Describe fully all property taken, including serial numbers, colour, sizes and identifying marks.

70	Get the victim to formally identify any property left by the suspect on the scene.
71	Describe all the injuries inflicted on the victim.
72	Include the fact that the victim did not consent, even if this is obvious.
73	Record the absence of consent for the removal of any of the victim's property by the suspect.
74	Is the victim willing to attend court?
75	Make sure the victim reads the statement thoroughly and that it is signed at all the right places.

From the literature reviewed, the researcher could conclude that a detailed checklist should be utilised to obtain the rape victim statement, as the information that could be obtained from the victim is too much to remember off hand. The checklist furthermore describes and covers all areas mentioned in the questioning as well as the categories and phases or sections as described above.

Both Samples A and B were asked what information must be included in the rape victim statement. They answered as follows:

- The 20 uniform participants stated that they do not ask specific questions during the interview and merely ask questions to clarify any doubt that the interview might create. The interviewing of the victim is seen as a mere step to register a case docket for the crime that occurred. The 20 uniform member participants indicated that they only put in basic information in the victim statement as if it was a normal statement, such as the date, time, and place, but no information and details of the actual deed, details and description of the suspect, or anything about the physical and emotional state of the victim. Eleven of the 20 uniform members in addition felt that the victim statement should be obtained primarily by the investigator. The participants stated that they had not undergone any specialised training or detective training and did not

- want to embarrass themselves or the SAPS in general if the statement had to be re-taken at a later stage owing to insufficient information.
- Twelve of the 20 detective participants said that they do interview the victim so as to obtain as much information as possible for the rape victim statement. The participants could not, however, identify any specific questions or checklists that they utilise. The participants all included the elements of the crime, the physical and sexual behaviour of the suspect and of the victim, and lastly a detailed description of the suspect.
 - The remaining eight detective participants included the information provided by the 12 detective participants above but in addition stated that they would include the *modus operandi* of the suspect before the rape, during the rape and after the rape had taken place.

The case docket analysis confirmed that investigators in practice do not make use of an interview schedule or checklist when interviewing the rape victim so as to obtain as much information as possible as described in the literature, as no checklist or interview schedule could be found in any of the case dockets. The participants had no knowledge of a checklist as depicted in the literature. The researcher is of the opinion that such a checklist would not only improve the quality of the interviews of the rape victims but would also contribute to the quality of the statements of the rape victims. This would inevitably impact positively on the successful investigation of rape cases as more information would be extracted from the rape victims in general. The absence of a checklist, according to the researcher, revealed a huge gap in the existing procedures.

From the interviews the researcher gathered that more than half of the uniform members preferred that investigators interview and take down the statements of rape victims. According to the uniform members, the investigators had a far greater knowledge of what information should be included in the rape victim statement. The detective participants

further acknowledged that they preferred to take down the victim statement themselves so as to ensure that more complete statements are obtained.

From the case docket analysis the following were found:

- Forty-one victim statements were taken down by the investigating officer who worked call duties at that time. Of the 41 statements, only nine statements had to be re-taken because the statement was incomplete and the information therein insufficient.
- Twenty-nine victim statements were taken down by the uniform member on duty in the Community Service Centre. Of the 29 statements, 23 had to be re-taken owing to incomplete and insufficient information and description of the suspect.
- A total of 32 statements from the sample of 70 cases had to be re-taken, almost 50% of the cases. It is highly likely that a factor which contributes to this is that members do not make use of a checklist, such as prescribed in the literature.

From the interviews with Sample C on what information should be incorporated in the rape victim statement the following answers were obtained from the prosecutor participants:

- Both prosecutors stated that the information in the statement must cover the elements of the crime. In addition they stated that the actions of the perpetrator must be described as thoroughly as possible. According to one of the participants, a thorough description of the perpetrator's actions enables her to prove intent as an element of the crime and a thorough description of the force or trauma of the actions helps to serve as evidence of excruciating factors when the sentencing of the perpetrator is carried out.

The researcher could conclude from the interviews with the prosecutors that the information contained in the rape victim statement should not only include the elements of the crime but should go beyond the mere reporting of the criminal act and include a description of the

whole incident. This confirmed what the literature suggested. The interviews with Samples A and B suggested that only the detective participants knew that the elements of the crime should be included as information in the rape victim statement. None of the uniform participants mentioned that the information had to include the elements of the crime. The case docket analysis confirmed that, in practice, not all investigators and uniform members include the elements of the crime as information in the rape victim statement. The fact that almost 50% of the initial rape victim statements had to be re-taken is evidence of this fact. This is a serious shortcoming that needs to be addressed.

3.7 THE VALUE OF THE INFORMATION CONTAINED IN THE RAPE VICTIM STATEMENT

The criminal investigator should focus on the value that information has to offer in the investigation process. The researcher has experienced on a daily basis and throughout the research that investigators in general have a tendency to focus only on evidence during the investigation process and not on the other sources of information. The statement of the rape victim contains a wealth of information, far beyond what the suspect and/or victim intends to communicate.

The following are examples of information that can be obtained unintentionally:

- “*Modus operandi*” is the practical, purposeful behaviour performed by the suspect to allow him to commit the crime (Van der Westhuizen, 1996:35);
- “Signature behaviour” is that behaviour that goes beyond what is necessary to commit the crime. This represents the behaviour that the suspect manifests for his/her own psychological reasons (SAPS Psychologically motivated crimes course learner manual, 2007:13);
- “Paraphilias” are sexual disorders characterised by specialised sexual fantasies and intense sexual urges and practices that are usually repetitive and distressing to the person. While most normal sexual behaviour is aimed at bonding individuals,

paraphilias are the opposite of this because they are often kept secret by the individual. This behaviour is often increased during times of stress (SAPS Psychologically motivated crimes course learner manual, 2007:18).

For the purpose of the research, the value of the information contained in the rape victim statement will be divided into the categories of “identification”, “tracing” and “prosecution”. These categories are discussed below.

3.7.1 Identification

Van Heerden (1985:10) defines identity as uniqueness and states that “identification rests on the theory that everything is unique in the universe in that it has certain distinctive individual as well as class properties”. The author goes further by writing that it is important to understand that identification in an investigation involves determining whether the witness has a true picture of the events, while Conradie (1994:113) argues that “the main objective of identification is to test the ability of the witness to recognise the offender accurately”.

The researcher could conclude from the literature that identification has the aim of identifying the perpetrator successfully, be it from the victim, a witness, an informant or the information contained in the victim statement.

Samples A and B were asked how the information contained in the rape victim statement could assist in the identification of the perpetrator. The participants answered as follows:

- Thirteen of the uniform member participants stated that the rape victim should be asked if he/she knows the perpetrator. According to them, the perpetrator would be identified by the victim.
- The remaining seven uniform participants stated that the victim should be asked to describe the perpetrator. They added that informants should then be tasked with identifying the perpetrator.

- Six of the detective participants stated that the rape victim must be asked to describe the perpetrator so as to try to assess whether an ID-kit of the perpetrator could be compiled. According to them, the ID-kit could then be published, which would assist in the identification of the perpetrator.
- Two of the detective participants stated that *modus operandi* information from the rape victim statement is valuable in the identification of the perpetrator, especially if the perpetrator has a history of similar sexual activity. The participants also mentioned that signature information from the statement was even more compelling as it went beyond the manner in which the criminal incident was committed and revealed a unique signature in the committing of the criminal incident.
- Eight detective participants said that the information in the rape victim statement assisted in the direction of all available physical and human resources in the investigation process. The participants said that it assisted in identifying a possible individual from a group of suspects. According to them, the nature of the incident directed the process of identification.
- The remaining four detective participants stated that the information in the rape victim statement must be utilised to profile the perpetrator. They used examples of race, gender, age, height, sex, language, possible paraphilias, *modus operandi*, signature, victimology and geographical information of the crime scene as information that could be utilised in compiling the offender profile. According to these participants, this information would assist greatly in the identification of the perpetrator.

From the interviews with Sample C, the prosecutor participants, on what value the information contained in the rape victim statement contributes to the identifying of the perpetrator, the following answers were obtained:

- Both prosecutor participants mentioned linkage analysis. According to them, the information assisted in identifying serial rapists and in eliminating possible copy-cat

perpetrators when a serial rapist was being trialed. Without detailed information in the rape victim statement, the accused could whilst on trial claim that the “real” perpetrator was still at large when a copy-cat rapist tried to de-rail the prosecution process. According to these participants, the information is vital for identifying, and distinguishing between, a single perpetrator, serial rapist and a copy-cat perpetrator.

From the interviews of the uniform participants the researcher could come to the conclusion that all of the uniform participants focused on the identification of the perpetrator by the victim, and not on utilising the information from the rape victim statement. The researcher could further conclude that, unlike the uniform participants, the detective participants focused more on the identification of the perpetrator through the utilisation of the available information contained in the rape victim statement, rather than relying on the victim’s identification alone. The detective participants touched on several aspects suggested by the literature. (See 3.6 above.)

The case docket analysis revealed the following results:

- Seven case dockets were discovered where ID-kits were compiled through the facial description of the perpetrator by the rape victim. Arrests were made in three of these cases, after the ID-kits were published with a press release which resulted in the identification of the perpetrator through information from the community. Collaborative evidence was obtained through DNA results and one perpetrator was positively identified at an identification parade by the rape victim after his arrest.

3.7.2 Tracing

‘Tracing’ is defined by the *Oxford Advanced Learner’s Dictionary* (2007:1567) as to track, find or to follow the movements of someone or something. It stands to reason that the perpetrator can only be traced or apprehended after he/she has been identified.

Samples A and B was asked how the information contained in the rape victim statement could assist in the tracing of the perpetrator and the participants answered as follows:

- Eighteen of the uniform participants stated that the rape victim could assist in the tracing of the perpetrator, as he/she should be able to identify the perpetrator and knew where the perpetrator worked or stayed.
- The remaining two uniform participants stated that the victim should be asked to be on the lookout for the perpetrator and to contact the investigator as soon as he/she saw the perpetrator.
- Six of the detective participants stated that, as with the utilisation of the ID-kit to identify the perpetrator, the ID-kit must be used for tracing the perpetrator by publishing it in the media. According to them, the ID-kit is compiled through the information in the rape victim statement as well as a physical description of the perpetrator. Members of the community would then be asked to call the investigating officer with information on the identity and whereabouts of the perpetrator.
- Four of the remaining detective participants stated that *modus-operandi* and signature information from the rape victim statement is valuable in the identification of the perpetrator, especially if the perpetrator has a history of similar sexual activity. They went further to mention that a case docket analysis could be carried out on previous convictions, which would reveal addresses or accomplices that could be visited to trace the perpetrator. Even court dates of outstanding, pending trial case dockets will give an indication of where and when the perpetrator would appear if he/she were out on bail or a warning so as to affect an arrest.
- The remaining 10 detective participants stated that the information in the rape victim statement will assist in directing all available physical and human resources in tracing the perpetrator after identification. The participants added that the information in the rape victim statement must be utilised to profile the perpetrator. They used, for example, known areas of operation (hunting ground) of the perpetrator, rape incidents which will direct observation duties at identified locations, and informants who

might have knowledge of the perpetrator's movement, to trace the perpetrator.

The researcher could come to the conclusion that none of the uniform participants had an idea of all the procedures that should be followed in order to trace the perpetrator. The victim cannot be given the sole responsibility of tracing the perpetrator, as rape incidents are traumatic and the victim should not be asked to confront or trace the perpetrator again. Furthermore, the detective participants focused more on the tracing of the perpetrator through the utilisation of the available information contained in the rape victim statement than on relying on the victim alone. The detective participants mentioned several of the aspects that the literature cited under 3.6 above suggested. The detective participants however did not state any additional aspects that were not taken up in literature.

The case docket analysis revealed the following results:

- Seven case dockets were discovered where ID-kits had been compiled through the facial description of the perpetrator by the rape victim. Arrests were made in three of these cases, after the ID-kits were published with a press release which resulted in the identification and successful tracing of the perpetrator through information from the community.
- Three case dockets were found which revealed that the perpetrators were apprehended after observation duties had been conducted at different locations notorious for the high percentage of rapes in the area.
- In 17 case dockets the perpetrator was known by the rape victim. The perpetrators in these cases were identified and successfully traced through the information contained in the rape victim statement. The victims knew the perpetrator and their addresses and no descriptions of the perpetrators were needed.

The researcher asked the prosecutors how the information contained in the rape victim statement could assist in the tracing of the perpetrator but they could not contribute to this aspect of the study.

3.7.3 Prosecution

‘Prosecution’ as defined by the *Oxford Advanced Learner’s Dictionary* (2007:1167) is the process of trying to prove in court that somebody is guilty of a crime. Section 179 of the Constitution of South Africa, Act 108 of 1996 provides for a single National Prosecution Authority (NPA), which consists of:

- “(a) The National Director of Public Prosecutions, who is the Head of the Prosecuting Authority,
- (b) Deputy National Directors,
- (c) Directors,
- (d) Deputy Directors, and
- (e) Prosecutors.”

The National Prosecution Authority Act, Act 32 of 1998 (South Africa, 1998) regulates the daily activities of the National Prosecution Authority, by regulating matters incidental to the NPA and by providing for matters connected with this. In terms of section 1 of the Act, the NPA has the power and responsibility to institute and conduct criminal proceedings on behalf of the State and to carry out any necessary functions incidental to these proceedings. The Act gives the NPA and prosecutors the discretion with regard to how they perform their functions, exercise their powers and carry out their duties. This discretion must, however, be exercised according to law and within the spirit of the Constitution of South Africa.

The NPA has delegated its prosecution authority in terms of section 22 (9) of the Act to the Directors of Public Prosecution (DPPs), provincially. In terms of section 20 (5) of the Act, DPPs have been designated to issue authorisation to prosecutors in their areas of jurisdiction

to institute and conduct prosecutions and, where necessary, to prosecute appeals arising from these. According to the NPA Policy Manual (1999:A2), each prosecutor must ensure that a valid authorisation appears on his or her personal file to enable him or her to institute criminal proceedings. The manual further specifies that prosecutors must, at all times, act in the interest of the community and not necessarily in accordance with the wishes of the community. The primary function of the prosecutor is to assist the court in arriving at a just verdict and, in the event of a conviction, a fair sentence based on the evidence presented. The criminal process is mainly concluded in courts where these statutory articles are applied in real cases.

“The information contained in the contents of the statement is of great importance as it indicates the type of crime that was committed and gives direction to the whole investigation process. It assists the public prosecutor in deciding on a charge and in compiling the charge sheet for the trial” (Van Rooyen, 2004:50). The investigator, therefore, should know the judicial elements of rape, which must be contained in the statement of the rape victim. Apart from the fact that the investigator will use this information to direct the investigation process, the senior state prosecutor has to utilise the content to compile the charge sheet and to lead the victim during his/her examination in chief during the trial. The investigator should keep in mind that the ultimate test is to present evidence in court that proves each of the elements of the crime and to link the perpetrator with the commission of the criminal offence.

Samples A and B was asked what value the information contained in the rape victim statement has for successfully prosecuting the perpetrator. They answered as follows:

- The 20 uniform members could not contribute to the discussion of this aspect of the study. The participants stated that they did not know the answer to this question.
- Four of the investigator participants stated that the information in the statement could corroborate the evidence that derived from physical evidence found on the crime scene. It could also assist the investigating officer to search for specific physical

evidence which would have been overlooked if the information had not been contained in the rape victim statement.

- Fourteen investigators said the information in the rape victim statement is very important for prosecuting the perpetrator as the statement is used to lead the testimony of the rape victim during the trial. It can further assist to refresh the memory of the rape victim, especially about certain details and will prevent the defence from claiming that the victim is testifying falsely.
- The remaining two investigators agreed with what the other investigators had stated but in addition added that finding similarities in the description of the *modus operandi* of the accused is vital for the prosecution process as it will help to charge the accused on several cases with similar *modus operandi*.

Sample C, the prosecutors, were asked the value of the information contained in the rape victim statement for prosecuting the perpetrator and they answered as follows:

- One of the participants stated that *modus operandi* and signature information assists in conducting linkage analysis. Linkage analysis enables prosecutors to charge an accused with multiple rapes if there are similarities in the *modus operandi* and signature of the crime. It is the means of prosecuting suspected serial rapists.
- The other participant stated that the information assists in the proving of intent as an element of the crime, as confirmation of other credible evidence presented during the trial, and in contesting the alibi of the accused.

From the interviews with all the participants (in contrast to the literature reviewed) the researcher observed that none of the participants made mention of the fact that physical evidence could be identified, which is important to the prosecution process. The participants all stated that the information in the victim statement can assist the investigation process directly or indirectly in the identifying, tracing and prosecuting of the accused. The information contained in the rape victim statement can confirm physical evidence found on

the crime scene and aspects such as the “*modus operandi*”, “signature” and potential “paraphilias” of the suspect, which would not have been found without the information contained in the rape victim statement. The information that can be obtained through the checklists, as explained under 3.6 above, can assist in the successful prosecution of the perpetrator. The investigator should be in a better position to focus all available resources and time in a specific direction in successfully resolving the criminal incident.

From the case analysis it was found that:

- Fifty-two case dockets were referred to court. Seventeen of the 52 court cases were withdrawn by the Senior State Prosecutor owing to a lack of sufficient evidence to link the accused with the commission of the crime.
- From the 52 case dockets, 15 case dockets revealed that the accused were successfully prosecuted through the evidence that was presented during the trial. This means that sufficient evidence was available to prove each of the elements of the crime of rape, as well as successfully link the accused with the commission of the crime.
- Seven of the 52 court cases were formally withdrawn by the victim in court. Criminal proceedings were therefore stopped by the victim, even if there was sufficient evidence for a conviction.
- In 13 of the 52 court cases the accused was acquitted because evidence in the case docket could not link the accused with the commission of the crime. There was insufficient evidence to do this.
- Out of the remaining 18 cases, 11 were closed as withdrawn by the victim before court (before someone were arrested) and 7 cases as undetected

From the literature study, interviews and case docket analysis the researcher could come to the conclusion that the information that is contained in the rape victim statement has a huge impact on the prosecution of the accused. It is therefore imperative that the investigator keeps this aspect in mind when he/she embarks on the investigation and the subsequent interview

with the rape victim and taking down of the rape victim statement.

3.8 THE ROLE OF THE INVESTIGATING OFFICER IN THE INVESTIGATION OF RAPE

Marais (1988:208) states that “success can only be obtained in court if the investigation has been prepared thoroughly and evidence presented effectively; this means that the ultimate intent of the investigator should be to submit the evidence which was obtained during the investigation process in court during the trial”. This means that it remains the responsibility of the investigating officer to conduct a thorough and professional investigation in every rape case.

Caldwell (1965:321) stresses the importance of the investigator supporting the prosecutor in the prosecution process when he remarks that “the successful prosecution of criminals depends to a great extent on the skill and efficiency of those who conduct the criminal investigation”.

Van Rooyen (2004:250) argues that “the primary function of the investigator is to testify about the information and facts and the manner in which he or she discovers them: accurately, completely and clearly”. The argument is based on the fact that the ultimate test for the findings of the criminal investigator is that they should stand up in court. The degree to which a case is fully and effectively investigated and possible deficiencies of the case are all revealed in court. In the witness box, the expertise and credibility of the investigator, or possibly their poor judgement or illogical reasoning, are revealed.

National Instruction 2/1998 sets a guideline on the role of the investigating officer in rape cases:

- As far as possible, take charge of the investigation. Where the investigator cannot attend to the investigation immediately he/she must give instructions by telephone to

a member attending to the victim and/or crime scene.

- The investigating officer must explain his/her role in the investigation and the subsequent procedures which the victim will have to undergo, to the victim.
- Always keep the victim informed of the progress in the case. Even if there is no positive progress to report, the victim will feel reassured that his/her case has not been “forgotten” if regular reports are made to the victim.
- An in-depth statement should be taken from the victim.
- The importance of the preservation of evidence on the victim and the crime scene should be emphasised to the victim.
- Provide victim assistance.

Samples A and B was asked what role the investigating officer plays in the investigation of rape cases and their responses were as follows:

- The 20 uniform participants said that they only take the victim statement and play no role in the investigation process. According to them, only the investigating officer plays a role in the investigation process.
- Thirteen of the 20 detective participants stated that their role is to conduct the investigation in such a manner that the suspect is identified, traced and prosecuted successfully in court.
- The seven remaining detective participants said that it is their role to take proper statements, assist the victim through the whole process, and to see the case successfully through the prosecution process in order to convict and sentence the accused. The participants further touched on practical aspects as depicted in National Instruction 2/1998, although not all aspects were mentioned.

Sample C, the prosecutor participants, were asked what role the investigating officer plays within the investigating process and their answers were as follows:

- Both prosecutors stated that the investigating officer plays a vital role in the process

as the prosecutor can only present evidence during the trial. The investigating officer is ultimately responsible for the identification, collection, and interpretation and submission of the evidence. They made it clear that they could only introduce evidence that the investigating officer supplies to them for prosecution purposes.

From the literature study and the interviews the researcher came to the conclusion that the investigating officers fulfil their role in the investigation of rape cases. No tasks were mentioned in the interviews that were not covered in the literature study. The reality is that statements that have to be re-taken from victims and information that might have gone missing during the initial interview could complicate the task of the investigator tremendously. The investigating officer therefore plays the additional role of recovering possible lost information and evidence.

3.9 SHORTCOMINGS

The 20 uniform participants were not questioned on this aspect of the study.

From the interviews of the 20 detective participants the following shortcomings were identified in the successful investigation of rape cases.

- Four participants stated that poor statement taking and a lack of investigator interest in the work involved in attending to the crime scene lead to the fact that rape cases are not investigated successfully.
- Five participants listed a lack of communication between investigators as a shortcoming. According to them, different investigators often search for the same perpetrator, yet they are not aware of this, or they do not coordinate their efforts and actions.
- Three participants stated that investigating officers do not attend to rape crime scenes, which results in the unsuccessful investigation of rape cases.
- Two participants stated that insufficient victim statements that do not contain all the elements of the crime and do not provide enough information are the reason that rape

cases are not prosecuted successfully.

- A lack of knowledge on the part of the uniform members taking down the rape victim statement was given as a shortcoming by one respondent.
- Five participants stated that a general lack of skills on how to handle a rape victim and how to conduct a rape investigation was the reason that rape investigations are unsuccessful.

The prosecutor participants, Sample C, were asked what shortcomings they identified in the investigation of rape cases and their answers were as follows:

- Both participants stated that investigators do not always submit sufficient evidence to link the perpetrator with the commission of the crime. One prosecutor stated that to a lesser extent investigators do not always know when evidence is admissible and when not. This leads to a situation where available evidence cannot always be introduced because of its inadmissibility, which impacts negatively on the prosecution process and the manner in which the prosecution wants to present the State's case.

From the case analysis the following shortcomings were identified:

- Seventeen case dockets were withdrawn in court owing to insufficient evidence. Inscriptions were made by the public prosecutors that the contents of the statements of the rape victim were insufficient and that the statements had to be re-taken. Retaken statements were found in these dockets.
- Eleven case dockets were withdrawn by the victim before any one was arrested (in the beginning of the investigation) after the investigating officer wanted to re-take her statement because the senior public prosecutor had instructed them to re-take the statement because the statement was poorly taken and insufficient. No one was thus charged for the alleged crimes.
- Nine cases were closed by the detective commander as undetected because no

positive information could be found owing to a lack of information in the rape victim statement that could be used to identify the perpetrator.

3.10 STEPS TO RECTIFY SHORTCOMINGS

The 20 uniform participants, Sample A, were not questioned on this aspect of the study.

The 20 detective participants, Sample B, suggested the following to address the shortcomings:

- Seven participants recommended that detectives and uniform members should receive better training in the handling of rape victims, to better their interviewing skills.
- Nine participants stated that commanders should be trained on how to guide the investigation process of rape cases, how to give guidance and in-service training in statement taking, and how to see to it that investigators and members take down sufficient statements from rape victims.
- Four participants recommended that better training material be made available for general detectives for improving their statement-taking skills in rape cases.

The prosecutor participants, Sample C, were asked how the shortcomings could be rectified and their answers were as follows:

- One participant stated that investigators should utilise the information contained in the rape victim statement more productively in order to cover all the elements of the crime and to identify, trace and prosecute the perpetrator.
- One prosecutor stated that investigators should from the outset of the investigation process keep in mind that the results of the whole investigation process must be tested in the prosecution process. If the result is positive, only then could a conviction be obtained.

3.11 SUMMARY

The prosecution process flows from the investigation process. This means that from the outset of the investigation when the investigator is summoned to the crime scene and obtains the first information of an alleged rape, the investigator has to keep in mind that the evidence must ultimately be presented in court. The interview and particularly the statement of the rape victim therefore need to be completed as thoroughly as possible. The rape victim statement should be factual and contain as much information as possible about the alleged rape, so as to enable the investigator to utilise the information to confirm the investigation hypothesis, as well as to guide the whole investigation process and all the available resources to identify, trace and successfully prosecute the perpetrator. It is therefore of the utmost importance that the rape victim be interviewed with respect and empathy through a systematically planned process.

Ultimately through utilising this information the investigating officer has to submit sufficient evidence to prove each of the elements of the crime in court during the trial, and in addition link the accused with the commission of the crime to solve the case successfully. In the last chapter the researcher presents the main findings, recommendations and conclusions of the research.

CHAPTER 4

FINDINGS, RECOMMENDATIONS AND CONCLUSION

4.1 INTRODUCTION

The aim of the research was to establish the value of the information contained in the rape victim statement. This was achieved by identifying what information should be included in the statement to ensure the completeness of the statement. The researcher attempted to achieve this aim by utilising data retrieved from a review of current literature, interviews conducted with a representative sample of detectives and uniform members, interviews with public prosecutors of the Sexual Offences Court and the analysis of different rape case dockets. The findings made by the researcher are described below. Thereafter, the chapter provides recommendations for future training in obtaining rape victim statements as well as recommendations for future research. The chapter ends with conclusions drawn from the study.

4.2 FINDINGS

The researcher made findings in regard to the research questions, which are considered to be primary findings, as well as secondary findings. Both sets of findings are discussed below.

4.2.1 Primary Findings Regarding the Research Questions

The following primary findings were made in answer to the research questions.

4.2.1.1 Research question 1: What is a statement?

According to the literature study, interviews and case analysis, a statement is a legal narrative description of events related to a crime. It is a formal, detailed account of the incident and it is the person's account of what took place during the incident. The information that is contained in the body of the statement is crucial to the investigation and prosecution process. It is a recollection of information of the person from whom it was obtained. If other

information is later recalled, an additional statement can be obtained from that particular person.

4.2.1.2 Research question 2: What is the value of the information contained in the rape victim statement?

The aim of the research was to establish the value of the information contained in the rape victim statement. To answer the research question adequately the researcher focused on the value of the information and divided it into three categories; namely, to identify, trace and prosecute the perpetrator.

A. Identification

Literature define identity as a uniqueness and state that identification rests on the theory that everything is unique in the universe in that it has certain distinctive individual as well as class properties. According to the authors, it is important to understand that identification involves determining whether the witness has a true picture of the events, with the main objective of accurately testing whether the witness has the ability to recognise the offender.

During the interviews, it became clear that Samples A and B and the prosecutor participants agreed with the views that came out of the literature study. They highlighted the following aspects of the identification of the perpetrator:

- The rape victim should be asked if he/she knows the perpetrator in order to identify the perpetrator.
- The rape victim should be asked to describe the perpetrator so as to enable informants to identify the perpetrator.
- The rape victim should be asked to describe the perpetrator for the compiling of an ID-kit of the perpetrator. The ID-kit could then be published to assist in the identification of the perpetrator.
- The *modus operandi* information from the rape victim statement is valuable in the

- identification of the perpetrator, especially if the perpetrator has a history of similar sexual activity.
- Signature information from the statement is even more compelling as it goes beyond the manner in which the criminal incident is committed and reveals a unique signature in the commission of the criminal incident.
 - The information in the rape victim statement assists in the direction of all available physical and human resources in the investigation process. It assists in identifying a possible individual from a group of suspects, because the nature of the incident directs the process of identification.
 - The information in the rape victim statement can be used to profile the perpetrator. The race, gender, age, height, sex, language, possible paraphilias, *modus operandi*, signature, and victimology of the perpetrator and geographical information of the crime scene constitute information that can be utilised in compiling an offender profile which will assist in the identification of the perpetrator.
 - The information will assist in linkage analysis, which is predominantly used in identifying serial rapists and to eliminate possible copy-cat perpetrators when a serial rapist is being trialled. Without detailed information in the rape victim statement, the accused could, whilst on trial, claim that the “real” perpetrator is still at large when a copy-cat rapist tries to de-rail the prosecution process. The information in the rape victim statement is vital in identifying, and distinguishing between, a single perpetrator, serial rapist and a copy-cat perpetrator.

The case docket analysis revealed that ID-kits could be compiled through the facial description of the perpetrator by the rape victim. Arrests were made, after the ID-kits were published with a press release which resulted in the identification of the perpetrator through information from the community. Collaborative evidence was obtained through DNA results and one perpetrator was positively identified at an identification parade by the rape victim

after his arrest. This meant that the perpetrator could be identified through the description of the perpetrator in the rape victim statement in practice.

B. Tracing

‘Tracing’ is defined, according to the *Oxford Advanced Learner’s Dictionary* (2007:1567), as to track, find or to follow the movements of someone or something.

During the interviews, it became apparent that the uniform participants, Sample A, had no idea how the perpetrator is traced and stated the following:

- The rape victim could assist in the tracing of the perpetrator, as he/she should be able to identify the perpetrator and should know where he/she works or stays.
- The rape victim should be asked to be on the lookout for the perpetrator and contact the investigator as soon as he/she saw the perpetrator or could identify where he/she stayed or worked.

The detective participants, Sample B, agreed with the views that emerged from the literature study. They highlighted the following aspects of the tracing of the perpetrator:

- The ID-kit could be used to trace the perpetrator by publishing it in the media. The ID-kit is compiled through the information in the rape victim statement as well as from a physical description of the perpetrator provided by the victim or other witnesses. Members of the community would then be asked to call the investigating officer with information on the identity and whereabouts of the perpetrator. This information could lead to the tracing of the perpetrator.
- The *modus operandi* and signature information from the rape victim statement is valuable in the identification of the perpetrator, especially if the perpetrator has a history of similar sexual activity. A case docket analysis could be carried out on previous convictions, which will reveal addresses or accomplices that can be visited to trace the perpetrator. Even court dates of outstanding, pending trial case dockets

will give an indication of where and when the perpetrator would appear if he/she were let out on bail or could act as a warning so as to affect an arrest.

- The information in the rape victim statement could assist in directing all available physical and human resources in tracing the perpetrator after identification. The information in the rape victim statement must be utilised to profile the perpetrator in order to identify known areas of operation (hunting ground) of the perpetrator and rape incidents, which will direct observation duties to identified locations and informants that might have knowledge of the perpetrator's movements, to trace the perpetrator.

The fact that Sample B could not contribute other information or steps in the tracing of the perpetrator that was not covered by the literature suggests that they might be stagnating in practice.

The case docket analysis revealed that the perpetrator could be traced in practice through the utilisation of the ID-kits, which is compiled through the information from the rape victim statement.

The detective participants stated that the perpetrator could be traced through the utilisation of the ID-kits and the case docket analysis proved that this could be done in practice. The researcher could therefore conclude that the information contained in the statement of the rape victim is vital in the compilation of a ID-kit which is an important tool in the tracing of the perpetrator.

C. Prosecution

'Prosecution', as defined by the *Oxford Advanced Learner's Dictionary* (2007:1167), is the process of trying to prove in court that somebody is guilty of a crime.

According to the literature, the information contained in the contents of the statement is of great importance as it indicates the type of crime that was committed. It further assists the public prosecutor in deciding on a charge as well as in compiling the charge sheet for the trial.

The investigator therefore should know the judicial elements of rape which must be contained in the statement of the rape victim. Apart from the fact that the investigator will use this information to direct the investigation process, the senior state prosecutor has to utilise the content to compile the charge sheet and to lead the victim during his/her examination in chief during the trial. The investigator should keep in mind that the ultimate test is to present evidence in court that proves each of the elements of the crime and to link the perpetrator with the committing of the criminal offence.

During the interviews the uniform members, Sample A, could not contribute to the discussion of this aspect of the study. The participants stated that they did not know the answer to this question.

The detective participants, Sample B, highlighted the following aspects of the prosecution of the perpetrator:

- The information in the statement could corroborate the evidence that derives from physical evidence found on the crime scene. It could also assist the investigating officer to search for specific physical evidence which would have been overlooked if the information had not been contained in the rape victim statement.
- The information in the rape victim statement is very important for prosecuting the perpetrator as the statement is used to lead the testimony of the rape victim during the trial. It further assists to refresh the memory of the rape victim about certain detail and will prevent the defence from arguing that the victim is testifying falsely.
- Finding similarities in the evidence of the *modus operandi* and signature information

assists in conducting linkage analysis. Linkage analysis enables prosecutors to charge an accused with multiple rapes if there are similarities in the *modus operandi* and signature of the crime. It is the means of prosecuting suspected serial rapists.

- The prosecutor participants agreed with the detective participants in terms of the similarities in the evidence of the *modus operandi* and signature information which assists in conducting linkage analysis. In addition they however added that the information in the rape victim statement assists in the proving of intent as an element of the crime, as confirmation of other credible evidence presented during the trial, and in contesting the alibi of the accused.

From the interviews with all the participants in comparison with the literature reviewed the researcher observed that none of the participants made mention of the fact that physical evidence could be identified, which is important to the prosecution process. The participants all stated that the information in the victim statement can assist the investigation process directly or indirectly in identifying, tracing and prosecuting the accused. The information contained in the rape victim statement can confirm physical evidence found on the crime scene and aspects such as “modus operandi”, “signature” and “paraphilias”, which might not have been found if it were not for the information contained in the rape victim statement.

The case docket analysis revealed that the perpetrator could be prosecuted in practice.

- Eighteen dockets (26%) of the 70 drawn did not go to court because evidence could not be obtained to positively identify the perpetrator and the case dockets were closed as “Undetected”.
- Fifty-two case dockets were referred to court. Seventeen of the 52 court cases were withdrawn by the Senior State Prosecutor owing to a lack of sufficient evidence to link the accused with the commission of the crime.
- 33% of the dockets were withdrawn due to the fact that the public prosecutor was of opinion that the evidence was not sufficient to prosecute the perpetrator.

- From the 52 case dockets, 15 case dockets revealed that the accused were successfully prosecuted through the evidence that was presented during the trial. Sufficient evidence was available to prove each of the elements of the crime of rape, as well as successfully link the accused with the commission of the crime.
- 29% of the dockets were prosecuted successfully because the investigating officers were able to identify, trace and link the perpetrator successfully to the commission of the crime with sufficient evidence.
- Seven of the 52 court cases (14%) were formally withdrawn by the victim in court. Criminal proceedings were therefore stopped by the victim, even if there was sufficient evidence for a conviction.
- In 13 of the 52 court cases (25%) the accused was acquitted because evidence in the case docket could not link the accused with the commission of the crime. There was insufficient evidence to do this. This proves the critical evidential value of the rape victim statement in the prosecution of the perpetrator.

4.2.2 Secondary Findings

The researcher made certain other relevant findings during the research. The findings are secondary and presented below.

4.2.2.1 Forensic investigation

Literature sources consulted suggest that “forensic investigation” refers to the conducting of court-driven investigation, although the uniform and some detective participants felt that “forensic investigation” refers to the analysis of physical evidence and samples. This definition does correspond with the shorter definition of the concept. Only two detective participants knew that forensic investigation is also defined as “to conduct court-driven investigation”, and as pertaining to legal proceedings, which include the whole criminal investigation process.

The researcher came to the conclusion that scientific methods and techniques in criminal investigation are a prerequisite for an investigation to be called a forensic investigation. Criminal investigation and forensic investigation have the objective of presenting the results of the investigation in a court of law. The criminal investigator should keep this in mind when he or she embarks on an investigation. Forensic investigation is a concept within criminal investigation; however, the utilisation of the information contained in the statement of the rape victim is a method or technique used in a forensic investigation. The concepts are fundamentally related to each other.

4.2.2.2 Format of the statement

The format of the statement is of utmost importance. In this research, based on literature and interviews, it was found that the statement consists of the following components.

A. Preamble

The statement begins with a preamble. The purpose of the preamble is to identify the deponent and to be able to trace him/her at a later stage.

B. Contents

The information provided as the contents in the body of the statement is of great importance as it indicates the type of crime that was committed and gives direction to the investigation process. Sufficient information will enable the public prosecutor to decide on a criminal charge as well as compile the charge sheet for the trial. A detailed comprehensive statement must include the juridical elements of that specific crime.

C. Conclusion of the statement

The signature, thumb print or mark of the deponent, together with the name of the place, date and time at which the statement was recorded and by whom the statement was recorded, should be placed at the bottom of the statement.

The case docket analysis revealed that in practice investigators use the format of the statement suggested by the literature and the interviews. All the statements that the researcher found had the same format.

4.2.2.3 Information contained in the rape victim statement

The researcher again broke down the information that must be contained in the rape victim statement into the format as described in 4.2.2.2 above. The results recorded below were obtained from the reviewed literature, interviews and case docket analysis.

A. Preamble

The identification particulars of the witness form part of the evidence. The information that should be included at the beginning of the statement must include the interviewee's:

- Full names and surnames
- Identity/passport number, sex, age and occupation
- Residential and work address
- Telephone numbers at home and work
- Language the statement is taken down in
- Any other relevant information that can be used by the investigator

The interviews revealed that all participants knew what information should be contained in the preamble of the statement, and the case docket analysis revealed that all statements contained the details of the deponents in the preambles of the statements as prescribed by the literature.

B. Contents

From the literature it was found that the information in the statement has to cover each of the elements of the committed crime as well as link the perpetrator with the commission of the crime.

During the interviews with Sample A the following was found:

- The uniform participants include only information and details of the actual deed, but no detail or description of the suspect or anything about the physical and emotional state of the victim.

During the interviews with Sample B the following was found:

- The detective participants all include the elements of the crime, the physical and sexual behaviour of the suspect as well as of the victim, and lastly a detailed description of the suspect. Some of the participants also include the *modus operandi* of the suspect before the rape, during the rape and after the rape has taken place.

During their interviews the prosecutor participants stated that the following information should be contained in the contents of the statement:

- The information in the statement must cover the elements of the crime and link the perpetrator with the committing of the crime. The actions of the perpetrator must be described as thoroughly as possible as they will assist in proving intent as an element of the crime and the force or trauma of the actions will help to serve as evidence of excruciating factors when the sentencing of the perpetrator is carried out.

The case docket analysis revealed the following:

- Forty-one victim statements were taken down by investigating officers. Nine statements had to be re-taken because the statements were incomplete and the information they contained insufficient.
- Twenty-nine victim statements were taken down by uniform members. Twenty-three statements had to be re-taken owing to incomplete and insufficient information.
- A total of 32 statements from the sample of 70 cases had to be re-taken, which amounts to almost 50% of the cases. A contributing factor to this is that members do not make use of a checklist as prescribed in the literature.

The interviews with Samples A, B and C suggested that only the detective participants and the prosecutors knew that the elements of the crime should be included as information in the rape victim statement. The case docket analysis confirmed that in practice not all investigators and uniform members include the elements of the crime as information in the rape victim statement. The fact that almost 50% of the initial rape victim statements had to be re-taken is evidence of this fact. This is a serious shortcoming that needs to be addressed.

The researcher is of the opinion that utilising a checklist would not only improve the quality of the interviews of the rape victims but would also contribute to the quality of the contents of the rape victim statements. This would inevitably impact positively on the successful investigation of rape cases as more information would be extracted from the rape victims in general. This part of the study revealed a huge gap in the existing procedures.

C. Conclusion

From the literature study it was found that the oath or affirmation of the statement is administered in terms of Regulation 1 of the Justices of the Peace and Commissioners of Oaths Act, 1963, Act 16 of 1963. According to Regulation 1, before a Commissioner of Oaths administers the oath or affirmation he/she shall ask the deponent whether he or she:

- Knows and understands the contents of the declaration;
- Has any objections to taking the prescribed oath; and
- Considers the prescribed oath as binding on his or her conscience.

If the deponent acknowledges that he or she knows and understands the contents and has no objections to taking the prescribed oath, the Commissioner of Oaths may administer the oath. Should the deponent object to taking the oath, then an affirmation may be considered.

The researcher obtained information from literature that the investigator should ask the following questions:

- Are you familiar with the contents?
- Do you have any conscientious objections?
- Do you consider the oath as binding?

The researcher agrees with the questions that are stated in the Justices of the Peace and Commissioners of Oaths Act 16 of 1963, as she knows the Act from the SAPS basic training and her experience within the SAPS. The interviews with all the participants and the case docket analysis confirm that in practice investigators utilise the questions as depicted in the Justices of the Peace and Commissioners of Oath Act. The researcher is of the opinion that investigators and SAPS officials should therefore continue to use the questions as depicted in the Act as a guideline when taking statements.

As mentioned the information obtained from the literature and the interviews with all the participants allowed the researcher to come to the conclusion that none of the participants made mention of the fact that physical evidence could be identified and traced through utilising the information contained in the rape victim statement, which is important to the prosecution process. The participants all stated that the information in the victim statement can assist the investigation process directly or indirectly in identifying, tracing and prosecuting the accused. The information contained in the rape victim statement can confirm physical evidence found on the crime scene and aspects such as “*modus operandi*”, “signature” and “paraphilias”, which would not have been found if it were not for the information contained in the rape victim statement.

4.2.2.4 The role of the investigating officer in the investigation of rape

SAPS National Instruction 2 of 1998 sets guidelines on the role of the investigating officer when conducting an investigation into rape cases and specifically on taking charge of the

crime scene; explaining his or her role in the investigation and procedures to the victim; keeping the victim informed and obtaining an in-depth statement; preserving the evidence and providing victim assistance; and later testifying against the perpetrator in court.

Of the sample of 20 uniform member participants, all 20 stated that they did not play any role in the investigation process; however, the 20 detective participants mentioned their role and included the same aspects as stated in the literature reviewed. The two prosecutor participants stated that the investigator is at the centre of the rape investigation process. The success of the trial and the prosecution's case revolves around the efforts that were put in during the investigation process by the investigator. The researcher could conclude that the uniform participants did not realise that the statements they take down from the rape victim form part of the investigation and prosecution processes, how their attitude may harm the image of the SAPS and may result in the victim not having any confidence in the ability of the SAPS to investigate the case. This might subsequently lead them to withdraw their cases.

4.2.2.5 Information

“Information” is defined as all unevaluated but relative material of every description derived from observation, communication, reports, and rumours, imagery and all other sources from which evidence is processed. Information is the knowledge which the investigating officer gathers from people or objects: from simply questioning a knowledgeable and often anonymous individual, the identity of the perpetrator, and usually his motive, are revealed. Crime investigation involves gathering information, assigning it some value, sorting it, and finally utilising it to develop facts. It is therefore important to evaluate all gathered information, not only to assess whether it is relevant and conclusive but also to assess whether it has a positive meaning in revealing evidence to prove a case. It is important to compare information obtained from witnesses with gathered information so as to evaluate the validity thereof.

According to Samples A and B:

- Information consists of leads or clues that the investigating officer obtains throughout the duration of the investigation process from different sources; and
- Information on its own does not prove anything and cannot be used during the trial.

The case analysis revealed that 18 case dockets were closed as undetected because the information that was gathered was insufficient to identify the suspect and could not be used as evidence in court.

The literature, interviews and case docket analysis all confirmed that information consists of all unevaluated material and that information in itself cannot be introduced during the trial as evidence.

4.2.2.6 Intelligence

Intelligence is the first step in a repetitive cycle of the decision-making process, in which one finds or recognises a problem, need or opportunity.

From the interviews with Samples A and B it was found that:

- Intelligence is a product of information.
- Intelligence could be information, but intelligence could also be evidence, if the intelligence proved an element of the crime that was being investigated.
- The uniform participants stated that “intelligence” is as another term for “information” while some stated (50%) that they do not know what intelligence is.

The researcher concluded that the majority of the participants were not conversant with “intelligence” is a concept.

4.2.2.7 Evidence

Evidence is all relevant information that, if admissible in court, can be presented. The evidence is something that proves or disproves allegations and assertions.

Evidence, in the legal sense, includes only what is introduced at the trial. The key to evidence is that it must be presented. If evidence has not been brought before court and presented during the trial, it cannot be called evidence. The outcome of the case ultimately can depend on the presentation of evidence before a judge who will sort out the merits of the claims and defences and render a judgement.

From the interviews it was found that:

- Evidence consists of objects that could prove the commission of a crime by the accused.
- Evidence must be presented during the trial to prove each of the elements of the crime.
- Evidence is the method in which a fact is proven in court.
- Evidence has to be relevant and admissible to be introduced and it has to prove the State's case beyond reasonable doubt.

The case study revealed the following results:

- Court cases were found where the accused was convicted and sentenced. This meant that sufficient evidence was introduced during the trial to prove each of the elements of the crime, as well as to link the accused with the commission of the criminal incident.
- Cases were withdrawn by the Senior State Prosecutor owing to a lack of sufficient evidence to link the accused with the committing of the crime.
- Cases were found where the accused was acquitted. On perusing the evidence in the case docket the researcher found that insufficient evidence meant that the accused

could not be linked with the committing of the crime.

The literature review, interviews and case analysis confirmed what evidence is and what it is used for. From the literature study, the interviews and the case docket analysis it is clear that evidence must be introduced in court during the trial. The researcher could conclude that sufficient evidence has to be presented to prove each of the elements of the crime, as well as to link the perpetrator with the committing of the offence to obtain a successful conviction.

4.2.2.8 Different types of evidence

“Evidence” as a concept can be divided in two basic types:

- Direct evidence (eye witnesses, victims); and
- Circumstantial evidence (a witness placing the accused on the scene with no other possible suspect present and proving or disproving a fact directly).

Evidence can be divided into four forms:

- Testimonial evidence (oral evidence by witnesses);
- Physical evidence (murder weapon, blood, fingerprints);
- Documentary evidence (letters, typewriting, notes, printings); and
- Demonstrative evidence (sketches, photographs, sketch of scene).

During the interviews with Sample B and C it was found that:

- The forms of evidence used in the South African justice system include documentary, testimonial, physical and demonstrative evidence.

The case study revealed that documentary evidence, results of physical evidence analysis, and demonstrative evidence were available in all these case dockets. The evidence however did not always prove all the elements of the crime or linked the perpetrator with the commission of the crime.

4.2.2.9 Difference between information, intelligence and evidence

The literature, interviews and case docket analysis suggest that information is all unevaluated material, including rumours and clues or leads. Intelligence is a product of this information after it has been collected, evaluated, analysed, integrated and interpreted. Through the utilisation of intelligence, evidence can be obtained which is ultimately used to prove the truth or untruth of any alleged fact.

Evidence has to be introduced during the trial and must be relevant and admissible if it is to be presented during the trial. Information and intelligence in themselves have no evidential value but are as important as evidence to the investigation process.

Information, intelligence and evidence can be gathered from direct and indirect information sources.

4.3 RECOMMENDATIONS

The researcher makes the following recommendations that will assist investigators to include sufficient information in the rape victim statement and utilise the information contained in the rape victim statement more optimally:

4.3.1 Training

The researcher recommends that the uniform members should be trained to understand that they form part of the investigative process due to the fact that they are often first in contact with the rape victims.

During Detective Commander's courses, commanders should be sensitized to give more guidance to investigators in the investigation process as to obtain sufficient evidence to identify, trace and successfully prosecute the rape perpetrators.

The researcher recommends that when members of the Detective Services of the SAPS are trained the following should be part of their training:

- Investigators should be taught the concept of forensic investigation.
- Investigators should be taught how to obtain more descriptive and complete rape victim statements.
- Investigators should be trained in interviewing skills because this will ensure that more information is obtained from the rape victim.
- Investigators should be given a checklist to make use of in interviewing the victim and taking down the rape victim statement. The researcher is of the opinion that such a checklist would not only improve the quality of the interviews of the rape victims but also contribute to the quality of the statements of the rape victims.
- Investigators should be taught that the information in the rape victim statement must cover all elements of the crime and link the perpetrator with the commission of the criminal incident.
- The importance of the value of the information contained in the rape victim statement should be stressed during detective learner programmes and sexual offence courses.

4.3.2 Research

The researcher recommends that more research should be conducted into assessing whether the interview of the rape victim should be conducted by an investigating officer with the assistance of a psychologist. This will help to obtain more detailed statements and will assist in meeting the psychological needs of the rape victim. The researcher is of the opinion that this will shorten the time it takes the rape victim to recover from the rape incident, which will assist him/her to testify more diligently during the prosecution process.

4.4 CONCLUSION

The rape victim statement should be taken down by the investigator with the aid of a checklist. This will enable the investigator to include as much information as possible. It is

important that the investigating officer does not only focus on the commission of the criminal incident but that he or she also asks questions relating to the time before the victim met the suspect, the time of meeting the suspect until the victim realised something was wrong, the beginning of the rape until the rape was finished, and lastly once the rape was finished until the suspect left the scene.

The rape victim statement must contain all elements of the crime and link the perpetrator with the commission of the criminal incident. Furthermore, the physical and emotional state of the victim should be taken into consideration when obtaining his or her statement. The investigating officer has a big role to play throughout the investigation process of the criminal case and should utilise all available information from the rape victim statement to its fullest potential. This will enable the investigating officer to identify, trace and prosecute the perpetrator successfully.

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APPENDIX 1

INTERVIEW SCHEDULE 1

THE VALUE OF THE VICTIM'S STATEMENT IN THE INVESTIGATION OF RAPE

SECTION A

1. INTRODUCTION

I am a UNISA student doing my Master's Degree in Forensic Investigation. The interview schedule is part of my research. Authorization for the research has been granted by the National Commissioner in terms of National Instruction 1/2006.

2. OBJECTIVE OF THE STUDY

The objective of my research is to establish what the value is of the information contained in the rape victim statement.

3. INSTRUCTIONS

- Participation in this study is voluntary.
- You will not be identified individually in the research and any information that you provide will be treated as confidential.
- It should take approximately one (1) hour to complete the interview schedule.
- Please answer every question in the schedule.
- Thank you for your participation in this research.

SECTION B

1. HISTORICAL INFORMATION

- 1.1 Name: and/or participants no.
Naam: en/of participants no.

- 1.2 Years of service as member/investigator?
Diensjare as lid/ondersoeker?
- 1.3 Unit:
Eenheid:
- 1.4 Qualification:
Kwalifikasie:
- 1.5 Internal Training:
Interne Opleiding:
- 1.6 Have you receive training in the investigation of rape cases?
Het jy opleiding ontvang in die ondersoek van verkragtingsake?

2. THE RAPE VICTIM STATEMENT

- 2.1 What is crime investigation?
Wat is misdaadondersoek?
- 2.2 What is forensic investigation?
Wat is forensiese ondersoek?
- 2.3 What would you say is the difference between criminal investigation and forensic investigation?
Wat sou jy sê is die verskil tussen ondersoek van misdaad en forensiese ondersoek?
- 2.4 What is rape?
Wat is verkragting?
- 2.5 How do you conduct an interview?
Hoe voer jy 'n onderhoud?
- 2.6 Are there specific steps that you make use of when conducting an interview?
Yes/No
If yes, can you name them?
Maak jy van spesifieke stappe gebruik tydens onderhoud voering? Ja/Nee
Indien ja, kan jy die stappe noem?
- 2.7 How do you open an interview?

- Hoe begin jy die onderhoud?
- 2.8 What qualities should a good statement taker have?
Oor watter eienskappe moet n goeie onderhoudvoerder beskik?
- 2.9 What is a statement?
Wat is n verklaring?
- 2.10 What should the format of a statement look like?
Wat is die formaat vir 'n verklaring?
- 2.11 What are the requirements to ensure a good statement?
Hoe kan n goeie verklaring afgeneem word?

3. THE VALUE OF THE INFORMATION CONTAINED IN THE RAPE VICTIM STATEMENT

- 3.1 What is information?
Wat is inligting?
- 3.2 What is intelligence?
Wat is intelligensie?
- 3.3 What is evidence?
Wat is getuienis?
- 3.4 What is the difference between information, intelligence and evidence?
Wat is die verskil tussen inligting, intelligensie en getuienis?
- 3.5 What information should be included in the rape victim statement?
Watter inligting moet in die verkragting slagoffer se verklaring vervat word?
- 3.6 How could the information contained in the rape victim statement assist in the identification of the perpetrator?
Hoe kan die inligting in die verkragtings slagoffer se verklaring help met die identifikasie van die verdagte?
- 3.7 How could the information contained in the rape victim statement assist in the tracing of the perpetrator?
Hoe kan die inligting in die verkragtings slagoffer se verklaring help met die opsporing van die verdagte?

3.8 How could the information contained in the rape victim statement assist in the successful prosecution of the perpetrator?

Hoe kan die inligting in die verkragtings slagoffer se verklaring help met die suksesvolle vervolging van die verdagte?

3.9 What is the role of the investigating officer in the investigation of rape cases?

Wat is die rol van die ondersoekbeampte in die ondersoek van verkragting sake?

3.10 Do you think there are shortcomings in the current investigation procedure?

Yes/No

If YES, what shortcomings?

Dink jy daar is tekortkominge in die huidige ondersoek prosedure? Ja/Nee

Indien JA, wat se tekortkominge?

3.11 If YES: What steps would you recommend to address the shortcomings?

Indien JA: Watter stappe sou jy voorstel om die tekortkominge aan te spreek?

4. ADDITIONAL QUESTIONS ARISING OUT OF THE INTERVIEW

APPENDIX 2

INTERVIEW SCHEDULE 2

THE VALUE OF THE VICTIM'S STATEMENT IN THE INVESTIGATION OF RAPE

SECTION A

1. INTRODUCTION

I am a UNISA student doing my Master's Degree in Forensic Investigation. The interview schedule is part of my research. Authorization for the research has been granted by the National Commissioner in terms of National Instruction 1/2006.

2. OBJECTIVE OF THE STUDY

The objective of my research is to establish what the value is of the information contained in the rape victim statement.

3. INSTRUCTIONS

- Participation in this study is voluntary.
- You will not be identified individually in the research and any information that you provide will be treated as confidential.
- It should take approximately one (1) hour to complete the interview schedule.
- Please answer every question in the schedule.
- Thank you for your participation in this research.

SECTION B

1. HISTORICAL INFORMATION

- 1.1 Name: and/or participants no.
Naam: en/of participants no.

- 1.2 Years of service as prosecutor?
Diensjare as aanklaer?
- 1.3 At which courts did you prosecute?
By watter howe was jy werksaam?
- 1.4 Qualification:
Kwalifikasie:
- 1.5 Internal Training:
Interne Opleiding:
- 1.6 At which court are you currently prosecuting?
In watter hof kla jy huidiglik aan?

2. THE RAPE VICTIM STATEMENT

- 2.1 What is rape?
Wat is verkragting?
- 2.2 What is a statement?
Wat is n verklaring?
- 2.3 What should the format of a statement look like?
Wat is die formaat vir 'n verklaring?
- 2.4 What are the requirements to ensure a good statement?
Hoe kan n goeie verklaring afgeneem word?

3. THE VALUE OF THE INFORMATION CONTAINED IN THE RAPE VICTIM STATEMENT

- 3.1 What is evidence?
Wat is getuienis?
- 3.2 What is the difference between information, intelligence and evidence?
Wat is die verskil tussen inligting, intelligiensie en getuienis?
- 3.3 What information should be included in the rape victim statement?
Watter inligting moet in die verkragting slagoffer se verklaring vervat word?
- 3.4 How could the information contained in the rape victim statement assist in the

- identification of the perpetrator?
Hoe kan die inligting in die verkrachtings slagoffer se verklaring help met die identifikasie van die verdagte?
- 3.5 How could the information contained in the rape victim statement assist in the tracing of the perpetrator?
Hoe kan die inligting in die verkrachtings slagoffer se verklaring help met die opsporing van die verdagte?
- 3.6 How could the information contained in the rape victim statement assist in the successful prosecution of the perpetrator?
Hoe kan die inligting in die verkrachtings slagoffer se verklaring help met die suksesvolle vervolging van die verdagte?
- 3.7 What is the role of the investigating officer in the investigation of rape cases?
Wat is die rol van die ondersoekbeampte in die ondersoek van verkrachting sake?
- 3.8 Do you think there are shortcomings in the current investigation procedure?
Dink jy daar is tekortkominge in die huidige ondersoek prosedure?
Yes / Ja
No / Nee
- 3.9 If YES, what shortcomings?
Indien JA, wat se tekortkominge?
- 3.10 If YES: What steps would you recommend to address the shortcomings?
Indien JA: Watter stappe sou jy voorstel om die tekortkominge aan te spreek?

4. ADDITIONAL QUESTIONS ARISING OUT OF THE INTERVIEW