

Notes on the Topic “What do Prosecutors expect from law enforcement agencies?”

Prosecutor Martin le Roux. [5 March 2019]

The Constitution provides for the establishment of a single national prosecuting authority in the Republic structured in terms of an act of parliament.

The prosecutor has the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings. These functions embrace the expectation of a certain standard of service from a government agency responsible for enforcing the law.

A prosecutor has to exercise its functions without fear, favour or prejudice and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.

Law enforcement agencies act under the umbrella of government structures. The most important agency is probably the South African Police Services and a brief [docket] to consider a prosecution normally reach the prosecuting authority through their structures. Police investigators have to, in specialised fields such as environmental crimes, rely on other enforcement agencies.

In order to understand what a prosecutor requires, the procedural system of criminal justice in South Africa must be understood.

Some systems are inquisitorial of nature where the court or a part of the court is actively involved in investigating the facts of the case, as opposed to an adversarial system where the role of the court is primarily that of an impartial referee in a contest between the prosecution and the defence. Magistrates and judges focus on the issues of law and procedure and act as a referee in order to reach a verdict.

The prosecutor is not the investigator of the facts and has to act as the “captain” of the team of the State in this contest. The “team” consists of the law enforcement officer, the investigator, the experts, the witnesses and whoever can assist the “captain” to discharge the *onus* that rests on the State to show guilt beyond reasonable doubt.

In order to do just that the prosecutor expect a proper brief or case docket. Well-constructed statements under oath, must form the basis of the case docket presented to the prosecutor.

Generally, all evidence and information gathered during the investigation as detailed in statements, will be reviewed by the prosecutor, including anything obtained during searches.

After considering the information in the docket, the prosecutor responsible for screening the case has two options; decline to enrol the case in the absence of sufficient evidence, or draft a charge sheet and enrol the case. If the case is to be enrolled, the docket and charge sheet is given to a prosecutor with directives as to whether a plea can be taken immediately or whether the case should be postponed to allow further investigation to be conducted.

There may be cases where the police open a docket and do not detain anyone for the offence. In such instances the prosecutor receive the dockets as decision dockets and either give directives to the police about what further investigation is needed or, if they are satisfied that the evidence is sufficient to prove the case in court, arrange for a summons, warning notice or warrant of arrest for the offender to appear in court.

If further investigation is required, the prosecutor provides written directives to the police in the investigation diary portion of the docket. The directives are intended to assist the investigating officer to collect the information required for the case to go to court. Once the additional investigation has been completed, the investigating officer returns the docket to the prosecutor. In situations where the case was, previously enrolled and postponed, dockets are required to be returned to the prosecutor before the next court date.

Enrolled cases are placed on specific court rolls and remain there until finalised. However, this does not mean that a single prosecutor will have responsibility for the case from beginning to end. Prosecutors are regularly transferred between courts hence the importance of a proper constructed case docket.

Ideally, the prosecutor is expected to consult with the complainant including the law enforcement officer, before deciding on a course of action.

Prosecutors thus have to prepare for trial and in doing so have to do the following.

- (i) Evaluate the evidence in the case docket.

- (ii) Consultation with the law enforcement officer regarding the evidence, investigation, availability of witnesses and possible exhibits.
- (iii) Draft a charge sheet.
- (iv) Research the law, reported case precedents and other material necessary to support the case.
- (v) Prepare documentary evidence such as documents, reports, files, photos and section 212 statements.
- (vi) Consult with the defence about possible pleas in terms of Section 105(A) of the Criminal Procedure Act or possible admissions in terms of Section 220.
- (vii) Prepare an address to assist the court in deciding on a verdict and on an appropriate sentence, following a conviction.
- (viii) Obtain court orders as to the exhibits.

The success of any case begins with the quality of the statements as the statements forms the basis upon which the prosecutor has to make a decision. The prosecutor must be able to read and understand the statement, if hand written, care must be taken that the handwriting is legible. This is an example from a statement made by a senior law enforcement officer, as to how a statement should not read.

“According to my investigation and 23 years’ experience in the field of investigation of crime I concur with my conclusion that even without the use of photo I/D parade, Capt. Wagener, Insp Bouwer, Sgt Waters and Cst Mbambo are the CPU members who committed these crimes unless decided otherwise. I therefore request that this matter be investigated thoroughly and final decision made to finalize the matter”

In order to construct a proper statement, members of law enforcement agencies must understand the basic legal principles applicable not only to the contravention but also to the law of procedure relevant and prepare statements accordingly.

By way of example, let us deal with search and seizure. In general, Chapter 2 of the Criminal Procedure Act regulates search warrants, entering of premises and seizure of property. However, Chapter 6 of the Marine Living Resources Act enables fishery control officers to extend the search and seizure as stipulated in the Criminal Procedure Act. The justification of a particular search or seizure should to be detailed in the statement and a prosecutor expect the officers of the particular enforcement agency, to detail this in the statement. The reason is that in the post constitutional era all evidence has to be gathered in

accordance of the Constitution. Unconstitutionally obtained evidence generally is inadmissible and creates a hurdle for the prosecution to cross.

The level of skill and qualifications of members of any law enforcement agency is key to successful and unbiased investigation. All law enforcement officers must have basic skill in areas in which they operate. They should also have a basic knowledge of court procedure to know what to expect when they have to testify.

A well-trained and diligent law enforcement officer will be able to draft a detailed statement, which in turn will enable the prosecutor, to successfully guide the matter through court.

The Courts had the following to say about witnesses statements,

S v Govender 2006 (1) SACR 322 (E) “The availability to the defence of the contents of the police docket, which usually contains the statements of all potential State witnesses, has enabled accused persons to make use of such statements in order to test the credibility and/or reliability of those State witnesses who testify at the trial.”

S v Bruiners 1998 (2) SACR 432 (SE) “Die doel van 'n polisieverklaring is om besonderhede van 'n misdaad te bekom sodat daar besluit kan word of die beskuldigde vervolg moet word. Die getuieverklaring is nie om die getuie se getuienis in die hof vooruit te loop nie. Dit is vergesog om van 'n getuie te verwag om in sy getuieverklaring reeds presies dieselfde weergawe te verskaf as wat hy in die ope hof gaan getuig.”