



Road Traffic
Management Corporation

NATIONAL TRAFFIC

indaba

Durban '16



THE REINTRODUCTION OF EVIDENTIARY BREATH ALCOHOL TESTING (EBAT)

Adv. C van der Vijver

Director of Public Prosecutions (WC)

A. INTRODUCTION:

1. S v Hendricks- Highlighted challenges with:

- Specification
- Calibration
- Record Keeping
- Training

2. The judge found that breathalysers are a reliable means of testing for alcohol in a suspect, and that they should be used as a tool to “eradicate the scourge of drunk driving for the betterment of society”.

B. PROCESS THAT FOLLOWED:

HENDRICKS JUDGMENT:

1. Working Groups:
 - Specification & Calibration
 - Legislation
 - Training
 - Prosecuting Guidelines
 - Infrastructure

C. CURRENT STATUS:

1. SANS 1793: “Evidential breath analysers”
 - Subject must provide 2 breath samples
 - Temperature sensor in hose (exhaled breath measured at 34 degrees C).
2. Amendments to Regulation 332 & 332A
 - No longer list of different equipment
 - Ease the Burden of Proof
3. Prosecuting Guidelines were amended
4. NDPP issued ‘EBAT’ Guidelines
 - **APPROVAL FOR THE USE OF THE EQUIPMENT**
 - Prescribed equipment
 - Calibration prior to use
 - Proper record keeping of repairs, maintenance and calibration
 - Relevant training for operators
 - Follow operators manual
 - **THE EVIDENTIAL MATERIAL**
 - Arresting officer’s statement
 - Operators statement
 - A copy of the type approvable certificate

- A copy of the operators certificate
- The print out of the results
- The warning statement of the person

Relevant statements must include

- detail with regards to the time of arrest and the time the person was tested.
- any other signs that the person may be under the influence of alcohol;
- any other signs that the person may be under the influence of alcohol;
and
- any other relevant information.

● **ENROLMENT AND PRESENTATION OF CASE**

- Before trial dockets must adhere to the above requirements
- Disputed matters ensure availability of certified documentation.
- A blanket challenge to evidence in terms of regulations 332 and 332A is insufficient to displace the prima facie proof provided by the documentation.
- Only when the defence indicates that they will call a witness with regard to the scientific workings of EBAT will the State be required to present the evidence of an expert.
- Prima facie Proof

- **CERTIFICATES**

- Certified copy of type approval certificate prima facie evidence of complying with SANS 1793 – **copy can only be certified by National Regulator for Compulsory Specifications (NRCS) .See GG 37049 of 19 November 2013)**
- Certified copies for calibration & verification prima facie evidence

- **GENERAL**

- Prosecuting guidelines for EBAT adopted by the TCSP
- Liaise with the DPP office when uncertain.

1. Gene Louw Traffic College

- 1.1 Operating Manual

- 1.2 Curriculum for Operator's Training

- 1.3 Adopted by RTMC

- 1.4 Operators Statement

- 1.5 Information Sheet

2. National Metrology Institute of South Africa (NMISA)- calibration process

3. National Regulator for Compulsory Specifications (NRCS)- type approval certificate

4. Infrastructure- SHADOW Centre

- Video & Audio Recorded
- Record Keeping

D. THE WAY FORWARD:

1. Pilot in Western Cape (Cape Town)
2. Report at end of February 2017
3. Application to the relevant DPP to use EBAT
4. Do not call an expert unnecessary
5. Prima Facie Proof

SV Veldhuizen 1983 (3) SA 413(A) at 416 G-H:

“The words ‘prima facie evidence’ cannot be brushed aside or minimised. As used in this section they mean that the judicial officer will accept the evidence as prima facie proof of the issue and the absence of other credible evidence that prima facie proof will become conclusive proof” (my underlining)

Also see: Terry v Senator Versekeringsmaatskapy Bpk 1984(1) SA 693 (A)

6. Rebut? – Trust Bank of Africa Ltd v Senekeal 1977 (2) SA 587(T) at 593 E-F it is stated that “merely to cast suspicion on the correctness of the facts prima facie established and mere theories or hypothetical suggestions will not avail the defendant: the defendant's answer must be based on some substantial foundation of fact”