



WHEN COPS GET IT Wrong...

As civilians, we tend to take a police officer's word as gold. Increasingly, however, we are seeing that some law enforcers are not always on the mark when it comes to certain procedures - and a lack of competence could lead to some very serious complications.

Emotions run high at accident scenes. Some things are dragged out as if in slow motion, other things seem to happen so rapidly you cannot believe they are fact. On top of all this, accident victims are placed under all sorts of obligations. Police, emergency workers, tow-truck drivers and other people all demanding information or injured people demanding attention. The victim is expected to cope with all this despite the shock and trauma of surviving a traffic accident.

Stan Bezuidenhout (An accident reconstructionist) says that the list of emotions felt by victims spans the entire gamut: surprise, disappointment, regrets, guilt even intimidation are commonly felt by accident victims, regardless of whether they were even the guilty party. Despite the vast number of accidents on South African roads, many of us have not much more knowledge than that required for an insurance claim. When victims are given instructions at an accident scene many obey without thinking, especially if shock has already set in.

This story is about how to avoid being a victim a second time. It is a story about when cops get it wrong at an accident scene, and how that can impact heavily on your ability to obtain redress afterwards.

Stan explains what to expect and, even if you are particularly sensitive, please read on. The following information could be of real assistance to you.

Considering the above, and the likelihood of you or your client having to submit an insurance claim, defend yourself against a claim or ultimately face a culpable homicide charge, we will focus specifically on what police and traffic authorities are supposed to do. Any deviation from what appears below should be reason for concern and may prejudice your (or your clients) rights. This also only ultimately applies to very serious accident scenes and / or those where there is a loss of life:

1. Firstly, the scene should be cordoned off, and no uninvolved parties allowed inside the demarcated area.
2. Only emergency personnel, official investigators and victims should be allowed in this area, while all onlookers, non-essential personnel (uninvolved police, traffic, fire and ambulance personnel not contributing or working in the scene) should be outside the demarcated area.

"The scene should NOT be cleared, cars moved, or evidence removed until ALL elements of the accident scene have been clearly marked with a permanent marking solution. Police or Traffic members making scratch-marks with a rock is not considered adequate."

3. At any very serious or fatal accident scene, the police should be in charge of the scene, since a criminal docket will likely be opened.
4. Police or traffic officers (depending on who actually handles the scene) should complete an AR form at the scene.
5. Only in very slight (Fender Bender) accidents should police or traffic officials "refer parties to the nearest police station."
6. Nothing should be moved, touched or removed unless this will promote safety, prevent additional accidents, or save a life.
7. The scene should not be cleared, cars moved, or evidence removed until all elements of the accident scene have been clearly marked with a permanent marking solution. Police or traffic officers making scratch-marks with a rock is not considered adequate.
8. Where there is a loss of life, or a major accident scene, a senior police member or a member of the SAPS Legal Criminal Records Center (LCRC) or the Forensic Unit should be in charge of the accident scene not a constable.
9. The detective for the area or for the shift might be present. In this instance, he may regulate activities at the scene.
10. At any very serious or fatal accident scene, all elements of evidence, including vehicle positions, road-surface evidence, vehicle relationships, road conditions, victim location, vehicle damage and more should be photographed by the police, or an appointed or approved investigator.
11. The police or traffic officers in charge should ensure that information about all parties, including witnesses is fully recorded, on the AR form, at the scene, before leaving or declaring the scene complete.
12. Police or traffic officers present should measure all elements of the scene accurately. Walking distances, using the heel / toe method or guessing distances will not yield an accurate rendition of the scene.

13. Where there is a suspicion of drunken driving, the police should observe the party facing the accusation, and establish whether they consider the person to be suspect of driving under the influence of an intoxicating substance.
14. Where there is reasonable suspicion (breath, slurred speech, imbalance, etc) of a driver being under the influence, the police should arrest that person, and have

his blood drawn by a district surgeon within two hours of the alleged offence.

DO NOT accept police members telling you ANY of the following, as a reason for NOT being able to charge or arrest a drunken driver

- We (the police) did not see him/her driving.
- He/she was not found behind the steering wheel of the car, while the car was idling.
- We cannot charge him/her because there is no complainant.
- Your testimony will not stand up in court, because you are involved in the accident.
- A witness has the right to refuse to testify and can therefore not be used as one.
- If we (the police) charge him/her with drunken driving his/her insurance will not pay for your damage.
- He/she did not hurt anyone or cause any property damage.
- I/we (the police) can use our discretion as to whether or not we should charge him/her.

"...even if you are right, and the law enforcement officers are completely wrong, do not fight with them. wrong or right, they have more power than you do at the scene."

Any of these reasons would be utter nonsense, since (with specific reference to each):

- a) A witness can testify to having seen a person driving a car especially if he/she was involved in the accident.
- b) The police will never be able to charge anyone if they had to see them all making accidents.
- c) In a criminal matter, the state is the complainant, and the policeman must enforce the law.
- d) any person that has seen or observed any criminal act becomes a witness including you.
- e) When you have witnessed a crime, you are a witness. You can be subpoenaed,

and even arrested and brought to testify, you do not have a choice.

- f) The law makes no reference to insurance benefits. If you agree to this, both you and the police officer are guilty of fraud against the insurance company which is a criminal offence.
- g) The law is clear: It is illegal to operate a vehicle while in a state of intoxication in excess of the legal limit. No reference is made to whom was hurt or what was damaged.
- h) Police can only use their discretion in order to establish whether a crime was committed. Once they have established this to have happened, failing to enforce the law is considered dereliction of duty, defeating the ends of justice and possibly being an accessory to the crime. All these are criminal offences themselves.

All that is well and good, but just what are you supposed to do if you had an accident and none of the above steps were taken, or important ones overlooked, skipped or simply ignored?

If you realise that police or traffic officials at an accident scene are NOT performing their jobs properly, or specifically trying to "get away from the scene as quickly as possible," you should:

- Take the name, rank, station and contact number of the officer in charge.
- Ask the officer why a certain task or function is not being performed.
- Inform the officer that the matter will be referred to his superiors for further investigation.
- Report the matter to the station or unit commander, the provincial commissioner

or director, and to the Public Protector.

• Demand feedback from them all.

Lastly, even if you are right, and the law enforcement officers are completely wrong, do not fight with them. Wrong or right, they have more power than you do at the scene. If you have been an accident victim, and you believe police did not properly handle the scene, please feel free to contact a Forensic Accident Reconstructionist, such as Stan Bezuidenhout from IBF Investigations. It is their job to reconstruct accidents from the available evidence.

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