

THE CHALLENGE OF DRUNK DRIVING ENFORCEMENT: A STUDY IN VHEMBE DISTRICT

TE MUNWANA

Email: munwanate@webmail.co.za

Cell: +27(0)72 55 35 963

ABSTRACT

The aim of the paper is to analyse the causes of non-prosecution of drunk-driving cases in the magisterial courts of Vhembe District. A case study was conducted of five magisterial courts found in the Vhembe District area. The approach was to peruse finalised case dockets of drunk driving from each magisterial court. A random sampling method was used to select case dockets, twenty from each magistrate to give a sample size of 100 cases. The results show that motorists in Vhembe District have been arrested for driving under the influence of alcohol or drugs. However, the number of prosecutions is very low, which is a cause of concern. It is concluded that there is an urgent need to develop strategies that will increase successful prosecution of those motorists who drive under the influence of alcohol in South Africa.

1 INTRODUCTION

Drunk driving is a serious social and public safety problem which is a punishable criminal offence in South Africa. The provisions on driving under the influence of alcohol and driving under the influence of drugs are found in the National Road Traffic Act (NRTA) (93 of 1996) and Criminal Procedure Act (CPA) (51 of 1977). Furthermore, Section 65 of the National Road Traffic Act defines intoxicated driving as the crime of driving a motor vehicle while impaired by either alcohol or drugs with a narcotic effect to the level that renders the driver's incapable of operating a motor vehicle safely. The provisions mean that it is illegal to drive a car with a blood alcohol content (BAC) above a certain threshold, or with drugs in the blood.

Police officers can inter alia use measures such as breath alcohol tests and eye examinations to prevent and uncover offenders driving under the influence of alcohol or drugs. It is not permitted for an individual to drive a car or other motor vehicle if they have drunk enough alcohol to have an alcohol level during or after the journey of at least 20mg per 100ml of blood or 0.1mg per litre of exhaled breath (Voas and Lacey, 2016). Anyone found to have done so may be prosecuted for driving under the influence of alcohol. The rule is based on the fact that it is not generally safe to drive with that level of alcohol in the body.

In a case of driving under the influence of alcohol, the state must prove that the accused drove a vehicle on a public road while under the influence, or while the alcohol content in the accused's blood exceeded 0,05g per 100ml (Alta Swanepoel and Associate, 2015). When these elements have been established, a court will consider, in imposing sentence, the degree to which a motorist was under the influence of alcohol, the extent to which his or her ability to drive was affected, traffic conditions at the relevant time, the type of vehicle

being driven and the actual harm or danger caused by his or her driving. It will also consider the time and place of the offence, and whether the accused is a first offender (Criminal Procedure Act, 51 of 1977).

However, the National Road Traffic Act [93 of 1996], allows one to drive if the Blood Alcohol Content (BAC), is less than 0, 5 in case of a driver or 0, 2 in case of a professional driver. This gives drivers the opportunity to take a chance and drive whilst under the influence. The offence may not involve (in this case) actual driving of the vehicle but rather include being inside the vehicle on the driver's seat, whilst the engine of such vehicle is running.

Evidence against the accused may be given by the police, the examining doctor or any person who, at the time of the alleged offence, thought the accused was under the influence (Clark, 2015). The opinions expressed in court must be qualified by reasons. For instance, the statement 'I believe he was under the influence' is not acceptable evidence, unless it is followed by an observation such as 'because he smelt strongly of liquor and his speech was slurred'.

In determining a sentence for driving with excessive alcohol in the blood, a court will consider the manner of the accused's driving at the time of the offence. Driving slowly and with exaggerated caution may be a characteristic of inebriation as erratic or reckless driving is. Imprisonment without the option of a fine is not usually imposed on a first offender, except in serious cases, such as when the accused was heavily under the influence or guilty of recklessness or gross negligence.

The number of motorists arrested is on the rise though the prosecution is declining. Clark (2015) indicated that, every year, the police arrests thousands of people in South Africa for allegedly driving under the influence of alcohol but few convictions has been recorded. According to Voas and Lacey (2016), only half of the suspects arrested are convicted of the crime of drunk-driving charges in South Africa. This is because of factors like drunken drivers bribing the police to lose dockets, blood-alcohol test results taking years to process, and a huge backlog at state laboratories resulting in magistrates then abandoning the cases. It is generally believed that the decline on prosecution is caused by identified challenges, mainly in the National Prosecuting Authority, Department of Justice as well as the enforcement agencies.

2. OBJECTIVE OF THE STUDY

The main objective is to determine which factors influence the absence of prosecutions in respect of drunk drivers in the Vhembe District. Identifying the factors affecting the decision on prosecution of drunk driving cases can help for future planning and to find alternative ways to improve on the low rate of drunk driving prosecutions. In this study two question arose, namely: what causes *nil* prosecuting of drunk driving cases and what could be done to improve the current situation.

3. CASE STUDY AREA

The case study was selected from Vhembe District, in Limpopo Province. The following magisterial courts were visited: -

- Thohoyandou magistrate court in Thohoyandou;
- Musina magistrate court in Musina;

- Louis Trichardt magistrate court in Makhado;
- Malamulele magistrate court in Malamulele; and
- Mutale Magistrate court in Tshilamba, Mutale.

4. RESEARCH METHODOLOGY

4.1. Methodology

To pursue the objective of the study both qualitative and quantitative methods are applied.

The conduct of the study was as follows:

Step 1: General literature review to understand the main objective of the study, namely identifying the factors that causes or influences nil or non-prosecution of drunk-driving cases and possible steps or remedies to improve the situation.

Step 2: Investigating the current situation regarding the cases of drunk driving in the district; and

Step 3: Suggesting measures based on the analysis of the cases.

4.2. Data collection

A review of case dockets in the magisterial district courts was conducted in five courts. A total number of 100 [n=100] finalised case dockets were reviewed, twenty (n=20) cases per magisterial court. The intention was to interview police officers, prosecutors and presiding officers. They however declined, citing legal implications of the cases both finalised and pending as they are subjected to a review. This means that the finding of this paper should be approached with caution as it might not be a true reflection of the cause of *nil* prosecution of drunk driving cases in the district. Reviewed cases were also limited to the decision but not on the merit or remarks of the presiding officers as the issue of *subjuditcur* has been raised.

5. RESULTS

In an attempt to examine the factors that causes nil or non-prosecution of drunk cases in Vhembe District, the following variables, as shown in Figure 1, were investigate. These are: 1. Struck off the roll. 2. Review of cases 3. Information in the dockets 4. Medical personnel and tools to draw blood.

Table 1: Factors Influencing Nil or Non- prosecution of drunk driving cases

No	TM	MM	LTM	MLM	MTM	TOTAL	REASONS
n=20	6	7	3	2	4	22	Struck off the roll
n=20	2	5	5	4	3	19	Review of cases
n=20	4	2	2	7	6	21	Information in the dockets
n=20	5	5	5	4	2	21	Medical personnel and tools to draw blood
n=20	3	1	5	3	5	17	Successful prosecution
n=100	20	20	20	20	20	100	

TM=Thohoyandou Magistrate, MM=Musina Magistrate, LTM=Louis Trichardt Magistrate, MLM=Malamulele Magistrate, MTM=Mutale Magistrate.

Table 2: Struck off the roll

No	TM	MM	LTM	MLM	MTM	TOTAL	REASONS
n=20	6	7	3	2	4	22	Struck off the roll

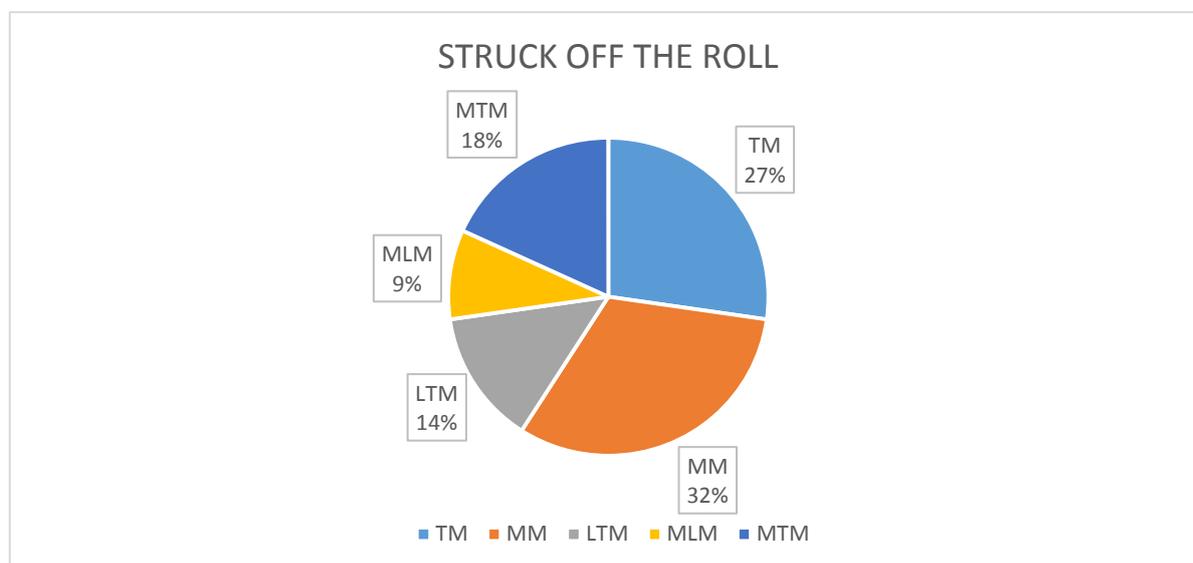


Figure 1: Struck off the roll

As depicted in Figure 1, struck off the roll is one of the reasons presiding officers often use in cases referred for prosecution. Some of the reasons for struck off the roll includes amongst others, lack sufficient information, a case has been postponed several times or some error has been made, mostly court dates or discrepancies in writing important information regarding the offenders.

The results show that 22% of the total number (n=20) has been struck off the roll in five courts in the study area or Vhembe District. The Musina magistrate court has the highest number (32%) of cases which were struck off the roll followed by the Thohoyandou magistrates court with 27% of the total cases struck off the roll. Once a case has been struck off the roll, it means that the investigating officer should consider the issue raised by the presiding officer and rectify the mistakes made. The case may then be enrolled for new trial date. However, some might not be enrolled, resulting in *nil* prosecution.

The review of cases is done on a finalised case i.e. in which the presiding officers have decided whether the offender was guilty or not. Some cases have the status of automatic review whilst others must be referred for a review. Reviewed cases might come back with different sanctions, for example, if a person is found guilty and sentenced to, say five years without the option of fine or parole, after review, the results might be different in that the sentence might be reduced or increased.

Table 3: Review of cases

No	TM	MM	LTM	MLM	MTM	TOTAL	REASONS
n=20	2	5	5	4	3	19	Review of cases

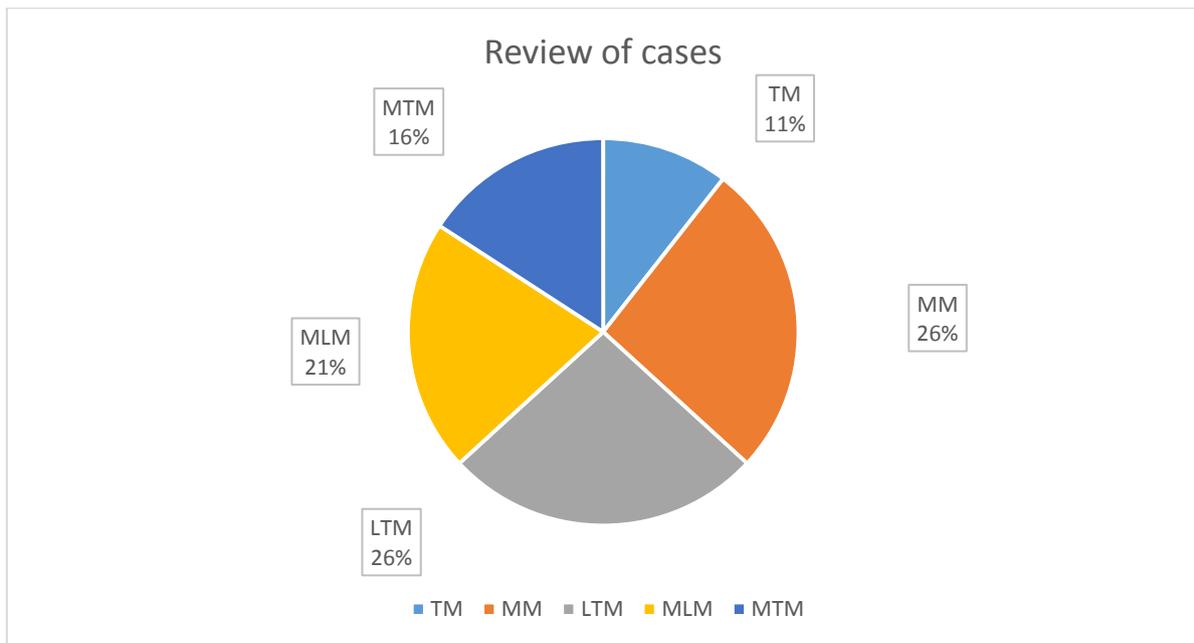


Figure 2: Review of cases

The results showed that Musina and Louis Trichardt magistrate's courts have the highest number (26%) of review cases followed by Malamulele (21%) and Mutale (16%). Thohoyandou has the least number (11%) of reviewed cases. Reviewed cases might come with different results, ordering the prosecuting authority to further investigate the matter, withdraw the matter or stop prosecuting the matter.

Table 4: Information on the dockets

No	TM	MM	LTM	MLM	MTM	TOTAL	REASONS
n=20	4	2	2	7	6	21	Information in the dockets

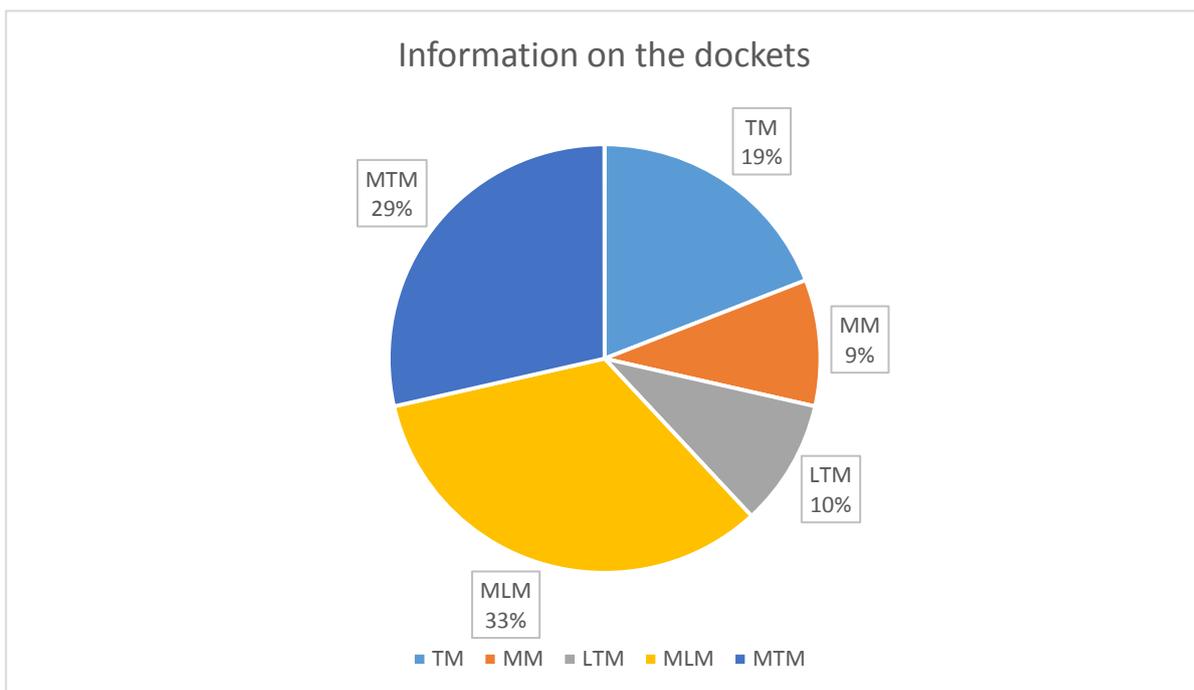


Figure 3: Information on the dockets

Information on the dockets entails amongst others, first information of the crime, such as medical report, statement and particulars of the offenders. In the case of drunk driving, medical report or blood results from the medical doctors are important. Of the 20 case dockets perused, 33% of Malamulele's case dockets were not prosecuted because of a lack of information in the dockets. This was followed by Mutale with 29% and Thohoyandou with 19% of cases that lack information in the dockets. Musina has the least number (9%) followed by Thohoyandou at 19% of case dockets that were not prosecuted due to lack of information in the dockets.

Table 5: Medical personnel and tools to draw blood

No	TM	MM	LTM	MLM	MTM	TOTAL	REASONS
n=20	5	5	5	4	2	21	Medical personnel and tool

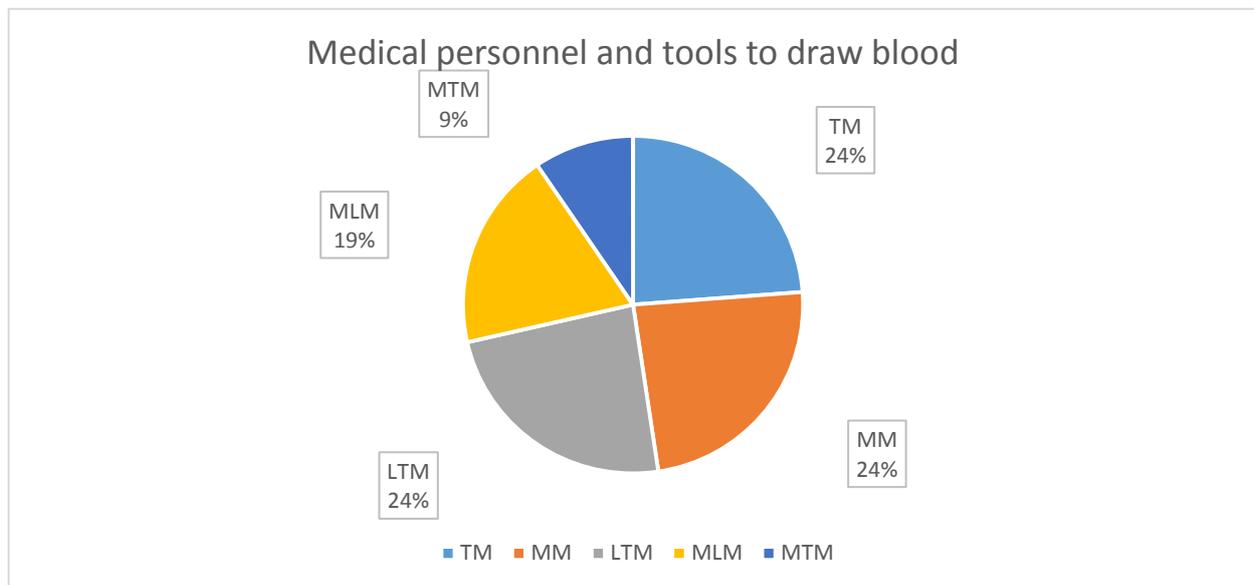


Figure 4: Medical personnel and equipment to draw blood

Medical personnel are doctors and registered nurses who draw blood samples from the suspect and this must be done within two hours of such arrest. Medical tools are those tools used by medical personnel and peace officers in the process of drawing blood from the suspect. This forms part of the contents of the dockets and statements. The results show that 24% of reviewed cases were not prosecuted due to lack of medical personnel or medical tools. This means that when the suspect was arrested blood samples were not drawn because of either lack of medical tools or non-availability of doctors or registered nurses within two hours of the arrest. The least of similar results were at Mutale (9%) followed by Malamulele with 19% of cases which were not prosecuted due to non-availability of doctors or medical tools. Once the case dockets contain such discrepancies, the presiding officers often refuses to prosecute.

Table 6: Successful prosecution

No	TM	MM	LTM	MLM	MTM	TOTAL	REASONS
n=20	3	1	5	3	5	17	Successful prosecution

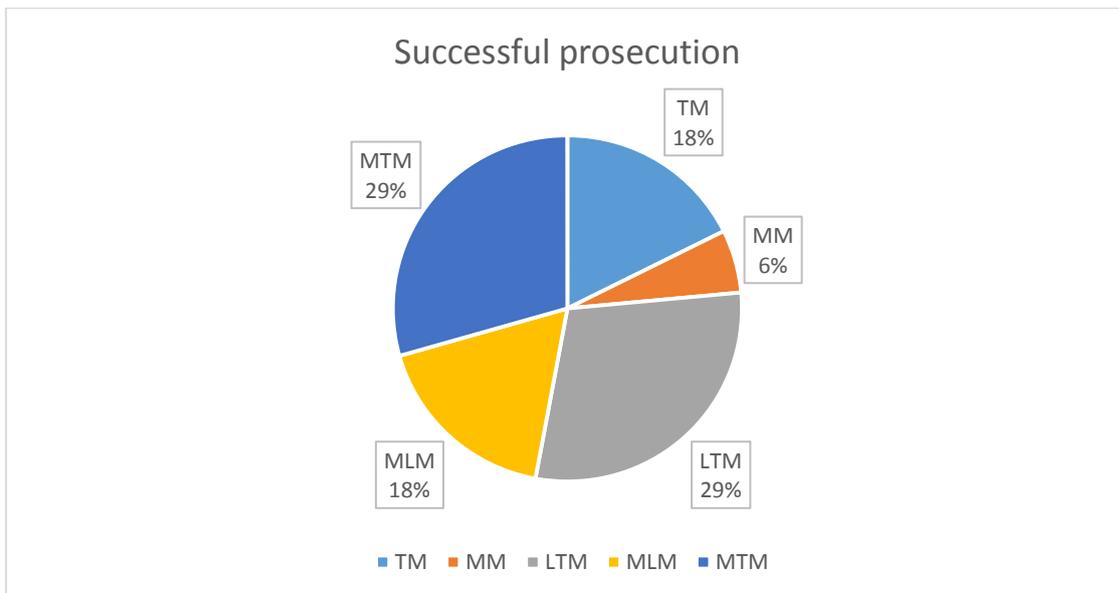


Figure 5: Successful prosecution

Successful prosecution of drunk-driving cases entails amongst other things that cases are brought to court and prosecuted. This depend entirely on the evidence and the quality of statements as well as investigation that has been put in for successful prosecution of the case. Successful prosecution means that the offender is found guilty and punished accordingly. This may mean the offender is given a suspended sentence, fines or both by presiding officers.

Reviewed cases show the Mutale magistrate’s court; and the Louis Trichardt magistrate’s court having the highest number (29%) of successful prosecutions, followed by Thohoyandou and Malamulele (18%) magistrate’s courts. The Musina magistrate’s court recorded (6%) the least successful prosecutions.

6. CONCLUSION

To successfully identify, prosecute, sentence, supervise, and ultimately, rehabilitate persistent drunk driving offenders, a comprehensive, systemic approach is necessary. Many offenders are habitual who sometimes need professional assistance. The results revealed that a high number of *nil* prosecution has been attributed to a variety of reasons. In most cases, dockets are struck off the roll due to the poor quality of statements and investigation made by investigation officers. Other contributing factors are lack of resources, delay in the results of blood taken from the suspect that lead the presiding officers to abandon the cases. In some instances, registered nurses or doctors are not available within two hours of initial arrest of the suspect, resulting in the case not to stand for prosecution. Police officers are also a factor in declining of prosecution as most of them fail basic principles of reading the suspect’s his/her rights, completing dockets and taking relevant statements for the case. In the light of the above, it is recommended that proper training for investigating officers and provision of resources might increase the number of drunk-driving cases prosecuted.

7. REFERENCES

Alta Swanepoel and Associates CC, 2015. A compilation of the National Road Traffic Act, 1996. Pretoria. South Africa.

Clark, K, 2015. Hard-core Drunk Driving Law enforcement Guide: Institute of Police Technology and Management. Jackson Ville. Florida.

Global Road Safety Partnership, 2007. Drink and Driving: A Road Safety Manual for Decision-makers and Practitioners. Geneva. Switzerland.

Republic of South Africa, 1977. Criminal Procedure Act. Government Printers, South Africa.

Republic of South Africa, 2015. Government Gazette No 38429, Department of Transport, Publication for comments: National Road Traffic Bill, 2015.

Voas, RB and Lacey JH, 2016. Issues in the Enforcement of impaired Driving Laws in the United States. Environmental Research Institute of Michigan (ERkf). USA.