



27 November 2018

ARTICLE: DRIVING UNDER THE INFLUENCE AND THE LAW

Introduction

With the festive season fast approaching, it is becoming increasingly important for drivers to be extra cautious on our roads. In 2017 approximately 14 050 people were killed as a result of road accidents within the Republic of South Africa. This amounts to a staggering 38 deaths a day. Furthermore, Easter 2018 resulted in a further 510 deaths over the 10 day period. In addition to the death toll, recent crime statistics published indicate that there have been over 2000 motorists arrested for drunk driving between July and September in Johannesburg alone. The need to create awareness is clearly of paramount importance and grasping an understanding of the consequences and processes of the law pertaining to a charge of driving under the influence of alcohol is a good place to start.

National Road Traffic Act 93 of 1996

Section 65 of the National Road Traffic Act 93 of 1996 (the “NRA”) regulates the prohibitions on driving whilst under the influence. The NRA provides that nobody may drive or occupy the driver’s seat of a motor vehicle, with the engine running, on a public road within the Republic of South Africa if your blood alcohol level is, or exceeds, 0.05 grams per 100 millilitres. The act differentiates between a “normal driver” and a

“professional driver”, the latter having a stricter requirement of 0.02 grams per 100 millilitres. This equates to having a breath alcohol concentration level of less than 0,24 milligrams per 1 000 millilitres, which would entail your average person consuming no more than 1 unit of alcohol per hour.

Know Your Rights

In the event that you are stopped at a roadblock it is of utmost importance that you understand your rights in the given situation:

- You are entitled to ask the officer for his or her certificate of appointment containing the details of the officer in terms of Section 334 (2) (a) of the Criminal Procedure Act 51 of 1977 (the “CPA”) as well as the right to ask the purpose of the road block. Should you have concerns over the authenticity of the road block you should request to be transported to the local police station.
- You are required to identify yourself as the driver of the vehicle and supply proof of your driver’s licence and comply with all reasonable instructions from the police official, including giving your co-operation should a Breathalyzer test be conducted.
- Should you be detained or arrested you are entitled to be informed of your Constitutional Rights, such as your right to remain silent, as well as the consequences of not remaining silent.
- In no circumstance can you be forced through duress or undue influence to make an admission or confession which could be used in evidence against you.
- You have the right to be brought before a court within 48 hours after the arrest. However, it should be noted that this excludes weekends and public holidays.
- You have the right to legal representation and should be informed thereof by the arresting officer.

The Correct Procedure

Should the police official deem it necessary, he or she will then take you into custody at the closest police station. You will then be subject to a blood alcohol level test. Section 37(2)(a) of the CPA states that only authorised personnel may complete this procedure which includes medical officers of a prison, district surgeons or, if requested to do so by a police official, a registered medical practitioner or a registered nurse. Upon completion the sample will be submitted for scientific analysis. Each step of the process should be accounted for by the relevant parties in the process to ensure the validity and reliability of the sample. The analysis is required to take place within two hours of the alleged crime. A police docket will then be opened, and an investigating officer will be appointed in the matter, whereafter you should be brought before court within 48 hours. However, an accused is entitled to apply for bail prior to the first appearance and can be released by a police official of or above the rank of non-commissioned officer after consultation with the investigating officer, or by the Prosecutor. Whether or not bail is granted, as well as the amount thereof, will be dependent on factors such as the nature of the crime, the interests of justice, the existence of a previous charge or conviction and the financial position of the accused.

The Sentence

The State Prosecutor will have to prove the offence beyond reasonable doubt. Should the State succeed with their charge you could be sentenced to up to 6 years imprisonment, dependant on the circumstances, or alternatively a substantial fine could be imposed. The latter being the more probable outcome for a first time offender. In *S v Serabo* 2002 (1) SACR 391 (E) the court said that sentences for first offenders were fines in the range of R4 000-R6 000 with the alternative of imprisonment generally not exceeding eight months. In *S v Wilson* 2001 (1) SACR 253 (T) the court emphasized the importance of license suspension as a deterrent. The NRA provides that on conviction of certain offences your licence and permit will be suspended for a minimum period. The offences refer specifically to:

- 1) Death or serious injury to a person
- 2) In the case of a conviction for an offence where:
 - (i) A speed in excess of 30 kilometers per hour over the prescribed general speed limit in an urban area was recorded; or
 - (ii) A speed in excess of 40 kilometers per hour over the prescribed general speed limit outside an urban area or on a freeway was recorded
- 3) Where the court finds that the offence was committed by driving recklessly
- 4) Driving while under the influence of intoxicating liquor or drug having narcotic effect, or with excessive amount of alcohol in blood or breath.

In such instances the minimum period of suspension is determined as follows:

- (i) A first offence, for a period of at least six months
- (ii) A second offence, for a period of at least five years
- (iii) A third or subsequent offence, for a period of at least ten years, calculated from the date of sentence.

In *S v Greef* 2014 (1) SACR 74 (WCC) the court highlighted that in terms of s 34(1) the court has discretionary powers in determining whether it is justifiable to deviate from the automatic period of suspension mentioned above, but noted that due to the severity and frequency of drunk driving incidents in South Africa such deviation should not be considered lightly.

Recent Developments

Social media has been taken by storm in the past few weeks over potential new laws relating to the detention and sentencing of drunk driving offenders. The Road Traffic Management Corporation ("RTMC") recently delivered a proposal suggesting that an offence of driving under the influence should be reclassified in terms of the CPA. It is important to note that this was merely a proposal put forward by the RTMC and is unlikely to have any immediate effect as many articles have suggested. The recommendation provides that the offence be classified as a schedule 5 offence along with other schedule 5 offences such as murder, treason and rape, which would further

increase the consequences thereof. One of the consequences of the proposal is that there be the requirement of being incarcerated for a period of seven days before being considered for bail. One would have to think that such a proposal would have little chances of success. The recommendation appears to be an abuse of our bail system in that it uses the bail system to implement the law and punish offenders. It would be a clear violation of numerous Constitutional rights such as the right to freedom and the right to a speedy and fair trial to name a few. As such the proposal has been lambasted by various legal experts across South Africa.

Conclusion

The dangers associated with drinking and driving far exceed any potential convenience that may result from it. Please be aware of the consequences of your actions and ensure that you do not form a part of the statistics this festive season. Should you have any further queries in this regard please feel free to contact our offices and arrange a consultation.

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