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FOUR-LEGGED CRIME BUSTER

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Abstract

Dogs have been used in criminal investigation since 1900. Dogs use their sense of smell to aid enforcement agencies to catch perpetrators. Dogs use to track down perpetrators and criminal activities are known as tracking dogs. Many jurisdictions around the world use these tracking dogs as an instrument to investigate a crime. Evidence obtained by the use of the tracking dogs is called tracking dog evidence which will be used in court to prosecute a felon. Generally, tracking dog evidence is given by the dog handler himself. In this context, the trial judge will review and scrutinise the evidence and accept the evidence if it is deemed to be relevant to the issue at hand. United States of America is one of the many jurisdictions that accept such evidence. However, tracking dog evidence is still unsettled and remains unclear in Malaysia as there is no clear provision or decision by the courts pertaining to this matter. Therefore, the purpose of this article is to study the admissibility of the tracking dog evidence and the provision it falls under in Malaysia.

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Keywords: Tracking dog, Malaysia, evidence, relevancy, admissibility. ”

1. Introduction

Crime rate is on the rise today especially during a recession. Most criminals are excellent in concealment of explosives, bodies, weapons, and drugs which makes it strenuous and difficult for the police to catch them. Usually, K-9 units are called in which tracking dogs are used to sniff perpetrators or tracking illegal items. It is the dogs basic sniffing that is truly astounding and remarkable. Tracking dogs take tracking to the extreme accomplishing remarkable feats. It is evident that tracking dog is our very best four-legged crime buster.

Tracking dogs usually sniffs objects which are taken from the suspect and will follow the trail leading the police to the suspects. These dogs are capable of identifying different individuals. This is possible because each individual has a unique sense of smell. Malaysia has been using tracking dogs in drugs cases as can be seen in the case of *PP v. Mohd Bashrah Akhbar* (2011) and *Low Kian Boon & Anor v. PP* (2015).

1.1. History and domestication of dogs.

Dogs originated from their counterpart, the Grey Wolf. Modern dogs and wolves are closely related as they share an almost identical genetic blueprint (Untung, 2007). There are debates on how these dogs became domesticated over time then ventured closer to humans. They became more trusting and tamer towards men. The first known usage of dogs for criminal investigation can be traced back to when King Louis XI used dogs to track down intruders. This event leads to the usage of dogs systematically. In America, usage of dogs in tracking down perpetrators can be seen since two decades ago. In 1985, a dog training center was established in Belgium.

In Europe, the Germans had opened up a training center in Grunheide in 1920. In 1917, dogs were used to identify suspects in the police station in which these identifications are called station identification (*Cranford v. Arkansas*, 1917). In the United States, the first tracking dog evidence was accepted by the court in the year 1983 (*Hodge v. Alabama*, 1983). In Germany, the first scent line up was carried out in a murder case (Kaldenbach, 1998; Siegel & Mirakovits, 2004). Through the advancement of technologies, Scent Transfer Unit was introduced and patented by Tolhurst and Harris (Patent D3907051, August 1998).

1.2. Sense of smell.

The sense of smell of dogs is 44 times better than of man (Randall, Burggren, & Frencg, 2002). Dog possess up to 300 million olfactory receptors in their nose compared to humans who only have about 6 million. Dogs have a second olfactory capability that we, humans do not have which is the Jacobson's organ (Case, 1999). Jacobson organ is below of the nasal passage which could help them trace pheromones. When dogs exhale, the air is exhaled through the slits in the sides of the nose. This exhaled air swirls usher new odours into the dog's nose (American Rescue Dog Association, 2002).

2. Problem Statement

Dogs have been used widely by the Malaysian Police. They have been used to solve murder, weapons dealings, and drugs trafficking cases. Unfortunately, these dogs are used only for such purpose

and nothing more. To date, their evidence is never tendered and admitted in the Court. Therefore, the question arises about whether tracking dog evidence is relevant and admissible in Malaysia by virtue of Malaysian Evidence Act 1950.

3. Research Questions

- Is tracking dog evidence relevant to the case at hand?
- How credible and reliable tracking dog evidence is?
- What are the factors to be considered when admitting tracking dog evidence?
- Can the tracking dog evidence be admitted by virtue of Malaysian Evidence Act 1950?
- What is the position of tracking dog evidence in other jurisdiction?

4. Purpose of the Study

- To identify the relevancy of tracking dog evidence in Malaysia.
- To analyse the admissibility of dog tracking evidence in Malaysia.
- To propose a framework for the admissibility of the tracking dog evidence in Malaysia.

5. Research Methods

This research is a pure-legal research which uses qualitative research design. This research is doctrinal in nature as the research analyses the law pertaining to evidence of tracking dog to evaluate the admissibility of the evidence.

In analysing the admissibility of tracking dog evidence in Malaysia, the researchers employed a comparative method. The comparison was done with other common law Jurisdiction such as India and United States. The reason for comparison with India is because India's Evidence Act is *pari materia* with Malaysian Evidence Act 1950. The US is chosen because of the vast advancement of dog tracking evidence concerning its reliability and admissibility.

6. Findings

6.1.Relevancy of tracking dog evidence.

Tracking dog evidence is relevant when it connects the facts in issue. This evidence can be relevant for the prosecution to strengthen its case and for the defence to weaken and dislodges the prosecution case.

The tracking dog evidence can be admitted by virtue of section 5 and section 9 of the Evidence Act, 1950. Section 9 of the Evidence Act, 1950 concerns on the identification of the perpetrator and thus the evidence can be admitted under section 9 as the tracking of the tracking dog concerns the identification of the suspect. The tracking dog evidence can also be given by an expert, who is the dog handler. His role would be to furnish the court with knowledge which is outside the experience and knowledge of the judge. Tracking dog evidence falls under the limb of "science or arts" under Section 45 of the Evidence Act. According to Sultan, "science or art" includes poison, ballistic test, and medical evidence (Abu Backer, 1994). Illustrations given under section 45 of the Evidence Act are not

comprehensive (Abu Backer, 1994). This evidence falls under “science or arts” because the usage of the dog to track is an art and the understanding of the anatomy of dog is science.

There is a test to be applied in determining whether the dog handler can give his opinion as an expert under section 45 of the Evidence Act. Based on the case of *Junaidi bin Abdullah v. PP* (1993), in which it was stated:

“In our view, the test to be applied for the purpose of section 45 of the Evidence Act 1950 is this. First, does the nature of the evidence require special skills? Second, if so, has the witness acquired the necessary skills either by academic qualification or experience so that he has adequate knowledge to express an opinion on the matter under enquiry? The answer to both questions must necessarily depends on the facts of each particular case” (p. 229).

In this context, the dog handler possesses special skills. They are trained to read signs given by their dogs, the ability to understand and read their dog. The dog handler also must understand breeds, training methods and the success rates of their dog’s findings. These dog handlers obtain these skills and set of knowledge through courses that they have attended and also experience from daily usage of the dog in criminal investigations. The dog handler fulfils the two-prong test and thus the dog handler is an expert witness and the evidence can be admitted under section 45 of the Evidence Act.

6.2. Tracking dog evidence is credible and reliable.

Neuhaus in the year of 1953 conducted an experiment and found that dogs are capable of identifying 1 milligram of Butyric Acid which is released in 108m³ of air which is equivalent to the size of a small town. Kalmus stated that dogs are also capable of discriminating different odours from different individuals (Kalmus, 1955). Scientist in Alabama discovered that dogs are capable of identifying 10 different smell (Williams & Johnston, 2002). These dogs are capable of remembering odours for months (Schoon, 2003) and there is instance where they could remember them for years.

When an object comes to human contact, oil and scent transfer onto the object, dogs would be able to track the scent upon contact. The dogs will usually indicate the located object by either digging, lying down, barking or wiggling its tail. Human scents can be divided three that is primer, secondary and tertiary scent. The primer smell is affected genetically and is stable throughout the time. The secondary scent is affected by the environment, hormones, medication and diet. The tertiary scent is affected by external factors such as perfume and soap. A study shows that with these external factors, the dogs only failed to identify correctly and accurately by 1.92 percent (Gawkonsi, 2000).

6.3. Factors and elements to be considered when admitting tracking dog evidence in court.

In 1981, a Columbian Court stated that dogs cannot be cross-examined during the trial (*Strakes v. U.S.*, 1981). For this reason, the court came out with a few elements to be considered before admitting the evidence. These elements are collected from the plethora of authorities decided by the courts. Among them are qualification of the dog handler (*California v. Gonzales*, 1990); breed (*U.S. v. Mcnience*, 1983); dog training (*U.S. v. Mcnience*, 1983); corroboration (*Reyes v. Texas*, 1997); reliability of the dog (*Vermont v. Bourasssa*, 1979); and no contamination (*California v. Gonzales*, 1990). Dog Breed plays a vital role in police work. Generally, large breeds are picked to track (Kemp et al., 2005) and are usually

done by Bloodhounds (Jesse, 1886). Starting from 1986, courts did not admit any evidence from any dogs of which their pedigree is not proven (*New Hampshire v. Maya*, 1985); (*California v. Mitchell*, 2003). The dogs must also be registered to the Dog Kennel Association.

There are times where the court even set the standard for dog training (*Ohio v. Nguyen*, 2004). The dog handler must be experienced and qualified. This is one of the most important elements as the handler would be giving testimony in court. There must be a strong unique bond between the dog handler and the dog to enable the dog handler to read them. In 1982, courts have finally accepted dog handlers as an expert witness.

6.4. Findings

6.4.1. United States

The analogy of the case laws from the US can be derived to serve as guidance for the admission of the evidence in Malaysian Courts. One of the most important case where the court had admitted tracking dog evidence is *Cranford v. State* (1977). In this case, the dog managed to find a bullet shell of a shotgun at the Defendant's house and track Defendant all the way to his office. In a recent case of 2014, Michigan Court decided to admit tracking dog evidence in which the dog managed to point to the Defendant's car and a blanket of the victim.

6.4.2. India

Initially, the courts in India were reluctant to admit the tracking dog evidence. Although there were instances in which these dogs managed to link and connect the suspects to the crime scene or the articles, the evidence of the tracking dogs were not admitted. However, in the case of *Pandian Kaanapan Nadar* (1993), the court begins acknowledging tracking dog evidence as long as the party relying on the evidence can prove its reliability. Furthermore, in *Annadrao v. State of Maharashtra* (2000), the court admitted tracking dog evidence, however, the court was of the view that the evidence should not be given much weight.

7. Conclusion

Dogs have been used greatly since centuries ago. This is because they generally have protective instinct, intelligent, loyal and amazing sense of smell. Dogs are reliable and credible and these are the main reason why they are being sought by many enforcement agencies throughout the whole world. In Malaysia, the tracking dog evidence is admissible under section 9 and section 45 of the Evidence Act 1950. The court can use the factors that are laid down in this paper in determining whether the evidence is reliable and fit to be admitted. It is high time for Malaysia to decide on the issue of admissibility of tracking dog evidence as dogs have been used for many years in the investigation and the evidence tracks down by the dogs are very significant in deciding an issue.

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