

EVIDENCE OF TRACKER DOGS

Author: Kislay Tarun, III year of B.B.A.,LL.B.(Hons.) from Alliance University

Abstract

This Research Paperwork is an attempt to study and understand the admissibility of expert opinions concerning tracker dogs in criminal trials with an in-depth analysis of the topic.

Expert evidence plays a very vital role when a criminal trial is in progress and their admission should be carefully examined before the court of law. One such essential form of expert evidence is the tracker dog. The most fundamental purpose of this paper is to find out the extent to which the evidence of tracker dogs can be made admissible in a criminal case. A prime focus has also been made to the limitations of such evidence which includes the risks of the tracker dogs becoming distracted due to which they can provide a false-positive identification which can harm the case in many ways. There are various tracker dogs trained and untrained. They are majorly used in criminal investigations. But are all or either of them can act as a witness before the court of law? Are the evidence traced by them completely admissible in a criminal court or do they have any probative value? The present paper aims to answer such questions. The paper further also examines the factors which can make the evidence of tracker dog identifications admissible which can make it have a probative value.

Keywords: Tracker Dogs, Admissibility, Expert Evidence, Probative Value

Introduction

Amongst the various legislations and laws enforced by the parliament The Indian Evidence Act, 1872 is the most essential codified law which plays a very vital role in solving criminal cases. Evidence is nothing but a form of proof that helps to state that the facts being claimed are true. It assists either party to prove that whatever event he witnessed things he saw, felt or heard is true. Among the different forms of evidence, there is one called 'opinion of third persons.' This also includes the identifications or objects and their traces made by the trained tracker dogs. One of the major procedures in a criminal case is the police investigation and the evidence are collected in this procedure only. The role of the trained tracker dogs is to pursue traces from a crime scene. So, what exactly is **Dog-Tracking Evidence?** These are the evidence found out by a sniffer dog during the investigation of a particular case. The admissibility of such evidence is still a big question and has been raised and come before the

Supreme Court numerous times. The evidentiary value of evidence from tracker dogs was thoroughly examined in the landmark judgment of *Abdul Razzak V. State of Maharashtra*.

Research Problem

Under the Evidence Law, there are various kinds of evidence available and get examined. But are all of them admissible in a court of law? The admissibility of expert opinions cannot be fully applied in every case. Tracker Dog evidence should be deeply examined to verify its admissibility. It is an animal, though it is trained for such criminal scenarios, but what is the validity of the evidence obtained from them in criminal cases?

Objectives

1. To analyze the evidentiary value of dog-tracking evidence.
2. To examine the physiological mechanisms involved in such evidence.
3. To highlight the limitations and risks associated with such evidence.

Research Questions

1. To what extent the evidence of tracker-dogs is admissible in a court of law?
2. Are these evidence accurate to the facts and circumstances?

Hypothesis

It is far from a straightforward response relating to the admissibility of the expert evidence about the behaviour of tracker dogs and their accuracy when it comes to criminal trials. It depends on the decision-maker in this sort to understand and examine if the trust should be invested in the accuracy and the identification made by a dog-related to an individual or an object related to that individual.

Review of Literature

Taking a journey of the recap relating to literature, every aspect of the topic has been dealt with core concepts of the resources. In the initial set up of preparation of the research, **Lecture Notes on Law of Evidence** by **Adv. Prakarsh Pandey** plays a significant

role. Another literature-based resource to look upon the legislations and formulated provisions have been, **The law of Evidence** by **Ratanlal & Dhirajlal**. Also, **the Admissibility and probative value of expert evidence of tracker dog scent identification** by **Ian Freckelton** is an article of great use to the topic researched herein.

Dog Tracker Evidence

The main role of a tracker dog is to make identification the scents with the help of their sense of smell and further pursue their traces. This is a very essential aspect of criminal investigation made by the police. This acts as evidence and how strong is this evidence in criminal cases depends and relies upon the skills of the tracker dog and its patterns of performance. The admissibility and probative value of such evidence lie on the slippery ground as it has certain limitations which can lead to false-positive identifications by tracker dogs. The major issue laid out here is that while a tracker dog is performing and detecting scents, its accuracy completely relies upon the thought process of the dog while dealing with that quarry. A dog is an animal at it has no way to make qualification of its evidence. That animal cannot convey to us whether he is acting over particular facts based on the balance of probabilities or a preponderance of probabilities. This gives birth to certain risk factors relating to false convictions based on the dependency upon this evidence. This has given rise to concerns in the judicial decisions too. Talking about the early judgments, a fear had got vested that inferences are drawn from the behaviour of tracker dog lead to a dangerous exercise of uncertainty. It was held that the trailing of either an animal or a man by a bloodhound dog should never be admitted in any case in two international judgments of *The People V. Pfanschmidt (1914)* and *Brott V. The State (1903)*. These authorities work closer in examining the potential unreliability in the behaviour of tracker dog in the identification of a particular scent. This is a major judicial concern. It is the dog's handler who carries on the exercise of this interpretation. Excessive deference is a result of the status of tracker dog evidence and its scientific character. It may lead to adverse inference if a purposeful attempt is made by a particular suspect of the case to mislead a sniffer or tracker dog. This again puts a big question mark in its evidential value. Anxiety and articulation of various sources were noticed by the judicial relating to tracker dog evidence in the case of *R V. Trupedo (1920)*.

In recent times, the usage of tracker-dog services by the investigating agencies has increased. This plays an important as during the investigation of criminal cases as in certain cases there is no apparent proof of guilt and the police, for the detection of crime have to take the

assistance of tracker-dogs. But, are this evidence completely reliable? They may be admissible but are not of much wait and utility. In a landmark judgment of *Babu Magbul Shaikh V. State of Maharashtra*, Justice M.F. Saldanha of Bombay High Court had discussed in detail the admissibility, value, and utility of tracker-dog's evidence. In this case, it was noticed that the tracker dog helped and assisted the police officials in recovering the clothes and bag of the accused. Currently, dog track evidence is accepted as admissible and circumstantial evidence in criminal proceedings but the question which is still unanswered is that what weight should be afforded to it? The trial court thought should warn the trial judge about the risk factors involved in conviction only based on evidence put on by tracking of a dog.

Phases involved in the Procedure

The behaviour of dogs relating to track which can be presented as evidence in a criminal court undergoes three separate phases before evidence is formed and put before the court during a criminal trial. Let's briefly discuss all three of them.

Searching Phase: The investigation procedure begins when the police hire tracker dogs to search for trails. In the very initial period, the dogs attempt to find a track. To do this the dogs sniff ten to twenty times very quickly in fact pace and this sniffing is done between inhalations of breath with the help of their nose. They move and sniff from their nose, try to smell the objects with certain scents to find the trails which can act as evidence and help to prove the facts of a case. It has been noted by the experts that this sniff frequency usually is 6 Hz. This frequency occurs only when the dog is in motion and searching for a trail such as a trail of blood, scent of certain objects associated with the case, etc.

Searching Phase: When the dog takes certain halts in moving and then further takes smaller steps, his sniffing frequency also becomes longer which usually lasts 3 seconds to 5 seconds. This is apparent in track identification and hints that the animal has been deciding upon certain trails and objects. He would have found something which may lead him to certain trails of the case.

Tracking Phase: This phase to a certain extent is similar to the searching phase. The walking and sniffing behaviour again becomes faster and it is indicated that the dog has now found out certain details relating to the case in the form of trails and objects.

The Methods used

It has been made clear that the dogs make use of psychological methods for the detection of scent trails. These methods are applied by them in different ways depending upon the different environment they are tracking in. A scent is something that results from a particular odour of a person. Every person has a particular odour in their body. The tracker dogs track a person from the disturbance of environmental odour which give an impact on the physical movements of a person and can be tracked by the sniffing of a dog's nose. The ways of tracking an individual by a tracker dog vary based on the circumstances. The ability of dogs of tracking scent depends on the depositing of scents by an individual on the ground or in the air.

Air Scent: This takes place when certain elements of the human body freely circulate in the air such as gland secretions, toiletries, odours of sweat, cells. There is a certain kind of bacteria that are attached to the cells of fallen skin. These cells help the dog by providing odours that enhance the individuality of a particular trail. It has been noticed that an air scent is stronger than the ground scent but a ground scent can be in a detectable condition for a longer period.

Ground Scent: In any particular place, it consists of soil, bugs, mud, trampled vegetation which is mixed and disturbed by an individual's footprints. The soil is disturbed and as a result, it releases moisture killing plant life. This finally results in a different odorous by-product. A new odour is released by each footprint which is more potent in comparison with the ones undisturbed by the surrounding vegetation.

Tracking Scent: When the air scent and the ground scent left behind by an individual is combined, it forms tracking the scent. The combination of both environmental odours and human odours released by an individual help the dog to identify and later determine the track scent. After this, the dog uses the overall scent's strength to determine the direction of a particular trail and keep tracking along that route. As because the last footstep of an

individual is stronger than the initial ones, the dogs move forward in the direction where the scent seems to become stronger. Dogs alternate between scent tracking and visual tracking based on the circumstances relating to the environment. It has been observed that dogs rely upon social, cognitive, or visual cues in order to identify the tracks of a particular individual.

Tracking Trials

Tracking is generally understood as the ability of a dog by which it detects, recognizes, and follows a specific scent with the purpose of identifying the tracks of the suspected criminal in a case. A tracking trial is basically an event in which the tracker dogs are encouraged to make use of their strongest ability to follow a particular scent trail. It is one of the training elements for a tracker dog. This is done to gain assistance in a criminal case. It helps in finding out a lost person or article and consists of a particular situation where the performance of the dog can be addressed fairly. This gives birth to the tracks which are laid straightforward and there is no use of wanderings to characterize a person who is lost. This also does not include any purposeful attempts made by the tracklayer to deceive the dog. The basics of tracking trials still remain the same in spite of different rules specified by different organizations. The aim is for the dog to purposely find the tracklayer who is "lost" and their dropped articles along the track. Under a general process, on a day previous to tracking trial by a trial judge, the tracks are laid, mapped, and marked. The purpose of choosing the tracks is the easy determination which can be made by the judge location of the tracks and where the articles are to be placed even after the ribbons, flags or marks have been removed. The number of corners in the tracks, length of the track, number of articles left on that track, all depend on the difficulty level of that track and the organization's rules under which that particular trial is being run.

Finally, after all these preparations and set-ups the day of the trial arrives. On this day, a tracklayer is made to follow that marked track and he removes all the marks that have been placed on that track. He then drops and leaves the articles of clothing including one at the end of the track as specified by the judge. After this, on track difficulty and depending on the organization's rules, the dog and his handler is directed to that track and are supposed to find the tracklayer and the articles. Generally what should happen is that the dog must continuously work as if it is really and genuinely looking for a lost person without the handler's assistance. And then find out the tracklayer and required the number of the lost articles at the end of the track. This step is required to be fulfilled for the dog to be awarded a pass. And this pass is also graded based on the quality of the work. After gaining the required

pass title the dog now may apply for a title of tracking in accordance with the rules of the organization the trials have been organized and run under.

The Tracking Dogs

Dogs that follow scent trials: Basically tracking dogs are those dogs that have been particularly trained to follow a human scent. They have the ability to track and follow a trail of short distances as well as multiple miles. Tracking is a major and essential skill of every dog for its survival in wild. It constitutes a part of their hunting skills that help them to track their potential prey down.

When to use a Tracking Dog: These dogs are single-purpose dogs and can be used in different situations based on the circumstances of the case and its investigation. (1) As police dogs are used to track down individuals who are either alive or dead, the dog here plays the role of Search and Rescue Dog, (2) As police dogs are used to detect the drugs, (3) They can also be used to detect certain explosives, (4) Can be used for the recovery of evidence from a crime scene, (5) Can be used in police investigations, (6) Can be used in the situation of hunting to find the animals which are shot down by hunters, (7) In the situation of dog sport can be used in tracking trials using the scent trails.

Dogs with a highly sensitive olfactory system: These dogs make use of their sense of smell to identify and follow a particular track. Their olfactory system is highly sensitive that means their sense of smell for a particular scent and the ability to differentiate them is too strong. It is much more superior to the human system. This makes it easy for them to differentiate between different human scents.

The history of Dogs with the ability to track: It has always been a fact which is well known that the dogs have the ability to track and they are capable of following a scent trail. This ability of dogs has been utilized by man for centuries. The core examples can be; (1) Dogs help a hunter to find food, (2) Dogs often hunt for exotica such as truffles, (4) Dogs have been of great help and assistance in hunting enemy forces and criminals, (5) Dogs often perform search and rescue operations to find lost or missing people.

What makes a good Tracking Dog: Tracking is something which is very common and easy for dogs and all dogs can do this as it is a natural instinct for them. They naturally track for food and gave this ability since birth. Dogs are not required to be trained or taught tracking until and unless one requires them to follow a specific track. “Blood Hound” is a very essential tracker dog as it is the only one that can be presented before the court of law to present evidence and as a witness.

Admissibility of Tracker Dog Evidence: An Expert Evidence?

It has been clearly conveyed that the role played by the tracker dogs of pursuing traces and producing evidence is a very essential aspect of every criminal investigation. But when we talk about the admissibility of such dog traced evidence, it is far away from scientific experts. Before making this comparison, it is important to understand the concept of expert and expert evidence. An expert is a person who has devoted his studies and time to a specific branch of learning and is capable of giving his opinion on that specialized field. There is also a reflection of a legal definition to this term provided under Section 45 of the Indian Evidence Act. It states the “opinion of a third person when relevant.” As mentioned in the Act; “When the court has to form an opinion upon a point of foreign law, science, art, identification of handwriting and finger impression, the opinion upon that point by a person skilled in the same are relevant facts and these persons are considered as experts.” Such evidence is laid down in the form of opinions and they are advisory in nature. These opinions are given for a witness. These scientific experts are appointed to deal with the scientific criteria and provide accuracy to the judge. When these expert evidence are formed by tracker dogs, it becomes a big question of admissibility. Tracker dog expert evidence has fundamental issues relating to its accuracy. The doubt here is the thought process of the dog that led it to reach such conclusions. On what basis can a dog give an account of his experiments? The court, in its judgments, has also ruled that the trailing of either an animal or human by a bloodhound (tracker dog) shall never be admitted in any case. It has been held that the tracker dog evidence lacks precise results and are uncertain in various cases. It can never ever be compared to scientific evidence. In *State of Maharashtra V. Mangi Lal*, it was observed that the tracking of a police dog tracking the scent from the crime scene to the house of the accused cannot be considered as evidence in the eyes of law. Finally, it can be said that there is no doubt that dogs have similar thought process as humans. They can also influence

criminal trials. But they also come with a risk factor of deception and uncertainty. They are not perfect in nature and cannot be trusted blindly. Therefore, over a period of time, courts have found out that sole dependence on tracker dog evidence cannot pronounce someone's conviction.

Established Principles

With rigorous case examinations and judicial decisions over time, the admissibility and probative value of tracker-dog evidence have gained much more clarity. The following principles have been laid as a result of several judicial decisions by different criminal courts.

Principle (1)

When discussing the facts of dog-tracking, there should be complete and accurate documentation of the exact manner and place wherein the track was conducted. This document shall be given and a panchnama should formulate which should be unambiguous and of clear view regarding the facts of dog tracking. It shall be correctly proven and should be backed by the proof of the handler.

Principle (2)

There should be no contradiction between both these documents as reported in the panchnama and the proof of the handler submitted to the court.

Principle (3)

There should be a separate test for cross-examining the proof of the handler. The handler's proof is separately required to pass this cross-examination test.

Principle (4)

The dog trainer is supposed to bring certain information before the court such as the training method provided to the dog, the past results of such training, the accomplishments and loyalty of the dog, etc.

Major Judicial Decisions

Abdul Razzak V. State of Maharashtra: In this, the main issue which arose before the Hon'ble Supreme Court was whether tracker dog evidence is admissible as evidence or not?

The Facts: An incident took place where a train was derailed from its track. While investigating the case, the police found some kind of conspiracy behind this incident of the derailing of the train. It was found that the rail track was destroyed. Then the police brought the tracker dogs for searching some related traces and the dog was taken near the broken railway tracks. As a result of this search, a few articles were found near the railway tracks.

The Judgment: In the judgment, the court said that, in any case the evidence of tracker dogs is admissible but it is not of much weight and is not in comparison with the evidences of scientific experts. They mean that the scientific evidence always stands at a higher level than the dog-tracking evidence. The court later relied upon Section 293 of Criminal Procedure Code.

It was observed in *Dafedar V. State of Maharashtra* that the dog tracking evidence beholds typically three raised allegations. Firstly, a dog cannot give its testimony on pledge and thus, cannot submit on cross-examination. The human who handles the tracker dog has to go in depth to document the proof obtained by the dog. This is hearsay evidence. Secondly, it has been stated that just the assumptions made in criminal matters cannot be relied upon for the life and liberty of an individual. In the case of *Shaikh V. State of Maharashtra* in 1993, the tracker dog had found the bags and clothes of the suspect Kumar and led the police to that suspect's house. Still a thorough investigation was carried out to examine if such proof was legitimate. It was found that there was more responsive stance to that evidence. Thus, it was stated that it is must for the proof obtained by a tracker dog to pass the test of dependability and investigation.

Conclusion & Suggestion

As a verdict, it can be stated that the tracker dog evidence in criminal cases can be highly powerful. But if its foundations are not closely investigated it can be harmful instead of being relevant to the case. These evidence can act as great assistance in the investigation of a case but they don't have a major weight to be admissible before the court or to decide the conviction of a criminal. In the modern period, the courts have become more sensitive towards such evidence. It is a uniform global position except in India against the conditions of dog-tracking evidence may be accepted against and accuse individual. Here, at first, it is necessary to determine the credentials of the handler of the dog properly. After this, proofs

should be provided relating to the abilities and actions of that particular tracker dog. Before obtaining proof properly from the dog handler regarding the specific detection of smell by a particular dog, a detailed and basic proof of the accuracy of the dog's breed and its performance and abilities as a detector must be given. The trainer of the dog must be capable of providing clear and concise proof of the duration, method, and the overall result of the monitoring along with the notes collected at that same time. This was described in the case of *Dafedar V. State of Maharashtra*. This may impact the judicial system.

Bibliography

BOOKS

- BATUK LAL, THE LAW OF EVIDENCE (2020th ed. Central Law Agency 2020).
- AVTAR SINGH, PRINCIPLES OF THE LAW OF EVIDENCE (24th ed. Central Law Publications 2020)
- DR. ASHOK K. JAIN, LAW OF EVIDENCE: LEADING CASES AND MATERIALS (2018th ed. Ascent Publications 2018)

CASES

- Abdul Razzak V. State of Maharashtra
- The People V. Pfanschmidt (1914) and Brott V. The State (1903)
- R V. Trupedo (1920) Case
- Babu Magbul Shaikh V. State of Maharashtra
- State of Maharashtra V. Mangi Lal
- Dafedar V. State of Maharashtra
- Shaikh V. State of Maharashtra 1993

STATUTE/CONSTITUTIONS

- The Indian Evidence Act, 1872

INTERNET SOURCES

- Muskan Vijay, *Admissibility and Significance of Expert Evidence in Tracker Dog Evidence*, Legal Services India E-Journals (April. 30, 2021, 02:10 PM), <http://www.legalserviceindia.com/legal/article-5565-admissibility-and-significance-of-expert-evidence-in-dog-tracker-evidence.html>

- Ian Freckelton, *Admissibility and Probative value of expert evidence of tracker dog scent identification*, Forensic Research & Criminology Journal, (May. 02, 2021, 01:30 PM), <https://medcraveonline.com/FRCIJ/FRCIJ-08-00306.pdf>

JOURNAL ARTICLES

P.R. Thakur, *DOG TRACKING EVIDENCE IS ADMISSIBLE AND RELEVANT PROVIDED IT IS RELIABLE*

NEWSPAPER ARTICLES

- <https://economictimes.indiatimes.com/news/politics-and-nation/can-a-tracker-dog-evidence-be-admissible-in-court/articleshow/41228644.cms?from=mdr>
- <https://www.hindustantimes.com/india/is-proof-gathered-by-sniffer-dogs-admissible/story-2MInUcTvHAbVApzBN5xRaJ.html>
- <https://www.dnaindia.com/india/report-supreme-court-judges-divided-whether-sniffer-dog-be-an-evidence-or-not-2009192>
- <https://www.outlookindia.com/newswire/story/sniffer-dogs-evidence-not-relevant-says-apex-court/628379>
- <https://www.monitor.co.ug/uganda/special-reports/kiruhura-murders-the-evidence-of-an-independent-dog-handler-1892308>