QORTI TA' L-APPELL KRIMINALI

IMHALLEF

ONOR DOTTOR JOSEPH G. GALEA DEBONO B.A.,LL.D.

SEDUTA TAL-HAMIS, 23 TA' MEJJU , 2002.

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IL-PULIZIJA.

(SPETTUR MARIO TONNA.)

VS.

ALESSANDRA FENECH .

Il-Qorti ,

Rat l-akkuza dedotta kontra l-appellanti quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fis-6 ta' Frar, 2002 ,talli fil-5 ta' Novembru, 2001 u/jew fix-xhur ta' qabel din id-data gewwa Triq il-Qasam , Swieqi, haqret jew uzat kefrija fuq kelb billi ghamlet uzu minn "spike collar".

Rat is-sentenza tal-istess Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tas-6 ta' Frar, 2002, li biha wara li irriteniet li l-Prosekuzzjoni rnexxielha tipprova l-akkuza u ghalhekk fic-cirkostanzi iddikjarat li qed issib lill-imputata hatja , ikkundannatha ghall-ammenda ta' ghoxrin lira Maltin (LM20) u oltre dan ordnat il-konfiska tal-kullar esebit fl-atti bhala dokument CSH.

Rat ir-rikors tal-appell tal-appellanti minnha pprezentat fit-13 ta' Frar, 2002 li bih talbet li din il-Qorti thassar u tirrevoka s-sentenza appellata u tilliberha minn kull imputazzjoni u piena.

Rat illi l-aggravji tal-appellanti, fil-qosor, jikkonsisstu fis-segwenti. I. Li gie ammess mill-bidu nett li l-kullar in kwistjoni kien jintlibes mill-kelb tal-appellanti; 2. li la hu ammess u lanqas pruvat li l-appellanti uzat xi mohqrija fuq il-kelb taghha ; 3. illi l-uzu ta' tali kullar ma jgibx mieghu awtomaikament il-prova u/jew tifsira ta' mohqrija partikolarment meta tinghata raguni sodisfacenti ghal tali uzu , bhal fil-kaz in ezami ; 4. li l-kullar in ezami skond magazines Amerikani tad-dilettanti tal-klieb hu rakkomandat ghat-tharrig ta' klieb kbar ; 5. li l-kullar kien jintuza ghal tharrig ta' kelb great dane u mhux ghall-mohqrija tieghu ; u 6. ghalhekk fic-cirkostanzi partikolari l-akkuiza ma treggix.

Ezaminat id-dokumenti esebiti, semghet ix-xhieda u t-trattazzjoni ,

Ikkunsidrat .

Illi dan il-kaz li origina b'mod kurjuz beda meta xi pulizija raw tfajla , bint l-appellanti , diehla party liebsa kullar tal-klieb maghruf bhala "prong collar" u ikkonfiskawh . Meta l-ghada , omm it-tfalja , l-appellanti , marret biex tiehu lura dal-kullar mill-ghassa tal-Pulizija, dawn staqsewha ghallfejn kienet tuzah u meta hi rrispondiethjom li kienet tuzah biex tittrejnja kelb "great dane" , hargulha ic-citazzjoni li uzat mohqrija fuq kelb .

Illi hu ammess mill-appellanti li hi kienet ghamlet uzu mill-ispike collar jew kif jissejjah "prong collar" esebit biex tallena jew tharreg kelb great dane u cioe wiehed mid-diversi klieb li ghandha. Dan il-great

dane kien ilu ghandha aktar minn xi sena u nofs u kienet salvatlu hajtu ,billi haditu minnghand il-proprjetarju tieghu li kien ser iraqqdu ghand il-Vet fejn hi kienet marret b'fenek tal-indi biex jarah il-Vet . Dak iz-zmien dan il-kelb kellu xi sena u umbaghad bdiet tuzalu l-kullar meta kellu xi sentejn u allura kien zviluppa fizikament u l-ghadam tieghu kien issoda . Dan il-kullar kienet tuzah ghat-training god-dar u barra . Kienet taghmillu qiesu nofs siegha , tlitt kwarti training kulljum , ghax umbaghad jiddejjaq jew jghajja. Fuq domanda tal-Qorti xehdet li il-kelb qatt ma ratlu demm ma ghonqu ghax l-iskop tal-kullar kien mhux li jqatta' imma li idejjaq lill-kelb u li johloq "unconfortable situation". Dal-kullar hi kienet xtratu mill-pet shop . Mistoqsija jekk lill-Magistrat kienetx qaltilha li kienet tlibbes il-kullar bil-maqlub biex aktar jisloh u l-kelb jobdi aktar , l-appellanti qablet li kienet xehdet li tlibbisulu bil-maqlub imma cahdet ripetutament li uzat il-kelma "tisloh" ghax l-iskop taghha ma kienx li tislohlu ghonqu jew li twegghu .

Mill-ezami tal-kullar esebit din il-Qorti ikkonstatat li fil-fatt il-kullar jista' jintlibes jew bil-prongs fuq gewwa ossia f'kuntatt ma ghonq l-kelb jew bil-prongs fuq barra u fuq gewwa ikun hemm biss holoq lixxi li ma jniggzux , pero' li meta jiccaqalqu ,ukoll jisporgu ftit il barra u jhokku mall-ghonq.

Illi fl-artikolu esebit mid-difiza tal-appellanti intestat "To pinch or not to pinch - Is the prong collar an instrument of torture or a universal training device ?" (DOG OWNER'S GUIDE publikat f' Cincinnati, Ohio , USA) jintqal li :-

> "Turmoil surrounds another training device that is gaining in popularity and is described as both cruel and humane. Known as the prong or pinch collar , this interlocking steel link collar looks like a medieval torture device , but is actually a gentle tool for training many dogs with little or no tugging , jerking or pulling . However, it is not suitable for all dogs, and herein lies the problem."

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> "Of all these training devices , the prong collar is the most misunderstood . Those trainers who put one on every dog are misguided as those who refuse to use them. The prong is not suitable for agressive dogs and is too harsh for extremely shy or fearful dogs . The prong is not for young puppies , although it can be used under the guidance of an experienced trainer for older puppies.
> "The prong collar is made of interlocking links , each with two blunt prongs that pinch the dog's skin when the collar is tightened . It should fit snugly just below the dog's ears . Unlike the chain slip collar, it puts even pressure around the neck by pinching the skin in a band about half an inch wide . No pressure is put directly on the trachea with the pinch collar."

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> "Some turn the collar "inside out" so the smooth side of the links lie against the dog's neck and the collar constricts but does not pinch when tightened."

Mid-dokumentazzjoni esebita (Fol.17) jirrizulta ukoll li minn studju li sar fil-Germanja fuq mitt kelb , li fuq 50 minnhom intuzaw choke collars u fuq hamsin minnhom intuza prong collar , instab li fil-waqt li fil-kaz tal-hamsin kelb li uzaw ic-choke collar 48 kellhom "injuries to the neck , trachea or back" u mill-liema 48 injury , tnejn kienu genetici u 46 ta' indoli trawmatika . Invece mill-hamsin kelb li fuqhom intuza il-prong collar , tnejn biss instabu li kellhom injury fil-ghonq. L-artikolista Janice Frasche' hi kwotata li tghid :-

> "I think of the prong collar as a tool that can increase the level of safety and control for both dog and handler."

Illi f'artikolu iehor intitolat "Training with the prong collar " miktub minn Suzanne Clothier (AKC Gazette, August 1988) jintqal :-

> "But never have I observed the dog with the tiniest red mark on his neck from wearing the ordinary training collar. "The "ordinary training collar " Tossuti writes about is the prong collar , an interlocking chain of blunt , metal prongs , connected by a loop of small link chain . This collar, when tightened , evenly applies pressure around the dog's neck . Tossuti viewed the prong collar as "a well-thought-out cruelty-preventing device which at the same time assists in systematic training"

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> "The prong collar , like any other training equipment properly applied , by clearly showing the dog his choices , will result in a happy dog who is willing to work ."

Illi minn dawn il-brani citati jidher li ghalkemm hemm certa kontroversja dwar l-uzu tal-"prong collar" kif jissejjah it-tip ta' kullar esebit , hemm hafna vantaggi fl-uzu tieghu . Meta umbaghad jitlibbes lil-kelb bil-maqlub - kif xehdet li ghamlet l-appellanti , ma jkunx hemm tingis jew qris . Il-kullar jintuza biex jaddestra klieb kbar bhal great dane , billi veru johloq certu inkonvenjent ghal kelb imma l-kelb jidra jirrispondi ghall-inkonvenjent billi jobdi aktar u hekk l-inkonvenjent jonqos.

Illi minn dan kollu jidher li il-fatt li intuza dal-kullar , per se , dan mhux necessarjament evidenza ta' mohqrija . Certament li l-iskop tal-appellanti li xehdet li hi "animal lover" u trabbi diversi klieb u "pets" ohra, ma kienx wiehed ta' mohqrija , u jekk kif xehdet l-appellanti , kienet tlibbes dan il-kullar lill-kelb great dane li kienet qed taddestra bil-maqlub , ossia bil-"prongs" iharsu 'l barra, l-inkonvenjent kellu jonqos u mhux jizdied , kif ikkonstatat l-istess Qorti mill-ezami tal-kullar .

Ghalhekk , konsidrat kollox , bil-fatt li l-appellanti ammettiet anki quddiem dil-Qorti li kienet tuza dal-kullar esebit fuq il-kelb taghha great dane biex taddestrah , dan ma jfissirx necessarjament li kienet qed tuza mohqrija fuq il-kelb ,specjalment jekk kif xehdet anki quddiem din il-Qorti u quddiem l-ewwel Qorti li kienet tlibbisulu bil-maqlub u cioe' bil-prongs wicchom 'l barra . Li irrizulta ghas-sodisfazzjon ta' din il-Qorti hu li l-appellanti hija "animal lover" u trabbi diversi pets u lil dan il-kelb great dane partikolari kienet salvatlu hajtu ghax is-sid li kellu qabel kien hadu ghand il-vet biex iraqqdu u hi haditu u rabbietu hi . Ghalhekk zgur li dak li ghamlet ma ghamlitux b'fini u skop ta' mohrija fuq dan il-kelb , imma biex taddestrah .

Ghaldaqstant u ghal dawn il-motivi , din il-Qorti thoss li hemm dubju ragonevoli jekk fil-fatt intuzatx mohrija fuq il-kelb jew le u konsegwentement qed tilqa' l-appell u tirrevoka is-sentenza appellata u tillibera lill-appellanti minn kull imputazzjoni u piena u mill-ordni tal-konfiska tal-kullar esebit bhala Dok. CSH .

(ft) Joseph G. Galea Debono.
Imhallef

Paul Miruzzi
Dep. Registratur
23.05.02.