

The role of electronic visual recording in the Jordanian criminal evidence

By

Imad Mohammad Rabie

Professor, Police Science Academy-Sharjah, United Arab Emirates

E.mail:rabeeimad@yahoo.com

Mohannad Walid Al-Haddad

College of Law - Jerash University

E.mail:M11haddad@yahoo.com

Abstract

In fact, electronic flashes are only visual, electronic, visual evidence that depends on the use of information and communication technology to prove the crime, which evidence can be obtained by modern electronic means such as mobile phones, modern digital cameras, e-mail, etc., and through these means, the crime can be monitored, and its data stored. In the electronic memory, and therefore suitable as evidence of the crime, this evidence takes several forms: In the form of still images (photographs) or moving images (video), or electronic data such as e-mail messages or phone messages (SMS), including all or part of the details of the case. The electronic video recordings and the extracts they contain have contributed to proving many crimes and attributing them to their perpetrators.

Keywords: visual recording; panel evidence; electronic; scientific evidence.

Introduction

Since the development in the world of information technology is a rapid and accurate development, which has made electronic visual recordings based on purely scientific bases based on fixed facts that contribute to the crime rate of the perpetrator, and in a way that cannot be compared with traditional evidence, and this calls for limiting the research to a part of that evidence, namely the recordings Visual only, and visual extracts All that can be obtained through electronic means of visual evidence based on the means of visual vision in revealing facts by watching still images, moving videos, e-mails or phone messages.

Significance of the study

The significance of the study comes in framing the role of the newly developed electronic video recordings in criminal evidence, as well as clarifying the irrefutable legal authority that this evidence enjoy in proving crimes and their attribution to their perpetrators, and the persuasive power that such evidence provides to judges, and the importance of these evidence in contributing to solving many One of the criminal cases that traditional evidence failed to solve.

The objective of the study

The study aimed to add electronic visual recordings and their extracts to the traditional evidence approved by the criminal judiciary, as they represent highly accurate

scientific and technical facts and help in the service of criminal justice in terms of explaining the details of the crime and attributing it to the perpetrator, and this naturally provides judges with knowledge of the fact that the crime was committed and then helps them to reach the truth.

Study problem of and research questions

The problem of the study is the extent of reliance on electronic video recordings as evidence in criminal evidence in light of the rapid and tremendous development in the world of information and communication technology, which has allowed the possibility of manipulating this type of evidence, which may contribute to blurring the truth, in addition to the above. They are: What is the legal nature of electronic video recording? What is the impact of the legal nature of the electronic video recording on the evidentiary strength? What is the position of Jordanian legislation and the judiciary on that? What are the obstacles to taking it? Does obtaining these electronic video recordings constitute an attack on the right to privacy? Which we will work to answer in this study.

Research Methodology

In order to answer the questions raised by the problematic and the research questions, this research relied on a complex approach based on two aspects: the first included the theorizing aspect, in which the study presents an analytical theory that considers the legal strength of criminal proof of electronic video recordings in Jordanian legislation only; The second included the practical and applied aspect, in which this research presents applications on the evidence derived from electronic video recordings within the legal texts and the provisions of the Jordanian judiciary.

This research has tried to find links between the theoretical and practical sides, as the application agreed with the idea and indicated its destination and quality. Referring to the writings of commentators and jurists of the criminal law, giving preference to them, and recommending filling in the legal gaps that may taint the text or judicial application in this regard.

Introduction to electronic video recordings

Electronic visual recordings are obtained by various modern technical means through cameras, mobile phones, and electronic texts as they are the most widespread and used by individuals, and therefore the research requires us to define the controls and conditions for the evidence derived from modern electronic visual means, in addition to the difficulties that may transform the validity of the evidence. The visual, so the research will be limited to a statement of the concept and characteristics of electronic video recordings in the first requirement, and a statement of the conditions and obstacles of electronic video recordings in the second requirement.

The concept and characteristics of visual extracts

The means of obtaining electronic visual evidence [1] - up to the date of preparing this research - can be limited to the following:

- 1 Still images, whether they are photographs stored in the memory of the camera or mobile phones, extracted and printed on paper, or published through the information network.
- 2 Motion pictures, which are the recordings (videos) recorded by mobile phones and cameras in their various forms, whether they are officially and by the competent

authorities or informally through security cameras that are used by individuals and institutions.

- 3 Electronic texts are represented by written messages stored in the form of electronic flashes in the memory of mobile phones and other devices that provide this feature, regardless of whether they are sent through phone companies as messages (SMS) or through smart applications sent via electronic means.

Proceeding from that, these means are the legal basis for the electronic evidence based on recording and photographing criminal facts within the allocated memory and thus submitting them to the judiciary to form a sentimental conviction of the incident before it; Accordingly, it requires us to discuss the concept of visual evidence in the first section, and its characteristics in the second section.

The concept of electronic video recordings

By extrapolating the Jordanian legislator's plan in the Evidence Law, specifically Article (13) of it, it expressed that computer extracts and electronic correspondence have the normal attribution power of proof [2], and in a related context, the Amman Criminal Court of First Instance decided, in its appellate capacity, in this regard in terms of saying: "...and since the respondent did not submit any written evidence that refutes and/or refutes what was stated in the written evidence of the appellant, which is meant here by correspondence through e-mail, and she did not challenge it with distortion or forgery, so it is an argument against him"[3].

That is why the electronic visual recordings extracted as evidence in criminal proof mean a set of virtual magnetic and electrical digital operations, resulting from precise transformations from the virtual medium to inside advanced devices, working to produce clear visual forms such as images, recordings, and documents with extreme accuracy and very quickly [4]. It is also defined as recording a crime or a specific event in a fixed or moving recording on an electronic material that can be preserved for photocopying so that it can be repeated more than once in a way that contributes to proving the crime or negating it from the accused or accused, or it is a visual documentation of certain facts. It was also defined as evidence derived from or through electronic software systems through legal and technical procedures to be submitted to the judiciary after scientific analysis or interpretation in the form of written texts, drawings, or images, to prove the occurrence of the crime, and to determine innocence or conviction in it.

We can conclude by saying that the electronic visual recordings (visual extracts) are nothing but legal evidence that depends on vision and observation and is based on fixed electronic means (images) or moving (video recordings) or text flashes obtained from electronic media such as messages, mobile phones (SMS) or applications. Various electronic smartphones include a detailed incidents about the events of a crime that contribute to revealing the truth to the judge.

Characteristics of electronic visual extractors

Through the concept of electronic video recordings - previously explained - it is possible to extract the most important characteristics and advantages of electronic video recordings [5], the most important of which are:

First: The visual recordings (extracts) are moral evidence of a technical nature: Of course, the electronic visual recordings take the form of electromagnetic flashes that work within the electronic field, and this requires extracting the content to be proven in the form of

a physical entity, and in order for this content to be given the status of legal evidence, the content must be unloaded By one or more experts and transferring them from flashes to paper documents that have a certain legal significance(), and this type of evidence is in the form of intangible moral data that can be obtained through cyberspace, and this naturally requires the use of advanced technical devices and equipment as well as the use of experts with expertise Expertise in the electronic field.

Second: Evidence against the offender: If electronic visual recordings can monitor personal information about the offender and then analyze it and verify his identity at the same time, which makes dealing with them easier than dealing with traditional physical evidence [6].

Third: Transcendental evidence for the limits of space and time: they are of a dynamic nature with a high speed that moves from one place to another through information networks and in a very short time compared to traditional evidence, and visual evidence depends on the rapid and continuous development of its electronic environment [7].

Fourth: Evidence that is difficult to get rid of: even in the case of deleting and erasing it, it can be retrieved, there are many electronic programs through which the deleted data can be recovered, extracted, and used as evidence against him, especially since this evidence is characterized by their ability to copy, so it is easy to extract a copy of the same origin and be It has a probative value, which is difficult to happen in the traditional evidence [8].

Conditions and obstacles for obtaining video recordings

For electronic visual electronic recordings, there are conditions that must be met in order to be acceptable in the penal evidence, but the fulfillment of these conditions may collide with some obstacles related to the individual's right to privacy, whose failure may result in the invalidity of this type of evidence, and to clarify that we will divide this requirement into two branches. In the first, we explain the conditions for the validity of electronic video recordings, and in the second section we address the most important obstacles facing this type of evidence, as follows:

Conditions for the validity of electronic video recordings

In order for the electronic video recording to have its legal effects, several conditions must be met, the most important of which are the following:

First: The legality of electronic video recording

In order for the electronic visual recordings (electronic extract) to be classified as criminal evidence, their existence must be recognized from a legal point of view, in addition to the necessity of obtaining the electronic visual recording in accordance with the rules of ethics, integrity, and objectivity, and therefore it is not permissible to violate the extracted visual evidence of the provisions of the Constitution and penal laws. In application of this, the Zarqa Court of First Instance ruled, in its appellate capacity, by saying: "as the criminal legislator did not restrict the criminal judge to evidence in and of itself except for specific crimes exclusively, and that the legislator in the Code of Criminal Procedure has exposed physical and tangible evidence and did not single out electronic evidence. Any provisions in the aforementioned law and the Cybercrime Law did not specify how to access the electronic evidence, but the law gave authority to the electronic evidence if it was obtained according to the technical bases in collecting the electronic evidence, provided that the access to it is legitimate. In most cases, it is contacted through electronic technical means according to tools

and means of research related to the electronic evidence, and the electronic evidence is authoritative in proving the electronic crime and the extent to which it is related to its perpetrator (the cybercriminal)" [9].

Accordingly, the procedures for obtaining electronic video recordings (visual extracts) and counting them as criminal evidence must be within the general framework defined by the constitution and penal laws, otherwise, the visual extract is essentially null and void due to its connection to the public order.

Second: Discussing the evidence derived from the electronic video recordings

In terms of discussing the evidence, the electronic visual recording is subject to the general rules of evidence stipulated in Article (147) of the Code of Criminal Procedure, which is based on the principle of openness of sessions and the right of litigants to discuss the evidence. The procedure is essentially null and void, and this is what the Jordanian Court of Cassation has settled on by saying: "by applying the law to the established incident, the court found that, in order to prove the first accusation against the defendants, the Public Prosecution did not present anything but the statements of the plaintiff before the public prosecutor, which is a shred of single evidence that was not discussed. The litigant made it public, as he is traveling outside the country, and his statements were highlighted by the Public Prosecution in violation of the text of Article (148/1) of the Code of Criminal Procedure and what was settled by the jurisprudence of the Court of Cassation, which requires excluding it from the counter of the evidence and excluding it. There is nothing left that links the accused to the first accusation. to them...". This means that the criminal judge can base his sentimental conviction only on the evidentiary elements that were put forward in the trial sessions and are subject to the freedom to discuss the evidence between the litigants.

In the researcher's assessment, the electronic visual recordings, whether they come from the direct memory of electronic devices (camera and mobile phones), from indirect memory copied in the form of CDs or (USB), or if they are printed on paper, all of them should be presented for discussion between opponents. The criminal case then can be the subject of proof or denial before the court, and the same thing applies to experts, as they must appear before the court to discuss them in their reports that they concluded [10].

Third: Certainty of Evidence

In order for the evidence to acquire a probative character, it was necessary for it to be conclusive and not subject to doubt and guesswork, and this matter applies to electronic video recordings that are required to be unquestionable or speculative when sentencing a conviction, since the penal judgment is based on certainty and certainty, and this allows the subject judge Through the electronic visual recordings presented to him, determining the evidentiary strength of the evidence, and the Jordanian judiciary has settled on it on the principle that partial judgments are based on certainty and not on doubt and guesswork, and in implementation of that, the Court of Excellence ruled by saying: "...as the penal judgments are based on certainty." And certainty and not on doubt and guesswork, and since the evidence is not conclusive and doubtful as it is discretionary, and since proving the guilt requires proof of it by legal evidence, contrary to what was stated in the evidence of the Public Prosecution, which must not be proven and the innocence of the person accused of this crime is declared." [11].

This means that the evidence in felonies and misdemeanors is established by all means of proof, and the judge rules according to his personal conviction and that the trial court, in extracting it from the established fact, is independent in weighing the evidence of

the case and estimating it in its adoption or subtraction according to its authority established in Article 147/2 of the Code of Criminal Procedure. It is commented upon in this substantive issue as long as its deduction is a plausible and acceptable deduction.

Obstacles to Obtaining Electronic Video Recordings

There are some obstacles that stand in the way of obtaining punitive evidence resulting from electronic visual extracts, such as the right to privacy of electronic content, and the right not to distort electronic content.

First: The right to privacy of electronic content

The Jordanian constitution guaranteed this right by stipulating in Article (1/1) that the state guarantees freedom of opinion, and every Jordanian has the freedom to express his opinion verbally, in writing, through photography and other means of expression, provided that he does not go beyond the limits of the law, as stipulated in Article (7) of the constitution itself. , that personal freedom is safeguarded, and that every attack on the rights and public freedoms, or the sanctity of the private life of Jordanians is a crime punishable by law.

He added that many of the legal texts and articles carried with them protection for the privacy of the individual, as Article (348) bis of the Penal Code stipulate, based on the complaint of the aggrieved party, whoever violates the private life of others by eavesdropping or sight by any means shall be punished by imprisonment for a period not exceeding three months. Including audio recording, taking pictures or using the endoscope, and the penalty is doubled in the event of repetition [12]. In addition, Article (26) of the Copyright Law criminalizes the violation of the right to privacy so that the person who made any image has the right to display, publish, distribute, publish or distribute copies of the image without the permission of the person it represents.

Certainly, the image is no less important than any private property right, as it has become more vulnerable to infringement, especially in the electronic field. Accordingly, it is understood from the foregoing texts that the Jordanian legislator has granted the right to every person to prevent or stop any attack on the scope of his private life, which includes his name, his image, his social life, his medical history, or his electronic or traditional correspondence, and accordingly, it is not permissible to obtain any electronic content (whether cameras or mobile phones) relate to any person without his consent or after obtaining judicial permission in the cases required by necessity, otherwise, this is considered a violation of his right to privacy. While electronic content that takes place in public places is suitable for evidence, even if it is stealth and without judicial permission, such as fixed or mobile traffic cameras, it is suitable to be evidence acceptable to the judiciary.

In application of this, the Irbid Penal Court of First Instance ruled in its appellate capacity, saying: “and about the defensive evidence presented by the appellant, represented by witnesses and the expert report, their testimony was all centered on that the appellant did not cross a red light, and this fact is proven and supported by the technical expertise represented in With the dubbed disc (camera), through which it was found that the appellant did not cross the red light, and since the defensive evidence was supportive and compatible with each other, and our court was convinced of its right to weigh and assess the evidence in accordance with the provisions of Article 147/2 of the Criminal Procedures and that the Court of First Instance The first was taken with this evidence after it weighed the evidence of the prosecution and the defense and put forward the evidence of the prosecution, which was weak and does not link the defendant with the appealed crime with the crime ascribed to him [13].

Second: The Right not to Distort Electronic Content

In order for electronic content to be considered as evidence in criminal evidence, it must include facts and these facts must not be subject to suspicion, tampering, or distortion, so distortion is intended to change the content of the evidence intentionally or by mistake. As for modifying or installing new content that leads to extracting the visual extracts from their content in a way that contradicts the truth, it is certain that modern technology has greatly contributed to enabling others to easily tamper with the visual recordings so that they appear as an original copy in their expression of the truth, and this matter is difficult for the judge to identify. He must, therefore, seek the assistance of experts entrusted with the task of verifying the truth of the content and then unpacking the content.

Through the practical application, the intended distortion in the fixed and moving video recordings is through installation or drawing. It is possible to install and dub in the video recordings by merging two different places in the plural method (dubbing), so the specialist can modify the image in terms of taking a picture of the person and another picture of another person, then he puts them together so that a real picture appears to the beholder so that it becomes as if they are in a disturbing situation. As for the other type, which is drawing, there are professional people, and through advanced electronic equipment, who can draw what looks like a picture, so the picture appears as if it is real, and this type of drawing is usually used by filmmakers by drawing scenes and scenes that are difficult to portray in reality [14].

In application of this, the Mafraq Magistrate's Court relied, in its ruling, on the expert's electronic testimony, by saying: "the witness's testimony... the listener on pages (61-62), which stated: the expert report before me now by the court is My report, which I organized based on a mandate from the Mafraq Public Prosecutor, is on eleven pages, and I attached to it 99 photographs extracted from the video clips and stored on a CD for use in the case. The video saved on the CD that the Public Prosecutor handed over to me could have been dubbed (fabricated), and I found this out through the video format, which is MP4. and I am certain that every sound I heard and recorded is due to the same person speaking because the video shooting is directed. for the same person" [15].

The Court of Cassation also ruled by saying: "The interpretation of this means that the phrase (which is not a sign of itself) contained in the inability of this paragraph is a condition for all the cases mentioned in the sense that the images should have no significance in and of themselves. It is understood from this that these pictures are just drawings of the person who thought them, such as caricatures or comics and the like, and the matter does not apply to real-life pictures of people, which is not possible for the legislator to intend to include the acts of the discriminator against him represented by publishing real, naked pictures of the complainant within the definition of the data contained in Article 2 From the Electronic Crimes Law, it is understood from this that these fees are fabricated and not real so that the face of a known person is placed on pornographic pictures, pictures of animals, or others so that it becomes her. The court concluded that it had established the right of the person against whom it was appropriate, which leads to the fact that the felony of indecent assault will not be realized" [16].

Therefore, it can be said that visual recordings, despite their importance in criminal proof, must deal with this type of evidence with some caution. Recording, and then moving on to discussing the facts contained in the recorded content, and thus establishing a judicial ruling on them if the court finds its validity to prove.

The legal value of electronic video recordings

The legal value of the visual recordings lies in many of the first determinants of determining the authority of the subject judge in accepting them, especially if we take into account that the penal evidence system in Jordan gives the judge wide freedom to accept any evidence and determine its persuasive power, and the second is to determine the authority of the evidence derived from it while stating the position of the legislation And the Jordanian judiciary, including, and this is what we will work on his statement in this topic.

The authority of the judge to accept the visual recordings and their authenticity in the evidence

The criminal judge has wide authority in assessing the value of the evidence derived from the visual recordings, however, these recordings have legal controls that must be fulfilled in order to be an argument in the evidence, so we will discuss in the first section the judge's authority to accept the visual recordings and in the second section the authority of the visual recordings in the evidence, as follows following.

The Judge's Authority to Accept Visual Recordings

To determine the authority of the criminal judge in accepting the visual recordings, he must first assess the scientific value of the evidence derived from the visual recordings and then assess the circumstances and circumstances in which he was found.

First: Estimating the scientific value of the visual recordings

Since the authority of the criminal judge in assessing evidence is restricted to conducting technical expertise, especially in scientific matters, including visual recordings, which makes his decision subject to appeal and premature in the absence of scientific expertise, because the decision in the case may require precise scientific matters that are difficult to analyze and understand Because of the modernity of the penal scientific methods of proof [17].

In application of this, the Court of Cassation ruled by saying: "...in the presented case and by reviewing the case documents, it appears through the testimony of the complainant ... that cameras were used in the shops adjacent to the stolen shop, and it became clear through the video and the testimony of the witness ... that the two persons appearing in the video They are the defendants ... and the censorship regulator testified against him ... Also, the report of the Department of Laboratories and Criminal Evidence mentioned the effects of epithelial cells, and since that was the case, the Public Prosecution had to conduct the technical expertise on the compact disc (CD) and compare it with the two pictures of the two people who appeared In this clip, along with my photo of the defendant against them, as well as taking two blood samples from the defendant and sending them to the Department of Laboratories and Criminal Evidence to compare them with the effects contained in the laboratory report. Therefore, the decision of Assistant Public Prosecutor Maan to prevent the trial of the defendants is against the law, premature, e and worthy of cassation [18].

Therefore, access to the truth makes the judge obliged to seek the assistance of experts in estimating the value of the visual evidence presented to him, and based on the expert report, the judge can reach an emotional conviction and base his judicial ruling on it.

Second: The judge's assessment of the circumstances and circumstances in which the visual recordings were found

Despite the criminal judge's commitment to scientific facts and principles as a restriction on his freedom to discuss the established scientific facts, which are based on

confirmed and accurate foundations beyond doubt, this does not deprive him of the authority to extend his legal control over all elements of the criminal case, including the method of obtaining evidence and the circumstances Which were found in it, as it falls within the original procedural work of the criminal judge, and is subject to the principle of equivalence of evidence [19], and therefore the criminal judge can exclude any scientific evidence found that it is not commensurate with the circumstances and circumstances of the incident [20].

Based on this, it can be said that the use of data of scientific development, including visual recordings in the field of crime detection, does not contradict the principle of the criminal judge's freedom to form his faith, as the judge remains free to assess the productive strength of the evidence of the case presented to him and to take what is appropriate and put forward what he is not convinced [21], even if it was scientific evidence based on precise principles and foundations, and for example in the crime of indecent assault, the expert confirmed when unloading the contents of the accused's mobile phone the fact of having sex contrary to the nature between the victim and the accused, despite the existence of this conclusive evidence that cannot be The court may reject it, but it rejected it based on its discretion and legal oversight when it was certain that the complainant's statements were not devoid of purpose, interest, and maliciousness. Because the element of consent was achieved by the victim as the essential element in this crime is that it was committed against her will, and they have reached the legal age, which requires the court to exclude scientific evidence based on Visual recording.

Therefore, it can be said that the visual recordings have effectively contributed in the areas of criminal evidence, given that the evidence based on the visual recordings can reach what confirms the occurrence of the crime, and also confirms the existence of a relationship between it and the perpetrator, but that there may be in the case what made the judge convinced, even if it is a possibility. It calls for suspicion that another person has committed the crime, which confirms the need to give the judge the authority to assess the evidence resulting from a visual recording, not to accept the absolute truthfulness of its validity, and to allow the judge the freedom to form his conviction, either by ascertaining that the accused committed the crime and then ruling with conviction or by conviction or suspicion that it is no longer attributable to him. He shall be judged innocent [22].

Authentic video recordings

The authority of the evidence derived from the visual recording depends primarily on the discretionary power of the criminal judge, and the extent of his conviction in the evidence derived from this recording. The legality of the evidence does not mean that it has absolute authority in the evidence. Or he may take it, but not on its own, but rather in conjunction with other evidence [23], and therefore the evidence here does not have absolute authenticity but relative authenticity, for example, if a visual recording is obtained, will it be authoritative in the proof? Here we can say that when the registration has authority in the penal evidence, two conditions must be met:

First: The transfer of the content derived from the video recording was made by a device that keeps the facts in memory (a camera, a mobile phone, or a website), and the transfer process takes place in a safe manner that matches reality and is free from tampering defects that may affect the clarity and details of the content. **Second:** the content of the recording, after transferring it to another memory, should not be subjected to artificial factors or influences through substitution or partial or total deletion, modification, or addition to give facts that do not resemble the truth in anything.

It can be said that the availability of these two conditions is difficult and difficult for the subject judge to verify on his own, but he must seek the assistance of experts to verify the legality of the visual evidence. In order to be aware of the authenticity of the visual recording in the field of criminal evidence in the light of Jordanian legislation and the judiciary, it must be explained successively in the following requirement.

The position of the Jordanian legislation and judiciary on electronic video recordings

It is certain that the electronic video recordings have the quality of valid legal evidence in the penal evidence, it must be approved within the fundamental rules of the law and then work with it in the judicial application. in the following two sections.

The position of Jordanian legislation on the evidentiary power of video recordings

By extrapolating the Jordanian legislator's plan, we find that the Code of Criminal Procedure does not explicitly state the authenticity of the visual recordings in the penal evidence, but he took them implicitly by referring to the text of Article (147/2) of it [24], we find that it left the judge free to build his conviction from any Evidence presented in any role of the investigation or trial; This means that the Jordanian law adopted the principle of freedom of criminal proof, as the criminal judge under the system is free to assess the value of evidence and accept it and alone has the right to determine its legal value without the legislator having any authority to restrict it, and this means that the judge can rely on visible evidence in Evidence if satisfied. In a related context, the same law permits the public prosecutor the right to conduct all necessary investigations in all places where there may be things whose discovery helps to reveal the truth [25].

As for privacy legislation, the Jordanian legislature has permitted the use of modern technology in criminal procedures, including visual recordings in trial and investigation procedures [26]. Also, in the Electronic Crimes Law, judicial police officials are granted to search and seize anything that evidence indicates that it is used to commit any of the electronic crimes [27], and this means that the electronic visual recordings that are seized are valid as evidence in the criminal proof, especially if the provisions of the law are taken into account. The court convinced him. In addition, the legislator explicitly stated that the video recordings (camera) are authentic in penal evidence and considered them as a means of proof when unpacking their contents within the scope of the law, which is what is stipulated in the instructions for licensing jewelry-making and selling jewelry shops [28].

These texts clearly show the Jordanian legislator's acceptance of the visual recordings as sufficient evidence in criminal proof. By extrapolating the previous texts, we find that our legislature permitted the use of video recordings to prove or deny the offense as long as it included facts about the committed crime.

The position of the Jordanian judiciary on the evidentiary strength of the visual recordings

By extrapolating the Jordanian judiciary's approach to this issue, we find that the visual recordings were taken into penal evidence, but the authenticity and validity of the visual recordings alone in the proof have not been established after the elimination of their matter. Rather, it is required for its acceptance to be accompanied by other evidence and to be subject to the principle of personal conviction.

Among the decisions of the Court of Cassation, which considered the visual recordings as legal presumptions that can be relied upon for proof as complete evidence, was the ruling of the Jordanian Court of Cassation, saying: "We find that what the High Criminal Court went to in extracting the facts and justifying them is the exclusion of the evidence of

the Public Prosecution It contradicts the established reality in the papers and is not consistent with it, as there is a set of clues in this lawsuit from which legal evidence can be extracted that proves that the accused (discriminated against) committed acts of beating and torture on the betrayed child and that her death occurred as a result of the injury that caused the bloody hemorrhage with the substance and membranes of the brain resulting from the impact on the body Satisfied solid and these clues are: What is confirmed by the technical expertise report submitted by the expert. Al-Mubaraz N9 repeated that by transcribing all the photos and videos on the phone of the complainant (the mother of the slain child) the slain child is in good condition and does not show any signs of beating and assault and that the photos were taken on 5/19/2020. On the other hand, it was proven from the same experience report by unloading the phone of the accused against her and used by her that the child was being beaten in Different parts of her body as shown in the attached pictures and that the date of taking pictures from the accused's phone was after 27/7/2020 and that the accused was the one who appeared in the content of the video clips and it was proven by the outstanding experience report (N/6) that the accused was present on all the slides used by her According to the restrictions of the telecommunications companies, and that most of them are located in the Jabal Amman area, and that by unloading the cellular devices belonging to the complainant, there are no video clips of the deceased girl, and the presence of photographs taken of a child that does not show any sign of distress or violence, and no presence has been proven through the slides used by her, according to the restrictions of the telecommunications companies.

The repeater of the accused's house from 17/5/2020 until the date of the report (14/9/2020) and that she was technically tracked through her phone on 5 and 6/9/2020 and it was found that she continues to be present in the northern Hashmi area, and no presence has been proven in the Jabal Amman area completely. In addition to what was proven in the recording of the witnessing document N/8 organized by the witness regarding observations of photos and videos on the accused's phone, in which the deceased child was shown suffering bruises and injuries indicated in the report on different dates, including on 7/9/2020 and 2/9/2020 and 25/8/2020 Also, by reviewing the cameras of the Al-Salaymeh supermarket located in front of the accused's house and watching the cameras by the organizers of the prominent seizure (N9) in the periods indicated on 5 and 6/9/2020, the arrival of the complainant, the mother of the deceased child, to the house of the accused was not seen... Hence, we find that the evidence available in this case and referred to constitutes convincing legal evidence that the accused, distinguished against her, beat and tortured the betrayed child while she was caring for her, and for long periods and repeatedly without reason or excuse, and that her intention went to that, and that the bruise suffered by the victim inside Her scalp, which led to a bloody hemorrhage with a substance and membranes of the brain, which resulted in her death, was an act of discriminatory action against her. It calls for re-weighting the evidence in light of what has been stated in this decision, and then applying the law to the acts established against the defendant to the extent certain in the light of the acts committed by her and in the light of the judicial medical report and the forensic doctor's testimony about the injury that led to the death, if it was deduced from it as a direction of intent The discriminator against her for killing the deceased child, or merely harming her that led to her death, which necessitates reversal of the distinguished decision due to the reasons for discrimination against him" [29].

The Court of Cassation also ruled by saying: "regarding the expertise report (N/2) related to unloading the recording device located in the accused's place and that the device records (16) cameras, which proved that the complainant was the one who was approaching

the accused and that the accused caught The video clips did not include the accused placing his foot or thighs near or between the thigh of the complainant, as well as the testimony of the organizer, Captain Osama Abu Lawy, in which there was no indication that the accused put his leg between the complainant's legs or that he sensitized her vagina by his leg and, consequently, there was no link in it to the accused with the felony of indecent assault attributed to him" [30].

It is understood from the aforementioned decision that in order for the visual recordings to be considered as legal presumptions that may be relied upon for proof as complete evidence, the trial court must draw a reasonable conclusion based on certainty and certainty away from any doubt and possibility [31], and this makes the visual recording a presumption. A link established by law between certain facts or is a result that the judge must extract from a specific fact, and therefore in the absence of direct evidence, the court will examine the facts through the circumstances and circumstances that accompanied the occurrence of the crime and the accompanying evidence included in the case file from other evidence of testimonies and technical evidence Such as fingerprint reports, blood samples, epithelial cells, telephone statements, medical reports, visual recordings, etc., to see if presumption or presumptions could be drawn from them that would prove that the accused committed the crime attributed to him, or not.

The other side of the judiciary stated that the video recordings do not amount to being an argument in criminal proof unless they are accompanied by other evidence and subject to the principle of personal conviction. According to this trend, the Jordanian penal judge, in accordance with the pronouncement of Article (147/2) of the Code of Criminal Procedure, has absolute authority to assess and evaluate criminal evidence, including evidence of visual recordings, and depends on the officer of personal conviction, that is, the extent of his personal conviction of the evidence presented to him, Among the judicial applications that did not take into account the evidence of the visual recordings is what the Amman Penal Magistrate's Court ruled by saying: "the court reviewed the case file and where the court finds that the complainant in this case did not appear to present his testimony before the public prosecutor and the court and that all that was submitted were letters And since what was mentioned in these electronic messages and in the technical tracking of the account, which the court considers that, although it is scientific evidence, it is not evidence in itself, but a presumption, and that this presumption is according to Jordanian legislation and what the esteemed Court of Cassation has said is subject to the discretion of the subject court in accordance with the principle of personal conviction according to According to Article 147/2 of the Code of Criminal Procedure .. and accordingly, and since the legislator in Article (147) of the Code of Criminal Procedure has established a simple legal presumption granted to the complainant It is the presumption of innocence, and whoever claims otherwise must prove this with certain legal and judicial evidence, persuasive and conclusive, on the occurrence of the crime and attributing it to its perpetrator, because the penal provisions are based on certainty and not on doubt and guesswork, and since the criminalization is conditional on the proof of the act and the proof of the act means that all the pillars and Elements of the crime and in order to be criminalized, there must be certain and persuasive legal evidence of the crime and its attribution to its perpetrator, which requires declaring the defendant's innocence of the crime ascribed to him due to the lack of legal evidenc" [32].

The Court of Cassation also ruled by saying: "in the presented case and by reviewing the case documents, it appears through the testimony of the complainant... that cameras were used in the shops adjacent to the stolen shop, and it became clear through the video and the testimony of the witness Bashar that the two persons appearing in the video are the

defendants. ...and the report of the Department of Laboratories and Criminal Evidence testified to him, and since that was the case, the Public Prosecution had to conduct the technical expertise on the CD and compare it with the two pictures of the two people who appeared in this clip with mine. The case against them, as well as taking two blood samples from the defendant and sending them to the Department of Laboratories and Criminal Evidence to compare them with the effects contained in the laboratory report, and therefore the decision of the Assistant Public Prosecutor - Ma'an to prevent the trial of the defendants is against the law, premature and worthy of cassation" [33].

It appears to us from the foregoing that the Jordanian judiciary has not decided its opinion regarding the electronic video recordings in terms of their authenticity alone in the penal evidence. For its acceptance to be accompanied by other evidence and to be subject to the principle of personal conviction, we, in turn, call for recognizing the authenticity of the evidence derived from the visual recordings and adopting it as evidence when it was conducted under the supervision of the judiciary and through technical expertise without the need to require it to be supported by other evidence, as long as it was done by the judges through a procedure Technical expertise to prove the integrity and validity of the registration, it is legitimate and certain evidence, but if the evidence is presented by a person, in this case, the judiciary can consider it as a mere judicial presumption and not a legal one that needs other evidence to support it in the proof coupled with the personal conviction of the judge.

Conclusion

In summary, it has certainly become clear that visual recordings are classified as scientific electronic evidence based on the use of technology to prove the crime and its elements, and this type of evidence is characterized by its accuracy and clarity so that it may surpass the value of traditional evidence, because of its unequivocal authority in indicating the facts, it contains, as well as what it contains. Detailed facts about the crime committed.

Therefore, the researcher's study in this research reached many results and many recommendations, which are as follows:

Results

- 1 The visual recordings take the form of visual data that appears on the electronic screens of various devices. Such data may be in the form of written texts such as threatening messages, slander, slander, humiliation, or other electronic crimes that are committed by electronic means, or in the form of still images or Animation that includes realistic depictions of the crime.
- 2 As for the authenticity of the evidence derived from the visual recordings in the evidence, it is determined by the criminal judge according to the discretionary authority. However, this authority is limited in this type of evidence, unlike traditional evidence, as it is limited to assessing the circumstances and circumstances in which the evidence was found only. It falls under the jurisdiction of technical experts, and the judge has no role in it.
3. The Jordanian legislator did not explicitly stipulate taking or not taking visual evidence in penal evidence. Referring to the provisions of the Jordanian judiciary, we find that they differ in terms of the authenticity and validity of the visual recordings alone in the proof. Criminal evidence and there are other judicial rulings that have not

been taken into account but stipulated for its acceptance that it be accompanied by other evidence and be subject to the principle of personal conviction.

4. Despite the development in the electronic field, there is still a lack of experts specialized in dealing with this type of evidence.

Recommendations

- 1 We recommend our legislator to the explicit text to take into account the visual evidence in the Code of Criminal Procedure, specifically Article (147/2) of it by adding the following text “Considering that the evidence derived from electronic video recordings, if proven safe from tampering and distortion with technical expertise, the court may rule without No other evidence needed. This proposal provides controls and procedures to ensure the legitimacy of this type of evidence
- 2 We recommend to our legislator the need to issue special legislation regulating the use of cameras and electronic surveillance devices, similar to the comparative legislation, and to acknowledge the authenticity of their recordings in criminal proof in order to facilitate the task of the investigative authorities in controlling crimes and identifying their perpetrators, and we suggest obligating all shops in Jordan to install surveillance cameras inside and outside the shop.
- 3 The necessity of training the judicial police personnel on how to deal with this type of evidence, in order to ensure the preservation of what it contains of scientific facts about the committed crime.
- 4 Preparing an integrated team of specialized technical experts, and registering their names in a special register, like the traditional experts, in order to seek their assistance when needed and in order to enable the judge to use their expertise to clarify some of the issues contained in the visual evidence, and to verify these evidences are real or not.

References

- Bell, B.L. A Special-purpose Architecture for the Design of Educational Software, Tech. Rep. No. 70, Evanston, IL: Northwestern University, The Institute for the Learning Sciences, 1996, p 55.
- Decision No. 4014/2018 issued by the Oman Court of First Instance in its appeal capacity on 06-12-2018 Your electronic decision program 2022.
- Farid, Nael Adel, Economic Computer Crimes, A Theoretical and Applied Study, (2005) Chalabi Publications, Lebanon, p. 117. Al-Hussaini, Ammar Abbas, Principles of Modern Criminal Investigation, Dar Al-Sanhouri, Baghdad, (2017), p. 244.
- Eoghan Casey, Digital Evidence and Computer Crime-Forensic Science Computers and the Internet, Second Edition Academic Press An imprint of Elsevier, London , 2004,p3
- Al-Mismari, Muhammad Obaid; Farghali, Abdel Nasser, Criminal Proof with Digital Evidence, Research Presented to the First Arab Conference on Forensic Science and Forensic Medicine, for the period 12-14/2007, Riyadh, p. 13.
- Carter, D. L. and Katz, A.J, "Cyber-crime: An Emerging Challenge for Law Enforcement" FBI Law Enforcement Bulletin, (1996), available on the World Wide Web (<http://www.fbi.gov/leb/dec961.txt>), arrival date: 12.03.2022.
- Al-Jamli, Tariq Muhammad, The Digital Evidence in the Field of Criminal Evidence, Journal of Law, University of Bahrain, Vol. 12, No. 1, Bahrain, 2015, p. 45.

- Al-Hawamdeh, Lawrence Saeed, The Argument of Digital Evidence in Criminal Proof, Journal of Jurisprudence and Legal Research, No. 2, Volume 36, Al-Azhar University, Egypt, 2021, p. 898.
- Al-Arabi, Mustafa Ibrahim, The Role of Digital Evidence in Criminal Evidence, Journal of Economic Research, Misurata University, Libya, 2016, p. 71.
- Hanafi, Hazem Muhammad, Electronic evidence and its role in the criminal field, Edition 1, Dar Al-Nahda Al-Arabiya, Egypt, 2017, p. 19 and beyond.
- Abdullah, Sabreen Youssef, The Role of Visual Evidence in Criminal Evidence, Journal of the College of Law, Al-Nahrain University, Volume 19, Issue 1 in 2017. P. 265.
- Belgrave, Samia, The Authority of the Criminal Judge in Accepting and Appreciating the Digital Evidence, Journal of Comparative Legal Studies, Volume 7, Number 1, Year 2021, Algeria, p. 688.
- Awad, Ramzi Riyad, The Authority of the Criminal Judge in Assessing Evidence, without edition, publishing Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 163.
- Al-Nimr, Abu Al-Ela Ali Abu Al-Ela, The New in Criminal Proof, first edition, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 203.
- Muhammad, Fadel Zaidan, The Authority of the Criminal Judge in the Evaluation of Forensic Evidence, Third Edition, House of Culture for Publishing and Distribution, Amman, 2010, p. 315.
- Al-Sammak, Ahmed Habib, The Evidence System in Sharia and Positive Law, Journal of Law, issued by the Scientific Publication Council, Kuwait University, No. 2, 1997, p. 153.
- Al-Husseini, Ammar Abbas, Visual Photography and its Authenticity in Criminal Evidence, Journal of the College of Law, Al-Nahrain University, Volume 16, Number 1, Iraq, 2014, p. 42.
- Al-Husseini, Ammar Abbas, Visual Photography and its Authenticity in Criminal Evidence, Journal of the College of Law, Al-Nahrain University, Volume 16, Number 1, Iraq, 2014, p. 42.
- Article 147/2 of the Code of Criminal Trials stipulates that: "Evidence shall be established in felonies, misdemeanors and infractions by all means of proof, and the judge shall rule according to his personal conviction."
- Article (82) of the Code of Criminal Procedure stipulates that: "With due regard to the previous provisions, the public prosecutor has the right to conduct investigations in all places where there may be things or people whose discovery or discovery would help to reveal the truth."
- Oman Penal Magistrate's Court Decision, No. 3065/2022, dated 20/2/2022. And also the decision of the Amman Penal Magistrate's Court No. 18426/2021 dated November 29, 2021. And the decision of the Amman Penal Court of Peace, No. 17100/2021, dated 11/21/2021 Your decision program.
- Al-Husseini, Ammar Abbas, (2017), Principles of Modern Criminal Investigation, Dar Al-Sanhouri, Baghdad.
- Hanafi, Hazem Muhammad, Electronic Evidence and its Role in the Criminal Field, Edition 1, Dar Al-Nahda Al-Arabiya, Egypt, (2017).
- Awad, Ramzi Riad, The Authority of the Criminal Judge in Assessing Evidence, without edition, publishing Dar Al-Nahda Al-Arabiya, Cairo, (2004).
- Farid, Nael Adel, Economic Computer Crimes A Theoretical and Applied Study, Chalabi Publications, Lebanon (2005).
- Muhammad, Fadel Zaidan, The Authority of the Criminal Judge in the Evaluation of Forensic Evidence, Third Edition, House of Culture for Publishing and Distribution Amman, (2010).

- Al-Nimr, Abul-Ela Ali Abul-Ela, *The New in Criminal Consistency*, first edition, Dar Al-Nahda Al-Arabiya, Cairo, (2000).
- Belgrave, Samia, *The Authority of the Criminal Judge in Accepting and Appreciating the Digital Evidence*, *Journal of Comparative Legal Studies*, Volume 7, Issue 1, Algeria 2021.
- Al-Jamli, Tariq Muhammad, *The Digital Evidence in the Field of Criminal Evidence*, *Journal of Law*, University of Bahrain, Vol. 12, No. 1, Bahrain, 2015.
- Bell, B.L. *A Special-purpose Architecture for the Design of Educational Software*, Tech. Rep. No. 70, Evanston, IL: Northwestern University, The Institute for the Learning Sciences, 1996, p 55.
- Carter, D. L. and Katz, A.J, "Cybercrime: An Emerging Challenge for Law Enforcement" *FBI Law Enforcement Bulletin*, (1996), available on the World Wide Web (<http://www.fbi.gov/leb/dec961.txt>), arrival date: 12.03.2022.
- Casey, E. "Using Case-Based Reasoning and Cognitive Apprenticeship to Tech Criminal Profiling and Internet Crime Investigation", *Knowledge Solutions*, available on the World Wide Web (http://www.corpus-delicti.com/case_based.html), (1997, arrival date: 07.05.2022.
- Eoghan Casey, *Digital Evidence and Computer Crime-Forensic Science Computers and the Internet*, Second Edition Academic Press An imprint of Elsevier, London , 2004,p3.