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CCTV EVIDENCE AND THE LAW: THE EMERGENCE OF THE SILENT WITNESS DOCTRINE IN *STATE V. ZAHIR JAFFER*

¹Dr. Usman Hameed, ²Ali Shahid, ³Saima Noor

¹Professor/HoD Department of Criminology, University of Lahore

²Lecturer in Law, Grand Asian University, Sialkot.

³Lecturer, Department of Criminology, University of Lahore

Usman.hameed@uol.edu.pk; Ali.shahid@gaus.edu.pk

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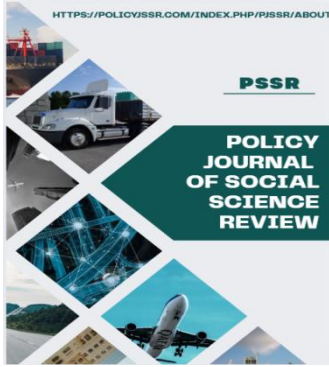
Dr. Usman Hameed

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ABSTRACT

The Supreme Court of Pakistan delivered a landmark judgment in the Zahir Jaffer case regarding the admissibility of CCTV footage as primary evidence. This review examines how the Court invoked the so called "silent witness theory" in combination with Articles 164, 73 and 46-A of the Qanun-e-Shahadat Order (QSO), 1984 to advance the view that CCTV footage can speak for itself as a witness and does not need human agency to make it admissible as a direct evidence. It further analyses the Court's observations on Call Data Records (CDRs), and the broader implications of the Zahir Jaffer judgment for the treatment of digital forensics in criminal trials in general.

Keywords: *Silent Witness Theory, Digital Evidence, Primary Evidence, CCTV footage, Photogrammetric Test, Call Data Record, forensic science, establishing identity, DNA.*



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Introduction

In the *Zahir Jaffer* case,¹ the Supreme Court upheld the death sentence awarded to the accused by the trial court and affirmed by the High Court on the basis of largely circumstantial evidence, particularly, the evidence of CCTV footage. In support of its decision, the Court relied on the “silent witness theory,” according to which evidence generated by a digital device may be admitted by a Court of law without the need to produce a witness who saw the occurrence. The Court formulated a two-pronged test: first, the footage must be original and free from tampering or editing; and second, its production must be pertinent to the facts in issue or relevant facts.² One of the relevant facts indicated in Article 22 of QSO 1984 is facts establishing identity, and CCTV footage has been held in this case to be a reliable source of establishing identity.

By virtue of an amendment made in 2013, Article 46-A was inserted into the Qanun-e-Shahadat Order (QSO), 1984, declaring documents produced through automated information systems, such as ATM receipts to be relevant facts.³ Previously, such documents

were treated as secondary evidence or as copies of a common original, admissible only in exceptional circumstances. Following the addition of provisos (3) and (4) to Article 73 of the QSO, 1984, occasioned by the coming into force of the Electronic Transactions Ordinance (ETO), 2002, documents generated through automated information systems are now regarded as primary and direct evidence.⁴ Consequently, a proviso was incorporated into Article 164 of the QSO, 1984, expressly permitting convictions to be based on evidence obtained through modern devices, thereby facilitating the use of digital evidence for establishing identity in criminal proceedings.⁵

Silent Witness Theory: Summary and Explanation

The “silent witness theory” is a legal doctrine that renders admissible in evidence photographs, videos, or computer-generated forensic material as primary evidence, without

information system. — Statements in the form of electronic documents generated, received or recorded by an automated information system while it is in working order, are relevant facts.”

⁴ See Explanation 3 to Article 73, “A printout or other form of output of an automated information system is treated as primary evidence if the system was in working order at all material times.”

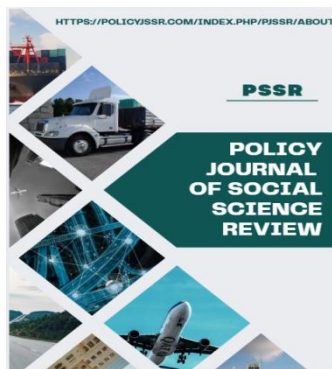
See Explanation 4 to Article 73 QSO 1984, “A printout or reproduction of an electronic document is treated as primary evidence where a security procedure was applied at the time of generation, sending, receiving, or storing” See also Section 29 of Electronic Transactions Ordinance [ETO] 2002 for Amendments to the Qanun-e-Shahadat Order, 1984.

⁵ *Shafqat Masih v. The State* (2021 MLD 1415)

¹ *Zahir Jaffer v. The State* (2025 SCMR 1325)

² The term facts in issue refers to principal facts that must be proved in order to get the decision of the court in one’s favor. Such facts must be alleged by one party and denied by the other. On the other hand, relevant facts are the facts which either by themselves or in combination with other facts prove or disprove the existence or non-existence of a fact in issue or principal fact, hence they are called evidentiary facts.

³ See 46-A of QSO 1984 “Relevance of information generated, received or recorded by automated



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the need for a human witness who observed the event.⁶ Instead, authenticity is recognized owing to the reliability of the recording process, such as by demonstrating that the CCTV system was functioning properly at the relevant time and there was no possibility of tampering. The admissibility of automatically captured images under the “silent witness theory” was affirmed in the United States in *Averhart v. State*.⁷ Similarly, the doctrine has been recognised in the United Kingdom in *R v. Atkin*, wherein it was observed that CCTV footage is admissible as a “silent witness” once its reliability is established, even if no witness observed the occurrence.⁸ If it is **confirmed that the** video has not been tampered with, it may be regarded both as an electronic document and as a material object capable of being inspected by the court.⁹

To adduce such evidence in a court of law, no oral testimony is needed, neither from the operator of the device nor from an expert witness to establish its authenticity. The evidentiary value of such material is contingent upon the manner of its procurement. For instance, a CCTV footage will be deemed to be reliable where it is shown to have been retrieved from a pre-installed and properly functioning surveillance system, such as DVR that was recording the crime scene at the

material time.¹⁰ Its realness can be confirmed further if the chain of custody was accurately documented prior to its transmission to the forensic science laboratory for verification and analysis.¹¹

Where the footage is shown to be original, unedited, and free from tampering, and gives a direct and contemporaneous account of the occurrence, its authenticity will stand proved without the necessity of human testimony.¹² As a result, such evidence will be admissible per se, and will not require the testimony of either the operator of device or an expert witness, to attest to its genuineness.¹³

The “silent witness” theory marks a departure from the earlier approach, under which mechanically produced evidence was treated as secondary or hearsay evidence, necessitating the testimony of both, the individual operating the device at the relevant time and an expert witness to verify its reliability.¹⁴ In *Zahir Jaffer*, the Supreme Court of Pakistan noted that the admissibility of evidence derived from modern devices had already been recognised under Article 164 of the QSO, 1984.¹⁵ Later on, pursuant to the insertion of Article 46-A into the QSO, 1984 and addition of provisos (3) and (4) to Article 73, documents generated through automated systems, such as ATM transactions were

⁶ Tal Golan, ‘The Emergence of the Silent Witness: The Legal and Medical Reception of X-rays in the USA’ 34 *Social Studies of Science* (2004) pp. 469–499.

⁷ *Averhart v. State* (470 N.E.2d 666)

⁸ *R v. Atkin & Others [2009] EWCA Crim 1876*

⁹ *Numan alias Nomi & Others v. The State* (PLJ 2023 Cr.C. 320 LHC-MUL)

¹⁰ *Basharat Ali Chaudhary v. The State* (Crl. Petition no. 248-L/2016 Supreme Court-Appeal)

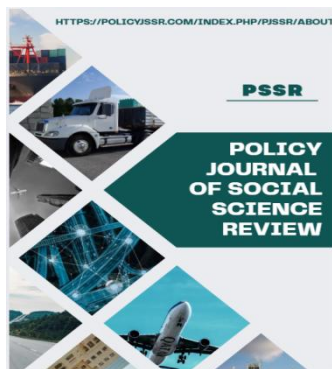
¹¹ *ibid*

¹² *Zahir Jaffer v. The State* (2025 SCMR 1325)

¹³ *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675)

¹⁴ *State vs. Ahmed Omar Sheikh* (2021 SCMR 873 Supreme Court)

¹⁵ *Zahir Jaffer v. The State* (2025 SCMR 1325)



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rendered admissible per se, without the necessity of oral testimony to establish their veracity. Thereafter, Article 164 of the QSO, 1984 was further amended in 2023 to expressly empower courts to accept evidence to be produced through modern devices and techniques, including Video Calls, Skype, IMO, WhatsApp, and Video Conferencing.¹⁶ Although CCTV footage is not expressly listed in the amended provision, it may reasonably be inferred from the judgment in *Zahir Jaffer* that evidence derived from such devices falls within the ambit of amended Article 164 of the QSO, 1984.

At present, the primary requirement for the admissibility of such evidence is confirmation that the surveillance device or DVR was functional at the critical time, that the extraction of the footage and its submission to a forensic expert were properly documented, and that the footage is found to be original, unedited and reliable by the forensic expert. Once these conditions are met, the evidence may be admitted without the need for human testimony.¹⁷ Stated otherwise, if it can be shown that the CCTV system was functional

and that no tampering occurred with the footage extracted from it, the genuineness of the evidence will be established, thereby excluding the need to produce the witness who was viewing or operating the device at the relevant time.

The theory leans on the process of generating evidence, rather than the type of evidence. Thus, a CCTV footage capturing a robbery or Dash-cam recording of a vehicular accident, if demonstrated to be accurate and free from tampering may be accepted in evidence without the necessity of supporting oral testimony.¹⁸ In the *Zahir Jaffer*, such evidence was regarded credible enough to warrant conviction even in a case punishable with death sentence. Therefore, the *Zahir Jaffer* judgment apart from recognising the primary nature of CCTV evidence, gave strength to the view that in unwitnessed crimes, conviction can be awarded on the grounds of circumstantial evidence alone, provided the evidence can speak for itself as a witness.

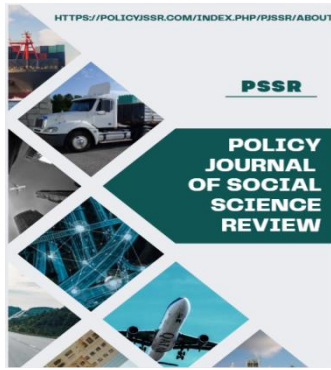
Prior to this case, circumstantial evidence, including medical and digital evidence, was rarely considered sufficient to justify a conviction in cases involving capital punishment. Such evidence was generally regarded as confirmatory or corroborative, carrying little independent value beyond confirming oral testimony.¹⁹ Thus, in a number of cases, it was held that forensic evidence, being confirmatory in nature, is of

¹⁶ See Section 164 QSO substituted by the XXXVII of 2023, s.12. “[164. Production of evidence that has become available because of modern devices or information system etc.— Depending on the nature of case and circumstances, the Court may, if deem appropriate, allow to be produced any evidence or witnesses recorded by the Court through the modern devices or techniques including Video Call, Viber, Skype, Imo, Whatsapp, Facebook Messenger, Line Caller and Video Conference, etc.]”

¹⁷ *Chairman, NAB v. Mir Faiq Ali Jamali and others* (PLD 2019 SC 675)

¹⁸ *Asfandayar and another v. Kamran and another* (2016 SCMR 2084)

¹⁹ *Ishtiaq Ahmed Mirza vs Federation of Pakistan* (PLD 2019 SC 675); See also *Siraj v. Crown* (PLD 1956 F.C. 123)



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no use where the ocular account fails to establish the commission of the offence.²⁰ Similarly, it was repeatedly held that, for circumstantial evidence to justify a conviction, the chain of circumstances must be so complete as to rule out every hypothesis consistent with the innocence of the accused.²¹ To illustrate, in Ahmad Omer Sheikh, the Court refused to accept a YouTube video in evidence showing the beheading of Daniel Pearl on the basis that the original video was never produced, and the individual responsible for creating it as well as the video camera used to capture the crime were not brought on record. Resultantly, the video was held to be inadmissible, being merely a recorded copy that could have been fabricated for cinematic purposes.²²

Likewise, in Ishtiaq Ahmed Mirza, the Supreme Court laid down as many as nineteen requirements for the admissibility of audio and video evidence, encompassing the production of the recording device and the individual responsible for making the recording, as well as the testimony of a forensic expert regarding its originality.²³ However, in the Zahir Jaffer, once authenticity was established, the Court held such evidence admissible without the need for human testimony, marking a clear departure from previous practice.²⁴

²⁰ *Muhammad Jamil vs. Muhammad Akram* (2009 SCMR 120); See also PLJ 2015 Supreme Court 774

²¹ *Shahid Ali vs The State* (PLD 2026 SC 126)

²² *State vs. Ahmed Omar Sheikh* (2021 SCMR 873 Supreme Court)

²³ *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675)

²⁴ *Zahir Jaffer v. The State* (2025 SCMR 1325).

Thus, just as Ali Haider alias Pappu marked a significant development in medical forensics by recognising the significance of DNA evidence as a gold standard for establishing the identity of an accused,²⁵ the Zahir Jaffer symbolised a comparable advancement in digital forensics treating CCTV footage as primary evidence for the same purpose. In the former, the DNA report was held to be admissible on its own without the need to produce an expert to testify as to its contents.²⁶ In like manner, CCTV footage was held to be admitted in evidence under “silent witness theory” without requiring the testimony of the CCTV operator or the expert who examined the footage.²⁷

Call Data Record and Silent Witness Theory

The “silent witness theory” renders CCTV footage admissible in evidence on the grounds of reliability of the process through which it is generated. It treats such footage as a witness that “speaks for itself,” provided that the integrity of the recording and accuracy of its source are duly established. In contrast, with regard to Call Data Records (CDR), courts have held that mere production of a CDR, without accompanying transcripts of the calls or end-to-end audio recordings, it cannot be relied as a trustworthy evidence.²⁸

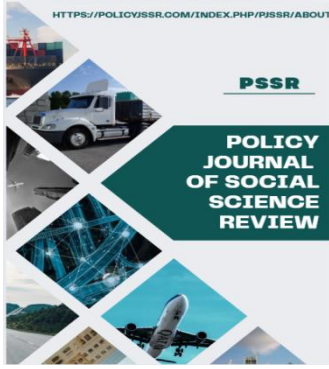
In addition to the above requirements, a CDR must also bear proper endorsement of the cellular company whose SIM was in use at the

²⁵ *Ali Haider alias Pappu v. Jameel Hussain and others* (PLD 2021 Supreme Court 362)

²⁶ *ibid*

²⁷ *Zahir Jaffer v. The State* (2025 SCMR 1325).

²⁸ *Khair Muhammad v. the State* (2025 SCMR 1599)



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critical time. 29 In the absence of official seal and signature of the issuing authority, a plain document purporting to be a record of all incoming and outgoing calls made to or from a certain SIM has been held to be deficient to prove location or identity of the user. 30 The requirement is meant to ensure that the authorized officer will subsequently appear before the court to testify as to the accuracy of the CDR.

In essence, a CDR must be supported by both a transcript of the conversation or a voice recording, as well as an authenticated record of incoming or outgoing calls. Without such supporting material, it can only demonstrate that a SIM was active within the coverage area of a particular cellular tower; however, it cannot establish what was said during the conversation. Moreover, a CDR cannot prove the identity of the actual user of the SIM, nor can it determine the precise location of its use, given that a single tower typically covers a wide geographical area. Accordingly, its admissibility further requires the attendance of an official from the cellular company to testify as to its accuracy. Therefore, it is clear that, unlike CCTV footage, a CDR has not yet acquired the status of a “silent witness” capable of speaking for itself.

Conclusion

While the acceptance of CCTV footage as primary evidence under “silent witness theory” is a welcome development, there remains an apprehension that, owing to the high-profile nature of the Zahir Jaffer case, the theory may not be applied with equal readiness in cases of

an ordinary nature. Putting it plainly, in routine cases, superior courts may find it difficult to sustain convictions solely on the basis of circumstantial evidence like CCTV footage due to fair trial considerations like presumption of innocence and the benefit of doubt.³¹ Accordingly, further conditions have been enumerated in a latest judgment pronounced by the Lahore High Court (LHC) to regulate the admissibility of CCTV footage as a primary evidence.

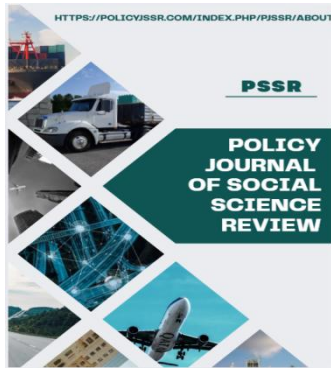
Thus, in Muhammad Ammar Shafi, the prosecution sought to establish the identity of the accused through CCTV footage and photographs obtained from Punjab Safe City cameras. However, the evidentiary foundation of this material was found to be fundamentally deficient.³² To begin with, the prosecution failed to establish an unbroken chain of custody regarding the transfer of the CD and photographs from the forensic expert to the investigating officer, and no witness was produced to depose as to the making of the video or the extraction of still images from the CCTV system. Next, the investigating officer did not take the surveillance device (DVR) into possession, leaving a material gap as to the origin and authenticity of the footage. Again, no expert witness was examined from forensic laboratory, nor was any certificate tendered to verify the genuineness of the video evidence. What’s more, the Court underscored the necessity of conducting a photogrammetric test by forensic science laboratory to establish that the accused were the same individuals

²⁹ *ibid*

³⁰ *Khalid Pervez v. The State* (2021 SCMR 522)

³¹ *Naveed Asghar v. The State* (PLD 2021 SC 600)

³² *Muhammad Ammar Shafi & 2 others vs. The State etc* (2025 YLR 1681)



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depicted in the footage, a requirement the prosecution failed to satisfy. Finally, the procedural obligations under Articles 71 and 139 of the QSO, 1984 were held to have been left unfulfilled which set forth the conditionalities for the use of CCTV footage both as oral and documentary evidence. As oral evidence, the footage ought to have been shown to the witnesses during the recording of their statements, while, as documentary evidence, it was incumbent the Court to inspect the footage by playing it in open court. Because of non-compliance with these requirements, the CCTV footage was held to be unreliable for establishing the identity of the accused.³³

Considering the foregoing, Muhammad Ammar Shafi authoritatively settles that, for CCTV evidence to be relied upon in proving identity, the prosecution must demonstrate a complete chain of custody from extraction to forensic examination; produce the testimony of the person responsible for viewing the footage and generating photographic stills; and obtain a photogrammetric test report from the competent forensic authority confirming the identity of the accused. In like manner, compliance with Articles 71 and 139 of the QSO, 1984 is indispensable, requiring both the exhibition of the footage to witnesses during testimony and its formal inspection by the Court. The failure to satisfy either of these requirements renders such evidence unreliable and incapable of sustaining a conviction. Arguably, Muhammad Ammar Shafi represents a refinement of the position adopted in the Zahir Jaffer judgment. While affirming

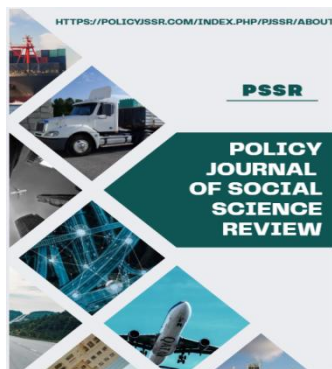
the significance of CCTV footage as a “silent witness,” it clarifies the conditions under which such evidence may be depended on.

The major takeaway from the Zahir Jaffer verdict is the Supreme Court’s acknowledgment that images or recordings generated through a reliable digital source constitute primary evidence, akin to a human witness capable of speaking for itself. Consequently, CCTV recordings of crimes such as theft, arson, accidents, or murder may be admitted in evidence without requiring corroboration through human testimony, provided the integrity of the process is established and the footage is free from tampering or editing.

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- aveed Asghar v. The State (PLD 2021 SC 600)

³³ *ibid*



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