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Legal Characterization of the Behavior of Following a Car to Evade Tolls

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Abstract: With the development and progress of science and technology, high-speed toll payment technology continues to innovate, which not only brings convenience to travel, but also brings new problems. As a result, a large number of toll evasion behaviors have emerged. In view of the frequent toll evasion phenomenon, this article discusses the qualitative issues of toll evasion behavior by combining cases, so as to resolve practical and theoretical disputes. The issue of behavioral crime and non-crime was discussed from the aspects of modesty and criminal illegality of criminal law, and finally it was determined that it constituted a crime. At the same time, we strictly compare the constituent elements of each crime, explore the legal interests protected behind them, and gain insight into the substantive purpose of setting up the crime, so as to correctly distinguish this crime from other crimes. It is also necessary to balance the relationship between punishing crimes and protecting human rights, and when multiple crimes are established, discuss the number of crimes and make an accurate evaluation of the crime. Through the above layer-by-layer analysis, this behavior was finally determined to be a crime of contract fraud, which is of great significance to combating crime and giving full play to the educational role of criminal law. It effectively curbs the occurrence of criminal behavior and is conducive to improving public acceptance and maintaining judicial credibility.

Keywords: Legal Characterization; Following a Car to Evade The Toll; Crime of Contract Fraud.

1. Legal Thoughts Drawn from Typical Cases

1.1. Case Introduction

The perpetrator, Zhang, drove a car on the expressway between Wanzhou District and the main urban area of Chongqing. When driving from Wanzhou to the main urban area, use ETC to enter the expressway from the ETC channel at a certain expressway entrance in Wanzhou. When arriving at Jiangbei Toll Station, Zhang quickly left the expressway by following a car instead of using an ETC card. When returning, he gets the card from the ordinary toll window of the toll station and enters the expressway. When he arrives at another toll station in Wanzhou, he uses the ETC card to drive the vehicle off the expressway. By adopting the above method, Zhang actually only paid the expressway toll at the adjacent toll station and defrauded most of the fees, totaling more than 11,000 yuan.

1.2. Focus of Controversy and Issues

In this case, there are major differences in its characterization among academic circles, which can be summarized into two aspects:

First, whether Zhang's behavior constitutes a crime. In this regard, there are two major views in the academic community. One party supports innocence and believes that Zhang's behavior is a civil breach of contract and only needs to be held accountable for breach of contract, and does not constitute a crime. The party that believes it is guilty claims that its conduct exceeds the realm of civil law and should be brought under criminal law.

Second, if Zhang's behavior is guilty, what kind of crime does it constitute? In this regard, five different opinions were summarized. One of them is that Zhang stole property interests through secret means, which constituted the crime of theft. Secondly, it is believed that Zhang publicly broke through and evaded tolls by following the car, which constituted the crime of robbery. Third, it is believed that Zhang affected the stable management of high-speed traffic, violated public order, and constituted the crime of picking quarrels and provoking trouble. Fourth, it is believed that through deception, Zhang caused the toll collector to fall into a wrong understanding and dispose of property interests, which constituted a crime of fraud. Fifth, it is believed that on the basis of constituting the crime of fraud, Zhang affected the market economic order and formed a valid contract with the operator, constituting the crime of contract fraud.

2. Analysis of Crime and Non-Crime Issues

2.1. The Relationship between Highway Users and Operators

To determine whether it is a crime or not, the premise is to resolve whether it is a civil breach of contract. We should first determine whether the relationship between Zhang and the operator is a civil subject with equal civil legal status, or whether the operator is an administrative subject exercising administrative rights.

The first view is that highways collect tolls in accordance with relevant regulations, that is, the toll collection activity is an administrative act, not a civil act performed by equal subjects.[1] The second view is that the civil legal relationship is the real legal relationship formed between the operator and the actor. [2] The operator's right to charge is a creditor's right, and the actor forms a civil contractual relationship with the operator for the paid use of the expressway. The author agrees with the second view, that is, the relationship between operators and users is a civil contract, for the following reasons:

First of all, the subject status of operators and users is equal.

Expressway-related affairs are mainly jointly responsible by management agencies, traffic management departments, and operators. Among them, the management agency is mainly responsible for supervision and management, and the traffic management department is responsible for handling traffic accidents, investigating and handling traffic safety violations, etc. Both are administrative agencies that implement management on behalf of the government, while expressway operators are the civil subjects that implement daily expressway operation and management. According to relevant regulations, expressways should not be for profit, administrative management should be separated from specific affairs, independent legal persons should be created to collect tolls, and relevant corporate legal persons should operate and manage expressways. As the subject of supervision of highway management entities, operators do not have administrative management functions and are civil subjects rather than administrative agencies. In this case, the victim unit Chongqing Yufu Expressway Co., Ltd., as the operator, is a qualified civil subject.

Secondly, operators and users have mutual rights and obligations. Expressway operators and users have the right to perform their obligations in accordance with the agreed content. Operators have the obligation to provide users with special expressway services, and then have the right to charge fees from users. Highway users have the right to receive services, but are obliged to pay a certain amount of money to the operator. This kind of rights and obligations originate from the agreement between the two parties, rather than legal provisions. Both parties enjoy equal rights and obligations through free and equal transactions.

Finally, the form of a contract is not limited to writing. According to legal provisions, contracts can be signed in written, oral or other forms, and different forms of contracts do not affect their validity. The law only stipulates that certain types of contracts need to have certain forms, and does not impose restrictions on general contract forms. This case is a service contract for paid use of an expressway. When Zhang entered the expressway, the two parties established the contractual relationship. The form of the contract was not restricted, and the contractual relationship between Zhang and the operator was not affected.

To sum up, Zhang and the expressway operator have established a civil contractual relationship, which is a service contract for paid use of the expressway.

2.2. Property Interests are the Objects of Property Crimes

Scholars who support the view of innocence exclude property interests from the objects of crime on the grounds that the criminal law does not expressly provide for it. Although the criminal law does not distinguish between property and property interests, and does not stipulate that property interests are the objects of crime in the criminal law, it cannot be considered that the criminal law does not protect property interests. The provisions of the criminal law are concise and it is impossible to express all the contents one by one. The relevant connotations should be analyzed from the original intention of the legislation and practical needs. On the one hand, the concepts of property in criminal law and property in civil law cannot be confused. The meaning of property in civil law should be broader, while criminal law, as a safeguard law, must protect property of considerable value. When property interests reach a certain value as civil rights, they should be protected by criminal law. [3] On the other hand, as criminal objects, property in criminal law should have the characteristics of management possibility, transfer possibility and value. Property interests can be managed and possessed by the victim, and property interests can be transferred to others for possession in certain ways. At the same time, property interests are valuable. [4] Therefore, in this case, the expressway operator's claims against users, as a kind of property interest, have the above three characteristics and can become the target of property crimes.

2.3. Determination of Criminality from Criminal Illegality

Crime has criminal illegality, which is mainly manifested in two aspects: on the one hand, it has formal illegality, and on the other hand, it has substantive illegality. Formal illegality mainly refers to the behavior's violation of criminal norms, and is mainly analyzed from the constituent elements of the crime. In this case, through the examination of the compliance of Zhang's behavior with the constituent elements, it can be proved that his behavior is formally illegal.

Substantial illegality means that the behavior substantially damages legal interests, and infringement of legal interests under criminal law is the key to conviction. The most intuitive result of Zhang’s behavior of following a car to evade tolls is that highway tolls, which are the property interests of operators, suffered losses. Zhang’s behavior infringed upon public and private property protected by the criminal law, and infringed upon the legal property rights protected by the criminal law; His behavior also had the possibility of causing personal injury and death, which disrupted the social management order to a certain extent; Zhang had a contractual relationship with the expressway operator, and his failure to perform the contract as agreed violated the principle of good faith in the contract; According to criminal law norms, public and private property, social order, the principle of good faith and economic order are all legal interests protected by criminal law. Therefore, it can be determined that Zhang's behavior objectively infringes upon legal interests.

To sum up, Zhang’s behavior not only complies with the constituent elements of a crime and is illegal in form, but also substantially infringes on various criminal law interests and is substantively illegal, and is a criminally illegal behavior. Therefore, according to the law, his behavior constitutes a crime.

2.4. Determining a Crime based on the Modesty of the Criminal Law

The modesty of criminal law is divided into two aspects, one is the modesty of crime, and the other is the modesty of punishment. Since this case mainly discusses the issue of crime and non-crime, the analysis focuses on the modesty of crime. It requires us to remain modest about convictions and to apply the law with prudence and restraint when there are disputes over issues such as guilt and innocence, misdemeanors and felonies. We should neither confuse the law with citizens' simple sense of justice, nor blindly apply criminal law to deal with problems. We must have awe of the law. Criminal law has two major functions, which are to protect legal interests and protect human rights. Neither can be neglected. In this case, Zhang committed fee evasion many times and the amount was relatively large, and the nature of his behavior was relatively egregious. If the behavior is evaluated only from the perspective of civil law or

administrative law, the cost of violating the law will be low and difficult to match the harmful consequences. Moreover, his behavior violated multiple legal rights and interests, and the circumstances were serious. Only lighter sanctions could not suppress this kind of behavior that infringed on the legitimate rights and interests of the counterparty. The application of criminal law not only effectively cracks down on criminal behavior, but also plays a role in punishment and education, protecting the rights of victims and safeguarding public interests. Therefore, considering the nature of the behavior, the fairness and effectiveness of the punishment, etc., it is necessary to use criminal law to sanction it.[5]

As can be seen from the above, the relationship between the user and the operator is a civil contract, but his behavior constitutes fraud under civil law, and it cannot be ruled out that he violates criminal law norms and constitutes a crime. In this case, Zhang's behavior has exceeded the scope of civil law and entered the realm of criminal norms. Zhang's behavior can be determined to constitute a crime.

3. Analysis of the Problem of This Crime and That Crime

3.1. It is Unreasonable to Establish the Crime of Theft

As to whether theft requires "secrecy", most people think that the crime of theft requires secrecy. If it is believed that "secrecy" is not required for theft, then as long as Zhang uses peaceful means to transfer possession, even if he carries out this behavior openly, it should be considered a crime of theft. Then "secrecy" is not a reason to prevent the crime of theft in this case. If it is believed that theft requires "secretness", then it is necessary to determine whether the car-following behavior is "secret". The person driving out of the toll station by following the car may subjectively have the mentality to pass secretly. Objectively speaking, in the complex environment of the toll station, there is a high probability that the toll collector did not realize that Zhang passed. In this case, Zhang's behavior can be determined to be "secret." But "secretness" is not the only requirement for establishing the crime of theft.

To establish the crime of theft, it is required to use peaceful means to transfer the property possessed by the victim to his own possession. Among them, transfer of possession, as an execution act of the crime of theft, is indispensable in the composition of the crime [6]. In this case, Zhang did not transfer possession. The expressway operator has a claim on Zhang to collect tolls, but the operator's act of letting Zhang pass is a voluntary abandonment of the claim and does not change the owner of the debt. The behavior performed by Zhang was an act of evading payment obligations, rather than destroying the operator's possession and establishing his own possession by transferring possession. Therefore, Zhang did not commit theft and was not guilty of the crime of theft.

3.2. It is Unreasonable to Establish the Crime of Robbery

To identify the crime of seizing, we must first define its violence. Violence in the crime of seizing refers to violence against objects, which is different from violence against people in the crime of robbery, but it also has the possibility of causing danger to people, which is different from the peaceful means of theft. As far as criminal law is concerned, not all violence is violence in the criminal sense. Criminal law violence should be part of the generalized violence. The crime of seizing has more detailed limitations on violence in terms of object and degree. In this case, Zhang's car-following behavior was dangerous to a certain extent, but it did not constitute direct violence against objects, and his violence was far from being personally dangerous, and did not meet the restrictions on violence for robbery crimes stipulated in the criminal law [7]. Secondly, there is no object that can be seized in this case. The operator's creditor's rights, as a kind of property interest, can become the object of crime, but they are not physical objects and do not meet the provisions of the crime of seizing for closely possessed property. Finally, Zhang did not have the criminal intent to commit the crime of seizing. The purpose of Zhang's car-following behavior was to evade the obligation to pay, and he did not have the intent to illegally possess other people's property through physical violence. Therefore, Zhang's behavior does not constitute the crime of taking.

3.3. It is Unreasonable to Constitute the Crime of Picking Quarrels and Provoking Troubles

The crime of picking quarrels and provoking trouble is a type of crime developed from the crime of hooliganism. The purpose is to protect social and public order, and there are four main situations that constitute a crime, including beating others at will, taking public and private property by force, making trouble in public places, etc.[8] Among them, taking by force is the closest to Zhang's behavior in this case, but the legal interest protected by the crime of picking quarrels and provoking troubles is social order. Taking by force is a type of behavior in the crime of picking quarrels and provoking troubles, which is different from the possession behavior in property crimes. The main purpose of using force is to bully people through hooliganism, causing the counterparty to fall into fear and forcefully obtain property. The behavior is violent, and its core is the destruction of public order. Zhang's repeated toll evasion behavior will disrupt the normal traffic order on the expressway and affect public order to a certain extent. However, it did not reach the level of disrupting social order as stipulated in the criminal law. His behavior more infringed on the property interests of the counterparty. Zhang also did not commit direct violence by force, and Zhang's evasion of fees through peaceful means cannot be considered as force. From a subjective perspective, the crime of picking quarrels and provoking trouble requires the perpetrator to have subjective motives such as showing off his strength and having fun, and to satisfy his criminal purpose by challenging the moral bottom line. In this case, Zhang did not have a mental state such as making trouble out of nothing or seeking excitement, nor did he have any criminal motive for the crime of picking quarrels and provoking trouble. Therefore, Zhang's behavior does not constitute the crime of picking quarrels and provoking trouble.

3.4. It is Unreasonable to Establish the Crime of Fraud

In terms of objective aspects, the crime of fraud requires the use of deceptive methods to defraud others of larger amounts of property. At the same time, we must strictly abide by the behavioral structure, that is, use deception to cause the counterparty to have a misunderstanding and divide the property, benefiting the perpetrator and causing harm to the counterparty. In this case, Zhang entered the expressway

through the unmanned toll lane and followed the car out of the toll gate, committing deception. Although the toll collector was not aware of Zhang's fraudulent activities, he mistakenly believed that Zhang had completed the payment, so he had a misunderstanding. Due to the misunderstanding, he gave up his creditor's rights and did not charge the perpetrator. On the return trip, Zhang received the pass card and entered the expressway, but used the ETC card to drive out, committing a deceptive act; causing the toll collector to mistakenly believe that the perpetrator was only traveling within the city, resulting in a misunderstanding; based on the misunderstanding, he gave up part of his creditor's rights. Since each behavior cannot be judged in isolation, the round trip must be discussed together. At this time, the toll collector also gave up his creditor's rights due to being deceived. Therefore, Zhang committed deception in this case. The operator's abandonment was due to a misunderstanding and the operator also had behavioral awareness.

On the subjective side, the crime of fraud must have the purpose of illegal possession. In this case, Zhang intended to exempt or reduce his payment obligation through deception, and had the purpose of illegal possession and the criminal intention to commit the crime of fraud. Therefore, Zhang's behavior met the constituent elements of the crime of fraud and was established as a crime of fraud.

3.5. Analysis on the Crime of Contract Fraud

As to whether the crime of contract fraud can be determined in this case, the essence lies in the distinction between the crime of fraud and the crime of contract fraud. Since the behavior patterns of the two are highly consistent, from the analysis of the legal interests infringed by the two, the crime of fraud is an infringement of other people's property, and the crime of contract fraud not only infringes on other people's property, but also infringes on the economic order. Therefore, the key to distinguishing the two crimes is the impact of the behavior on the economic order, that is, whether there is a contract between the parties under the crime of contract fraud. Regarding what kind of contract constitutes the crime of contract fraud, the general view is that the form of the contract is not the key, but its substantial impact on the market economic order is the core [9]. Through the above analysis of the relationship between Zhang and the operator, it can be known that when the perpetrator enters the expressway, the contract between him and the operator is established, and the relationship between the two is a civil contract. Regardless of the type of contract or the essence of the infringement of legal interests, it meets the contract requirements of the crime of contract fraud. From the analysis of the crime of fraud, it can be inferred that on the basis that Zhang's behavior complied with the constituent elements of the crime of fraud, there was a legal and valid contract and satisfied the constituent elements of the crime of contract fraud [10]. Therefore, Zhang's behavior constitutes the crime of contract fraud.

3.6. Crime Count Analysis

From the above analysis, it can be known that Zhang's behavior not only constitutes the crime of fraud, but also constitutes the crime of contract fraud. At this time, the number of crimes needs to be analyzed. In terms of protected legal interests, Zhang's behavior infringed on the property interests of expressway operators and the interests of market order. If he was only convicted of fraud, there would be a lack of evaluation of the fact that the legal interests of market order were infringed. If several crimes are punished at the same time, Zhang's behavior that infringes on property interests will be repeatedly evaluated. Therefore, both the protection of human rights and the protection of legal interests must be taken into consideration, and evaluations must not be repeated or omitted.

Judging from the number of Zhang's criminal acts, Zhang entered the expressway through the unmanned toll lane on his way out and then followed the car out. On his return trip, he entered the highway by taking the card and drove out through the unmanned toll lane. On the surface, Zhang's outgoing behavior and return behavior are two independent criminal acts. But in essence, Zhang's outing and return behaviors were two acts under the control of the same criminal intention, and his criminal intent was not eliminated when his outing behavior ended. The core is to obtain long-distance expressway services by paying short-distance tolls. Round trip is a complete criminal act. Therefore, Zhang only has one criminal act in this case.

From the perspective of legal consequences, an act committed by Zhang violated the crime of fraud and contract fraud under the criminal law. The establishment of the crime of contract fraud will inevitably violate the crime of fraud, and the two are competing laws. When the legal provisions conflict, the special law is generally treated as superior to the general law. However, when there is a legal provision, one of the felonies will be punished in accordance with the provisions. In the criminal law, the crime of contract fraud is a special legal provision compared with the crime of fraud, while the crime of fraud is a general legal provision. The criminal law does not stipulate which crime takes precedence when the two crimes coincide, so it must be dealt with in accordance with the general principles, that is, the special legal provisions The crime of contract fraud takes precedence over the crime of fraud under general legal provisions, and Zhang's behavior was determined to constitute the crime of contract fraud. In summary, the case was ultimately punished with contract fraud.

4. Conclusion

Under the current background of vigorously promoting modernization, the widespread application of high and new technologies is the general trend, which has also produced many new types of criminal cases. But this does not mean that it will inevitably lead to irresponsible results. The most important thing is to study the behavior itself. Through the analysis of this case, it can be seen that Zhang's behavior infringed upon property interests and the legal interests of market order, defrauded operators of property interests through deception, and destroyed the market atmosphere of honesty and trustworthiness in the economic market. His behavior is fully consistent with the criminal elements of the crime of contract fraud and the original intention of the legislation. However, incorporating this behavior into criminal law regulations is not the only means to curb it. Only by comprehensively managing it in multiple aspects can we achieve the best results. People's ignorance of the consequences of their actions is one of the reasons that lead them to commit crimes. The role of criminal law in preventing crime is directly proportional to the legal knowledge of ordinary people. Due to the continuous debate in the judicial circles on the characterization of this behavior, the offenders also have a sense of luck. Therefore, it is necessary to achieve

"the same verdict in the same case" so that judicial personnel can accurately identify the crime, and we must also do a good job in legal publicity and education so that the public can realize the seriousness of this behavior. At the same time, by reforming and innovating toll management methods and strengthening the supervision of toll stations, we can also effectively prevent the occurrence of illegal activities and eliminate toll evasion by following cars at the root.

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