

The Exploration of the Expansion and Restriction Path of Judicial Application of the Crime of Assisting Information Network Criminal Activities

-- From the Perspective of 277 Judgments from A Certain District in Chengdu

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Abstract: With the interpretation of the constituent elements of this crime to a certain extent in documents such as "Opinions on Electronic Fraud II" and "Interpretation of the Crime of Helping Trust in 2019"^[1], it is hoped that the judicial authorities can better understand the various constituent elements of this crime in judicial practice and correctly apply them to judgments, activating the effective application of this crime in judicial judgments. However, there are still many difficult issues between the judicial practice department and the academic community regarding the inconsistent understanding and views on the constituent elements of this crime. This article aims to optimize the understanding of the various elements of the crime of Assisting Information Network Criminal Activities, explore judicial practice governance strategies and methods for Assisting Information Network Criminal Activities, and propose reasonable inclusion standards for Assisting Information Network Criminal Activities by exploring the application standards in the competition of upstream and downstream crimes of Assisting Information Network Criminal Activities. It actively responds to a series of difficult problems in the current judicial practice of Assisting Information Network Criminal Activities, and provides reasonable suggestions and effective countermeasures for the latest policy research on Assisting Information Network Criminal Activities.

Keywords: Crime of aiding information network criminal activities, Restricted path, Management of minor offenses, Trial sample analysis.

1. Introduction

Since the 2010s, the trend of sentencing for serious crimes with a sentence of more than three years by China's judicial practice departments has been continuously decreasing. The trend of China's criminal structure becoming less serious has gradually become prominent with the scientific construction of the national governance system and governance capacity, as well as the continuous development of social and economic levels. According to the 2019 Report of the Supreme People's Court on Strengthening Criminal Trial Work, since 2014, the criminal policy of combining leniency and severity has been adhered to^[2]. Defendants who have statutory or discretionary leniency circumstances or plead guilty to punishment have been given lenient punishment in accordance with the law. 81.6% of them have been sentenced to fixed-term imprisonment of less than three years, an increase of 5.8 percentage points year-on-year, minimizing negative factors and promoting social harmony. Deepen the standardization reform of sentencing, revise and improve sentencing guidance and procedures, and promote the unity of sentencing standards. In October of the following year, the report of the Supreme People's Procuratorate on the application of the leniency system for confession and punishment by the People's Procuratorate showed that the proportion of minor offenses sentenced to imprisonment of less than three years had reached 83.2%. The author believes that new types of crimes that endanger economic and social management order, represented by cybercrime, are increasingly becoming a ty-

pical representative of the era of minor crimes. Under the influence of a positive criminal law perspective, criminal law actively intervenes in social governance by adding minor offenses. The changes in criminal structure have an impact on criminal law governance strategies, and China has gradually begun to build an efficiency oriented system for the governance of minor offenses.

According to the sample analysis of trial practice in a certain district of Chengdu, the majority of perpetrators of the crime of Assisting Information Network Criminal Activities have a junior high school education, and their age structure is mainly composed of young adults. With the comprehensive transformation of social life in the era of the internet society, how to prevent crimes against such groups of people whose education level does not match the development of social operation models in the era of information network development has become an urgent problem to be solved^[3]. To this end, at the prevention level, it is necessary to strengthen the publicity of the criminal nature of the two types of cards, enter public places such as schools, communities, and tea houses, and achieve a down-to-earth policy promotion, reminding the public not to suffer big losses due to small gains. At the level of crackdown, the trial practice in a certain district of Chengdu has shown significant differences in sentencing standards within a certain range^[4]. Therefore, it is necessary to understand and analyze the relevant laws on the crime of Assisting Information Network Criminal Activities, and find corresponding criminal governance measures based on the problems analyzed in the sample.

2. Difficulty Focus: Reasons and Analysis for the Expansion of Judicial Application of the crime of assisting Information network criminal activities

2.1. The problem of unclear criteria for "knowing" identification

In the two-year sample data collected on the crime of Assisting Information Network Criminal Activities, there is a lack of explanation for the reasoning process of "knowing". In the 2021 sample, only in the case of Ren's crime of Assisting Information Network Criminal Activities, the defendant admitted in court whether they knew it or not, while in the other cases, there was no process of deduction and interpretation of knowledge. The system of admitting guilt and punishment fully demonstrates the advantages of improving the trial efficiency of judges and timely and effective punishment of those who commit crimes of Assisting Information Network Criminal Activities. However, the impact on the defense system and the effective integration of the trial centered litigation system reform also bring challenges^[5].

2.2. The issue of criteria for determining "serious circumstances"

What is judicial recognition of "payment settlement" as assistance? Article 3 of the Payment and Settlement Measures: "Payment and settlement" refers to the behavior of units and individuals in social and economic activities using bills, credit cards, and settlement methods such as exchange, collection and payment, and entrusted collection to make monetary payments and clear funds; Article 162: "The settlement method referred to in these Measures refers to exchange, collection and payment, and entrusted collection." According to Article 4 of the 2022 Meeting Minutes, "If the credit card rented or sold by the perpetrator is used to receive telecommunications network fraud funds, but the perpetrator has not carried out acts such as transferring, cashing out, or withdrawing on behalf of others, or has not provided verification services such as facial recognition to cooperate with others in transferring, cashing out, or withdrawing, it should not be recognized as a 'payment settlement' behavior as stipulated in Article 12, Paragraph 1, Item (2) of the Interpretation." The minutes of the symposium on handling cases related to internet finance crimes clearly state that "payment settlement services (also known as payment services) are monetary fund transfer services provided by commercial banks or payment institutions between payers and payers." From a positive and negative perspective, the "payment settlement assistance" behavior of the crime of Assisting Information Network Criminal Activities mainly includes assisting in transfer, cashing out, withdrawal and other behaviors, Or cooperate with these behaviors to provide facial recognition and other verification services, and provide monetary fund transfer and other behaviors. Simply providing credit cards to receive funds is not a payment settlement behavior.

2.3. The issue of distinguishing between related charges

2.3.1. Distinguishing between the crime of Assisting Information Network Criminal Activities and the crime of concealing and concealing the proceeds of the crime

Trust crime is an essential part of upstream cybercrime, which refers to the act of assisting others in criminal activities by providing payment and settlement, facilitating their smooth implementation of the crime. The crime of concealing and concealing the proceeds of a crime (hereinafter referred to as the crime of concealment) involves assisting in the transfer of criminal proceeds and their benefits after the establishment of upstream criminal facts and the completion of the crime^[6]. Due to the fact that both the crime of Assisting Information Network Criminal Activities and the crime of concealment can manifest as receiving and transferring stolen funds through bank cards in practice, there are many similarities, and the distinction between the two has always been a difficult issue in both practical and academic circles. Some of the samples present inconsistent charges identified during the detention arrest trial stage^[7]. Therefore, defining the essential difference between the crime of Assisting Information Network Criminal Activities and the crime of concealment can help to better understand the differences between the charges of Assisting Information Network Criminal Activities in judicial practice and make accurate judgments, which can improve quality and efficiency.

2.3.2. Distinguishing between accomplices of the crime of Assisting Information Network Criminal Activities and the crime of telecommunications and network fraud

Telecommunications network fraud refers to the criminal behavior of using telecommunications, internet and other technological means to release false information or set up scams to the public with the purpose of illegal possession, mainly through remote control and non-contact inducement of victims to deliver property. Due to the many similarities in the elements, application environment, and background of the crime, there are many overlapping and blurred distinctions in the application level of the crime of Assisting Information Network Criminal Activities and the crime of telecommunications network fraud in judicial practice. For example, both are of the nature of "accomplices", both objectively requiring the implementation of aiding behavior, and subjectively requiring knowledge that others have committed telecommunications fraud crimes^[8].

In the field of judicial practice, the distinction between the crime of Assisting Information Network Criminal Activities and the crime of telecommunications network fraud has long been an unavoidable and difficult issue, which can easily lead to differences in application. The traditional theory of joint crime is based on the premise that there is a connection of intentions among the joint criminals, and joint criminal intent is a necessary element for establishing a joint crime. Article 25 of the Criminal Law of our country stipulates that "joint crime refers to the intentional crime committed by two or more people together." Therefore, "the establishment of an accomplice must be based on intent". Whether committed individually or jointly, the content and degree of intent should meet the theoretical requirements of intent. Assisted offenders also belong to intentional offenders and cannot be identified without the

basis of punishment for intentional offenders.

3. Corresponding Strategies: Analysis of the Restriction Path in the Judicial Application of the crime of assisting Information network criminal activities

3.1. Using "clear knowledge" as the criterion for determining "knowing"

There are three main views in the current theoretical community regarding the specific connotation of knowing, namely the deterministic theory, the possible theory, and the should be theory. The most direct textual interpretation is adopted, which believes that "knowing" means knowing clearly and with certainty, and does not include doubts that cannot be determined. It may be said that as long as there is a possible understanding, knowledge is established. It should be said that inferring from objective factual evidence that the actor knows or may know also constitutes knowing^[9]. Professor Mingkai Zhang pointed out that in academia, knowing is usually divided into two types, including knowing in the general provisions of criminal law and knowing in the specific provisions of criminal law. The former is a general constituent element of intent, while the latter is a specific constituent element of intent. Only when the actor has knowledge in the specific provisions of criminal law can the danger of the actor to the behavior be determined. The nature and consequences of the harm are well known. If the perpetrator only has a certain degree of reasonable suspicion, or only vaguely knows, it is not knowingness in criminal intent. Professor Chen Xingliang pointed out in his book "Doctrine of Criminal Law" that knowing includes knowing (knowing with certainty) and should know (knowing with certainty). Professor Liu Yanhong pointed out in her article "The Judicial Expansion Trend and Substantive Limitation of the Crime of Assisting in Information Network Crime" that "knowing" in the crime of Assisting Information Network Criminal Activities is limited to "clearly knowing", and the judgment of "knowing" should be based on a comprehensive subjective and objective determination of "clearly knowing". In the determination process, objective evidence should be presented more seriously, rather than relying on logical deduction.

3.2. Clarify the nature of the transaction amount and payment settlement amount, and make an accurate judgment on the severity of the situation

The analysis and handling of serious circumstances in the sample are as follows: In 2021, 88 judgments (80.73%) were made without reasoning for the elements of serious circumstances constituting crimes, and 21 judgments (19.27%) were settled for clauses over 200000 using Article 12 (2) of the 2019 Interpretation of the Crime of Assisting Information Network Criminal Activities. In the 22 year sample, 12 judgments (7.69%) settled for clauses over 200000 using Article 12 (2) of the 2019 Interpretation of the Crime of Assisting Information Network Criminal Activities for serious circumstances, 156 cases (92.31%) were not rationalized. The author believes that the settlement amount of cybercrime helped by the defendant of the crim

e of Assisting Information Network Criminal Activities in the sample of 2021 and 2022 is mainly based on Article 12 of the 2019 Interpretation of the Crime of Assisting Information Network Criminal Activities, and the legal basis adopted by a certain district court in Chengdu for "serious circumstances" in Article 287-2 of the Criminal Law is mainly based on the implementation of the behavior specified in the preceding paragraph. However, due to objective conditions, it is impossible to verify whether the assisted object has reached the level of crime. However, if the total amount involved reaches five times or more of the standards specified in the second to fourth items of the preceding paragraph, or causes particularly serious consequences, the offender shall be held criminally responsible for the crime of aiding information network criminal activities. In the process of determining the elements of "serious circumstances" in Article 287-2 of the Criminal Law of a certain district court in Chengdu, the sample containing the reasoning part for the elements of the crime cited Article 12 (2) of the 2019 Interpretation of the Crime of Helping Trust, and determined the "serious circumstances" by paying a settlement amount exceeding 200000 yuan. However, out of a total of 268 samples (100 in 2021 and 168 in 2022) with payment settlement behavior types in the two-year sample, there was no explanation given on whether all payment settlement amounts were used for criminal purposes, or whether some were normal card transaction s^[10]. In the author's opinion, it is complex and labor-intensive to clarify whether each payment in the huge flow of funds in the card is used for criminal payment settlement or normal flow. However, if the defendant of the crime of Assisting Information Network Criminal Activities defends the qualitative issue of a certain or several account flows and requests the exclusion of payment settlement amounts, the prosecution and trial authorities should listen to the defendant's defense opinions on this issue and believe that it is necessary to investigate. If the total amount of payment settlement of the defendant after deducting the current account balance is less than the standard of 200000 yuan in Article 12 (2) of the 2019 Interpretation of the Crime of Helping Trust, it shall be deducted from the payment settlement part. The author suggests that, based on the principle of trial as the center, when the judicial authorities correctly clarify the elements of the "serious circumstances" of the crime of Assisting Information Network Criminal Activities, they can design or introduce a set of calculation formulas for the payment settlement amount, import complete transaction information from the bank card or account involved in the case, input necessary amount information such as the reported amount provided by the victim, the victim's address, and the normal transaction amount supported by evidence provided by the defendant. There is a clear and scientific derivation process for calculating the payment amount correctly, based on the payment settlement amount reaching 200000 yuan standard in Article 12 (2) of the 2019 Interpretation of the Crime of Helping Trust.

3.3. Clarify the boundary between the crime of Assisting Information Network Criminal Activities and related charges

3.3.1. The boundary between the perpetrator of the crime of Assisting Information Network Criminal Activities and the accomplice of the crime of telecommunications and network fraud

There are differences in the objective direction of helping behavior. Although the act of aiding in the crime of Assisting Information Network Criminal Activities includes providing assistance for the crime of telecommunications network fraud, providing assistance for telecommunications network fraud does not necessarily constitute the crime of Assisting Information Network Criminal Activities. As mentioned earlier, although Article 287-2 of the Criminal Law provides for a relatively broad range of ways to assist in the crime of Assisting Information Network Criminal Activities, and there is a certain trend of pocket money crimes, the scope is limited to six specific types of assistance behaviors: ①Internet access, ②server hosting, ③network storage, ④communication transmission, etc. (①to④ are technical support), ⑤advertising promotion, ⑥payment settlement, etc. If the provision of technical support "etc." and payment settlement "etc." in Article 287-2 of the Criminal Law are forcibly passed as a fallback, and all acts of providing assistance to telecommunications fraudsters are considered within the scope of the crime of Assisting Information Network Criminal Activities, then the legislation on joint crimes stipulated in the General Principles of the Criminal Law will not be able to solve the problem of distinguishing between principal and accessory offenders, and will undermine the function of the principle of legality of crime and punishment and the constituent elements. Therefore, if the type of behavior that assists the perpetrator of telecommunications network fraud is a general type of assistance behavior beyond the six specific circumstances stipulated in Article 287-2 of the Criminal Law, such as providing venue, funds, etc., it can be recognized as an accomplice to the crime of telecommunications fraud.

Belief in crime categorizes dozens of types of aiding behaviors in cybercrime and is independently stipulated in this article. If the act of aiding itself infringes upon legal interests and reaches a certain degree, it constitutes the crime of Assisting Information Network Criminal Activities. In the payment and settlement assistance behavior of selling or renting bank cards, the act of providing bank card assistance by the perpetrator can promote the substantive occurrence of information network crime, connect the entire information network crime chain, and make the victim's financial losses occur specifically, with independent and decisive role. The accomplice of telecommunications network fraud only has a general level of division of labor, and cannot independently promote the substantive process of the entire telecommunications network fraud.

The legal benefit of the protection of telecommunications fraud is the property rights of the victim, while the first, second, third, and fourth level criminal charges for the crime of Assisting Information Network Criminal Activities are "criminal charges", "crime of disrupting social management order", "crime of disrupting public order", and "crime of aiding in information network criminal activities". The essence of the crime of Assisting Information Network

Criminal Activities belongs to the crime of disturbing public order. There may only be one act of assistance by a helper, especially when one helper provides technical support, advertising promotion, payment settlement, and other assistance to multiple criminals using information networks. In addition to infringing on the normal management order of the cyberspace, the crime of helper may also infringe on the order of the state's control over drugs and obscene items if the helper uses the information network to publish information on the sale of drugs and obscene items. Therefore, in terms of the substantive nature of legal interest infringement, the type of legal interest infringed by the perpetrator of telecommunications fraud is relatively single, which is the property rights of the victim, while the legal interest infringed by the perpetrator of the crime of Assisting Information Network Criminal Activities is relatively broad and abstract, which may involve legal interests protected in multiple fields. The type of legal interest infringed by the accomplice that has broken through the main auxiliary relationship between the accomplice and the principal offender of telecommunications network fraud is also determined by the legal interest of property rights. Therefore, judicial practice agencies can distinguish between accomplices of the crime of Assisting Information Network Criminal Activities and the crime of telecommunications and network fraud based on whether the legal interests infringed by the two crimes are specific and diverse.

Consistency judgment of subjective intention. One is that there is a difference in known presumptions. When the perpetrator and the aided person conspire to communicate before or during the crime, the perpetrator and the aided person are considered accomplices and principal offenders; If the perpetrator provides assistance to the assisted person afterwards, the perpetrator constitutes the crime of concealment and other charges that can only be established after the completion of the upstream crime; When there is no subjective collusion between the actor and the assisted person, a comprehensive judgment should be made based on the actor's subjective and objective facts, combined with empirical rules. Especially when the principal offender is not present, the criminal intent between the perpetrator and the assisted person cannot be traced, and it is necessary to rely on different types of evidence to confirm each other before presumed "knowing" without confessing. Article 11 of the 2019 Interpretation of the Crime of Helping Beliefs states that the presumption method for whether the perpetrator was aware can be used to determine whether the perpetrator had indirect intent. If the owner of a newsstand stall selling fixed telephone cards, after receiving warnings from public security organs and other departments, still sells telephone cards without identity registration and verification, it can be determined that the perpetrator's subjectivity has reached the level of indirect intent, allowing the occurrence of harmful consequences^[11].

The second difference is the rules for sentencing. When the aided person and the perpetrator have criminal intent in contact throughout the entire criminal process, the perpetrator simultaneously constitutes an accomplice to the crimes of Assisting Information Network Criminal Activities and telecommunications fraud. At this time, the provisions of Article 287-2 (3) of the Criminal Law shall apply, and imaginative joint offenses shall be punished as a serious crime; If it is impossible to determine whether the perpetrator and the assisted person have criminal intent, or if the perpetrator

only has indirect and general intent, as in the example of a newsstand vendor selling phone cards mentioned above, the perpetrator should be convicted and sentenced for the crime of aiding information network criminal activities.

3.3.2. The distinction between this crime and the offense of concealing and concealing the crime

One view is that if the perpetrator simply sells or rents bank cards, the payment settlement amount should be recognized based on the total amount of incoming and outgoing payments; Another view is that the identification should be based on the party with the larger amount and can not be accumulated. In terms of the distinction between the crime of lending bank cards to assist in credit and the crime of telecommunications network fraud, existing literature recognizes that lending bank card type assistance does not directly participate in telecommunications network fraud, but provides assistance for telecommunications network fraud, such as bank cards. Telecommunications network fraud is the direct use of network information and bank cards provided by others to commit fraud. This article will provide clear criteria for distinguishing between the crime of lending bank card type trust and related competing charges at the level of constitutive elements. In addition, in terms of the number of behaviors of the perpetrators of the crime of lending bank cards to help trust, there are mainly two views in existing literature: viewpoint one is the theory of natural social behavior. It should be said that behavior is an external action exhibited by the human body, and the judgment of the number of behaviors should be taken from a natural perspective, starting from the general concepts commonly held by the public. Therefore, sometimes even if multiple natural behaviors are carried out, those that can be considered solely based on the same behavioral decision according to social beliefs should still be considered as one behavior. Viewpoint 2 advocates measuring the number of behaviors from a normative perspective based on the constituent elements. This theory suggests that if the content of an act overlaps with multiple elements of criminal law, it should be recognized as a different constituent act. However, due to the overlap of these constitutive behaviors in both subjective and objective aspects, according to the principle of prohibiting duplicate evaluations, it is necessary to first compare the overlapping content before conducting standardized evaluations. Multiple theories have been derived regarding the judgment of overlapping parts. Most scholars agree with the main overlapping theory. This theory suggests that when there is overlap in the main parts between several constituent acts, and only one of the crimes is evaluated, the remaining facts of the case cannot meet the constituent elements stipulated in the criminal law provisions, then the several constituent acts can be considered as one act.

4. Conclusion

In the trial practice of the crime of Assisting Information Network Criminal Activities in a certain district court in Chengdu, it was possible to clearly use the "2019 Interpretation of the Crime of Assisting Information Network Criminal Activities" to determine the defendant's "knowledge" and "serious circumstances", and the collected two-year sample identified other behaviors other than technical support, advertising promotion, payment settlement, etc. as "aiding behaviors" in Article 287-2 of the Criminal Law.

However, in the vast majority of the samples, there is a serious lack of reasoning processes based on confession and punishment, expedited adjudication, or summary procedure trials, which are not conducive to the implementation of the principle of trial centered and substantive trial, but also to the reasonable protection of the defendant's human rights and interests. This article analyzes sample data to explore a series of phenomena in the two-year trial of the crime of Assisting Information Network Criminal Activities in a certain district of Chengdu. Based on the above phenomena, reasonable suggestions are proposed to clarify the elements of the crime such as payment settlement amount in "knowing" and "serious circumstances", and to provide reasonable standards for distinguishing between Assisting Information Network Criminal Activities, concealment, and accomplices in the crime of telecommunications and network fraud. This has positive significance for the criminal governance of Assisting Information Network Criminal Activities.

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