

Discussion: Behavior Qualitative of "Two Dimensional Code"

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Abstract

There are several controversies in the academic circle about the "two-dimensional code" case: First and foremost, the case belongs to theft; Then, it belongs to fraud; Third, it belongs to two-way fraud; fourth, it belongs to ordinary triangle fraud. The author holds the view that the two-dimensional code of "transfer" should belong to triangle fraud, but it is not the traditional triangle fraud, but a new type of triangle fraud. Therefore, it should be convicted and punished with fraud crimes.

Keywords

QR code case; triangle fraud; non debt settlement.

1. One: The Case

Between February and March 2017, the defendant zou xiaomin to shishi city in numerous Taiwan crispy corn the door of the wal-mart stores, shimao skyscraper city mall cocoa lemon milk tea shop, shishi city koto the place such as vegetable market, the victim jeong, wang mou and others store WeChat qr code switch for their WeChat qr code, diddle to shop customer should transfer to the victim WeChat account number sum, a total of 6983.03 yuan.

The court held that the defendant, Zou Xiaomin, for the purpose of illegal possession, repeatedly used secret means to steal citizens' property, with a total amount of 6983.03 RMB, belonging to a large amount, and his behavior has constituted the crime of theft. On the conviction of this case. First of all, the defendant Zou Xiaomin used secret means to change (cover) the merchants' wechat collection QR code, in a bid to obtain the money paid by customers to the merchants, which is in line with the objective elements of theft. Secret transfer of two-dimensional code is the critical step to obtain property. Secondly, after the merchant delivers the goods to the customer, the property right of the merchant is already in a certain and controllable state, and the customer must pay the equivalent price immediately. Wechat collection QR code can be regarded as a merchant's cash box, and customers scanning the QR code of the merchant is to pay to the merchant's cash box. The defendant's secret exchange (covering) of two-dimensional code is to use his own cash box to replace the merchant's cash box, so that the money delivered by the customer will fall into his own cash box, thus taking possession of it. Third, the defendant did not make up the fact or conceal the truth to the business or customer, so the business or customer could not be considered to have been deceived subjectively. The so-called "fraud" means that some people "cheat" and others "cheat". In this case, the defendant did not have any contact with the merchants or customers, including face-to-face and space (Network Telecommunication) contact. Except for the two-dimensional code exchange, the defendant made no express or implied payment to the merchants and customers.

It is the result of the defendant's secret means that the merchant let the customer scan the payment, which makes the merchant not find that the QR code has been replaced, instead of subjectively voluntarily delivering property to the defendant or the defendant's QR code.

Based on the instruction of the merchant, when the customer transfers payment with the QR code provided by the merchant, the result is borne by the merchant. There is no case that the customer is deceived by the defendant. Customers are not cheaters or victims. Businesses are victims, but not cheaters. In a nutshell, the defendant Zou Xiaomin's behavior does not conform to the objective elements of the crime of fraud. His act of obtaining property by changing the two-dimensional code of the merchant by secret means conforms to the objective constitutive requirements of the crime of theft, and should be investigated for criminal liability as theft.

2. Second: Viewpoint Display and Debate

The first viewpoint is that the case belongs to theft. There are two ways to infer this point of view: To begin with, fraud and theft are mutually exclusive charges, and it is impossible for a single act to establish theft and fraud at the same time. In this case, although the customer disposes of property based on the wrong understanding, he or she eventually gets the goods he should deserve and is not the victim. As a real victim, the shop has not been cheated. As a consequence, the case excludes the crime of fraud and should be identified as theft. Second, theft is the secret theft of property. This case is equivalent to digging a hole in the cash register of a store to let the property of the store fall into the perpetrator's pocket. The author argues that these two opinions are separated from the behavior of theft and come to a conclusion. The former point of view can see that larceny and fraud are mutually exclusive charges, but this does not mean that a crime does not conform to the crime of fraud. The identification of the crime must be based on the subjective and objective elements of the crime, not through the "exclusion law". If this view holds that this case is a crime of theft, the author can not help but ask: "whose property was stolen in this case? Compared with the property of the customer, the customer has not suffered any loss; the customer has not been infringed upon in relation to the customer's claim for goods; the actor has not obtained the property relative to the merchant; and the merchant has not changed thanks to the actor's replacement behavior relative to the merchant's claim for payment to the customer." The latter view is even more ridiculous. The transaction in this case was actually completed through the transfer of creditor's rights. After the actor replaced the two-dimensional code of the merchant, it was impossible for businesses to obtain the creditor's rights from the beginning to the end, not to mention "being dug and transferred by the actor."

The second opinion is that this case belongs to the crime of fraud. This view holds that the change of the two-dimensional code makes the customer fall into a wrong understanding, the customer disposes of property based on the wrong understanding, and the actor obtains the property, which fully conforms to the composition of the crime of fraud. The biggest problem with this view is that it does not take into account the status of the victims in the shops. In this case, it is an indisputable fact that the shop belongs to the victim. After the event, the property recovered by the judicial organ will naturally be returned to the merchant rather than the customer. It is also the shop rather than the customer who can appear in court as the victim and appoint a litigation agent. Thus, according to this view, there may be inconsistencies in the legal determination. Furthermore, this viewpoint actually draws the conclusion that the customer is the victim from the theory of individual property loss. To be sure, it is true that this view takes into account the constituent elements of theft, but the conclusion that customers are victims based on the theory of individual property loss in form does not conform to the actual situation in China. According to the theory of individual property loss in form, any act that violates the will of the party concerned and makes him lose his property is considered as a loss. For instance, the law forbids the sale of cigarettes to minors. Now a minor has successfully purchased cigarettes by cheating the cigarette store with his elder brother's ID card. According to the theory of individual property loss in form, if the owner of a cigarette is cheated and loses the

ownership of his cigarette, he can be regarded as a "victim". In other words, the view does not consider whether the victim has a wrong understanding of the legal interest relationship such as "transaction purpose" or "property exchange". It can be predicted that the victim is a victim only by formally violating the will of the victim and triggering him to lose his property. The third opinion is that the case belongs to two-way fraud, that is, the property of the customer and the merchandise of the store were cheated at the same time, but the perpetrator had only one act, so it was handled by imaginative concurrence. This point of view makes up for the defects in point two and fully evaluates the identity of the victim of the shop in this case. However, this view is the same as the view, which does not conform to the facts of the case. On the one hand, the loss of individual customers is not in line with China's national conditions. On the other hand, it is believed that the goods in the store were defrauded, but the transaction in this case has been fully realized, and it does not matter that the goods in the store are defrauded. Moreover, it is impossible for the public security organs to recover the stolen goods as stolen goods after the event. At most, it can be fixed as evidence.

The last view holds that the case belongs to the ordinary triangle fraud, that is, the perpetrator swindles the customer and causes the customer to dispose of the property, and the customer disposes of the property based on the wrong understanding, resulting in the loss of the business. This view fully takes into account the identity of the customer being cheated and the identity of the business victim, but the argument on the constituent elements is not rigorous when determining the triangular fraud. In the case of triangle fraud, the cheater must have the authority and status to dispose the property of the victim, but in fact, no matter according to the "camp theory", "effect theory" and "authority theory", customers can not have the authority and status to dispose of the property of the business.

3. Third: My Opinion on the Nature of the Case

If we want to comprehensively consider the above problems, this context believes that the perpetrator's behavior constitutes triangle fraud, but it is not a traditional type of triangle fraud, but a new type of triangle fraud. The other elements of this new type of triangle fraud are the same as those of the traditional triangle fraud. The only difference is that the cheater disposes of his own property. The specific constituent elements are: the cheater drives the act of fabricating facts to conceal the truth - the cheater falls into a wrong understanding - the cheater disposes of his own property - the cheater gets property - and the victim suffers losses.

This new type of fraud can be identified as triangle fraud mainly in the following aspects: on the one hand, the core factor of triangular fraud is that the cheater has the right to dispose, and the victim of the new type of triangle fraud has the right of disposition. On the other hand, the victim's punishment behavior makes the victim suffer losses, and the new triangle fraud also has the characteristics of separation of the victim and the victim, and the victim's punishment behavior will lead to the victim's loss. The only difference between the traditional triangle fraud and the new triangle fraud is that the victim's property is dealt with by the traditional triangle fraud, while the property of the victim is disposed of by the new triangle fraud. There are differences in the ownership of property, but this difference will not affect the conviction in essence. Therefore, this type of fraud is also included in the triangle fraud.

The cases of new triangle fraud generally have the following situations: the payer has the obligation to pay to the receiver based on various legal relationships. When the payer delivers according to the instructions of the receiver or in accordance with the transaction custom, the property is transferred to the fraudster or the third party due to the recognition of defects. The payer has no civil fault, but the receiver has lost the payment The right to pay again. This kind of evaluation not only solves the problem of the victim's right of disposition, but also satisfies the problem that the victim is a shop. It not only comprehensively evaluates the facts of the case,

but also makes no repeated evaluation of the case. More importantly, he solved the problem of unity of elements. Generally speaking, the identity of the elements in the crime of fraud means that the property obtained by the defendant and the property lost by the victim are identical. In other words, the loss of the victim and the acquisition of the defendant must be an exterior relationship or corresponding relationship. The exterior interior relationship or corresponding relationship of the elements in the criminal law generally means that the property obtained by the actor and the property lost by the victim have such a relationship. For example, when demonstrating the traditional triangle fraud, we often discuss whether the property lost by the victim and the property obtained by the actor have the corresponding relationship of elements. Only when it has the relationship can we attribute the victim's loss to the actor and judge the causality between the loss and the result. In the "QR code" case, it seems that there is no such relationship between the property lost by the victim and the property obtained by the actor. "As a matter of fact, it is not. In the fraud between the two, the victim disposes of his own property; in the traditional type of triangle fraud, the victim also disposes of the victim's property. Therefore, the theory of criminal law expresses the identity of the material as that the loss of the victim and the acquisition of the defendant must be an exterior or internal relationship or corresponding relationship. Actually, even in the fraud between the two and the traditional type of triangular fraud, we can even conclude that the identity of the material means that the property disposed by the fraudster is identical with the property acquired by the defendant." In this case, what the cheater disposes of is the bank creditor's right, what the victim loses is also the bank creditor's right that he should get, and the perpetrator also gets the bank creditor's right. Therefore, what the actor gets and the victim's loss not only has the corresponding relationship or the exterior and interior relationship, but also can be said that they are completely the same relationship. Therefore, we can say that the new triangle fraud is similar to the traditional triangle fraud. More in line with the requirements of triangle fraud.

The new type of triangle fraud can not only be applied to "two-dimensional code" cases, but also can be applied to many "apparent agency" cases in practice. Example 1: a natural gas company provides door-to-door installation of natural gas services. In accordance with the customary practice in the past, the customer will instruct the installer to transfer the money directly through Alipay, WeChat or bank transfer to the company after installation of natural gas. The installer himself must not collect the goods. However, for the sake of embezzling the payment for goods, one of the installers told the customer that he only needed to deliver the payment to him. After the customer delivered the goods according to the instructions, the installers ran away with the money. In this case, the company has the right to ask the customer to pay the installation fee. Because of the fraud of the installation personnel, the customer delivered the money to the installation personnel. However, the company should not let the installation personnel convey the information, but should convey it in advance. Therefore, the installation personnel in this case have the appearance of "agency right". According to the trading habits, the customer has no civil law fault, and the company loses Loss of the right to claim payment for goods to customers. Example 2: company A supplies goods to company B on a regular basis every month. According to the past custom, company B will deliver the payment to the deliveryman a of company a, and a will transfer the goods to company B. One day, a was promoted because of his outstanding work and was no longer engaged in delivery duties. The company sent B to replace a's original work. But the company did not trust B, so told B not to accept payment, but forgot to inform company B. When B delivers the goods to company B according to the agreed date, company B will pay the payment of 100000 yuan to B according to the previous custom, and B runs away with the money. If according to the principle of civil law, according to the previous trading practice, B has the right to receive payment from company A. company B has no fault in giving money to the delivery man according to the trading custom. The fault is that company a does not inform company B of the money. As a result, B

establishes "apparent agency", and B's collection will have a debt settlement relationship between company a and company B. company a will lose the right to claim payment from company B and can only recover from B. Furthermore, we can more clearly observe that B is in the position of fraud agent of triangle fraud, which makes company B fall into the fact that it has the right to collect money by concealing the truth. Company B disposes of its own property based on the wrong understanding, but makes company a lose the right to claim payment for goods from company B. therefore, B makes company a lose money and property through a new type of triangle fraud. The installers in example 1 and B in example 2 belong to "unauthorized payee". However, due to their identity as installers or drivers, they also have the appearance of "right to collect money on behalf of others" according to instructions and transaction habits. After the counterpart has paid the corresponding amount in good faith, the real "payee" will lose the right to claim the second payment, and the loss of the transaction will be ultimately borne by the natural gas company or company A. On the one hand, the case is classified as fraud, which is in line with the objective facts of the case and the cognition of the general social concept; on the other hand, if the perpetrator of the case is successfully captured, the natural gas company or company a must obtain the qualification of the victim according to the provisions of the criminal procedure law and be appointed as the litigation agent Participating in the court trial, the property recovered by the public security organ or court must be returned to them rather than to the counterpart. At most, the counterpart who pays for the goods will attend the lawsuit as a witness and give his testimony. The recognition of this kind of triangle fraud can accurately locate their status in criminal proceedings and provide the basis of substantive law. Admitting this kind of triangle fraud can also tackle the problem of "non debt settlement" caused by the transfer of creditor's rights in civil law. Example 3: Party A has one million ordinary creditor's rights against C, and Party A does not inform Party C after transferring the creditor's rights to Party B at a price of 950000. When the creditor's right is due, Party A demands that Party C "pay off the debt" as a creditor, and C will pay a million yuan in good faith. According to articles 79 and 80 of the contract law, the assignment of creditor's rights can take effect only by reaching an accord between the creditor and the assignee. If the debtor has not been informed, the debtor still has the right to repay the original creditor. In this case, even if Party A fails to inform the debtor of the assignment of creditor's rights, Party A will lose its status as a creditor. If it requests Party C to "pay off the debt" as a creditor in the future, it belongs to non debt repayment, which is only given the effect of repayment by law in order to protect the rights of the debtor. At this time, Party B has no right to ask Party C to perform the debt again, and has to ask Party A to return the relevant property according to the provisions of "unjust enrichment". This case can be perfectly solved by admitting that the cheater disposes of his own property. Firstly, the causality between the fraud of a and the loss of Party B is fully evaluated. Besides, the identity of the property elements of the property disposed by C and the loss of B is guaranteed. Finally, the position of the victim of B is correctly positioned. The new triangle fraud proposed in this paper is just an attempt. Maybe this case can have a better solution. For instance, the "two-dimensional code" case realizes the right of customers to dispose of store property. Therefore, the author asks colleagues in the legal field to give better suggestions.

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