

Legal Characterization and Practical Application of the Offense of Obstructing Safe Driving

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ABSTRACT

This paper discusses in depth the legal characterization and practical application of the crime of obstructing safe driving. Firstly, it summarizes the theory of dangerous crime, distinguishes between concrete dangerous crime and abstract dangerous crime, and clarifies that the crime of obstructing safe driving should be categorized as abstract dangerous crime. Secondly, through analyzing the legislative background, controversial issues and social level thinking, the necessity of the establishment of the offense of obstructing safe driving is explained. After that, it further discusses the relationship and boundaries between the crime of obstructing safe driving and the crime of endangering public security by dangerous methods from the perspective of the practical operation of the public prosecutors and lawyers, and proposes that attention should be paid to maintaining the modesty of the criminal law in the practical application, reasonably distinguishing between the crimes and non-crimes, and emphasizing the purpose of education and punishment. The article concludes that clarifying the legal characterization and practical application of the crime of obstructing safe driving will help maintain road traffic safety and protect the rights of citizens.

KEYWORDS

Obstructing safe driving offences; abstract dangerous crime; legal characterization; practical application; public safety

1 Understanding of dangerous crimes in current criminal law doctrine

1.1 Identification and concept of dangerous crimes

Dangerous crime is the legal concept corresponding to the actual harm: when the behavior of the perpetrator caused real harm to the interests of the law, as the basis for the crime of the legal concept, called the actual harm of the crime; and to the behavior of the perpetrator as long as the behavior of the law of the interests of the real danger, as the basis for the crime of the concept of the law of the danger of the crime.¹The social harm of a dangerous crime is manifested in the fact that although the offender's behavior has not yet resulted in actual legal damage, it has already caused the corresponding legal interests to be threatened, and has a certain degree of social harm, which is recognized as a dangerous crime.

1.2 Definition, characteristics and differences between concrete and abstract dangerous crimes

According to the general view of the criminal law community in China, dangerous crimes can be divided into concrete dangerous crimes and abstract dangerous crimes based on whether or not the danger posed by the hazardous act to the interests of the law is realistic. The former requires that the danger of infringing on legal interests must reach the type of crime of realistic and concrete danger, while the latter requires that the danger of infringing on legal interests can reach the level of abstraction.²China's research on "dangerous crime" is mainly from the 1990s only began to gradually popular, the main source is the civil law system of jurisprudence. At present, the academic community generally exists in the constituent elements, the degree of danger, dangerous attributes and judgment of four kinds of doctrine used to distinguish between abstract and concrete dangerous crime.³In order to accurately determine the type of dangerous crime, it is necessary to clarify the definition, characteristics and corresponding differences between the abstract dangerous crime and specific dangerous crime. The definition of a concrete dangerous crime is a criminal construction that takes the actual danger of damage to the object of the behavior as an element, as a result-oriented. The characteristic of concrete dangerous crime is that the concrete object of behavior is in the real objective danger, and the failure of the result is just a kind of accident. Abstract dangerous crime is defined as a crime in which the act is dangerous to the protected legal interest as judged by the legislator. Abstract dangerous crime is characterized by the fact that this danger is not a danger to the object of the act, and at the same time, this danger is not a constituent element of this crime. Examples include perjury, abandonment, teaching criminal methods, etc.

1 Zhou Guangquan - Criminal Law Objectivism and Methodology - 2013

2 ZHOU Jianzuo. Study on the Limitation of Criminal Legislation on Abstract Dangerous Offenders[J]. Journal of Harbin Institute,2023,44(09).

3 Shi Lirong. The application of incriminating the crime of obstructing safe driving[D]. Zhejiang University of Technology,2023.

The difference between a concrete and an abstract danger lies in the difference between a danger that is scientifically and objectively real and one that the legislator presupposes exists, and between a danger that has been proved or is to be proved and one that does not need to be proved to exist.

1.3 Approaches and methodologies for identifying dangerous criminals

Practice for "dangerous methods of endangering public security crime" in the public security to carry out a multi-faceted comprehensive judgment and considerations, where the public security not only refers to the majority of the usual concept, more for the majority of the unspecified groups with the possibility of real danger, and this danger is real, is very urgent. urgent, can not use the corresponding administrative legal means to adjust and pursue the responsibility of the situation. From the point of view of jurisprudence, when there is a conflict between the administrative law and order type of crime and criminal offense, and at the same time, there may be imaginative competition between the two at the same time, should be given priority to choose the heavier aspect of the judgment, which requires our judicial staff can accurately synthesize the rules of fact, reasonable decision-making, so as to achieve the punishment is appropriate to the crime. Especially when some of the facts and evidence in the case is not clear and coherent, requiring the contractor in some special moments can only be based on their own inner meaning to make their own judgment on the case, that is, to resort to the "free evidence" method.⁴At this time, you can think more about the following issues: first of all, we must fully take into account the severity of the penalty and the principle of modesty; secondly, in recent years, the judicial and administrative organs to promote the prudent arrest and reduce the call for litigation; finally, the combination of procedural and substantive justice as a combination of the idea of the judicial staff's dominant idea rather than the idea of "severe punishment". Lastly, the idea of combining procedural and substantive justice as the guiding ideology of judicial personnel rather than that of "harsh punishment".

1.4 Offences against safe driving are abstract dangerous crimes.

Combined with the above analysis of dangerous crimes and the legal provisions of the crime of obstructing safe driving, the author, from the point of view of the legislative purpose, believes that this crime is more in line with the original intention of adding the crime of obstructing safe driving as an abstract dangerous crime. First of all, in practice, if the crime is defined as the category of concrete dangerous crime, then as long as there is no real danger caused, it can not be convicted, which is inconsistent with the legislative purpose of the formulation of the crime, the reason why the legislation to add the crime, the main purpose is to protect the lives and properties of citizens from being infringed upon, and to maintain the purpose of road traffic safety; Secondly, the abstract dangerous crime in general, only for the actor's behavior has the corresponding provisions, and the crime of obstructing safe driving. As long as the state of danger is reached, it can be convicted and punished, which means that the crime can only be negated if it reaches the special circumstances stipulated in the law, i.e., the circumstances in which the crime is simply impossible to occur, so it is beneficial to the realization of the purpose of safeguarding the safety of road traffic and punishing and educating the offenders to designate the crime as an abstract dangerous crime.

2 Current controversies and reflections on the issue of interference with drivers' driving

2.1 Legislative background

Prior to 2019, there were no clear provisions for interfering with a driver's driving, which was characterized by diversity. In the process of determining the crime of endangering public security by dangerous methods, traffic accidents and other different crimes, there are different punishments, poor education and other situations, and the way to restrain such behavior has a wide range of characteristics.⁵And dangerous methods of endangering public security crime is gradually expanding the field, the market economy, road traffic and social management and other aspects belong to the scope of application of this crime.⁶Inevitably, it shows some characteristics of pocket crime. In order to avoid interfering with the driver's driving and other undesirable behaviors to the people's life and health and other aspects of the security risks, in order to ensure the safety of the people's daily riding and driving public transportation, and at the same time to avoid

⁴ LU Qikang, LIANG Yong. The problem of falling objects from a height and jurisprudential thinking in the context of the implementation of the Amendment (XI) to the Criminal Law[N]. Shanxi Science and Technology News,.

⁵ Xie Han. On the Crime of Obstructing Safe Driving [D]. Henan University, 2022.

⁶ He Qianyi. Discussion on Several Issues of the Crime of Endangering Public Safety by Dangerous Methods[J]. Journal of Changzhi College, 2023, 40(04).

such cases in accordance with the pocket crime of endangering public safety by dangerous means for the pocket referee, so the amendment of the new this crime to adjust, in order to meet the latest changes of the road safety requirements, to protect the rights of the citizens.

2.2 Focus of the dispute

There is still a great deal of controversy over how to recognize endangering public safety. From the perspective of the provisions of the law, endangering public safety as a dangerous crime for the degree of danger, and interference with the specific expression of the driver of a moving public transport vehicle, to achieve the purpose of limiting the mode of behavior of the crime - the degree of violence and control, so grasp of the word public safety is essential for the correct application of the crime. However, from the viewpoint of judicial practice, there is no clear standard for the determination of endangering public safety, which has led to the confusion of incrimination and imbalance in sentencing.⁷

2.3 Reflections at the Public Prosecution Level (Practical Determination of Obstructing Dangerous Driving Offenses)

In the time before the official release of the "Amendment (XI)", the "Guidance" has a corresponding provision for interfering with the driver's driving behavior should be punished by dangerous methods of endangering public security crimes. However, all cases are used to adjust the sub-crime or there are some inappropriate places, the urgent need to set up a new corresponding crime to the behavior of the constraints. As a result, the crime of obstructing safe driving came into being.⁸ From the practical level, it should be pointed out that the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security jointly issued the "Guiding Opinions on the Lawful Punishment of Criminal Acts of Obstructing the Safe Driving of Public Transportation" (Gongtong Zi (2019) No. 1) after the promulgation of the amendment still has its own existence of legal significance. In the process of judicial adjudication of interfering with drivers, the relevant laws and regulations in the Guidance Opinions can still be seen, especially the provisions in the Guidance Opinions concerning the heavier penalties for such behaviors and the fact that probation cannot be easily applied to such behaviors under normal circumstances. After the entry into force of Amendment (XI) to the Criminal Law, its relationship with the Guidelines is in a more delicate state. From the form of the establishment of the legal provisions, the use of "endanger" and "jeopardize" are used in the formulation of the law to distinguish between different crimes; from the substance of the law, the semantics of "jeopardize" and "jeopardize" are different from each other. From the essence of the legal provisions, the semantics of "endanger" and "jeopardize" in practice there is no very significant difference in the specific application, and in the actual application of the crime of impeding safe driving still have the relevant provisions of the Guidelines exist.⁹ In the process of specific practical cases, attention should be paid to distinguish the relevant provisions of the Guidance. For example, other people in the public transport in the driving state, the use of violence or nonviolent means of motor vehicle drivers to interfere with the actual behavior and has grabbed the steering wheel and has endangered public safety, but has not yet caused serious consequences or has caused serious consequences, we must be compared to the "Guiding Opinions" on the different provisions of such acts for the corresponding law enforcement decisions. With the addition of the new crime of obstructing dangerous driving, attention should be paid to clarifying the boundary relationship between the pocket crime of endangering public security by dangerous methods and the crime of obstructing safe driving. In the criminal law provisions of the dangerous methods of endangering public security is a pocket crime, and the penalty compared to the general criminal law is heavier, and impede the safe driving of the crime of one year of imprisonment, belong to a lighter grade of sentencing, and in the general situation of interfering with public transport drivers driving behavior does not yet have a very high degree of social hazards. Therefore, in the specific adjudication of such cases, for the subjective malignancy of the perpetrator is not large, for the harm caused by the community is not high impact on road traffic safety, interfere with the normal driving behavior of the driver should be dealt with in accordance with the crime. For rare cases, the perpetrator interferes with the driver's normal driving public transport, affecting road traffic safety behavior of the subjective malignancy is greater, with greater social hazards, may cause major safety hazards, according to the crime of sentencing 1 year imprisonment obviously can't be done when the punishment is appropriate to the crime, and in line with the "Penal Law" in order to endanger the crime of public safety by dangerous methods, can be in accordance with the dangerous methods of public

7 Li Hongfei. Study on the Determination Criteria of "Endangering Public Safety" in the Offense of Obstructing Safe Driving--Analysis Based on 83 Judicial Documents[J]. Beijing Police Academy Journal

8 Shi Panpan. Research on Issues Related to the Crime of Obstructing Safe Driving [D]. Inner Mongolia University, 2022.

9 FANG Tao, FENG Weiguo. Exploring the judicial application of the crime of obstructing safe driving--an examination based on 46 adjudication documents[J]. Journal of Guangxi Police College, 2022, 35(03).

safety crimes for investigation. The crime of endangering public security by dangerous methods may be investigated.

3 Issues of application in judicial practice

After the Criminal Law Amendment (XI) formally brought the crime of obstructing safe driving into the scope of adjustment of the criminal law, the specific application of this crime in future judicial practice will be an important test of judicial fairness and efficiency. In order to ensure the correct application of this offense, we need to have a high degree of systematic thinking, take into account a variety of factors, ensure a clear distinction between crimes and non-crimes, abide by the principle of modesty of criminal law, and focus on the purpose of education and punishment.

First of all, clarifying the boundary between crime and non-crime is the first and foremost task in applying the crime of obstructing safe driving. The constituent elements of the crime of obstructing safe driving need to be accurately grasped to ensure that only those acts that truly comply with the provisions of the law and constitute an abstract danger to public safety can be recognized as crimes. This requires us to interpret the legal provisions in detail and, in conjunction with the circumstances of the specific case, to determine whether the perpetrator has committed an act of abstract danger that endangers public safety. At the same time, we must also be vigilant in avoiding over-criminalization of minor offenses and expanding the scope of application of the criminal law. In determining whether an act constitutes the crime of interfering with safe driving, various factors such as the subjective malignancy of the perpetrator, the actual degree of harm caused by the act and the social impact should be taken into account. For example, in the case of minor interference with driving, if no actual danger or harmful result is caused, consideration may be given to penalizing and educating the offender through administrative means, rather than applying the crime of impeding safe driving directly.

Secondly, in applying the offence of impeding safe driving, we need to strictly observe the principle of modesty in criminal law. The modesty of the criminal law requires that when we use penal means, we must give full consideration to their necessity and reasonableness in order to avoid the abuse of penalties. This requires that, in judicial practice, we make a comprehensive judgment as to whether and to what extent penalties should be applied, based on such factors as the subjective malignancy of the perpetrator, the degree of harm caused by the act, and the impact on society. For perpetrators whose subjective malice and degree of harm are less serious, we should give priority to administrative means of punishment and education rather than the direct application of penalties. This will not only help to reduce the burden of justice, but also give better play to the role of administrative means in maintaining social order. As for the perpetrators of greater subjective malice and heavier degree of harm, although the crime of obstructing safe driving can be punished according to the law, their self-surrender, first-time offenders, occasional offenders and other circumstances should be taken into full consideration in sentencing, so as to ensure the fairness and reasonableness of the penalties, and to realize that the punishment is appropriate to the crime.

In addition, education and punishment should be an important purpose in the application of the offence of impeding safe driving. Penalty is not only a punishment for criminal behavior, but also a means of education. Through the reasonable application of the crime of obstructing safe driving, we expect to be able to educate the perpetrators to recognize the wrongfulness of their actions and the danger to public safety, thus prompting them to reform and return to society. In judicial practice, we can enhance the effect of education and punishment in a number of ways. Firstly, the harm and seriousness of the perpetrator's behavior is clearly stated in the verdict, so that the perpetrator deeply recognizes the negative impact of his wrongdoing on society.

In conclusion, when applying the crime of obstructing safe driving, we should maintain a high degree of systematic thinking, ensure a clear distinction between crime and non-crime, strictly observe the principle of modesty of criminal law, and focus on the purpose of education and punishment. By adopting a variety of measures to enhance the effectiveness of education and punishment, we can give full play to the positive role of the crime of impeding safe driving in maintaining road traffic safety and protecting the rights of citizens, while avoiding the abuse and misuse of penalties and realizing the goals of judicial justice and social harmony. Only in this way can we build a safer and more harmonious social environment.

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