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Research on telecom and network fraud crime

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ABSTRACT
The continuous development of information technology has promoted the progress of the society and brought a lot of convenience to Peoples Daily life, but followed by a lot of potential security problems. Many criminals use the telecom network to commit fraud, disturb the social order, the telecom network fraud crime threshold is low, and has a strong concealment, and there is a non-contact between the victims, making such cases frequent. This paper will analyze the characteristics of telecom network fraud crimes and the problem of the identification of such crimes.

KEYWORDS
telecom network; fraud; conviction; accomplice

1 The characteristics of telecom network fraud crime

1.1 The particularity and concealment of criminal means

Telecom network fraud crime is the use of information network, telecom network fraud actors through some professional technology, such as call, text messages, chat on the network software, etc., with the continuous development of network technology, the way of crime is in, in recent years, the AI in face, AI acoustic technology began to enter the public view, the victim due to the lack of understanding of the crime technology, coupled with the actor cheat, into the wrong understanding, dispose of their own property.

1.2 The universality of the object of the crime

Person through the form of "wide net", send to most groups fraud information, in order to achieve the purpose of more victims, and the majority group is mostly not specific, actor is usually randomly selected target, using the victims psychological weakness, such as public security, court, procuratorate official authorities, with false information to obtain the trust of the victims, there is with high return as bait, using the victim greed of psychological fraud.

1.3 Criminal acts show a trend of "gang-oriented" operation

The implementation of the telecom network fraud, often more scattered, there are more links, need to have special technical personnel of false website or small programs, again need someone fake identity, fictional facts, lure the victim bait, after the victim when the money, also need someone to speak money, then to a different account. In this way, due to the implementation of telecom network fraud has a certain complexity and technology, so it is often by the gang to commit the crime, organized division of labor, leaders, perpetrators, and help to transfer the money, in the process of judicial practice, we should pay attention to the distinction of the principal and accomplice.

1.4 The seriousness of the result of the crime

Telecom network fraud crime not only brings property loss to the victims, but also has psychological trauma. In the process of fraud, it often involves the infringement and leakage of personal information, which has a great impact on individuals and families. Telecom network fraud crime has also disturbed the order of the whole society, destroyed the normal market transactions, and hindered the healthy development of the market economy. In addition, due to the technical nature of telecom network fraud, in many occasions, but also involves cross-border crimes, to our public security organs to solve cases have brought great obstacles, increasing the difficulty of law enforcement.

2 The identification problem of telecom network fraud crime

2.1 The identification of this crime and that crime

With the development of network technology, the use of telecom network to commit crimes emerge in an endless stream, some seemingly appear to be telecom fraud certainly constitute the crime of fraud, we should consider whether its behavior conforms to the essence of the crime of fraud. In practice, there are many disputes, that is, when using the telecommunications network to commit crimes, we should pay attention to the distinction of theft and fraud. Both belong to the crime of property, the use of the network for theft and telecom fraud, are in the use of telecommunications network on the property of others, the essential difference lies in the main means of illegal possession of property. If it is a false way of deception, then it is considered as the crime of fraud, if the main means of illegal possession of property, it is considered as theft. The second difference is whether the victim has the meaning of disposing of the property. Such as actor compiled a false sale of air tickets website, lure the victim to find the false website and purchase process, when the victim contact the customer service, customer service will tell the generation to buy a fault of the machine, let the victim to the ATM self-help remittance to the actors account, in this case actor fictional facts, let the victim autonomous remittance, the property damage resultsIt is a result of the victims "voluntary" choice, and the perpetrators behavior should be defined as fraud. Again for example by a specialized technical personnel to set a false web links or small program, inside a lot of viruses, again by personnel to lure his victim point, then the inside of the virus will steal to the victims property, this time is not the victim actively dispose of property, property damage results are caused in the victim unaware, shall be identified as theft.

2.2 The identification of success and failure

There are different theories in the theoretical level of the crime of fraud. The first is out of control, which refers to whether the victim has lost control and possession of the property as the criterion of accomplished and attempted standards. The second is possession, is whether the actor actually occupies the victims property as the standard. The third is the control theory, which is whether the actor has obtained the actual control of the property as the standard. In the crime of telecom network fraud, because of the non-contact between the perpetrator and the victim, the transfer of money is not directly carried out face to face, which challenges the successful and attempted identification of telecom network fraud crime. Zhang Mingkai professor thinks, as long as the victim will remit money into the designated account, it should be identified as fraud accomplished (if the victim within 24 hours can cancel transfer or pay to the bank, after 24 hours for fraud accomplished) so if it is the actor cheat the victim deposit account is the account of the victim itself, and the actor to the victims account information has fully mastered, this time constitutes a crime accomplished, not to withdraw the money or transfer out.[1]

2.3 Recognition of accomplice

2.3.1 Identification of the scope of accomplices

The above-mentioned telecom network fraud crime shows a trend of "gang-oriented" operation, so there are generally joint crimes in such cases. For telecom network fraud crime commander, leader, perpetrators, it is easy to identify as an accomplice, for some people provide professional technology, for telecom network fraud gangs provide accommodation, the fraud gang personnel training, asked them to establish accomplice, only ask them to its behavior know is to help fraud and implementation.

There is a lot of debate about how to identify those who help with withdrawals. Telecom network fraud operator in these roles, these people in the crime subjectively know what they do nature, so this kind of people as accomplice is relatively simple, but for withdrawals, they usually do not know the specific source of the money, just know that the money belongs to illegal income, they are responsible for withdrawals and transfer. According to the Ministry of Public Security on telecom network fraud criminal cases opinions of some issues of applicable law, the provisions of article 5, the knowing is a telecom network fraud crime and its income, in accordance with the legal way to transfer, cash, cash, in accordance with the provisions of the first paragraph of article three hundred and twelve of the criminal law, to conceal, conceal proceeds of crime, crime proceeds shall be investigated for criminal responsibility. Those who conspire in advance shall be punished as a joint crime. Some people think that for this kind of professional withdrawal behavior should be identified as the crime of money laundering, money laundering crime refers to hide, hide drug crime, underworld organization crime, terrorist crime, smuggling, corruption and bribery crime, destroy the financial management order, financial fraud crime and the source of income and nature, the implementation of legal behavior. Then the profession is responsible for money launderingPeople, they are not the fixed members of the criminal gang, in the telecom network fraud crime is identified as money laundering crime. Another view that should be identified as cover, conceal crime, crime, money laundering crime and conceal, conceal crime, crime is special law and general law, belong to the relationship between law competition, money laundering crime for upstream crime has seven crime limits, and conceal, conceal crime, crime of upstream crime is not limited to the seven.

1 Zhang Mingkai. Criminal responsibility of telecom fraud withdrawals [J]. Politics and Law, 2019, (03): 35-47.

So for the telecom network fraud illegally to provide two card behavior should be how to identify it? Bank card and phone card are an important auxiliary tool for telecom and network fraud crime. The actor needs to buy two cards from others to hide his identity and avoid the tracking of the public security organs. In recent years, the cases of illegal provision of two cards occur frequently in China. According to the search results of China Judicial Document network, a large number of network telecom network fraud crimes of illegally providing two cards have been identified as the crime of helping information network criminal activities. There are also exceptions, if the actor has provided two cards to the actor, and helped him to carry out the withdrawal transfer and how to determine? According to (2021) 1023 early 309 FuZheng cover, conceal criminal against the first criminal judgment, the defendant FuZhengming know its home is engaged in telecom network fraud crime, still help the acquisition of bank card and transfer, the behavior of the bank card is absorbed, the court should be identified as cover, conceal crime, no longer separate positioning help information network crime. However, the illegal provision of the two cards is equivalent to only providing a tool for the payment and settlement, but the withdrawal is to help the actor to directly pay and settle the accounts, and the two are still different in nature. Two cards are an important part of the telecom network fraud crimeBridge, many dedicated to two card acquisition and specialized sales personnel, but in part of the telecom network fraud provides two card cases, the cognition of their behavior is not clear, no actual participation in the fraud crime, the illegal income income is small, which also includes a lot of minors, in many university campus we can see the popularity of two card nature, that we can consider from the behavior of the personal danger, social harmfulness comprehensive consideration, for some is not serious illegal two card behavior not crime.

2.3.2 Identification of the establishment time of the accomplice

In the telecom network fraud crime, at what time to help the offender to join the behavior of the offender, establish an accomplice? According to the essence of the end of the theory, if the actor of telecom network fraud in the crime before the complete control, will constitute the accomplice of telecom network fraud crime. So under this theory, how should judge the substantive end of the situation, in the telecom network fraud, how to be the actor will fully grasp the proceeds of the crime. According to the accomplished standard, in the telecom network fraud crime, if the crime is added before the completion, constitute the accomplice of the telecom network fraud crime, otherwise does not constitute. According to the end of the criminal, if joined before the end of the telecom network fraud, can establish a joint crime, and joined after the end of the implementation, will not establish a joint crime. The author prefer to make the end said, in the actor will fraud the implementation of the case, this time to join the behavior of neither property damage to the victim, nor have a promoting role for fraud, join the behavior and the victims property loss and the behavior of the fraud between no inevitable a causal relationship.

2.3.3 The distinction between principals and accomplices

In telecom network fraud crime, to distinguish between the slave, we should analyze in specific case, depends on the actor of the victims property loss has played a vital role, such as the design let the victim transfer and the victim property damage has very direct causal relationship of behavior, actor is not suitable for identified as an accessory. Also depends on the actor in the telecom network fraud crime group is a what role, whether to the development of the criminal group has played an important role, if it is in the criminal group is responsible for command, leadership, management, then should be considered, some criminal group of technical personnel, telephone operator, attract others to join personnel, etc., how to identify its identity, or according to its role in the telecom network fraud crime, whether to support the whole crime continues to run a comprehensive consideration.

2.4 The determination of the amount involved in the crime of telecom and network fraud

In judicial practice, the amount of fraud is an important basis of conviction and sentencing, therefore, in the telecom network fraud crime amount, to the victim statement detailed understanding and analysis, combined with the bank transaction records, the third-party payment settlement account transaction records, call records, electronic data for the amount of evidence.

2.4.1 Identification of the amount of crime committed by each total prisoner

As mentioned above, in the telecom network fraud crime, more is to take the way of joint crime, so how to identify the amount of crime should be determined? For the ringleaders, shall, in accordance with its participation or organization, command of the amount of common fraud, for other principal, shall, according to its participation or organization, command the amount of common fraud, accomplice of telecom network fraud crime, shall be in accordance with the amount of the joint fraud. If it is a telecom network fraud crime is responsible for sending text messages, call the prisoners, how should identify the crime amount, if it is they send text to call the victim of all property losses identified as its crime, the role in the common crime is not adapt, will lead to heavy sentencing, in violation of the principle of punishment. Therefore, we believe that the view should adhere to the total amount of joint crimes: each prisoner is responsible for all the crimes of the criminal group, but the role of the joint crime, the social harm and the crime should be considered in sentencing.[2]

2.4.2 Identification of the amount of the crime in the case of an accomplished and attempted crime

In the case of telecom network fraud crime, according to the provisions of the "Opinions" fraud public and private property worth more than 3,000 yuan, more than 30,000 yuan, more than 500,000 yuan, should be identified as "large amount", "huge amount" and "particularly huge amount" stipulated in Article 266 of the Criminal Law. At this time, since the amount of the crime has been identified, and the crime of fraud has been completed, only need to be identified as the amount of the accomplished. Under the attempted telecom network fraud crime, "opinions" regulation when fraud amount is difficult to verify, with send fraud SMS more than five thousand, call more than five hundred, fraud information on the Internet, page views accumulated more than five thousand times, any one meet conditions can be identified as a crime of fraud (attempted). Those who reach ten times above the provisions shall be deemed as "other especially serious circumstances" as stipulated in Article 266 of the Criminal Law, and shall be convicted and punished for the crime of fraud (attempted). In the case of the amount of fraud is difficult to determine, as long as the number of text messages and phone calls, or the information view to identify, if the crime of fraud (attempted), there is no need to identify the amount of crime.

3 Sum up

The development of information technology is good for the development of society, but also to prevent people use its illegal and criminal activities, in order to maintain social order and personal rights and interests, in view of the telecom network fraud crime such a situation, we should strengthen the protection of personal information, education of citizens carefully transfer remittance. At the same time, it is also necessary to strengthen the legal governance of telecom network fraud crime, play the role of legal sanctions, the identification of many aspects of telecom network fraud crime, is to carry on the development of the theoretical level of criminal law, but also to provide solutions to the problems in judicial practice.

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