

A Qualitative Study on the Criminal Law of "Stealing QR Codes"

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Abstract: For the act of exchanging QR codes involving multiple parties, it actually belongs to the intersection of criminal law and civil law, and should be solved jointly by criminal law and civil law. This article introduces the system of manifest receipt and uses the effect of manifest receipt of creditor's rights to explain and demonstrate that in the traditional crime of triangular fraud, the victim's property can be disposed of by the person being deceived, thus demonstrating that the deceived person has the authority and status to dispose of the victim's property. Ultimately, it is determined that the act of exchanging QR codes constitutes the traditional crime of triangular fraud.

Keyword: Exchanging QR Codes; Larceny; Fraud Crime; See Receipt System

1. Problem Posing

The theft of QR codes discussed in this article refers to the act of a person replacing the merchant's payment QR code with their own payment QR code while the merchant is not paying attention, in order to obtain the money paid by the customer through scanning the code. There are often different controversies regarding the unauthorized exchange of QR codes involving multiple parties. A typical case is that from February to March 2017, Zou went to Taiwan Crispy Corn Store at the gate of Wal Mart Mall in Shishi City, Coco Lemon Milk Tea Store in Shimao Motian City Mall, Hudong Food Market in Shishi City and other places for many times to exchange the WeChat QR codes of the victims, such as Zheng and Wang, with their own WeChat QR codes, so as to defraud customers who had been in the stores of money that should have been transferred to the victims' WeChat accounts, totaling 6983.03 yuan. The prosecution believes that Zou's behavior constitutes fraud, but the People's Court of Shishi City, Fujian Province believes that Zou

constitutes theft.

2. Defects and Reflection on the Theory of Theft

2.1 Theft of Payment does not Meet the Requirements for Possession Transfer

It should be said that the merchant's payment is regarded as the object of property loss, and it is believed that the perpetrator used secret means to exchange the merchant's payment QR code in order to obtain the payment made by the customer to the merchant. While gaining benefits, the perpetrator also caused losses to the merchant, which meets the objective elements of theft. Meanwhile, it is believed that the secret exchange of QR codes is the key to the perpetrator obtaining property. In addition, it is believed that after the merchant delivers the goods to the customer, the merchant's property rights are already in a determined and controllable state, and the customer must immediately pay the equivalent price. The WeChat payment QR code can be regarded as the merchant's cash register, and customers scanning the merchant's QR code make payment to the merchant's cash register. The act of secretly changing the QR code by the perpetrator is to secretly exchange their own cash register for the merchant's cash register, so that the customer's payment falls into their own cash register and becomes their own. [1] But it should be said incorrectly.

Firstly, secrecy is not a necessary requirement for the crime of theft. In theft, both objectively and subjectively, secrecy is not required, and there are numerous examples of blatant theft. Moreover, the key and direct means that led to the transfer of property interests in this case was the customer's QR code payment behavior, and the perpetrator's act of exchanging QR codes only created a condition in advance for the customer's QR code payment.

Secondly, it is incorrect to equate the payment

QR code with a merchant's cash register. The object of transaction with QR code is the balance of WeChat change and Alipay account, that is, electronic currency, on which there are customers' claims on their own WeChat change and Alipay balance. Customers transfer electronic currency by way of claim transfer; The object of transaction using a cash register is real money, which is tangible property, and the creditor's rights obviously belong to the category of property rights rather than objects. The court's precedent adopts to classify QR codes as cash registers, essentially classifying creditor's rights as objects, which is obviously inappropriate. Finally, the merchant has no ownership of the payment. In the case of QR code theft, the merchant does not have the de facto dominance over the WeChat change and Alipay balance paid by the customer. The dominance belongs to the customer all the time, and then the de facto dominance is directly transferred to the actor's account through the customer's code scanning payment. In this process, the merchant never occupies it all the time.

2.2 The Theory of Theft of Creditor's Rights is a Paradox

It is believed that there was no cash involved in this case from beginning to end, and the target of the crime should be the creditor's rights enjoyed by the merchant against the customer. The perpetrator obtained the creditor's identity status by stealing a QR code as a preparatory act. When the customer scanned the code, there was a real and urgent danger to the merchant's creditor's rights. When the perpetrator's account received the money, their theft was completed. [2] This statement is unreasonable.

Firstly, theft does not result in the transfer of rights. Theft is a factual act that does not require expression of intention as a necessary element, but directly produces legal effects according to legal provisions, and can only transfer the possession of property. The transfer of rights must be based on the expression of the rights holder's intention, and can only become the object or target of legal action.

Secondly, the perpetrator's unauthorized exchange of QR codes does not grant them the status of a creditor. On the one hand,

creditor's rights belong to relative rights, with specific subjects and no effectiveness against third parties. Since third parties do not bear debts, there is no possibility of infringement. On the other hand, theft infringes on possession rather than ownership, and the object protected by possession is property rather than rights. Therefore, the object of theft can only be property, which belongs to the category of absolute rights, and cannot be debt.

Finally, the theory considers the act of the perpetrator stealing the QR code as a preparatory act, which is also incorrect. In criminal law, regardless of the criminal offense, the perpetrator must have committed an act that resulted in the infringement of legal interests. In the act of stealing QR codes, if the perpetrator only has preparatory actions, it is impossible to produce actual harmful results. [3]

3. Defects and Reflection on Fraud Theory

3.1 General Scams Targeting Customers

It is believed that the merchant did not possess any property, and the property was directly disposed of by the customer from their own hands to the perpetrator. Therefore, the direct victim of the act of exchanging QR codes is the customer. Due to the perpetrator's mistake in exchanging QR codes, the customer disposed of the property that should have been disposed of to the merchant and ultimately lost it, which meets the constitutive elements of general fraud. [4] It should be said that there is an error. In the crime of fraud, the standard for determining property losses is the principle of overall settlement, which judges the existence of property losses by comparing the economic value changes of the victim's overall property before and after the disposal behavior. When the victim's income cannot offset the expenses and becomes 'poorer', the requirement of property loss is established. Because the customer was deceived by the behavior of the perpetrator to steal the QR code, he had a wrong understanding of the authenticity of the QR code, and paid the WeChat change and Alipay balance that should have been paid to the merchant to the perpetrator, which really belongs to the deceiver. But the merchant provided goods equivalent to the payment to

the customer, and the customer's money and goods were settled economically, without any substantial property loss; In addition, even if the merchant discovers on the spot that their QR code has been stolen, based on the fact that the QR code is within the merchant's control area and there is no special agreement between the two parties that the customer must transfer their property to the merchant's account to complete the payment, the customer has no obligation to verify. Therefore, the merchant bears the risk and cannot require the customer to make another payment. At this point, the merchant's transaction purpose is to achieve it and belongs to the victim.

3.2 General Fraud Claims against Merchants

It is believed that the perpetrator who stole the merchant's payment QR code is equivalent to using their own electronic cashier to replace the merchant's electronic cashier, causing the merchant to have a misunderstanding and requiring customers to scan the stolen payment QR code to pay for the goods. Only the merchant is deceived, and the customer only paid the goods according to the merchant's requirements. The customer is not deceived. In addition, if the merchant requires the customer to deliver or dispose of the goods to a counterfeit electronic cashier, it should be recognized that the merchant has made a delivery or disposal behavior, and the merchant has suffered financial losses as a result. Therefore, the act of stealing QR codes constitutes a general fraud crime against the merchant. [5] But this viewpoint is incorrect. We must always understand that payment for goods is made by customers scanning a code due to a mistaken understanding. The payment is directly transferred from the customer to the perpetrator, and the merchant has never owned the payment from beginning to end. Since they have never owned the payment, how can we talk about delivering the payment? And the disciplinary action belongs to the act of implementation. The act of the merchant requiring the customer to deliver the payment to the counterfeit electronic cashier is not an act of implementation. The act that truly causes the transfer of ownership of the property is the act of the customer scanning the code for

payment, which belongs to the act of implementation.

3.3 The Shortcomings of Traditional Triangle Fraud Theory

It is believed that customers transfer their property to the perpetrator's account based on their incorrect understanding of the ownership of the QR code, and the customer is in a position to dispose of the merchant's property. The merchant suffers losses due to the customer's incorrect disposal, and therefore the merchant is the victim. Therefore, the perpetrator's behavior belongs to traditional triangular fraud. [6] This viewpoint is incorrect. The triangle fraud theory requires the victim to have the authority and status to dispose of the victim's property. Obviously, in the act of stealing and changing the QR code, the customer disposes of his own WeChat change and Alipay balance. The transfer path of this money also goes directly from the customer to the perpetrator. The merchant has never occupied it from beginning to end, and the customer and the merchant have only a sales contract relationship, and do not have the authority and status to dispose of the merchant's property. Therefore, the traditional triangle fraud theory is not tenable.

3.4 The Defects of the New Triangle Fraud Theory

It is believed that the perpetrator engaged in fraudulent behavior by stealing QR codes, causing customers to have a mistaken understanding of the ownership of the QR code and disposing of their property based on this mistaken understanding. As a result, the perpetrator obtained the property and the merchant suffered losses. Therefore, the merchant is the victim. However, since the deceived customer disposed of their own property, which is different from the traditional triangular fraud theory, the perpetrator's behavior belongs to a new type of triangular fraud. It should be said incorrectly. Firstly, the biggest characteristic of fraud is no longer the separation of the disposer and the victim, but the separation of the property owner and the victim. Therefore, the two theories only have similarities in name, and their core has changed, so they do not have comparability. [7] Secondly, since the new triangle fraud theory argues that

customers' disposal of their own property directly causes property losses to merchants, it is sufficient to directly recognize that customers have the right and status to dispose of merchant property in this situation, and there is no need to reconstruct a new theory. Finally, the applicability of this statement is relatively narrow, with a feeling of being specifically constructed to solve the problem of stealing QR codes. Although the scholar has also introduced several cases to illustrate that these cases can be explained with the help of the new triangle fraud theory, this is actually a reversal of the argumentation method.

4. The act of Exchanging QR Codes Should be Recognized as Triangular Fraud

4.1 The Act of the Perpetrator Stealing the QR Code is a Deception of the Facts

Deception, as a form of communication, exists in various forms, including language communication, written communication, and physical communication; It can be achieved through continuous dynamic interaction to form or deepen the information receiver's perception of the facts, or it can be achieved through only one interaction and then presented in a static manner to the information receiver, allowing them to consider whether to make changes to their perception of the facts. [8] When it comes to the act of stealing QR codes, the perpetrator replaces the merchant's QR code with their own and places it in the merchant's store through a dynamic interaction, which is then presented in a static manner. Due to the difficulty of identifying the authenticity of QR codes with the naked eye for ordinary people, the codes that should be exchanged are openly displayed in the merchant's store and implicitly declared to all unspecified third parties who enter the merchant's store that they are the merchant's QR code. This is fraudulent behavior.

4.2 The Deceived Person Made a Cognitive Error due to the Fraudulent Behavior of the Perpetrator

In the act of stealing QR codes, it is difficult for ordinary people to recognize them with the naked eye alone, and the QR code is placed within the spatial control range of the merchant. Merchants and unspecified third

parties entering the store naturally assume that the QR code in the store belongs to the merchant, believing that the facts claimed by the perpetrator are true. This is a manifestation of the deceived person's mistaken understanding.

In addition, in the act of stealing QR codes, we cannot expect the victim to have sufficient attention to the QR code and identify its authenticity, nor can we expect the merchant to rationally replace it with a reprinted QR code for customers to scan and pay. Instead, we should pay attention to the fact that the deceived customer actually believed that the QR code in the merchant's store was the merchant's own, and thus engaged in scanning and payment behavior. The reason for the false perception of the victim is that the perpetrator replaced the merchant's QR code with their own, which led to a misunderstanding between the merchant and the victim. This is consistent with the causal relationship between the perpetrator's deception and error.

4.3 The Behavior of the Victim belongs to the Disposal Behavior that Directly Damages the Victim's Property

4.3.1 The behavior of the victim includes two claims

In the act of changing QR codes, the property transferred by the fraudster is called payment for goods relative to the merchant. Its essence is the creditor's right of customers to their Alipay balance and WeChat change, which is both creditor's right and property right. Its creditor's rights are shown in that customers have the right to request repayment of principal and interest on third-party platforms such as WeChat and Alipay, and its property rights are shown in that customers can conduct exclusive and absolute possession control over the balance or change through third-party platforms, and can freely trade and transfer the balance and change to other users without the consent of the third-party platform. From this, it can be seen that the act of stealing QR codes belongs to a typical cross disciplinary behavior.

The act of a deceived person transferring property is the realization of another creditor's right. There is a legal relationship of debt and credit between customers and merchants. Customers have the obligation to pay for

goods and the right to request the merchant to deliver the goods. Similarly, the merchant has the right to receive payment and the obligation to deliver the corresponding goods. Therefore, in the act of exchanging QR codes, there are two types of debt: one is the debt of the merchant to the customer, which only has a claim nature, and the other is the debt of the customer to the third-party platform, which has both a claim and property rights nature. The act of customers scanning codes to transfer property is to fulfill the merchant's creditor's rights against customers.

4.3.2 The act of transferring property by the victim has the legal effect of extinguishing the creditor's rights

The act of transferring property by a deceived person is a manifestation of fulfilling a debt, but it also has legal consequences of eliminating the merchant's creditor's rights. Disciplinary action refers to a legal act that directly causes a certain right to occur, change, or be extinguished, and the object of its disposal is the right. This seems to indicate that debt cannot be disposed of, but in reality, while debt can be disposed of, it involves the interests of creditors and cannot be effectively disposed of without their consent [9]. Generally speaking, only by making payment to creditors can it lead to the extinction of the debt, that is, the formation of effective repayment. Paying to a third party does not exempt the debtor from liability. However, when the debtor makes payment to a third party with apparent rights, the effect of repayment can occur. Here, we can prove that the act of customers paying for goods is an effective repayment and can eliminate the merchant's creditor's rights by introducing the system of creditor's rights in the act of exchanging QR codes to demonstrate that the perpetrator has a surface of rights. This proves that the act of disposing of debt can have a legal effect on the disposal of debt rights. Moreover, due to the significant misunderstanding of the merchant regarding the previous explicit or implicit behavior of customers scanning the stolen QR code, it can be revoked, and this revocation behavior will not affect the customer's payment behavior based on the appearance of trust rights. Therefore, the perpetrator constitutes apparent acceptance, and the customer's payment has the effect of repayment. Thus, the customer's

payment behavior ultimately proves that the debtor customer has the authority and status to dispose of the creditor's merchant property, indicating that the act of exchanging QR codes belongs to traditional triangular fraud.

Firstly, the debtor's erroneous payment of money to the perpetrator due to deception can establish a claim form for collection. The so-called debt collection refers to the situation where the debtor's payment usually does not have the effect of repayment when the recipient has no right to receive the debt. But if an unauthorized recipient has a certain appearance of receiving rights, and the debtor makes a payment to the unauthorized recipient based on trust in the appearance of the receiving rights, the law may recognize the effectiveness of the payment based on protection for bona fide debtors. [10] The act of exchanging QR codes constitutes effective repayment. The reasons are as follows: firstly, the actor has no special authorization from the merchant and no specific relationship with the merchant, so there is no reason to obtain the property paid by the customer. However, the actor obtained it on his own, so he is an unauthorized recipient. Secondly, the perpetrator exchanged the merchant's QR code, which is extremely similar in appearance to the merchant's QR code and cannot be recognized by the naked eye alone, thus forming the appearance of the right to claim. Thirdly, non-specific customers who enter the store for consumption, based on their own lack of verification obligation towards the merchant's QR code in the store and their trust in the merchant themselves and the store's security, or by scanning the code according to the merchant's instructions or directly scanning the code themselves to transfer their debt, therefore, the customer paid the corresponding property in good faith and based on good faith.

Secondly, the act of the victim disposing of the debt resulted in a reduction of the merchant's assets. In the act of stealing and changing the QR code, the customer scanned the stolen QR code due to the fraud of the perpetrator, so the transfer of WeChat change and Alipay balance, regardless of who the transfer object is, belongs to the performance of the debt, and is also the act of disposing of the debt. Although the business has paid the goods and has not obtained the corresponding

consideration for the goods, the business has no right to ask the customer to pay again, nor to ask the customer to return the goods on the grounds of unjust enrichment. Therefore, there is a loss of property for merchants.

Finally, the act of the victim disposing of the debt also directly produces the legal effect of disposing of the merchant's creditor's rights. We have already proved that the actor constitutes apparent acceptance, and the customer's payment behavior, on the one hand, enables the customer to directly transfer their creditor's rights to WeChat and Alipay to the actor, on the other hand, because of the formation of apparent acceptance, it eliminates the debt relationship between the merchant and the customer. This effect is based on the customer's good faith and non negligent payment behavior, and it should be recognized that the settlement is valid. The merchant suffered property losses due to the inability to demand the customer to make another payment. Therefore, by introducing the system of apparent beneficiaries, we believe that the customer's disposal of debt has the legal effect of disposing of the merchant's creditor's rights, which can demonstrate that the debtor's customer has the authority and status to dispose of the creditor's merchant's property.

4.4 The Victim has the Awareness of Disposing of Property

In the disposal of property interests such as creditor's rights, the victim only needs to transfer possession in the presence of possession and realize that they are transferring possession, without considering whether the transfer of possession will affect the merchant's creditor's rights. In connection with the theft of QR code, the customer paid the payment that should have been paid to the merchant to the perpetrator based on the wrong understanding. The customer knew about the behavior of code scanning payment, and knew that the behavior of code scanning payment would result in the decrease of WeChat change and Alipay balance. As for whether there was any understanding of the object of money transfer, the fact that the customer wrongly transferred the money based on the fraud of the perpetrator could not be denied. Therefore, we believe that the customer's behavior is a conscious

disciplinary action that can produce corresponding criminal law settlement effects, and this result can be attributed to the merchant.

5. Conclusion

For the illegal exchange of QR codes at the intersection of civil and criminal law, we cannot expect to completely solve it through criminal law without considering the relevant provisions of civil law. Instead, we should combine civil law and criminal law to analyze this behavior. Through the analysis and argumentation of various theories, we found that the theft theory has a core defect in the recognition of possession transfer. The traditional triangle fraud theory lacks the authority and status of the victim to dispose of the victim's property. However, by introducing the system of apparent acceptance, customers can not only dispose of their own debt but also achieve the effect of disposing of the merchant's debt. This is not an accidental behavior, but an inevitable effect brought about by the disposal of civil law debt. Therefore, it is a good argument for the core elements of the authority and status of the victim to dispose of the victim's property in the traditional triangle fraud crime. It cannot be denied that introducing the system of apparent acceptance into the criminal law qualification of solving the problem of stealing QR codes is a new attempt at argumentation, which will inevitably generate many different doubts. However, this does have certain reference significance for solving the problem of civil criminal cross disciplinary behavior.

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