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Analysis of Judicial Practice and Dilemma Optimization of "Two Cards" Crime of Assisting Information Cybercrime

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Abstract

At present, the crime of assisting information network crime (hereinafter referred to as the crime of assisting cybercrime) surges in judicial practice, showing the tendency of "pocket crime". Among them, the most significant is the crime of "two cards". Judicial practice has formed a routine identification mode of "confession + two cards" for the crime of two cards of assisting cybercrime, showing the unclear connotation of judicial practice knowing the crime, and the breakage of the chain from the behavior of providing two cards to presumption of knowing. Through the analysis of the judicial judgment situation, the knowledge of this crime should be equivalent to clear knowledge. Adopt the legal presumption of knowing, judicial practice can adopt the way of comprehensive identification as a supplement to prevent the abuse of the crime of assisting cybercrime.

Keywords: "two cards", the crime of assisting information network crime, knowing, presumption

1. Introduction

In 2015, the Amendment (IX) to the Criminal Law of the People's Republic of China added the crime of assisting cybercrime, aiming to regulate the act of providing help when others knowingly commit information network crimes.[1] In 2019, after the Supreme People's Court and the Supreme People's Procuratorate issued and implemented the Interpretation on Several Issues concerning the Application of the Law in Handling Criminal Cases such as Illegally Using of Information Network and Helping Information Network Criminal Activities (hereinafter referred to as the "Interpretation"), other objective acts discovered in criminal activities are punished in a large number. In December, 2020, after the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Industry and Information Technology and the People's Bank of China jointly issued the Notice on Cracking down on Illegal Trading of phone cards in accordance with the Law, "Two cards" of assisting cybercrime cases surge, it also produces the problem of helping the letter behavior type corresponding to the law.

In recent years, the number of cases of helping crimes has increased rapidly. According to relevant data released by the SPP, the crime of helping crimes has ranked the third among all kinds of criminal crimes. The number of help letter crimes has surged, among which the "two cards" of assisting cybercrime cases are increasing. Criminals help others to carry out information online crimes by providing bank cards and mobile phone cards. The "two cards" of assisting cybercrime has brought great damage to the stability of the social order. At present, in China's judicial practice, there are great differences in the attribution of the two cards, and the crime of

[1] See Ji Yang. (2022). Simplification of Proof of Crime of Helping Information Cybercriminal Activities and Its Limitations. *Law Review*, (4).

helping credit presents the tendency of "pocket crime". In order to effectively crack down on the crime of helping information network and curb the tendency of this crime, it is of great significance to conduct the study of "two cards" crime. Based on this, this paper takes the frequent occurrence of "two card" crime of helping letter in recent years as the research object, analyzes the judicial practice of two card crime, examines the dilemma in dealing with the two card problems, and puts forward the corresponding optimization scheme.

2. The Criminal Characteristics of Two Cards of Assisting Cybercrime

2.1 The Characteristics of the Crime Subject Are Obvious

2.1.1 The Criminal "Three Low" the Characteristic Is Obvious

Through the analysis of the judicial judgment of the "two cards" crime, the criminals showed the "three low" characteristics in terms of age, educational background and income, namely, lower age, lower educational background and lower income. First, in terms of age, the phenomenon of low age of this crime is prominent, and the vast majority of criminals are under 30 years old. In addition, in recent years, the number of minors suspected of committing crimes has gradually increased. According to relevant data from the SPP, from 2020 to 2022, the number of minors suspected of criminal crimes was 236,3,001 and 5,474 respectively, up 82.4 percent year-on-year in 2022. Second, in terms of academic background, this crime of low education background account for the vast majority. Through the analysis of the judgment of judicial practice, the crime of this crime is mainly concentrated in junior high school education, followed by primary school education. The Supreme People's Procuratorate released the prosecution data of the crime cases in 2022, which showed that 66.3 percent in 2022 of those prosecuted had a junior high school education. Third, in terms of income, the low-income group of criminal suspects accounts for the majority, and the vast majority of criminals have no occupation. In general, there are internal links between the "three low" characteristics of the subject of this crime: the criminals of this crime show the characteristics of low age, while the low age is closely related to low education background and low income. The younger criminals, their ability to distinguish right from wrong is weak, poor vigilance. On this basis, the low education background makes the criminals of the crime weak, and there is a misunderstanding about the behavior of renting and selling bank cards and the corresponding legal consequences.[1] Especially in recent years, the number of minors participating in this case has gradually increased, and the stage of low education and low income of minors has further enhanced the "three low" characteristics of the subject of this crime.

2.1.2 Criminals Draw over Each Other and Commit More Crimes Together

In the "two cards" of assisting cybercrime, the criminals draw over each other, and the proportion of joint crime is higher. Specifically, in the "two cards" type of help letter crime, after one person obtains the crime channel, they often draw others to participate in the crime. Not only do I provide bank cards to help others' criminal activities, but I also tell others the criminal channels and attract others to participate in this crime. For example, in the case of Feng helping information network criminal activities, Feng provided bank cards for profit, and introduced Kang, Sun and others to provide bank cards for others to transfer online, which constitute the crime of helping information network criminal activities.[2] In addition, the proportion of the joint crime is higher. On the one hand, due to the criminal characteristics of mutual cooperation, the common crime is high; on the other hand, the crime of "two cards" is complicated, and the network transfer capital flow through bank card is complicated. For example, in the case of Liu, Guo and other helping information network criminal activities,[3] the defendant had a specific division of labor in the distribution link of selling bank cards, handling bank cards, delivering bank cards and subsequent illegal income, which constituted a joint crime.

2.2 Diversification of Criminal Acts

The objective behavior of this crime is to provide technical support or help for others to use the information network to commit crimes, which is reflected in the "two cards" crime of providing bank cards for others. According to the analysis of judicial judgments, it can be seen that most criminals in practice are "providing bank cards for profits". Whether it is attracted or attracted, the actor provides his bank card to others for use to obtain benefits. Although the objective behavior of this crime is simple, there are different behaviors in practice, specifically as follows.

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[1] See Chen Jiaqi, Xu Kun. (2022). Characteristics and Prevention and Control of the "Two cards" Related Information Network Crime Cases — From the perspective of "Canon" at the Bottom. *Journal of Hebei Vocational College of Public Security Police*, (4).

[2] See Feng to help information network crime case, Zhongyuan District People's Court of Zhengzhou City, Henan Province (2023) Yu 0102 sentence no. 841 criminal judgment.

[3] See Liu, Guo and other help information network criminal activities, Hailin People's Court of Heilongjiang Province (2022) hei 1083 Criminal No.66 criminal judgment.

First, for profit, rent, lend bank card. This kind of behavior is the main behavior of the crime of "two cards", and the criminals are mostly attracted by other criminals. The common behavior mode in judicial practice is that the criminals can make money by renting and lending bank cards, and then provide their bank cards to others for use. The subjective purpose of the actor is to obtain benefits, that is, the consideration after providing the bank card. Objectively, the behavior of providing the bank card helps others to commit crimes through the information network. For example, in the case of Hu helping information network criminal activities,[1] others promised that Hu could make a profit of 20,000 yuan through the bank card. In order to obtain profits, Hu went to the designated place to provide the bank card and password to others, and finally made a profit of more than 10,000 yuan.

Second, for the profit acquisition of bank cards and paid provision. In addition to providing his existing bank cards to others, the actor will also buy other people's cards and sell them for profit. For example, in the case of Shen helping information network crime,[2] the defendant actively collected 24 bank cards from others and provided them to others for compensation; in the case of Chen helping information network crime, the defendant provided 8 bank cards under his name and 9 bank cards purchased from Chen to others for use.[3]

Third, introduce others to provide a bank card for profit. This kind of behavior is more common in the joint crime of helping letters. Criminals may not directly provide bank cards for the upstream criminals, but will play a substantial help in the link of providing bank cards. By introducing others to provide bank cards, the criminal promotes the role of bank cards and telephone cards in payment and settlement in information network criminal activities. For example, in the case of Yang Shiyun and other helping information network criminal activities, Yang introduced others to provide bank cards, so as to obtain the introduction commission and provide payment and settlement help for others' criminal activities.[4] In the case of Ou and other help information network criminal activities, Ou introduced and arranged others to provide bank cards for payment and settlement in order to seek benefits.[5]

2.3 The Sentencing of the Judgment Result Is Relatively Light

At present, the crime structure in China has changed, "the number of serious violent crimes and the rate of severe punishment decreased, the number of minor crimes and the rate of light punishment increased", China has entered the era of minor crime cases.[6] Some people believe that the crime of helping faith is a new crime spawned by the Internet under this background.[7] According to the legal provisions of the crime of helping letter, the crime of helping letter is a crime of less than three years, which is a part of the minor criminal case. Through the analysis of the judicial practice judgment, the judgment result of the "two cards" of assisting cybercrime is relatively light, the vast majority of the criminals were sentenced to less than one year in prison, and some cases in which the criminals were sentenced to criminal detention. In the case of lenient punishment, the "two cards" of assisting cybercrime, confession and punishment utilization rate is higher, the criminal can voluntarily surrender, even if it does not constitute a surrender, but also can truthfully confess, constitute a confession. In addition, the criminal can actively return the stolen money after the crime, and the court also considers the case in the sentencing stage.

3. "Two Cards" of Assisting Cybercrime Judgment Documents Combing

Through sorting out and analyzing the judgment documents of the crime of "two cards", there are differences in the expression of the court in the discretionary stage in practice, which is mainly reflected in the classification of the behavior of using bank cards. In addition, there are differences in the identification mode of "two cards", on the one hand, the definition of the knowing crime, on the other hand, the judgment of the subjective knowledge

[1] See Hu help information network criminal activities crime, Shanxi Hejin City People's Court (2024) Jin 0882 Criminal No.133 criminal judgment.

[2] See Shen help information network criminal activity crime, Beijing Miyun District People's Court (2022) Beijing 0118 Criminal Chu No.328 criminal judgment.

[3] See Chen help information network criminal activities crime, Beijing Shunyi District People's Court (2022) Beijing 0113 Criminal No.462 criminal judgment.

[4] See Yang and other help information network criminal activities case, Beijing Shunyi District People's Court (2022) Beijing 0113 Criminal Chu No.295 criminal judgment.

[5] See Ou help information network criminal activity crime, Beijing Mentougou District People's Court (2022) Beijing 0109 Criminal Chu No.184 criminal judgment.

[6] Lu Jianping. (2022). On the Crime Control Strategy in the Era of Misdemeanors. *Political Science and Law*, (1).

[7] See Ban Yiyuan. (2022). On the Judicial Administration of "Two cards" Crime of Assisting Cybercrime under the Background of Less Arrest and Prudent Prosecution and Custody. *Journal of Political Science and Law*, (6).

of the criminal.

3.1 Provide the Attribution Difference of the Two Cards

In practice, there are differences in the expression of the court in the discretionary stage, which is mainly reflected in the classification of the use of bank cards. Through the analysis of the judgment documents, the court judgment expression can be divided into three kinds.

First, it is clear that the two cards will be provided to provide technical assistance or payment and settlement assistance. The court summarized the act of providing bank cards and phone cards as providing technical or payment and settlement assistance, which corresponds to the law of helping crime. Different courts differ slightly in their statements, some courts describe it as "knowingly using an information network to commit a crime, still providing payment and settlement assistance for crimes, circumstances of aggravation, his behavior has constituted the crime of helping information network criminal activities" and "knowing that others use information network to commit crimes, provide technical support for their crimes, circumstances of aggravation, has constituted the crime of helping the information network criminal activities", some courts simply describe it as helping act, that is, "knowingly committing information cybercrimes by others, to help him with his crime, circumstances of aggravation, its behavior has constituted the crime of helping the information network in criminal activities, should be punished according to the law". Although there are differences between the two expressions, both identify the provision of bank cards and phone cards as providing technology or payment and settlement help, and this judgment said is also the vast majority of the court in the "two cards" of assisting cybercrime judgment.

Second, the classification of the two-card behavior is not clearly provided. In their discussion, some courts did not clearly classify the act of providing bank cards and phone cards, but held that when the subjective requirements were met, the actor provided bank card transfer or obtained benefits, and then determined that the offender constitutes this crime. In this regard, some courts say that "Being fully aware that others are using information networks to commit crimes, providing bank cards for others to commit crimes, and profiting from it, constitutes a serious offense that violates criminal law. Such actions amount to the crime of assisting in criminal activities carried out using information networks, and should be punished according to the law", focusing on the description of providing cards and profit, some courts also say that "others knowingly use information networks to commit crimes, provide bank card transfer for others, circumstances of aggravation, its behavior has constituted the crime of helping the information network in criminal activities, should be punished according to the law", although not focused on the description of the acquired consideration, however, the provision of two cards is not classified.

Third, there is avoidance in providing a two-card behavior. In its argument, the court did not discuss the act of providing two cards, but took the way of avoidance. Part of the court from the perspective of crime meet the constitutive requirements, as "the behavior of the defendant constitutes help information network crime, should be punished", or from the perspective of conviction sentencing, expressed as "procuratorate accused the defendant help information network crime facts clear, evidence really, fully, accused of convicted, sentencing advice appropriate, should be adopted". In practice, the court has other similar expressions, and this article is mixed. But on the whole, this kind of expression does not define the provision of bank cards, phone cards and other behaviors.

3.2 The Practical Difference in the Connotation of the Subjective Knowledge

Constitute this crime requires the criminal to meet the constitutive requirements of "knowing" subjectively. There are different ways to deal with the subjective understanding of criminals. Through the analysis, it can be seen that in practice, there are three processing modes of "clear knowing", "clear knowing and possible knowing" and "clear knowing and should know" for the identification of knowing.

First, the vast majority of courts determine that the criminal subjectively "clearly knows" that the crime by others to use the information network. In these cases, although the court used only the expression "knowing", it was the omission of "clear knowledge", indicating that the court determined that the perpetrator was subjectively of the type of clear knowledge. It should be pointed out that subjective clear knowledge does not mean that the perpetrator clearly knows the specific charge of using the information network to carry out criminal activities, but clearly knows that the behavior of others is a criminal act.

Second, some judicial judgments hold that the criminal subjectively "knowingly may" use the information network to commit the crime. For example, in the case of Ding helping information network crime,[1] the court held that the defendant "knew that the behavior of providing bank card may be used for illegal and criminal

[1] See Ding help information network criminal activities crime, Beijing Dongcheng District People's Court (2022) Beijing 0101 criminal early no. 12 criminal judgment.

activities, and the circumstances constituted the crime of helping information network crime, which should be punished in accordance with the law". In the case of Zhang,[1] the court held that the defendant "opened bank cards knowing that it may be used for information network crime, and provided payment and settlement assistance to others. If the circumstances were serious, his behavior constituted a helping information network crime". The court has adopted the possible expression in its judicial judgment.

Although some courts have avoided expressions that may know, in fact they believe that the actor's subjective knowledge is not limited to "clear knowledge", but also "possible knowledge" under the connotation of "clear knowledge". For example, in the case of Zhang helping the information network criminal activities,[2] the procuratorate accused the defendant of constituting the crime of assisting cybercrime, the reason is that Zhang still gave his bank card and password to others while knowing that it may be used for illegal crimes. Similar cases also have Liu, Guo and other help information network criminal activities crime case,[3] the public prosecution organ accused the defendant "knowing that the sale of bank cards may be used for information network illegal crimes", still help others to handle bank cards and sell. Although the court did not use the expression "may know" in the final judgment, it accepted the charges of the public prosecution agency. This indicates that the court held that "knowing" contained not only clear knowledge but also possible knowledge. In 2021, Chongqing municipal higher people's court, Chongqing municipal people's procuratorate and Chongqing municipal public security bureau issued the "Meeting Minutes on the Legal Application Issues Regarding Handling Telecommunications Network Fraud and Its Associated Crimes", which says the crime of "knowing", generally require evidence can confirm the actor realize that others may commit a crime, does not require actors to realize the circumstances of the crime. In this type, the court did not limit the standard of knowing to clear knowledge, but adopted the way of summarizing knowing, that is, as long as the actor is subjectively likely to realize that the upstream behavior is a crime, it belongs to the crime that the information network to use others to commit a crime. The standard of proof of "probably knowing" is lower than the "clear knowing" treatment model.

Thirdly, in judicial practice, there are also situations where the court thinks that the defendant is subjectively "should know". For example, in the case of Hua,[4] the court held that the defendant "provided bank cards to others in order to obtain benefits, he knew or should know that others used his bank card for network fraud, that is, he provided bank cards to others knowing that others committed network fraud, he had the intention of crime". In the case of Pang the court held that "the subjective knowledge of the crime was limited to the perpetrator knowing or should know that the helping object used the information network to commit the crime, and did not require the perpetrator to realize the specific content of the crime".[5] Similarly, even if some courts do not adopt statements that should be known in the final expression, they also believe that knowledge contains not only clear knowledge, but also clear knowledge. In sun,[6] for example, in the help information network crime, the prosecution believes that the defendant "know or should know others may use the rental bank card information network crime, it also rents bank card, makes the bank card is others for information network crime of money work, if the circumstances are serious, its behavior constitutes help information network crime". When the procuratorate initiated a public prosecution, the defendant should know or know subjectively, and the court finally recognized the charges of the public prosecution organ. This shows that in this part of the case, the judicial practice believes that the crime of assisting cybercrime knowingly includes clear know and should know.

4. "Two Cards" of Assisting Cybercrime Practice Dilemma

Through the above crime of the "two card" class help the judicial judgment analysis, can find "two card" class help letter sin is guilty in practice under the judicial judgment routine phenomenon, namely as long as the defendant is the behavior of the bank card, under the condition of pleaded guilty to forfeit judge think the actor

[1] See Zhang help information network criminal activities crime, Beijing Xicheng District People's Court (2022) Beijing 0102 Criminal Chu No.51 criminal judgment.

[2] See Zhang help information network criminal activities crime, Beijing Tongzhou District People's Court (2022) Beijing 0112 sentence No.397 criminal judgment.

[3] See liu, Guo and other help information network criminal activities, Hailin People's Court of Heilongjiang Province (2022) black 1083 no. 66 criminal judgment.

[4] See Hua help information network criminal activities case, Hubei Suizhou Intermediate People's Court (2023) Hubei 13 criminal end no. 129 criminal judgment.

[5] See Pang helped information network criminal activity case, Qiubei County People's Court (2024), Yunnan Province, Yun 2626 Criminal judgment.

[6] See the crime of Sun for helping information network crime, Xinjiang Uygur Autonomous Region (2024) new 0103 Criminal Judgment No.161.

constitutes the help letter. The reason is the act of providing two cards and the presumption of knowing, and the ambiguity of the subjective knowledge of the offender.

4.1 Provide Two Cards of Behavior and Knowing of the Presumed Fracture

On the whole, in China's judicial practice, the identification of the crime of helping letters presents a routine situation. The mode of judges identifying "two cards" can be summarized as "confession + two cards". The court's judgment reasoning emphasizes the expression of objective behavior, and often adopts the presumption of subjective knowledge. Presumption is an important concept in evidence law, which is "the category of evidence law that marks the legal relationship between basic facts and assumed facts".[1] Theoretically, the presumption is divided into legal presumption and factual presumption: the former refers to the presumption based on legal provisions, while the latter refers to the presumption based on empirical rules of experience.[2] Since the research object of this paper is the crime of assisting cybercrime and its interpretation, the presumption mentioned in this paper refers to the legal presumption.

The important reason for the presumption is the difficulty of judicial proof, which is not the method of proof, but the "method of alternative judicial proof".[3] Some scholars believe that the presumption is "the interruption of the proof process", its essence is "creating some legal relationship between the basic facts and the assumed facts". [4]some scholars believe that the presumption is "the jump of the proof process", [5]turning the facts repeatedly verified in practice into the assumed basic facts, reducing the time for subjective elements to prove the reasoning. Although the expression is slightly different, in fact, the two scholars have shown the characteristics of presumption, that is, the factual basis on which the presumption is based can not logically deduce the result, and its essence is to achieve the legal proof effect by proving the basic facts. As Professor Chen Ruihua pointed out, presumption is not only a means to replace judicial proof, but also an avoidance of logical reasoning methods.[6]

The reason why presumption is gradually paid attention to in judicial practice is that presumption can reduce the difficulty of judicial organs, especially the subjective identification of criminal suspects. Because the subjective aspects of the criminal suspect are difficult to grasp in judicial practice, especially in the case that there is no direct evidence and only indirect evidence, it is very difficult for the judicial organs to prove the constituent elements of the crime, and the presumption reduces the burden of proof. By presumption, the object of proof has changed from the subjective elements to the objective elements of the proof, that is, as long as the basic facts of the presumption are proved, the establishment of the constructive facts can be determined. And given the help letter sin subjective knowing is difficult to prove, our country law also provides the legal presumption, "Interpretation" article 11 through listing the six kinds of behavior, the social widespread, repeatedly verified behavior summarized for the presumption knowing the basic facts, namely as long as the criminal suspect has the six kinds of behavior, can directly identify the existence of subjective knowing. In addition, article 11 also has a cover clause, aiming to adapt to the new situation of the crime through the cover clause.

In judicial practice, some courts, according to article 11, paragraph 4 of the "Interpretation", "provide procedures, tools or other technical support and help specially used for illegal crimes", identify the act of providing two cards as payment and settlement or technical support in the judgment, and then presume the subjective knowledge of the actor. For example, in the case of Xie helping information network crimes,[7] the court held that the defendant Xie "provides bank cards and other payment tools for others to carry out telecom network fraud crimes, which should be assumed that others may be suspected of crimes, constituting the crime of helping information network crimes according to law". Some judges think that the behavior of actively buying bank cards is in line with the "interpretation" article 11, paragraph 3, "the transaction price or way is obviously abnormal" and paragraph 7, and then assumes the subjective knowledge of the actor. For example, in the case of

[1] Zhang Baosheng. (2023). *Law of Evidence*. China University of Political Science and Law Press.

[2] See Chen Guangzhong. (2019). *Evidence Law*. Law Press.

[3] See Chen Ruihua. (2021). *Criminal Evidence Law*. Peking University Press.

[4] See Zhang Baosheng. (2009). Presumption is the Interruption of the Process of Proof. *Chinese Journal of Law*, (5).

[5] See Xu GS. (2022). Integrated Solution to the Proving Problem of Subjective Elements: with Concurrent Discussions of the Factor Analysis Mode. *Journal of Zhejiang Gongshang University*, (1).

[6] See Chen Ruihua. (2021). *Criminal Evidence Law*, Peking University Press.

[7] See Xie help information network criminal activities crime, Changyuan City People's Court of Henan Province (2020) Yu 0728 criminal beginning no. 112 criminal judgment.

zhao helping information network crime case,[1] the court thinks the defendant for personal interests, actively contact purchase card, its behavior conforms to the explanation "item (3)" (transaction price or way obviously abnormal) and "item (7)" (other enough to identify the actor knowing regulation). Therefore, it can be completely inferred that Zhao Yuqin is subjectively "knowing". There are also courts in the judgment avoided the attribution of the provision of two cards.

Through this search, it is found that the separation between helping behavior and constructive basic factual behavior in practice, the six kinds of behaviors listed in Article 11 of the Interpretation are actually very low, and the classification of two-card behavior patterns in judicial practice is vague. It seems that the court equated the provision of bank cards with article 11 of the "Interpretation" "providing procedures, tools or other technical support and assistance specially used for illegal and criminal activities" and "the transaction price or method is obviously abnormal", and regarded the provision of bank cards as one of the basic facts stipulated by the law. But in fact, as the law itself stipulates, this type of behavior is "specifically used for illegal crimes", that is, it is not needed for normal social activities.[2] And the bank card does not belong to the tool specially used for illegal crime, it belongs to the normal social activities needed. It should not be typed because of such behavior. In addition, for the help letter crime of the bottom clause to restrictive application. To assume help letter crime knowing that the basic facts are in the form of law, the judge need to do is to case facts to basic facts, thus concluded that knowing, and apply out clause will not only expand the judge in the crime of help letter discretion, expand the application of help letter crime. Therefore, in fact, in the judicial practice, there is a dilemma that the presumption provision is suspended, and the situation outside the presumption is rampant and there is no specific explanation. There is a break between the two-card act and the knowing presumption.

4.2 The Definition of Subjective Knowledge Is Not Clear

In judicial practice, there are three treatment modes of "clear knowledge", "clear knowledge and may know" and "clear knowledge and should know" in the subjective determination of the doer, which show that the subjective definition of the crime of helping faith is not clear in practice. Theoretically, the study of helping sin also revolves around these three views. The first emphasizes that the certainty of knowledge is clear, the second introduces possible knowledge in addition to the certainty, and the last emphasizes the possibility of knowledge, although the actor does not know.

4.2.1 Know Clearly and Know Is Possible

In judicial practice, there are views that the knowledge of the crime of assisting cybercrime should include not only the explicit knowledge, but also the possibility of knowing. [3]Ban believes that the judicial practice adopts the general way of knowing, and only requires the actor to realize that the upstream behavior may be committing a crime.[4] In the contrary opinion, the knowledge of the crime of helping letter should be strictly limited to "clear knowing", and the inclusion of "knowing possibility" into the category of the crime is to add new elements outside the "knowing" elements, which not only increases the unpredictable risk of the perpetrator, but also increases the risk of misjudgment of the judicial organs.[5] From the perspective of the circular demonstration of subjective and objective elements, Professor Yu Chong believes that if "knowing the possibility" is included in the subjective elements, the objective elements will be changed from others to commit crimes to others to commit crimes, which expands the evaluation scope of this crime.[6]

4.2.2 Knowing and Knowing What Should Be

In the crime of helping letters, theories vary on whether you know what you should know. Professor Jiang Su

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[1] See the crime of Zhao, Zhang and other criminals, the criminal order of Baise Intermediate People's Court (2021) of Guangxi Zhuang Autonomous Region no. 330.

[2] See Zhou Jiahai, Yu Haisong. (2019). Interpretation of Several Issues concerning the Application of Law in Handling Criminal Cases involving Crimes of Illegally Using an Information Network or Providing Aid for Criminal Activities in Relation to Information Network. *People's Judicature*, (31).

[3] See Hao Chuan, Feng Gang. (2020). "Knowing" about the crime of helping information cyber criminal activities should include "perhaps knowing". *Procuratorial Daily*, (September 23, 3rd edition).

[4] See Ban Yiyuan. (2022). On the Judicial Administration of "Two cards" Crime of Assisting Cybercrime under the Background of Less Arrest and Prudent Prosecution and Custody. *Journal of Political Science and Law*, (6).

[5] See Liu Yanhong. (2023). The Trend of Judicial Expansion and the Application of Substantial Limitation of the Crime of Assisting Information Network Criminal Activities. *China Law Review*, (3).

[6] See Yu Chong. (2023). The Independence and Subordination of the Crime of Helping Information Cybercrime. *Journal of National Prosecutors College*, (1).

believes that knowing should include "clear know" and "should know".[1] Professor Zeng Lei also believes that the crime of assisting cybercrime is knowing to know and should know. The adoption of "should know" can solve the difficulty of identifying knowing in judicial practice, and the helper should have this understanding of knowing based on their own understanding of the society.[2] On the contrary, many scholars believe that "should know" should not be regarded as the lower limit of the crime of helping faith. According to Professor Ji Yang, for example, interpreting the expansion of knowing as the cause for the explosive growth of this crime reduces the proof of subjective guilt; [3]Judge Hua Yueliang said, help letter sin as a criminal act of help, this is to expand the crime circle, if the lower limit of knowing is defined as "you should know", not only will it further expand the crime circle, it may also make this crime a network pocket crime; [4]Professor Sun yunliang proposed the double risk of interpreting knowing as knowing based on the same reason, thus defining the knowing of this crime as a clear cognition; [5]Professor Liu Xianquan basically agrees that he knows what he should know, it is also from the perspective of cognitive possibility, thought that "should know" as a presumption of knowing, the judicial organs still have a relatively sufficient basis for this proof, but it also points out the disadvantages of the aforementioned scholars, then proposed "more than half the rule" as the quantitative scale.[6]

Scholars should include "should know" about the crime of the author should deny "should know" as the lower limit of this crime to prevent the tendency of network pocket.

5. Suggestion of "Two Cards" of Assisting Cybercrime

Through the analysis of the judicial practice operation of "two cards" crime, there are still shortcomings in the connotation of knowing and the method of knowing proof. Based on this, this paper puts forward the optimization suggestions of the "two card" help letter crime, to promote the accurate identification of the two card help letter crime in judicial practice.

5.1 Knowing Is Equivalent to Clearly Knowing

Because the judicial organs of the connotation of knowing, the judicial practice has appeared the combination of knowing and knowing, should know, expand the criminal circle of this crime, making the crime of helping letter have the tendency of "pocket crime". It should be clarified that the knowing of this crime is equivalent to the clear knowing, and does not contain the possible knowledge and due knowledge.

The establishment of this crime is to effectively crack down on the help behavior of various network crimes. The reason why it is punished as a separate crime is that the behavior of this crime causes the social harm requiring punishment for the stability of social order. Professor Liu Yanhong, from the perspective of the positive crime of cyber crime, summarizes the two types of helping letter crime, knowingly promoting and knowingly non-promoting. Although there are differences, it requires the perpetrator to realize the criminal plan or intention of the true crime, that is, it is necessary to realize that the upstream behavior performed by others is a criminal act.[7] And this knowledge of the criminal plan or intent is a clear one, not a possible knowledge. If the subjective mentality of the crime that people may know is affirmed, it means the default of the subjective mentality of the actor may not know, which not only causes the uncertainty of the crime, but also adds additional elements to the identification of the crime, and expands the risk of the crime. Therefore, the knowledge of this crime should not contain the connotation of the possible knowledge.

In fact, in judicial practice, the debate about knowing is more based on the question of whether knowing should know. Because of the subjective difficulty to prove, for the sake of reducing the difficulty of proof, the judicial

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[1] See Jiang Su. (2020). The Interpretation Direction of the Crime of Helping Information Network Crime Activities. *Criminal Science*, (5).

[2] See Zeng Lei. (2023). The Judgment Logic and Scope Limitation of "Knowing" in the Crime of Helping Information Network Crimes. *Journal of People's Public Security University of China* (Social Sciences Edition), (1).

[3] See Ji Yang. (2022). Simplification of Proof of Crime of Helping Information Cybercriminal Activities and Its Limitations. *Law Review*, (4).

[4] See Hua Yue Liang. (2016). The Understanding and Application of "Knowing" in the Crime of Helping Information Network Crimes. *Juvenile Delinquency Prevention Research*, (2).

[5] See Sun Yunliang. (2019). The Core Issues on the Crime of Helping Information Cybercrime. *Tribune of Political Science and Law*, (2).

[6] "More than half of the rules" refers to "the electronic evidence that neutral business behavior helped by the use of information network criminal activities of the object of more than half, should be based on the presumption information network service should know or should have good reason to doubt its business behavior support the object using the information network crime, but still determined to provide technical support and help". See Liu Xianquan, Fang Huiying. (2017). Difficulties in the Identification of the Crime of Helping Information Network Criminal Activities. *People's Procuratorial Semimonthly*, (19).

[7] See Liu Yanhong. (2016). Criticism of the Positive Treatment of Cybercrime Assistance. *Studies in Law and Business*, (3).

organs often take "should know" as the lower limit of this crime. But in fact, the presumption of this crime has reduced the difficulty of proof, and on this basis, the boundary of subjective proof difficulty is set on what should be known, which reduces the proof difficulty of judicial organs and further expands the crime circle. By analyzing the six basic facts listed in article 11 of the Interpretation, we can find the subjective point of the basic facts, but in fact they know rather than should know. There are great differences between the premise of knowing and knowing. It should be known that not knowing is the logical premise, and objectively, the actor does not know.[1] The constructive basic facts, whether informed by the regulatory authorities, or receiving reports, or providing procedures, tools or other technical support specifically used for illegal crimes, the actor's subjective performance of the act should be known. That is, although the presumption fact is obtained from the basic facts, the presumption chain is the knowledge of the actor.

Although the presumption is a method of alternative to judicial proof, but compared with the general proof principle, there are only differences in the means, and the results or standards of the final proof should be consistent. Since the underlying facts on which the presumption is based point to knowledge, other methods of proof should come up in the end to the same standard of knowledge, not mere knowledge. In addition, in the process of fact determination, the correspondence between the basic facts and the assumed facts itself contains the risk of subjective and objective deviation. As a substitute method of proof, the presumption itself is risky. On this basis, if the knowing connotation of judges contains "should know", the burden of proof is further reduced in the process of fact-finding, and it is easier to expand the criminal circle of this crime and make the crime present a pocket tendency.

To sum up, the knowledge of this crime should be equivalent to clear knowledge, and does not contain may and should be known. The correct definition of the connotation of knowing not only clarifies its boundaries in theory, provides good guidance for judicial practice, but also prevents the expansion of the crime circle in practice and reduces the risk of the pocket of this crime. For judicial staff, it is to standardize the process of proof and strengthen their burden of proof.

5.2 Proposal of Comprehensive Identification Methods

The court identified the provision of two cards as "providing procedures, tools or other technical support and help specially used for illegal crimes and crimes" and "providing technical support and help for others to evade supervision or evade investigation" as stipulated in Article 11 of the Interpretation, and thus identified the subjective knowledge of the perpetrator. Sometimes the process of knowing this presumption is accomplished with the cover clause stipulated in Article 11. But in fact, in the fact determination of the crime of two card help letter, the application of presumption of knowledge should be strictly in accordance with the specific circumstances listed in Article 11 of the Interpretation, and the facts of the case and the basic facts of presumption. The reason why the behavior of providing technology or help under specific conditions can constitute the crime of help letter is that these technologies and help behaviors themselves violate the relevant prohibitions of the law.[2] The identification mode of "confession + two-card behavior" formed in judicial practice adds a new basic facts in addition to the existing legal presumption. Therefore, when the situation of the case cannot be linked with the constructive basic facts, the comprehensive identification should be used as a supplement, and the excessive application of the guarantee clause should be prevented, and the burden of proof of judicial personnel should be strengthened, rather than trying to find legal provisions to avoid the logical process.

In order to prevent the abuse of the crime of helping credit, judicial practice corrects the deviation of the identification method, and on the premise of subjective and objective consistency, adopts the practice mode of constructing comprehensive identification by combining the evidence of the whole case.[3] The court will combine the defendant's specific behavior, cognitive ability, working experience and the confession made to determine that he is subjectively "knowing" of his behavior. For example, in the case of Tang and Luo and other helping information network crimes, the court comprehensively determined the defendant's subjective knowledge, based on the defendant's cognitive ability, the time and the process of providing the bank card to

[1] See Wang Xin. (2013). The Meaning and Recognition of "Knowing" in China's Criminal Law — Based on the Analysis of Criminal Legislation and Judicial Interpretation. *Law and Social Development*, (1).

[2] See Chen Hongbing. (2022). "Pocketization" Correction of Crimes of Helping Cybercrime. *Journal of Hunan University* (Social Sciences), (2).

[3] See MAO Bin. (2022). Reflection on the dilemma in determining the knowledge element of the aiding cybercrime offense. *Evidence Science*, (6).

others.[1]

In December 2016, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security jointly issued the "Opinions on Several Issues Concerning the Application of Law in Handling Criminal Cases such as Telecommunications Network Fraud (No. 2)" (hereinafter referred to as "Opinions"), in which Article 8 stipulates that the awareness of the actor should be comprehensively determined based on factors such as the number of bank cards acquired, sold, or rented by the actor, as well as the actor's cognitive ability, past experiences, transaction counterparties, and other subjective and objective factors.

The promulgation of the Opinions is of practical significance for the identification of the "two card" type crime of helping letter, which promotes the judicial practice to identify the existence of the perpetrator by combining the cognitive status and previous experience of the defendant without direct evidence to prove the subjective.

In the presumption of law, since the basic facts on which the presumption is based, themselves contain certain regularity, the judge will apply the rule of experience in the presumption. Similarly, in the process of comprehensive identification, the court determines knowing by combining various subjective and objective factors related to the actor, and this process rule of experience also plays an important role. However, on the occasion of comprehensive identification, because there are no basic facts stipulated by law, the judge should be more prudent in the process of identification. Even if the number of two-card crimes surges, judges should judge according to the specific situation of each case, rather than form a presumption-like recognition pattern of "confession + two-card crimes". The judge should avoid the tendency of routine to judge the case, and should reason in detail.

To sum up, the presumption and comprehensive identification are the knowing identification methods of this crime. Although the latter is developed in practice and makes up for the deficiency of the former, both should be applied prudently in their application. The six basic facts enumerated in article 11 of the Interpretation reduce the burden of proof of the judicial organ on the subjective knowledge of the actor. When a new type of behavior appears in practice, it is necessary to carefully judge whether the type of behavior conforms to the basic facts, and to avoid the excessive use of the bottom clause in Article 11 of the Interpretation. In the case that it is difficult to apply the presumption, the court can adopt the way of comprehensive identification, use the rules of experience, and comprehensively consider the age, occupation, social experience and other factors of the actor.

6. Conclusion

"Two cards" of assisting cybercrime has become the main crime of help letter crime in recent years. Through the investigation of the judgment of the crime of assisting cybercrime in judicial practice, the "two cards" of assisting cybercrime has produced a routine judgment of "confession + two cards" in practice. In order to correctly deal with the crime of "two cards", on the one hand, it is necessary to clarify the connotation of knowing this crime is equivalent to clear knowing, on the other hand, to adopt the way of comprehensive identification to make up for the break of the presumption of the process of providing two cards and knowing it. Practice reflects theory, theory guides practice, and the correct identification of the "two cards" of assisting cybercrime also provides guidance for the handling of the new help letter crime in practice. Only by treating the problems reflected in the practice correctly, and making them clear in theory, can the practical problems be solved accurately.

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[1] Tang, Luo and other help information network criminal activities crimes, Hengyang City, Hunan Province Zhengxiang District People's Court (2021) Xiang 0408 sentence no. 436 criminal judgment.

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