

## Qualitative Research on the Behavior of Following Vehicle and Rushing Checkpoint on Highway

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### Abstract

As for the behavior by non-violent means to follow the car and rush checkpoint to escape the highway fee, in the criminal law judicial practice, how to qualitative have many disputes. This paper analyzes the judicial qualitative of the behavior. First of all, this paper analyzes the existing academic debate. Secondly this paper by analyzing think the non-violent behavior of following car and rushing checkpoint on highway motivated by financial aggression and have less destruction of social order, It is hard to identified as defiance. The driver didn't take behavior of fictional facts and concealing the true., therefore, it does not constitute the crime of fraud. Finally the paper considers that the key to distinguish the grab and theft is whether there is damage to the person, The object of theft may be property interests and it's reasonable to consider this kind of behavior as a theft.

### Keywords

**Non-violence; Behavior of following vehicle and rushing checkpoint on highway; Property interests; Defiance; Fraud; Theft.**

### 1. Introduction

Currently, the escape of highway toll is constantly occurring, and the forms are various. It is especially hard to determine the nature of those drivers who follow front vehicles, and escape highway toll by accelerating the speed when the stop bar is not closed. Therefore, the criminal law is full of controversy as per whether the behavior can be convicted and what crimes it constitutes, and how to regulate it in criminal law.

### 2. Current academic debate

#### 2.1 Not constituting a crime viewpoint

According to this view, this type of following vehicle and rushing checkpoint behavior destroys the debt and debtee relationship between civil subjects, which can be settled through civil lawsuits without using criminal law to regulate it, otherwise there is a suspicion that the criminal law is too instrumental. At the same time, the highway toll collection company is a government-authorized regulatory agency, and it is not a state organization. The collector who executes highway toll is not a national staff member. According to the criminal law on tax evasion, tax evasion does not constitute a crime until the tax authorities do not pay the tax after they are reminded to pay. The tax collection unit is a state agency. The obligation to pay taxes and fees is greater than paying highway fees. The law still requires administrative penalties as a prerequisite for crimes that constitute tax evasion. Penal regulations for evading highway tolls are suspected of expanding criminal penalties, which violates the general public's perception that the nature of their behavior is equivalent to bus ticket evasion. Punishing such acts with administrative actions can achieve the effect of disciplinary prevention. The use of criminal law is against the principle of apology and restraint. At the same time, the amount of highway tolls evaded by such a rushing checkpoint behavior is usually not enough to constitute a crime, and highway toll collection companies should have the obligation to recover, and the continuous occurrence of laissez-faire behavior is also a manifestation of highway toll collection companies' inaction. The degree of perpetual subjective understanding of the perpetrators is reduced.

When the amount of evasion reaches the standard required by the crime, it constitutes a crime. It is inappropriate for the actors to bear all the criminal results, because the management obligation of the highway toll company will be ignored.

Meanwhile, according to the provisions of criminal law, in the case of which the applicable crimes are still in dispute in the discussion of legal theory and practical professionals, the application of such behaviors with a certain crime constitutes a manifestation of crime, and the criminal law's statutory principles of the criminal law are contrary to each other, so it should not be considered that such acts of following vehicle and rushing checkpoint constitute a crime.

## 2.2 Constituting fraud viewpoint

The second view holds that such conduct constitutes a crime of fraud. Because when evaluating the facts of a case under the deliberate control of a crime, one act or stage of behavior should not be cut out and evaluated separately, instead, all acts in the entire facts of the case should be evaluated as a whole, and the actors should be evaluated. The actor enters the toll station entrance and exits the toll station should be evaluated as a whole behavior, and the object of this crime is a property interest that is different from public and private property—the compensated utilization right of the highway. When the actor enters the highway, he has the intention to evade tolls, and the act of obtaining a highway pass card at the entrance is to deceive the staff, making them mistakenly believe that the actor has the intention to pay the toll, and then the highway staff raises the bar to allow the passage, which punishes the right to use the highway, and transfers the right of expressway to the driver of the vehicle. This act complies with the constituent elements of the crime of fraud. In addition, according to the *Interpretation of Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases Concerning Illegal Production and Sale of Armed Force Vehicle License Plates* stipulated by Supreme people's court in 2002, the act of faking or altering the license plates of the armed forces to defraud the toll in large amount shall be convicted and punished according to the crime of fraud. The judicial interpretation is also based on the fact that the vehicle has been disguising the license plate before entering the highway. The intention is to deceive the toll collector to avoid paying tolls. This act of not planning to pay tolls from the beginning is a typical fraud, just like the act of taking a taxi without paying and eating overlord meal.

When the actor enters the highway, a contractual relationship is formed between the driver and the highway toll company. Although the actor does not sign an actual written contract before entering the highway, the highway company has the obligation to pay for the highway passage right, and the driver has the obligation to pay the toll, which is essentially a factual contract that conforms to the practice and is not different from a written contract in nature. Besides, the use right of highway passage belongs to the enjoyment of paid services. Its nature is not different from the collection of goods stipulated in the crime of contract fraud. The actor scams the use of the highway by evading the payment of tolls after enjoying paid services, which is similar to the behavior of the actor escaping without paying the accommodation fee after staying, and the actor shall be dealt with qualitatively as a fraud.

## 2.3 Constituting theft viewpoint

The third view holds that such conduct constitutes theft. During this process the drivers follow front vehicle and rush the checkpoint for the purpose of illegal possession when leaving the toll station on the highway. They rush the checkpoint by following another vehicle, without causing damage to the highway's stop bar. They use a peaceful way instead of violence to avoid paying highway tolls. At the same time, under the management of highway toll collectors, the behavior of blatantly accelerating the charge evasion is an open theft. Regarding the subject of theft, some people think that the act is the theft of highway tolls, while some people think that the object of the theft should be a property interest. When the driver enters the highway, he has a debt and debtee relationship with the toll company. When driving off the highway, the driver evades tolls through breaking checkpoint in order to discharge the debts, thereby obtains property benefits. Although the suspect doesn't behave

violent against the object, and he adopts peaceful means, he runs away in a blatant manner, which is consistent with the characteristics of public theft and should be considered a crime of theft.

#### **2.4 Constituting robbery viewpoint**

The fourth view is that the actor constitutes the crime of robbery. The traditional view of China's criminal law holds that the confidentiality and openness of acts are the fundamental criteria for distinguishing between the two crimes of theft and robbery. But now it is said that the crime of robbery may have the possibility of causing casualties, that is, the acts of violence against the property. At the same time, the property is tightly possessed by the victim. When violence is passed on to a person, it is condemned the crime of robbery, otherwise it is condemned the crime of theft. However, it is inappropriate to limit the object of the plunder to tightly controlled property from a practical point of view. From the perspective of judicial practice, the criminal object of the crime of robbery should be identified as the property under the control of others, and the criminal object in this act is based on the property benefit of the debt and debtee relationship generated by the highway service, which belongs to the property under the control of the highway. The behavior of the actor to follow the car openly in the presence of the toll collector is to speed up the vehicle obviously so that the toll collector does not have the time and unable to intercept it, which is in line with the constituent elements of the crime of robbery when the person is unprepared and then seizes openly.

#### **2.5 Constituting provoking trouble**

The fifth view holds that such conduct constitutes provoking trouble. From the perspective of the public, the behavior of highway toll evasion is more considered as a disruption of public order and traffic order, and they relatively don't care how much highway tolls have been escaped. Besides, it is different from the behavior of overlord meals, and the differences include the proportion of this behavior, the possibility of its occurrence, and the social harm it has caused. Overlord meals cannot occur in the same restaurant every day, but this single checkpoint rush behavior will occur every day. If it is not regulated, it will cause more chaos in the social order, so it should be convicted from the level of obstructing the social management order. Although the crime of provocation and harassment was formerly a hooligan crime, it should be viewed from a development perspective now. After the crime of hooliganism was abolished, there is no necessary link between the behavior that constitutes the crime of causing provocation and the nature of hooliganism. Moreover, during the identification of actual case, the identification of the hooligan motive of the crime has also been weakened, and the crime is not a pocket crime. The "taking by force" stipulated in the crime is more an external expression of behavior. Taking by force is not a normative expression of law, it is more like the spoken expression of ordinary people. It shows that the perpetrators are in a state of opposition to public order when they perform acts. Rushing checkpoint openly is exactly in line with this "force" attitude. Therefore, non-violent following of vehicle to rush checkpoint violations with serious circumstances should be regarded as provoking trouble crime.

### **3. Qualitative analysis of vehicle following and checkpoint rushing**

#### **3.1 Not belongs to provoking trouble**

The provisions of trouble crime are designed to protect the public and social order, and the abstraction of the object's legal benefits will lead to the generalization of the constituent elements and is not conducive to restricting criminal acts. Therefore, the specific criminal act itself should be proceed to determine the specific legal benefits protected rather than the abstract concept of order. This type of highway vehicle following and checkpoint rushing is more in line with the third clause of provoking trouble crime. The legal benefit protected by this clause is the peace or stability of social life related to property. In the situation of vehicle following, which causes the highway stop bars do not have enough time to be closed, the behavior of escaping tolls shows a sneak slip away. That is different from the accelerated collision behavior when the highway stop bars are closed in the front, which shows disobey of regulations and provocations against public order. This behavior manifests as a sneaking escape without being noticed by others and has evaded the obligation to pay tolls. Even if

the toll collector finds such behavior on the highway, the driver just bears the idea of trusting in luck that it is too late for the collector to intercept and chase, rather than the subjective malicious intentional collision while others block in front.

It is very important to understand the criminal motive of the crime of provoking trouble. Article 1 of the *Interpretation of Several Issues on the Application of Laws in Handling Criminal Cases of Provoking Trouble* stipulates that the criminal motive of the perpetrators of the crime of provoking trouble shall be based on seeking stimulus, venting emotions, flaunting superiority and being rude, but in this type of escaping highway tolls, the motivation is typical for money invasion. Even if the behavior is considered to infringe a complex object composed of social public order and property ownership, its main manifestation is also the violation of other people's property. The perpetrator's criminal purpose, criminal motive, and criminal behavior are more related to the criminal result of escaping tolls on the highway, which does not cause serious damage to social order, so it should be characterized as a crime of financial aggression.

### 3.2 Not belong to crime of fraud

First of all, for the crime object of the highway toll, the perpetrator uses real license plate at the entrance of the highway to obtain the pass card, and then follows vehicle in front to pass the checkpoint when exiting the highway. From the beginning to the end, the perpetrator does not commit deception. What's more, there is no misunderstanding of the collector to waive the toll, so it's lack of the meaning and behavior of punishment.

Secondly, regarding the identification of the time node that constitutes the crime, the viewpoint that the crime is deceived evaluates the behavior as a whole from entering to leaving the highway, thereby confusing the viewpoint that the paid right of the highway is the object of crime. On the surface, this is a fraudulent act. In fact, the real determination of whether it constitutes a crime of fraud, whether there is a fictional fact, or the concealment of the truth is based on the subjective thoughts and behavioral state in fulfilling his obligation to pay tolls, and has nothing to do with his thoughts while entering a highway access station. In 2002, forging the altered license plate was supported to be fraud crime, which was proposed by the judicial interpretation of Supreme Court, is also because while driving off on the highway, the driver got fictional facts to staff who collected the toll, and cheated the tolls. Therefore, it is determined that it constitutes fraud, rather than judging from the state when the driver is just entering the highway.

For public services similar to highway traffic, when a certain behavior becomes a habitual behavior, especially a universal behavior in an environment supported by market transactions, there is no need to specifically investigate the subjective psychology of both parties of the transaction before the habitual behavior is performed. No matter how the actor thinks, it cannot be considered a cheat. The reason is, in the process of enjoying the service, the party who provides the service does not care how the other party thinks when he starts receiving the service, but pays more attention on how he will perform when he pay for the service. At the same time in judicial practice, it is difficult to identify the subjective psychology of the actor when receiving public services. It is more judged from the performance of the actor when performing the obligation. For example, when taking a taxi or going to a restaurant for dinner, it is unimportant and difficult how an actor thinks when the service is first started. Taxi drivers do not pay attention to the subjective ideas of passengers when they take a taxi. They concern more about how passengers pay the cost when they get off the car, and whether they want to evade the cost before they get on the bus or after they get on the bus is not the key to whether they can constitute fraud. It is just difficult to determine. The only way to determine whether it constitutes a crime of fraud is to evade payment due to deception when getting off the car. It is also the same for vehicle following when the actor drivers out of the highway. The act of slipping away leads the toll collector into a wrong understanding and letting him go without using deception, is difficult to constitute a crime of fraud.

### 3.3 Should be convicted of theft, not robbery

For those who denies the view of robbery or theft, the first biggest question is what is the target of the crime of robbery or theft. If it is considered to be toll, the toll is not actually transferring substantially from the toll collector or toll station to the actor, there is no process of property transferring. Secondly, if it is considered that the theft is a property benefit, it means that the actor forms a debt and debtee relationship with the toll company of the highway while driving on the highway, and he does not perform the debt when he drives his vehicle out of the toll station. As a result, the debt's right was stolen, but as legal right and obligation, the creditor's debt is not destroyed by the escape of the actor. The actor cannot steal it. Once the actor does not seize and take away any other person's property, it does not constitute theft or robbery.

In response to the above statement, firstly, property interests can be the subject of theft, which has become the mainstream view. For example, according to Article 265 of the Criminal Law, the identification of the telecommunications code of another person as the object of theft is the manifestation of theft of property interests. Secondly, the author believes that the transfer of benefits is diverse. There are trace transfers such as bank account transfers, which has digital traces and can be checked, and there are also meaning expression transfers such as refusing to pay after taking a taxi, and taxi owners states that the charge is free, the taxi owner killed by passenger in order not to pay the cost after taking the taxi. In this case, it is difficult to achieve the debt and debtee relationship, and the transfer of property interests is achieved. Similarly, *Minutes of the National Courts' Trial of Economic Crimes*, the *Minutes of Misconduct Trial Minutes* in 2003 also stipulated that the failure to realize creditor's rights could be regarded as causing economic lose.

In such following vehicle and rushing checkpoint discussed in this article, the criminal object is the claim right of the highway company, and the transfer of property interests has occurred. Because the personal information such as the name and address of the actor cannot be obtained, the highway company cannot recover the toll lost, and the claim for creditor rights is difficult to realize, resulting in actual economic losses, which is largely equivalent to the elimination of debt and debtee relationship. Secondly, even if there is a view that highway companies should urge the actors to pay based on the license plate information. In the absence of administrative regulations and laws, the absence of a reminder procedure by the highway company is not a cause of the crime,. For such toll evasion behaviors, if the highway company must urge payment or even litigation to realize the creditor's rights, it will greatly increase the management costs and operating expenses for the highway company, and it is not conducive to the maintenance of social order.

Similarly, for example, the actor who eats overlord meals slips away without being noticed after eating, the owner cannot recover the debt without knowing the identity information of the actor. This kind of difficult-to-realize nominal debt and debtee relationship has actually caused difficulties in the perform of claims. If the amount is sufficient, it should be considered a crime of theft.

Regarding the difference between the crime of robbery and theft, it is now generally believed that the crime of robbery must have the potential to cause injury or death. In this case, the actor adopts peaceful method of sneaking while the checkpoint is not closed, and he does not cause violent collision and damage to the stop bar. The stop bar is not under the close control of the toll collector, and there is no danger of personal injury to the toll collector. Therefore, it was unreasonable to consider it as the crime of robbery.

## 4. Conclusion

Therefore, this article believes that evasion of highway toll by following the vehicle to rush the checkpoint should be convicted of theft. First of all, if highway toll companies were asked to prosecute each case of toll evasion, some of them could not find the parties, which obviously exceed their own capabilities and greatly increases the cost. Moreover, such behaviors have become a trend of proliferation and continue to increase. Without regulation, it will cause damage to public order. Therefore it is necessary to criminally intervene in this kind of behavior, and it should be investigated.



Secondly, based on this behavior analysis, the motive of the behavior is not a blatant provocation against public order, and the result of the behavior does not cause serious damage to the traffic order, which was not enough to cause conviction. Once again, this behavior is analyzed from the entry of the highway station. The subjective determination of the actor in the previous stage is difficult, and it confuses the conditions for the successful determination of the crime of fraud. In the process of following the vehicle to rush the checkpoint, no fraudulent method was used to conceal the facts of the staff and conceal the truth of the road toll, so it is difficult to identify this behavior as fraud. In the end, the theft of property interests has become the mainstream point of view in criminal law. The target of the crime does not have to be a tangible state. The act is based on the claim of creditor's rights as a crime object, which causes serious obstacles to the collection of tolls by highway toll companies, making it difficult to realize the debt and debtee relationship. It is equivalent to the elimination of the transfer of property interests to a certain extent. In summary, the author believes that this behavior should be convicted and punished as a crime of theft.

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