

The accomplice problem of drunk dangerous driving

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Abstract: *With the increasing number of national car users in China, coupled with the wine culture is quite popular in China, the driving behavior of social citizens after drinking has caused a great danger to the road safety. Throughout the judicial practice, for the accomplice punishment of drunk dangerous driving is not ideal, the outstanding problem is for the drunk dangerous driving crime punishment is too low and punishment scope is not clear enough, and then the drunk dangerous driving accomplice punishment and problems in the analysis and discussion, by analyzing the main disputes, for the case of drunken dangerous driving accomplice punishment and put forward the corresponding suggestions.*

Keywords: *drunk type; dangerous driving crime; accomplice; punishment situation*

1. Foreword

With the increasing number of automobile users in China and the prevalence of wine culture, this leads to the current drunk driving behavior, which poses a great threat to the road public transportation safety in China. In order to effectively punish this dangerous driving behavior, in 2011, drunk driving a motor vehicle was included in the Criminal Law Amendment (VIII). Since then, the behavior of driving a motor vehicle after being drunk has been stipulated in the country's Criminal Law with the crime of dangerous driving.^[1] However, is not only drunk itself driving behavior is dangerous, help, abetted drunk dangerous driving similar behavior also has great harm, in practice, these help, abetting dangerous driving behavior will not only be drunk in a dangerous situation, but also reflects the helper, abettor to others life, health and other safety disregard, so it is necessary to punish. In fact, China has long tended to punish the helping and abetting behaviors of dangerous driving behavior in the relevant legal norms. In 2009, In order to strictly arrest drunk driving behavior, the relevant state authorities have promulgated laws and regulations, and drunk driving was immediately included in the legal category. At the same time, the regulations also clear for the first time said "for drunk driving with passengers should also carry out punishment" opinion, this view also caused heated debate, but many people disagree, there are a small number of people support this claim, but this opinion and due to its lack of specific operation standards were shelved, no follow-up.^[2]

2. Punishment for the crime of drunk dangerous driving

2.1. Case analysis

In judicial practice, the punishment situation of the accomplice of drunk dangerous driving is very different. According to the different participation degree of the accomplice in drunk driving from light to heavy, it can be divided into the following situations:

2.1.1. Acquiescence in the establishment of an accomplice in drunk driving

On the afternoon of May 12, 2019, Tang , Huang and Song and Chen took an ordinary truck driven by Huang and owned by Huang to Huang's friend's home for "April 8", during the meal, Tang and Huang are drinking. After Tang received a phone call to go back, Huang decided to go back with Tang, Tang see Huang's body unwell and sit in the driving position of Huang vehicle, with the key in the car to start the vehicle and drive, Huang acquiesced and called drive a little slower. Tang's blood ethanol content was 222.67mg/100ml. The court held that Tang has violated the relevant laws and regulations, drunk and still driving a motor vehicle on the public transport roads, his behavior has constituted the crime of dangerous driving. Huang knowing Tang drinking acquiesced Tang driving his own vehicle, and ride this vehicle together, its behavior constitutes dangerous driving crime (accomplice).^[3]

This case is an accomplice in acquiescence to an intoxicated person driving a motor vehicle. In this case, the owner of the vehicle, Huang, acquiesced in drinking companions driving his vehicle, and take

this vehicle, so Huang constitutes a drunk driving dangerous driving crime. In this case, the owner of the vehicle passively transferred his vehicle to the driving of the drunk, and only agreed in silent acquiescence when the drunk drove the vehicle. The court also identified such acquiescence as an accomplice in the crime of drunk dangerous driving and punished him.

2.1.2. Consent to the establishment of an accomplice in drunk driving

On the evening of July 29, 2021, the defendants Song, Li and their colleagues had dinner and drank alcohol at a colleague's home in Yijing New Town Community of Bazhong Economic Development Zone. After dinner, Li drove its small car license plate for Sichuan Y7 from the community, sent colleagues back to Bazhong City clean government education base, Song and other colleagues to Bazhong Economic Development Zone East Jinyuan Business Hotel Jinhao Entertainment Club KTV singing, drinking. Then Li drove back, came to the KTV and Song and others drink. At 1 PM the next morning, Li driving the car on song back to Bazhong, honest education base, because the base door closed, Li continue to drive the car to return to bilateral economic development zone FuJin Yuan community colleagues home rest, when the car into the tunnel exit, Song to Li by its driving Sichuan Y7 small car, Li agreed. Subsequently, Song drove the car to take Li from the tunnel exit, along Zhongshan Road to the direction of Fu Jinyuan community. At 2 o'clock in the morning, when Song driving the car to Zhongshan Road 1 Wenjin Jinyuan community, hit the road central barrier, Song drove away from the scene, continue to drive to park. At 3 a. m., Song reported the case. After the police rushed to the scene, Song and Li lied that the night Li did not drive the vehicle. After testing, Song's ethanol was 129.0 mg/ 100ml.^[4]

This case belongs to the consent of others drunk driving to establish an accomplice situation. In the case, Li knew that Song has been in a drunk state, still lend the vehicle to Song driving, he consent to Song this dangerous driving behavior, has constituted a dangerous driving crime to help commit. Compared with the first case, the accomplice was more involved in dangerous driving, not "acquiesced" but "consent", and "consent" was shown by his consent to lend his vehicle to the drunk to drive.

2.1.3 Indulgence and connivance of others to establish an accomplice in drunk driving

On August 4, 2021, the defendant Xu in the knowledge of Chen drinking, still under the name of the small car delivered to Chen driving, at 4:28 on the same day, Chen was seized by the police on duty when he drove the car to the middle section of Guangzhou Avenue in Yuexiu District of the city after drinking alcohol during the suspension of the driver's license. After identification: Chen vein blood detected ethanol component content is 82.6mg/100mL. The defendant Xu knowing that its drunk still let Chen drunk driving motor vehicle behavior belongs to Chen dangerous driving accomplice.^[5]

The above-mentioned case belongs to the joint crime of knowing that the other person is in a drunk state, still handing over his motor vehicle to a drunk person to drive, and maintaining a conniving and laissez-faire attitude towards the state of drunk driving of others, thus constituting a joint crime with the crime of drunk driving dangerous driving, and the defendant also established a helper of the crime of dangerous driving. This situation is more common in judicial practice, and the perpetrator himself has provided physical assistance to the drunk person, and has already established an accessory for the crime of dangerous driving.

2.2. Focus of the dispute

Through the search on the Chinese judgment documents website, it can be found that the more common in judicial practice, but also the high degree of the crime is that the motor vehicle owner knows that others have been in a drunk state, but still give their motor vehicle to the drunk to drive, in this case, the owner of the motor vehicle provides certain physical help for the dangerous driving behavior of the drunk, maintains a laissez-faire and indulgent attitude towards the dangerous driving behavior of the drunk, and constitutes the joint crime of drunk dangerous driving together. According to the specific content of the judgment we can know that the same is to provide drunk vehicle behavior, in the judicial practice need to combine the subjective objective state of mind, accomplice actors for drunk dangerous driving behavior participation is varied, such as "acquiesced" drunk dangerous driving and their vehicle "by" drunk driving, intentionally, instigate, drunk dangerous driving, its harm to public order safety is different. Nowadays, in judicial practice, the act of providing or borrowing a vehicle for a drunk person knowing that others are in a drunken state is mostly recognized as an accomplice to the crime of drunken dangerous driving, and a certain criminal punishment is given, which is endorsed by most scholars.^[6] However, some scholars argue that the current Criminal Law and

relevant judicial interpretations do not give clear provisions on the punishment of drunk driving dangerous driving accomplices. Therefore, the punishment for providing motor vehicle behavior is lack of basis, and it is suspected of expanding the scope of punishment of drunk driving dangerous driving.^[7]

In all three cases, the people's court has punished the owner of the motor vehicle for providing the vehicle. There is no doubt that the person provided to the drunk vehicle will be regarded as an accomplice in the crime of dangerous driving, however, there is a certain dispute over whether the same drinking person and the same passenger should be punished as an accomplice in the crime of dangerous driving. In trial practice, the fellow passenger is usually the owner of the vehicle, or the person who exchanges places with the drunk driver to conduct dangerous driving together, it is also a question that whether to punish the fellow passengers in drunk driving vehicles is worth considering in judicial practice.

3. Current problems in the punishment of drunk dangerous driving

3.1. The scope of punishment for accomplices is not clear enough

Due to our country's current "criminal law" for dangerous driving crime is too simple, resulting in drunk dangerous driving crime accomplice punishment range is obviously too vague. Both the accomplice and the principal offender are the perpetrators of the common crime, but the accomplice is in the non-core position of the common crime. In the specific sentencing stage, generally speaking, the criminal responsibility of the accomplice is slightly lighter than the principal offender, which also reflects the principle of suiting punishment to crime.^[8] The sentence for dangerous driving is relatively light, so the sentence for the accomplice is lighter. Among many controversies, the most difficult problem at present is whether all types of drunk dangerous driving behavior should be punished. Some scholars believe that the crime of dangerous driving itself is a kind of behavioral offense, that is, as long as the perpetrator carries out the behavior of drunk driving, then the crime of dangerous driving should be constituted, and it is no longer necessary to judge and discuss one of the specific circumstances. Scholars in this view believe that the crime of dangerous driving is abstract potential damage offense, the legislature will drunk driving behavior for a crime, the purpose is to prevent the actor in drunk state, understanding and will ability are reduced, unable to control the operation of motor vehicle similar behavior, thus brought more danger for road traffic safety, this danger is essentially a legal hazard, is a legislation, under the risk social background road traffic accidents, damage national life, damage property safety for actor dangerous driving behavior in advance regulation.

3.2. The punishment for accomplices is too low

From the above three cases, it can easily be seen that in judicial practice, the punishment of drunken and dangerous driving accomplice is only criminal detention and fine. Among them, the statutory punishment for dangerous driving is only criminal detention, and the maximum sentence for criminal detention is six months, and the combined punishment for several crimes shall not exceed one year. It can be seen that drunk dangerous driving crime of the defendant, the highest punishment is sentenced to six months of criminal detention, if the defendant was sentenced to probation, or sentenced to criminal detention for six months, two months after commutation, his actual execution of less than six months, and imposed a lower fine, also cannot give the criminal and accomplices to warning effect, the criminal may be punished after continue to dangerous driving.

4. Improve the measures for the joint crime of drunk type and dangerous driving

For the crime of drunk dangerous driving, we should make a certain judgment based on the specific circumstances of the case, and can not generally believe that as long as the actor helps, abets, indulge or connive at the behavior of dangerous driving, the establishment of drunk dangerous driving accomplice.

4.1. Clarify the scope of punishment

In view of the problems existing in the above case, the author from the integrity of the legal specification system, think should use the form of legal provisions to increase the scope of drunken

dangerous driving crime accomplice of relevant provisions, in order to facilitate the judicial organs in the actual judicial practice more easy to understand and grasp, so give the following suggestions:

First, those who knowingly provide the vehicle to others for drunk dangerous driving, the vehicle provider or those who ride with others, causing serious consequences, shall be punished as accomplices of the crime of drunken dangerous driving. Second, a person who still abets or helps others to commit drunk dangerous driving while knowing that he is drunk shall be punished as an accomplice for the crime of drunken dangerous driving.

4.2. Severely punish those who violate the law and discipline

In the judicial practice of drunken dangerous driving accomplice punishment is relatively loose, which greatly affected the judicial credibility of the judicial organs and judicial authority, to strengthen the punishment of dangerous driving accomplice, is committed to adapt to the criminal law in the principle of criminal responsibility a reflection, also can give criminals with a more powerful deterrent. For the reality, most criminal always weigh the cost of the crime and the relationship between what he can get after he commits the crime, so as to determine whether it can support him to commit the dangerous criminal act with great risk. Therefore, in order to reduce the frequent occurrence frequency of drunken dangerous crimes, it is necessary to increase the cost of committing the crime, so as to deter the criminals. So the author puts forward the following suggestions: First, reasonably adjust the punishment between the crime of drunk dangerous driving and the accomplice of drunk dangerous driving, that is, in allocating the legal punishment of the crime of drunk dangerous driving, the connection and balance between the joint crime of drunk dangerous driving should also be considered, which is conducive to the improvement of the whole penalty system. Second, formulate guiding cases of the joint crime of drunk dangerous driving, further clarify the actual establishment conditions of the joint crime of drunk dangerous driving, and clarify the scope of punishment by classification. Third, try to carry out certain ideological education of drunk dangerous driving accomplice and track them for a long time. Because of these people did not actually implement drunk dangerous driving behavior, although the actual drunk driving actor did not cause actual damage consequences, but because of the abetator or helper subjective consciousness of crime consciousness is present, which contains potential personal danger is more serious than the actual crime, so for this kind of people can regularly psychological evaluation, until the psychological assessment is normal can reduce the surveillance.

5. Conclusion

Dangerous driving crime has been controversial frequently since it entered the criminal law. As a typical behavior type of dangerous driving crime, drunken dangerous driving crime has more theoretical differences related to it. Corresponding to this, there are also a large number of theoretical differences related to the punishment of accomplices of drunken dangerous driving crime. In the context of today's risk society, it is necessary for the criminal law to punish the accomplices of drunk driving dangerous driving, to increase the crackdown on the accomplices of drunk driving dangerous driving, to warn the general public not to drive after drinking, and also not to abet, help or indulge drunk people to drive motor vehicles. Therefore, it is necessary to conduct some in-depth analysis and research with the help of the existing relevant provisions and relevant cases in judicial practice in theory, so as to clarify the punishment intensity and scope of accomplice of drunk dangerous driving crime.

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