

Determination of the Accomplished Standard of the Crime of Drug Trafficking by Delivery

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Abstract: Throughout the provisions of China's criminal law and judicial interpretation, there are no clear provisions on the accomplished standard of the crime of drug trafficking, resulting in different views in the theoretical and practical circles. After the intervention of the delivery factors, it has already affected the determination of the accomplished of the crime of drug trafficking. Postal drug trafficking can be divided into two types: selling directly by mail and purchasing by mail for the purpose of selling. The legal benefits protected by drug crimes are public health. Only when the buyers and sellers enter the actual transaction link, can there be a real and urgent threat to the public health. Based on this, drug trafficking by mail should adopt the accomplished standard that the drug buyer enters the actual place of receipt. In the sell directly by mail type, the buyer refers to the person who purchases the drugs, while in the purchasing by mail for the purpose of selling, it refers to the perpetrator's next person.

1. Introduction

Drug crime is one of the main types of crimes in our society, causing widespread harm and negative influence. Drug trafficking is the core crime within the drug crime system and plays a vital role. Despite the long-term severe crackdown, China's law enforcement agencies have largely mastered the methods and procedures related to traditional drug trafficking. However, in recent years, with the rapid development of the delivery industry, an increasing number of criminals have turned to carrying out drug crimes through express delivery and non-contact channels such as the Internet and positioning systems, especially in the context of drug trafficking. The 2022 Report on the Drug Situation in China highlights that "non-contact drug trafficking models are prominent. Professional drug transportation organizations, logistics truck delivery, or parcel delivery through city express services and covert methods are being utilized for drug trafficking, eliminating direct human contact." Delivery-based drug trafficking represents a non-contact model with its own particularities. Furthermore, the implementation standards of traditional drug trafficking methods are subject to considerable controversy, and the emergence of new and old problems presents new challenges in establishing standards for identifying delivery-based drug trafficking. This necessitates a thorough study and analysis to identify suitable solutions for accurately establishing standards for delivery-based drug trafficking, effectively cracking down on such illicit behaviors^[1].

2. The status quo of the established standard of drug trafficking

In 2012, the Supreme People's Procuratorate and the Ministry of Public Security issued the "Provisions on Jurisdiction Standards for Criminal Prosecution by Public Security Organs (III)" (hereinafter referred to as "Provisions III"). Article 1 of this document defines drug trafficking as "knowingly engaging in illegal sales or purchasing drugs for the purpose of selling." According to this definition, drug trafficking primarily encompasses two modes of behavior: illegal drug sales and illegal drug purchases for the purpose of trafficking. Therefore, the author contends that drug trafficking can be categorized into "direct trafficking" and "purchasing for sale". Specifically, delivery-based drug trafficking can be further divided into "direct trafficking through delivery" and "purchasing through delivery for sale".

2.1 Direct trafficking type by mail

2.1.1 Payment for drug funds is the completion standard

It is advocated that once the perpetrator has received payment for drugs from the buyer, the crime is deemed to have been committed. For instance, in the case of Li Kang's drug sales, the defendant Li Kang received drug payments from individuals including Xia, Chen, her boyfriend Lin, Jiang, Tian, Liang, Wu, and Yao. Although the drugs intended for them were not delivered and were seized by law enforcement, the court holds that even though Xia and others did not receive the drugs, they had made payments to Li Kang for drugs. This establishes a substantial transactional link in the drug trade and should be identified as the successful execution of drug trafficking^[2].

2.1.2 Delivery and mail is the completion standard

He advocates that the crime is committed as soon as the perpetrator delivers the drug package to the mailing department. For instance, in the case of Zhang's drug trafficking, the defendant Zhang intended to deliver drugs to the logistics company for mailing to Li Mou. Subsequently, upon receiving reports from relevant individuals, the law enforcement authorities intercepted two parcels sent by Zhang through the logistics company. Despite the argument that the drugs proposed by Zhang and his defenders had not yet been dispatched and should be considered an attempted crime, the court ruled that Zhang's intention to sell drugs to others via mail, and the transfer of the drugs to the mailing department, constituted the completion of the crime.

2.1.3 The completion standard is that the drug buyer enters the actual receiving place

It is advocated that regardless of the drug buyer, once they enter the actual receiving location, the crime is established. For instance, in a specific drug trafficking case, the defendant, Mr. X, used the mailing method to send drugs from Kunming, Yunnan to Shandong Yantai where they were intended for sale to Han. Mr. X then collected the payment from Han and to ensure the success of the transaction, he met with Han in Shandong where the two individuals planned to retrieve the drug package from an express company. However, the police intervened and seized the drug package on the spot. The court held that as Han had delivered the drug funds and the drugs had been mailed to Yantai for sale, the transaction had been completed, and Mr. X's behavior constituted a completed crime^[3].

2.2 Purchase by mail for sale

2.2.1 Payment for drug funds is the completion standard

It is advocated that once the perpetrator's family member collects the perpetrator's drug money, the crime will be established. For example, in the case of Liu Wenhui's drug sales, the defendant Liu Wenhui purchased drugs from Ma Yu with the intention to sell them. They agreed that Ma Yu would mail the drugs to Liu Wenhui via express delivery, and Liu Wenhui paid for the drugs in advance. Subsequently, after Ma Yu received the payment and the drugs at his previous residence, both individuals were arrested. Despite the defense's argument that Liu Wenhui's actions constituted an attempted crime, the court held that as Liu Wenhui had paid part of the drug money and entered into the transactional link, the crime had been committed.

2.2.2 The above home delivery mail is the completed standard

It is advocated that once the perpetrator delivers the drug package to the mailing department, the crime is considered established. For instance, in the case of Zhou Feng's drug sales, the defendant Zhou Feng purchased drugs with the intent to sell them and sent them via express delivery from their residence. The police, based on their investigation, seized the drug packages and apprehended Zhou Feng at their residence. In response to the defense's argument that Zhou Feng's seized drug package did not constitute actual possession as it was confiscated by law enforcement, and therefore should be classified as an attempted drug trafficking crime, the court held that the defendant Zhou Feng had purchased drugs for the purpose of selling and had dispatched the drugs via express delivery, completing the drug trade. Despite the timely intervention of law enforcement and the non-actual delivery of the drugs, it did not affect the commission of the drug trafficking crime^[4].

2.2.3 The actor enters the actual receiving place as the completion standard

It is advocated that regardless of whether the doer signs for the package, as long as the doer is aware that the drug package has arrived at the receiving place and physically enters the actual receiving place, the crime is committed. For example, in the case of Zhou Mou's drug trafficking, the defendant Zhou Mou purchased drugs for sale. Upon arriving at the express company to collect the drug package sent from Yunnan, they were informed that the goods had not been sorted, and subsequently left. However, they were later arrested at their residence where Zhou Mou confessed to purchasing drugs for sale. In response to the defense's argument that the drugs had not been accepted, the court ruled that as Zhou had purchased methamphetamine tablets for the purpose of selling, and the drug package had been shipped to the express company, Zhou's behavior should be legally identified as drug trafficking crime.

2.2.4 The actor collects drugs as the completion standard

It is advocated that once the perpetrator collects drugs from the supplier, the crime is considered established. For example, in the case of Zhu Xiaohong, the defendant Zhu Xiaohong purchased drugs from an individual in Sichuan province for trafficking, who then sent them to Zhu Xiaohong via express delivery. Zhu Xiaohong was apprehended by the police on the spot after receiving the drug package mailed to her at the east gate of her address. In defense of Xiaohong Zhu's argument that the seized drugs purchased through express delivery were not circulated in society, and therefore should be classified as attempted drug trafficking, a plea for a lighter or mitigated punishment, the court held that although the drug package was seized by law enforcement and not circulated in society, Xiaohong Zhu's actions of purchasing drugs for trafficking had already

introduced the drugs into the trade circulation, thus constituting drug trafficking^[5].

The aforementioned cases illustrate the current chaotic state of identifying the standard of delivery and drug trafficking. There are varying opinions among the courts regarding the identification of delivery nodes, leading to differing standards adopted by different courts. Consequently, this situation can easily result in different judgments for the same case. The underlying reason behind the divergent judgments in the same case stems from the inconsistent application of the law, specifically the inconsistent standard for determining the completion of postal drug trafficking. If the occurrence of differing judgments in the same case becomes frequent, it will significantly erode trust in the judiciary among the parties involved and the public. This, in turn, may impact the judicial authority and credibility, and contravene the fundamental principles of criminal law and criminal justice.

3. Factors affecting the identification of the postal drug trafficking delivery criteria

3.1 Strict anti-drug and criminal policy

In order to combat drug crimes, China has long implemented a strict criminal policy with heavy and severe punishments for drug control. Drug crimes have serious repercussions on people's safety, health, and social stability, and drug trafficking is the central offense within this category, necessitating a policy of "strict drug control". However, in judicial practice, due to an inadequate understanding of the anti-drug criminal policy, there has been an improper expansion of the scope of drug trafficking crimes.

3.2 Characteristics of postal drug trafficking segments

With the rapid development of the delivery industry, criminals are exploiting the convenience and non-contact characteristics of express delivery to engage in illegal and criminal activities. Postal drug trafficking is one such example, and its criminal characteristics differ from traditional drug trafficking. In postal drug trafficking, traffickers use false identity documents or information to deliver drugs through express delivery companies that do not strictly implement a real-name system. Express mail typically involves a certain transportation distance and requires a specific amount of time for transportation, resulting in the entire transaction process of drug trafficking. Additionally, due to the nature of mailing itself, the entire process is divided into several stages, distinguishing mailing drug trafficking from traditional "hand over, hand delivery" drug trafficking. Various situations may arise at each stage of the process, such as an agreed transaction but not yet delivered, delivered but not signed for, in transit, or delivered but not yet signed, etc. In this scenario, judicial authorities have greater discretionary space for determining the completion of the crime, and the standard for determining the completion of mailing drug trafficking is more selective. As a result, different opinions on handling these cases emerge in practice^[6].

3.3 Separation of the elements of drug trafficking crime

Traditional drug trafficking methods are mainly divided into two types: one involves transportation by drug traffickers themselves, while the other entails transportation by mules or lower-level carriers. Both methods exhibit characteristics of direct human-to-human transfer and hand-to-hand delivery. However, non-contact mail drug trafficking, due to the involvement of delivery factors, leads to the separation of various criminal elements of drug trafficking, primarily including the separation of people and goods, the separation of drug buyers and sellers, and the separation of drug assets.

3.3.1 Separation of people and goods

The separation of people and goods refers to the situation where the drug trafficking personnel and drugs do not accompany the mail, but the drugs are sent to the express department and come under the direct control of the express staff. At this point, the drug traffickers only have indirect control over the drugs. The timing and location of when the drug packages will be delivered depend on the delivery staff, and the nature of the crime will also be influenced by the actions of the delivery staff.

3.3.2 Separation of drug buyers and sellers

Currently, "Internet + logistics delivery" has become the primary method of drug trafficking, which can be divided into online and offline components. The online aspect involves criminals utilizing communication platforms, shopping platforms, the "dark web", and specialized drug websites to conduct sales and purchase transactions using undetected codes and coded language, thus avoiding direct interaction between buyers and sellers. In the offline transaction process, sellers typically use express delivery services that do not strictly adhere to real-name system requirements to disguise and deliver drugs, while payments are made using virtual currencies such as Bitcoin or third-party payment platforms. To ensure safety, buyers often engage uninformed individuals to retrieve the goods or personally go to receive them. Throughout the entire process of mailing and drug trafficking, there is a lack of face-to-face contact at both ends. As there is no physical interaction between the buyer and the seller, it becomes difficult to ascertain the transaction status of both parties. Furthermore, either party may alter the transaction time online at any moment or even cancel the transaction midway. For instance, if a buyer is apprehended when attempting to collect the package from the logistics company, but an agreement to cancel the transaction has already been made by the buyer and seller, resulting in the buyer returning the drugs, how should the criminal form of drug trafficking in this situation be identified?

3.3.3 Separation of drug resources

In postal drug trafficking, buyers often use virtual currencies such as Bitcoin or make online payments for drugs through third-party payment platforms. Both drugs and drug money serve as key evidence in identifying the crime of drug trafficking. In traditional drug trafficking methods, buyers and sellers often engage in face-to-face transactions, which can lead to the potential loss of goods if caught. However, postal drug trafficking involves non-contact transactions, with buyers typically making payment for the drugs either in advance or after receiving them. This separation of drugs and drug resources results in situations where there may be a collection of drug funds but no delivery, receipt of drugs but no payment, which can also impact the standard for identifying postal drug trafficking.

4. The path identified by the standard of drug trafficking

4.1 The premise of the standard of drug trafficking

In addition to the influence of the aforementioned factors, the fundamental reason for the controversy lies in the divergence regarding legal interests and the nature of drug trafficking, which has yet to be conclusively determined. Clarifying the legal interests associated with drug trafficking and understanding its nature is a prerequisite for accurately identifying attempted forms of delivery and drug trafficking.

4.1.1 Legal benefits of drug trafficking. The legal benefit protected

In the criminal law theory of China, the crime of drug trafficking is generally regarded as a violation of the national drug management system. The author believes that this viewpoint is worth discussing. Although the crime of drug trafficking is classified under the offense of obstructing social management order in Chapter 6 of the Criminal Law, considering the national drug management system as the protected legal interest of drug trafficking crimes according to general criminal law theory would lead to premature identification of drug trafficking crimes. Logically, once drug traffickers contravene the country's drug management system, they have already infringed upon legal interests and are deemed to have committed a completed crime. This suggests that attempted drug trafficking can be identified as accomplished. Moreover, the criterion for the initiation of a crime, particularly in the preparatory stage, may be considered as execution. Specifically in the case of postal drug trafficking, the involvement of delivery factors extends the entire transaction process, encompassing delivery, loading, transit transportation, arrival at the receiving location, staff delivery, and drug purchaser sign-off as pre-links. These links differ from traditional drug trafficking methods, therefore, designating the "national drug management system" as the protected legal interest for drug trafficking crimes advances the point of identification of the crime. The author contends that the legal interests safeguarded by the crime of drug trafficking should be the public health.

4.1.2 The behavioral nature of drug trafficking

In the theory of the nature of drug trafficking, there are three different perspectives. One viewpoint posits that the crime of drug trafficking belongs to the act of the offender. According to this perspective, as long as the actor begins to execute the elements specified in the specific provisions of criminal law, the establishment of the crime is considered complete. Another perspective holds that the crime of drug trafficking is the process of the offender. Additionally, there is a view that considers the crime of drug trafficking as an abstract dangerous crime, wherein the infringement upon public health does not need to manifest in reality but simply requires the presence of abstract danger. The author believes that the crime of drug trafficking belongs to the category of process behavior criminality. Process behavior criminality refers to the implementation of behavior that undergoes a process, and the crime is not deemed established until the behavior has been executed to a certain extent. Against the backdrop of "Internet + logistics delivery" becoming the primary method of drug trafficking, the process characteristics of delivery and drug trafficking are particularly evident. Unlike traditional drug trafficking methods, the intervention of delivery factors divides the behavior of drug trafficking into distinct stages, which typically include reaching a deal and payment between buyers and sellers, delivering the drugs, packaging, transit transportation of the drug package, its arrival at the destination, and the signing for the drug package. These stages elongate the process of drug trade, and the implications of drug trafficking behavior on public health law expand with the progression of the delivery stages. This differs from traditional drug trafficking methods, where the endangerment to public health is only considered after the completion of specific nodes in the process.

4.2 Construction and certification of the standard for delivery and drug trafficking

The crime of drug trafficking is categorized as a process behavior crime, and the key to determining the completion of the offense lies in judging the stage or extent of the trafficking behavior. In the author's opinion, postal drug trafficking should adhere to the completion standard of the drug buyer entering the actual receiving location. In this context, "selling directly by mail"

should be considered complete when the buyer enters the premises, and for "buying by mail for sale", the entry of the perpetrator should serve as the standard for completion. Although these two types of completion standards are essentially the same, their expressions differ slightly. The "drug buyer" in the case of "selling directly by mail" corresponds to the "next destination of the actor" in the case of "buying by mail for sale". "Buying by mail for selling", compared with "selling by mail", introduces an additional link for the actor to purchase drugs from the homeowner. The actor becomes the second seller, and the true "drug buyer" is the next destination of the actor. Moreover, in real life, there are two primary methods of express delivery: one involves the consignee signing for the package at the logistics company, while the other entails door delivery by the courier. Door delivery can be carried out not only by the consignee in person but can also be collected from an express collection point, such as an intelligent express locker or a central collection station. Regardless of the form of delivery, it can be seen as an agreed-upon receiving location for the drug buyer and personnel.

Firstly, as previously mentioned, in line with a reasonable understanding of the stringent anti-drug criminal policy, the payment of drug funds, delivery, acceptance by logistics companies, and the subsequent transportation of parcels cannot be considered as completion standards. In the context of postal drug trafficking, drug trafficking is still in its preparatory stage prior to reaching the delivery points of logistics companies. Once the drugs are delivered, the drug package falls under the control of the logistics company, and the logistics transportation route becomes fixed. Sorting, delivery, and other related activities can only be conducted by internal staff of the logistics company. This differs from the traditional method of drug trafficking where traffickers themselves transport the drugs, presenting less of a danger to society and posing no immediate harm to public health. Therefore, at these junctures, drug trafficking does not meet the criteria for posing an imminent threat to legal interests and remains in the preparatory stage of the crime. Consequently, based on this assessment, criminal preparation should not be deemed an attempted crime solely to mechanically enforce the strict anti-drug criminal policy.

Secondly, the entire process of drug trafficking reaching the logistics company cannot be used as the standard for postal drug trafficking. Behaviorally, although the drug package may pose a threat to public health after arriving at the delivery points of the logistics company, it remains under the control of the logistics company at this stage, without presenting an immediate danger of circulation in society, nor does it have the direct and urgent impact characteristic of traditional drug trafficking violations. The process of the courier delivering the package or the drug buyer collecting it has not yet been completed. Drug buyers may arrange for a new delivery time with the courier or wait several days to collect the package, signifying that the drug trafficking activity has not reached its full completion.

Finally, postponing the standard of the crime of drug trafficking to the perpetrator or the drug buyer essentially treats the crime of drug trafficking as an outcome, improperly restricting the scope of the offense and deviating from the true definition of drug trafficking. Additionally, in the context of postal drug trafficking, law enforcement authorities may struggle to accurately determine when the perpetrator or the drug buyer completes the signing behavior, especially in cases of door delivery where the perpetrator or the drug buyer can contact the courier at any time to change the delivery time and location. In a similar scenario, if the police detain the perpetrator before the drug buyer signs for the package, it could be considered an attempted crime. This places excessively high demands on law enforcement, which is not conducive to judicial practice and hinders the fight against drug crimes.

In summary, in the context of postal drug trafficking, the crime is only considered complete when the drug reaches the agreed-upon receiving location and the buyer enters that location. The entry of the actor or the drug buyer into the actual receiving site corresponds to the traditional drug

trafficking scenario where both the buyer and the seller are present at the transaction site. At this point, barring exceptional circumstances, the transaction can be completed immediately, and the drug trafficking behavior poses a significant and immediate threat to public health. The entry of the actor or the drug buyer into the actual receiving site represents the mid-stage of the drug trafficking process, neither unduly expanding the scope of completion nor delaying identification excessively. When making arrests, the police only need to ascertain whether the perpetrator or the drug buyer has entered the actual receiving location, which also streamlines judicial operations.

5. Conclusion

Currently, there is a high incidence of drug trafficking by mail, and judicial authorities have disparate standards for determining drug trafficking, leading to inconsistency in judgment. With ongoing theoretical and judicial disputes and the absence of relevant regulations to provide clarity, there is an urgent need to establish new standards for determining drug trafficking. It is essential to clarify the nature of drug trafficking, accurately delineate the stages of mail drug trafficking, consider the legal harm at each stage, and develop a new completion standard. This approach aims to prevent a one-size-fits-all recognition model, adhere to the principle of criminal punishment adaptation, and achieve judicial refinement, ensuring that the determination of outcomes is more scientific and rational.

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