

A Brief Analysis of the Validity and Judgment of Criminal Understanding in Traffic Offense Crimes

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Abstract: In judicial practice, the vast majority of courts link the victim's forgiveness in traffic offense cases to whether the defendant fulfills their compensation obligations. In cases where the defendant actively fulfills their compensation obligations, most are likely to receive lenient judgments. However, these judicial documents do not explicitly state whether the criminal forgiveness expressed by the forgiving party is valid. The judgment of the validity of criminal forgiveness must be integrated into the entire criminal procedural process. This is not only because the victim is a party involved in the litigation but more because forgiveness itself is an inherent right based on emotion. The exercise of this right must meet the corresponding requirements to maximize the protection of the interests of the forgiving party. At the same time, it should also be subject to certain limitations to avoid the emergence of excessive demands or other moral and legal risks.

Keywords: Traffic Offense Crime; Criminal Forgiveness; Validity of Forgiveness

Introduction

In 2024, the Foshan Intermediate People's Court in Guangdong issued a second-instance judgment under case number (2024) Yue 06 Xing Zhong 331, which revoked the sentencing part of the first-instance judgment. Based on the new facts that the defendant actively compensated for the victim's losses and obtained their forgiveness during the second-instance trial, the judgment stated that the defendant was guilty of a traffic offense crime and was sentenced to eleven months of imprisonment, suspended for one year and six months, which was more lenient than the first-instance judgment. Reviewing the circumstances of second-instance retrials in traffic offense cases, the majority of courts do not elaborate on the authenticity of the forgiveness when making judgments, nor do they assess the validity of the forgiving intent. They simply make more lenient judgments on the defendant, including the application of probation and the reduction of sentences, based on the defendant's active compensation and obtaining forgiveness during the second-instance trial. Whether such a brief summary is sufficient to express the genuine intent of the defendant's forgiveness is unknown, as is whether the forgiving party meets the corresponding requirements. In the vast majority of traffic offense cases, the victims and their immediate family often face significant losses in property, personal well-being, and even life. Therefore, reviewing the validity of criminal forgiveness can be a highly efficient choice for soothing the resentment of victims and their immediate family and alleviating social tensions. In determining the validity of forgiveness, the subject requirements, timing requirements, and certain formal requirements become very important.

1. Core Elements of Effective Forgiveness in Traffic Offense Crimes

1.1 The Eligibility of the Subject of Forgiveness

To investigate whether the forgiveness offered by the victims and their immediate family members in traffic offense crimes is valid, in addition to the previously mentioned risk of "pardoning with money" as a consideration, one should first examine whether the subject of forgiveness is eligible.

1.1.1 The Nature of Traffic Offense Crimes and the Determination of the Subject of Forgiveness

Article 133 of China's Criminal Law stipulates the behavioral manifestations, the legal interests infringed, and the corresponding harmful consequences of traffic offense crimes. Specifically, a person committing a traffic offense crime should first be in violation of road transportation regulations, such as

speeding, running red lights, or failing to signal when turning, and subsequently, these actions should lead to the occurrence of harmful consequences, which are serious personal injury or death, as well as significant property damage. In terms of sentencing, traffic offense crimes are divided into three tiers. If the aforementioned conditions are met, the sentencing range is the lightest. If there is an attempt to flee, the sentence is increased by one tier, and if fleeing results in death, it is increased by another tier. Regarding the relationship between the infringement of legal interests and the harmful consequences, traffic offense crimes primarily focus on maintaining road traffic safety and order, with the degree of the accident serving as the measure of the infringement of legal interests. Therefore, this crime does not have a clearly defined victim. In other words, anyone present in public traffic could potentially be a victim, or it could be understood that anyone participating in public traffic order could have a chance of becoming a suspect. From this perspective, the victim in a traffic offense crime does not offer forgiveness because their participation in the public traffic order has been violated, but rather because of the unwarranted personal or property damage inflicted by the act, leading them to extend forgiveness.^[1,4]

1.1.2 The will of the subject of forgiveness should be free

Some scholars argue that the eligibility of the subject of forgiveness should consider the degree of association with the victim, whether they have full capacity for action, and whether they can freely express the will to forgive. The author believes that law is built upon simple moral emotions, representing the general approach that the masses would recognize in the face of legal disputes. Therefore, its foundation must be simple emotions rather than absolute rationality. Losing emotions and relying solely on rationality will lead to logical fallacies and discomfort; while relying solely on emotions without considering the law will induce moral risks. How to balance the two has always been an unavoidable issue. Domestic scholars generally do not discuss how forgiveness should be exercised as a right, but only discuss it as a discretionary sentencing factor in the criminal process, focusing more on outcomes rather than considering the formation and evolution of this emotion, because law is rational, and mixing emotions would lead to bias. The author believes that traffic offense crimes do have their peculiarities, as does the victim's forgiveness. As Lei Lianli from Hunan University of Science and Technology has said, the victim's forgiveness is a process of emotional fluctuation that needs to be judged in combination with whether the defendant or suspect genuinely repents to determine the effectiveness and authenticity of the forgiveness. The mediation by third-party organizations, the involvement of public security and procuratorial organs at different stages, and the final judgment of the court, all contribute to the emotional ups and downs of the victims and their relatives, which constantly change. In this process, whether the forgiveness offered is genuine, can be withdrawn, or can be revoked, are all matters for discussion. After all, forgiveness itself, as a right, requires a relatively low degree of caution in its exercise, and it is sufficient to confirm the sincerity of the repentance attitude of the suspect or defendant.

1.2 The act of forgiveness is valid

Under the premise of a clear subject, the forgiveness subject with independent and free will must perform a certain act of forgiveness, and it must meet certain conditions to be considered valid forgiveness. Although forgiveness is a right, it is more often expressed as an emotion of forgiveness and leniency. However, to determine whether the act of forgiveness is valid in traffic offense crimes, it is necessary to start from the original meaning of the term "right" and, if necessary, explore the differences from similar terms to understand where to begin judging its validity. Due to cultural differences between the East and the West, there is no need to make a big distinction between forgiveness and understanding in Chinese semantics. Strictly speaking, in judicial practice, both can express the same meaning, which is that the victim and their close relatives, after understanding the facts, show understanding, tolerance, and forgiveness towards the defendant or suspect. Therefore, the so-called victim's forgiveness is primarily about "forgiving and tolerating after understanding the facts." Thus, the author believes that effective forgiveness consists of two steps: first, understanding the facts, and second, forgiving based on one's inner feelings.

1.2.1 The forgiveness subject understands the truth

In the judicial practice of traffic offense crimes, the subject of forgiveness understanding the truth primarily occurs through the early stages where both the party at fault and the victim go to the traffic police detachment's accident handling center. The staff there presents the surveillance video footage and clarifies the responsibilities of both parties after listening to their statements and defenses, distinguishing between primary and secondary liabilities. This point has been recognized by the

majority in practice and does not require any enhancement or modification, so it will not be elaborated further. However, it is precisely because the content of the statements and defenses made by both parties only pertains to the time of the accident and does not include the family and economic circumstances of the suspect outside the accident, nor does it include the specific methods and content of responsibility assumption after the accident. This is because when the traffic police detachment intervenes, the case as a whole has not made substantial progress, and there are disputes among the parties regarding how the accident occurred and the division of responsibilities. In some cases, after the accident, parties use various means and methods to pressure the other party, attempting to settle the case with money or power, which makes it difficult for the victims and their relatives to clearly understand the facts of the case, especially in the early stages of the criminal proceedings. It also hinders the correct role of third-party mediation, leading to a situation where things are swept under the rug. Understanding the truth should encompass the period from after the accident until the end of the criminal proceedings, throughout the entire process. It involves the suspect or defendant maintaining communication with the victim and their relatives, covering a comprehensive range of topics from the driver's character, work, education level, circumstances at the time of the incident, and family economic situation to the victim's family circumstances and the extent of the damage. This comprehensive communication can take place under the auspices of a third-party mediation organization or be hosted by public authorities.^[5,9]

1.2.2 The subject of forgiveness grants forgiveness based on genuine intention

After the subject of forgiveness has fully understood the circumstances related to the offending driver, it is impossible for their emotional fluctuations to subside instantly, especially in cases where the driver has severely violated traffic regulations or in accidents that could have been avoided, and the unfortunate incident occurred due to the driver's serious fault or even fleeing. Life is invaluable, and the deceased cannot be brought back. Based on the concept of restorative justice theory, the premise of criminal forgiveness is that the suspect or defendant has compensated for the material loss or personal injury caused by the accident. The author believes that on this basis, a sincere apology, genuine remorse, and subsequent actions of repentance can better repair the damaged relationship and heal the spiritual trauma of the forgiveness subject. Therefore, during the mediation process organized by mediation organizations or public authorities in the early stages, they should actively guide the suspect or defendant to make sincere repentance and heartfelt apologies, rather than guiding the victim party to actively forgive.

In China, the public grows up in an environment where "life is priceless" and "life is respected," and also inherits the traditional concepts of retribution and the means of private retaliation. When forgiveness cannot be granted based on genuine intention, or when influenced by emotions, it is easy to engage in extreme behavior. Therefore, whether the act of forgiveness by the subject is based on true intention is also one of the criteria for determining the effectiveness of forgiveness.

2. The corresponding restrictions on granting forgiveness in cases of traffic accident crimes

Traffic offense cases have their particularities, mainly manifested in the complexity of the legal interests infringed upon and the directness of the harmful results. Therefore, for the victims in traffic offense crimes, certain restrictions need to be placed on the subjects granting forgiveness. In addition to the limitations on the subjects themselves, the act of forgiveness also needs to be clearly defined to avoid unnecessary back-and-forth which could increase the burden of litigation, and also to prevent the emotional rollercoaster of the forgiving party.

Firstly, in terms of the object of forgiveness, it is not limited to the behavior of the offending driver, nor is it limited to the offending driver themselves. The emotion carried by forgiveness in the criminal process is profound and can be extended to the suspect or defendant and their immediate family members, to indicate acceptance and forgiveness of their sincere repentance and heartfelt apologies. Therefore, the exercise of the right to forgiveness does not require excessive restrictions, as the underlying logic of forgiveness is a form of emotional expression, which does not need to be overly constrained by law and does not require the setting of too many prerequisite conditions.

Secondly, given that the current price for obtaining the victim's forgiveness is a one-time payment of a forgiveness fee, there should be corresponding restrictions on the number of times forgiveness is granted at different stages. On one hand, this avoids the situation of repeatedly granting and withdrawing forgiveness within the same stage, which increases communication costs for both parties and wastes judicial resources. On the other hand, it also prevents the situation of excessively high

demands for forgiveness within the same stage. In the author's view, after the criminal trial procedure has been initiated, there should be one opportunity for forgiveness during the investigation stage and one during the review and prosecution stage. Once the subject of forgiveness has expressed the intention to withdraw, they may not grant forgiveness again within that stage, and the corresponding forgiveness fee should be returned. Meanwhile, the public prosecution and judicial authorities may continue to accept applications or suggestions from the forgiveness subject regarding the increase of penalties.^[10]

During the trial stage, the law may also provide two opportunities for the subject of forgiveness, to be confirmed before and after the trial. If an agreement on forgiveness has been reached before the trial and forgiveness has been granted, there is no need to confirm the authenticity of the forgiveness after the trial; only the effectiveness of the forgiveness needs to be verified. If no agreement has been reached before the trial, the subject of forgiveness may still exercise their right to express the true intention of forgiveness during the period from the end of the trial until the judgment is made, and the judge should verify the effectiveness and authenticity of the forgiveness.

Finally, in judicial practice, the letters of forgiveness issued by the victims and their immediate relatives do not adequately demonstrate the process of how forgiveness is formed, and the format of these letters varies greatly. At the same time, in order to reach a criminal understanding as quickly as possible, various regions combine forgiveness with the "Guiding Opinions on the Application of the System of Leniency for Those Who Plead Guilty and Accept Punishment," promoting it on one hand by actively encouraging suspects or defendants to plead guilty and accept punishment, and on the other hand by actively persuading victims to issue criminal forgiveness through ideological work, in order to achieve a so-called balance and harmonious state.

Overemphasizing results without caring about the process may lead to the risk of quid pro quo transactions akin to those in the Anglo-American legal system during the judicial process. Ultimately, the harm may not only be to the subjects of forgiveness but also to the country's judicial system and the stable social order. Forced forgiveness is not sweet, nor is it feasible. Therefore, on the issues of whether to grant forgiveness, why to grant forgiveness, and how to guide the subjects of forgiveness to grant it, we still have a long way to go. This is not only a legal issue but also an ethical and cultural one.

3. The pathway for determining the effectiveness of forgiveness in traffic offense cases

The so-called judgment pathway refers to the general line of thinking used to deduce a certain conclusion in a particular event. Typically, the judgment of legal facts only needs to consider whether the factual aspects meet the statutory requirements and whether there is any illegal situation at the legal level. As for the relevant carriers that bear the legal facts, which are commonly referred to as "evidence" or "indications," they form a general relationship of content and form with the facts. For the judgment of this "form" itself, the author believes that it can be made based on the rules of evidence, without the need to delve into the formal authenticity of the carrier of the forgiveness intention, such as a forgiveness letter, in the judgment, otherwise there is indeed a suspicion of unnecessarily increasing the burden of litigation. Therefore, the judgment pathway described in this article is to propose a general line of thinking that may be applicable to determine the authenticity and effectiveness of the content of the carrier, namely the forgiveness itself, for reference.

Firstly, whether forgiveness is seen as an expression of emotion or the exercise of a right, it has a corresponding subject. In the context of the criminal procedure, most scholars consider it to be a discretionary sentencing factor rather than the exercise of a right. However, in terms of the identity of the victim and their close relatives, the author is more inclined to recognize forgiveness as an inherent right. Before the occurrence of facts related to traffic offense crimes, this right is in a state of silence. It is only when the perpetrator commits acts related to traffic offense crimes that this right to forgiveness is activated, and only one unique subject can initiate it. Therefore, the first step in determining the existence of effective forgiveness in traffic offense crimes is to judge whether the subject granting forgiveness conforms to the general common sense of legal principles and ethics.^[11]

Secondly, as a right, the exercise of forgiveness must be accompanied by the manifestation of intention, which is commonly expressed through words or actions. Some views suggest that forgiveness can also be expressed through silence. In practice, there are many instances where the victims and their close relatives sign and stamp the forgiveness letter after receiving the criminal forgiveness money. In such cases, there is no need to discuss whether the subject of forgiveness is willing to forgive, because

the victims and their close relatives have already accepted the forgiveness money, and their voluntary signing and stamping on the forgiveness letter is sufficient proof. The author believes that this view is open to debate. Although the act of signing and stamping may seem to be an external manifestation of the willingness to forgive, it is worth discussing whether this act itself represents an affirmative intention to forgive. In criminal cases, especially traffic offense crimes that involve personal safety, property, and even life, it is quite inappropriate to consider the victim's signature, stamp, and acceptance of forgiveness money as an act of forgiveness. Firstly, because criminal forgiveness is a right based on emotion, the decision to exercise it is unrelated to the acceptance of forgiveness money.

Furthermore, the timing element and the result element are also very important. Since the occurrence of the traffic accident, it should be considered as the starting point for exercising the right, and it remains within the valid period for forgiveness until the issuance of the criminal judgment document. There is an argument that forgiveness can be granted during the period when the offending driver is serving their sentence. Forgiveness during the execution of the penalty can only indicate that the subject of forgiveness has let go of the past over time or recognizes the sincere remorse of the offending driver. This type of forgiveness is not equivalent to the victim's forgiveness in the criminal process; the two are fundamentally different in nature. The traditional view holds that the consequence of the victim's forgiveness is to obtain corresponding compensation and provide a receipt, while the defendant receives a relatively lenient sentence, which is a win-win outcome. Therefore, it is not difficult to find phrases like "in view of the defendant's active compensation and obtaining the family's forgiveness during the second trial" in many second-instance judgments for traffic offense crimes.^[12]

Finally, after judges determine the existence of the effectiveness elements through general channels, they should also argue reversely whether there are limitations on granting forgiveness. These limitations are mainly reflected in the restrictions on the subject of forgiveness, the number of times forgiveness can be granted, and the form of forgiveness. If there are limitations on the exercise of the right to forgiveness, judges should also weigh each case individually to determine whether to recognize the existence of the effectiveness of criminal forgiveness. In conclusion, the author believes that following such a pathway is the general approach to assessing the existence of the effectiveness of criminal forgiveness in traffic offense cases.

Conclusion

Throughout the entire criminal process, it is indeed necessary to examine whether the forgiveness behavior exhibited by the subject of forgiveness is effective, and there are indeed corresponding standards for this. This does not bring about litigation fatigue; on the contrary, it elevates the status of the victim. When the trauma is healed, forgiveness from the heart can better pave the way for a hopeful future.

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