

Study of the Constituent Elements of the Pickpocketing Crime

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Abstract: Pickpocketing is a relatively common type of crime in Chinese judicial practice. The two basic characteristics of pickpocketing are that the crime should take place in a public place and the object of pickpocketing should be the property carried by others. Although the judicial interpretation has established the characteristics of pickpocketing, the debate on it has not subsided, specifically with the dispute on the definition of “public places” and “carrying”. Public places are categorized into completely open public places and relatively open public places. So the nature of public places in specific cases should be analyzed. The scope of the property being carried not just includes the property on the body of an individual, but also includes the property being placed within a safe distance from the individual in the surrounding area.

Keywords: Pickpocketing; Public places; Carrying property

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1. Introduction

Pickpocketing is a relatively common type of crime in the judicial practice of China, which has only been penalized as an ordinary circumstance of the crime of theft. To better combat and prevent crime and protect people’s property, the Criminal Law Amendment (VIII) on thieving crimes was revised, with pickpocketing as one of the special circumstances. Specifically, it reads, “Anyone who steals public or private property in a larger amount, or who commits multiple thefts, burglary, burglary with a murder weapon, or pickpocketing, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or restriction, and shall be fined in addition to a single fine.” In 2013, the promulgation of the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law to the Handling of Criminal Cases of Theft clearly defined the specific connotations of pickpocketing as “the act of stealing the belongings carried by others in a public place or on a means of public transportation.” This definition makes clear the two basic characteristics of pickpocketing, that is the act should take place in a public place, and the object of the pickpocketing act should be the property that another person is carrying. The 2013 judicial interpretation clarified the characteristics of pickpocketing, but the controversy has not subsided. What constitutes “public place” and “carrying” is the subject of endless theoretical debate, and standards vary in

practice, bringing certain difficulties to judicial practice. The pickpocketing crime having a harsher sentence after the revision has also triggered discussion among scholars. This paper will discuss the above aspects.

2. The dispute relating to public places

According to the 2013 judicial interpretation of the definition of pickpocketing, pickpocketing refers to the act of stealing other people's belongings in a public place or on a public vehicle, and the public place is a necessary element of the place that constitutes the crime of pickpocketing. However, more and more scholars believe that pickpocketing in public places is only a typical pattern of pickpocketing behavior, that is, pickpocketing behavior often occurs in public places but is not limited to occurring in public places. That is to say that the typical pickpocketing pattern is in public places since this raises the threshold of the crime. In this regard, some scholars further pointed out that "even if 99% of pickpocketing occurs in public places, we can not say that pickpocketing will only happen in public places or that occurring in public places is a must when defining pickpocketing. The significance of public places for pickpocketing is only a description and summary at the empirical level due to the multiplicity, but it is difficult to become the only characteristic of things determined at the theoretical level when defining concepts"^[1].

The definitions of scholars on the connotation of public places can be broadly categorized into the following three types. The first is to define a public place based on spatial characteristics, considering that a spatially open place, can be used for the gathering of a majority of people, has the mobility of unspecified people, and is functionally characterized by social activities^[2]. The second is based on the definition of the characteristics of the people in the place, which is the right of use belongs to the public, and the place that allows an unspecified majority of people to enter is a public place. At the same time, it is clear that the determination of a public place has nothing to do with whether or not payment is required for entry, the nature of the activity, or whether or not a third person is present at the time of the crime^[3]. The third definition is based on the flow of people in a public place, pointing out that high mobility and density are the connotations of a public place, and suggesting that this characteristic of a public place may be diminished under special circumstances^[4].

According to the above viewpoints, it can be roughly sorted out that the scholars' generalization about the connotation of public places is mainly based on the nature of the space and the identity of the people in the place, which can then be summarized into two basic features, the right of use and the right of access. From the point of view of the right of use, the right of use of public places is attributed to the public for the unspecified or the majority of people to engage in social activities. From the perspective of the right of access, a public place is a place to which an unspecified number of people are authorized to have access, and one of these two conditions is indispensable. It should be noted that the right of access is not related to ownership, and the nature of the owner of the place does not affect the public nature of the place. Whether it is the state, collectively owned premises, or privately owned premises, as long as the public can engage in public activities, then the premises can be recognized as a public place. For example, publicly owned public places include stations, parks, office halls, and so on, while privately owned public places include shopping malls, theaters, restaurants, and others.

Further analysis of the right of access reveals that public places can be divided into two categories, completely open public places, where access is completely unrestricted, and relatively open public places, where access is limited to a certain group of persons. In the case of relatively open public places, although the identity of the persons entering this type of place is specified and limited to a certain group of people, this

aspect of restriction is not sufficient to specify the scope of the group, and the place is still a public place in the relative sense. Examples include a theater where a performance or movie is being held or a stadium where a sporting event is being held. Access to these venues is restricted to needing specific credentials, such as a movie or event ticket. However, the non-specificity of the group is not negated on the basis that specific credentials are required for entry. This is because the range of permitted entrants is still relatively wide, for example, in a movie theater, although a ticket is required to enter the theater, the identity of those who can purchase tickets is not fixed. In other words, anyone can buy a ticket to a movie so the people in a movie theater are still an unspecified majority. In addition to venues accessible with specific credentials, there is another similar category of venues, that is, venues accessible only by specific identities. Such status includes occupation, gender, and so on. For example, entry to most primary and secondary schools on weekdays is generally restricted to staff and students, so it can be said that those who enter have a specific identity. Another example is public bathrooms and toilets, which are restricted to people of a particular gender. However, whether it is a specific occupation or a specific gender, it does not affect the non-specificity of the person, nor does it affect the public nature of the place.

The right of access is not the only basis for determining the nature of a public place, nor is the number of people the only way to determine the nature of a place. The number of people in a relatively open place should not be used to define a public place. For example, the thieving crime of internal staff during mealtime in a cafeteria where outsiders cannot easily enter cannot be recognized as pickpocketing. An open place can still be considered a public place even if there are few numbers of people present. For example, a thieving crime occurring in the early morning of the train station can still be constituted as pickpocketing even if the scene only has the perpetrator and the victim.

In summary, public places should cover completely open public places and relatively open public places. Hence, the nature of the public place of specific cases should be specifically analyzed.

3. Disputes relating to carrying

3.1. The need to clarify the concept of carrying

Regardless of changes in legislative and regulatory measures, stealing of property as the characteristic of pickpocketing behavior has been widely recognized by scholars and legislators, and it is precisely for this reason that pickpocketing has been separated from ordinary theft to regulate the necessity of a separate act. Some scholars pointed out that “pickpocketing is a type of crime more harsh compared with ordinary theft with unique connotation of wrongdoing. This unlawful connotation must also be comparable to the burglary of the home, such as carrying a weapon when committing the theft.” The stolen object being carried is this unique connotation, and it is what elevates pickpocketing to a situation comparable to burglary and theft with a weapon., The importance of the stolen object being carried when pickpocketing can be seen when analyzing specific crime cases. Special theft in China’s criminal law includes multiple theft, burglary, theft with a weapon, and pickpocketing. The reason why these four kinds of theft are set out separately with no incrimination amount standard is because it has a higher personal, and property infringement, and has a higher social harm compared with ordinary theft. Take theft with a weapon as an example, theft with a weapon tends to have a higher degree of physical harm, this is because in the process of theft with a weapon, if an accident occurs or the crime is discovered, it can result in further worsening of the crime, or even escalate into serious crimes such as robbery.

The concept of “carrying” is important because the theft of another person’s personal belongings not only violates property rights but also poses a risk to the personal safety of the other person. Pickpocketing is similar to burglary. Burglary is the invasion of other people’s homes to commit theft, which not only violates other

people's property rights but also violates other people's right to live in peace. Additionally, the burglary crime being discovered can escalate into more serious harmful crimes such as kidnapping and homicide. Therefore, it is important to maintain security at a distance. A residential home is an independent space for the privacy and safety of a citizen, but it is also at risk of burglary, home invasion, robbery, trespassing, and other crimes. Since pickpocketing involves items being carried by the victim, the crime being found can result in assault and other crimes. If the pickpocket carries a weapon, the crime might turn into a robbery, so ordinary theft cannot be compared with pickpocketing. The pickpocketing of other people's belongings seriously violates the victim's sense of security and safety. There is a certain safety distance between people for both the protection of personal safety and property safety. If this safety distance is breached, the right to life or the right to own property may be violated.

It is generally believed that the safe distance is composed of private space as well as the spacing surrounding the private space, for example, the clothing pockets and the backpack are the private space of an individual, and even the human body's skin, tissues, and other private parts belong to the private space in the broadest sense of the word. So a private space can be defined as a space where other people shall not intrude without the permission of the owner. This distance can create a sense of security and stability, and the property within the distance is readily controllable and disposable. According to this definition, comparing ordinary theft with pickpocketing, ordinary theft is the behavior of transferring the possession of other people's goods by peaceful means, which generally only infringes on other people's property legal interests, while the behavior of pickpocketing other people's belongings will not only infringe on other people's property rights but also infringe on other people's personal safety.

3.2. Disputes relating to the carrying of the property

According to the definition of the text, carrying means to be attached to or carried by the side. There are different theories as to the specific scope of carrying. Among them, the mainstream view is that the property being carried is on the person's body or places nearby^[5]. This view is considered to be broad. In addition to this, there are the narrow view and the compromise view. The narrow view states that the property should be on the victim's body^[6]. The compromise view states that the property is generally close to the victim's body where the property can be interacted with and looked after by the victim^[7].

This paper supports the narrow view that carrying should be construed restrictively, which is limited to carrying the property in close proximity. This stems from the fact that high-intensity possession must be established under the stringent conditions of close ownership. First of all, when the property is placed down, in which the victim's ability to oversee the property is weakened, the property cannot be considered under close possession and thus this cannot be defined as pickpocketing. As for the compromise point of view, if the property within a certain range from the victim can still be regarded as close possession, it will inevitably lead to the expansion of the criminal law, resulting in the ordinary theft behavior being treated as a pickpocketing crime. If the property was extremely important to the victim, the victim would not have placed the item down from their body.

Since the property carried with the victim should be limited to close to the body, this indicates the presence of a safe distance. The victim's control over the property outside the safe distance is weak, while the property within the safe distance is often of high personal importance. The definition of safe distance should be considered from the following aspects.

The first is that the objects should be close enough in terms of physical distance. This is the most basic definition of a safe distance. The safe distance is the area that a person can control and maintain, and the person

will not be worried at all when they place their belongings in it. The essential reason for this complete lack of concern lies in the physical sense that the body can be touched and checked at any time. When the property is beyond the distance the body can reach, even in close proximity and line of sight, the person will still worry and not be completely at ease.

According to the principle of subjective-objective unity, subjective safety distances also need to be considered in addition to objective distances. This includes the psychological distance. Physical reach is fixed and easy to judge. However, in the case of psychological distance, there are two aspects, the victim's concern and the concern of society in general. In terms of the victim's concern, the concern will change with the victim's personality characteristics. For example, a paranoid individual worrying about their property will have a relatively small safety distance. If the perpetrator committed the act of stealing outside the safety distance, it can only be recognized as ordinary theft, since the item is not considered being carried by the victim. This judgment standard has a serious flaw, as the victim in many cases is not clear whether they are worried about the property, so it is hard to determine the safety distance and whether the property should be considered being carried.

In terms of the concern of society in general, the situation is judged according to the thoughts of the average person in society. Factors such as whether or not the victim is concerned about the property, whether the item is at a safe distance, and whether the property is considered being carried are facts that can be foreseen by the pickpocketing perpetrator. The nature of the perpetrator's behavior will not be altered along with the victim's personal subjective thoughts, which not only solves the issues with the inconsistent concern of the victim but also is a relatively stable and predictable interpretation.

It should be noted that in different environments, the safety distance between people will also change. For example, in the bus, subway, and other crowded environments, the distance the body can touch is unchanged, but people are not worried about the distance becoming shorter according to the general social standards, thus, the safety distance range will become shorter, and the scope of the belongings will become smaller. In a more open environment, the distance between people will be wider, thus, the safety distance will become longer, and the scope of belongings will become larger.

To summarize, the scope of property, that is in the possession of the person, includes not only property carried on the person, but also property in the vicinity of other people, within a safe distance, mainly in the range of the body at any time, and the average person in the society will not have any worry in such circumstances.

4. Determination of modesty in the crime of pickpocketing

After the promulgation of Amendment (VIII) to the Criminal Law, pickpocketing, as a special kind of theft, no longer has a minimum theft threshold. Therefore, it has become a focus of attention for scholars to explore whether the crime of pickpocketing should have such a wide range of penalties. It is necessary to further explore the former elements of pickpocketing for a detailed study and analysis, of whether all the elements of pickpocketing are in line with the necessity of punishment. As some scholars pointed out, "whether academic discussion or judicial practice, in dealing with specific issues, should adhere to the order of hierarchical thinking, which is the concept of the elements of the definition of the first step of the work, the expansion and contraction of the scope of punishment is the second step of the consideration." Theoretical research should eventually be implemented in practice, so the analysis of the elements of the crime of pickpocketing is only the first step. The following will explore the modest determination of the crime of pickpocketing.

According to the explanation of the person in charge of the Legal Affairs Commission of the National People's Congress, the criminalization of pickpocketing in the legislative stage had taken into account the following factors, "the crime involves a high technical skill; usually has a habitual nature; has a high level of criminal techniques and criminal skills, anti-detection ability; often involving several people to commit crimes together, and there is the possibility of further injury to the victim; this type of crime is currently more arrogant, more harmful." [8]. This note explains some of the considerations of the criminalization of pickpocketing, that is, compared to general theft, pickpocketing does not set a minimum threshold amount intentionally to fight against pickpocketing crime. Some scholars pointed out that "if the judicial interpretation of pickpocketing set a minimum threshold limit, although it can be appropriate to reduce the number of theft crimes, but there is a judicial interpretation of the suspicion of the criminal law, the legislator for the special type of theft does not count the amount of legislative efforts will come to naught" [9].

According to the above explanation, the reason why the crime of pickpocketing should be severely punished is the nature of gangs and the habits that characterize it. On the other hand, if pickpocketing is a first-time or occasional offense that is not gang-related or habitual, and if the amount of the offense does not reach the standard of incrimination or is not large compared to general theft, is it not necessary to punish it severely? The answer should be in the affirmative, as criminal law is characterized by modesty, and acts that do not pose serious harm should generally not be dealt with by penalties.

As a matter of fact, modesty is an important feature and fundamental concept of criminal law. The modesty of criminal law originates from the idea of human rights protection, which is one of the two basic functions of criminal law, which is to combat crime and to protect human rights, and which permeates the entire process and all aspects of legislation as well as the administration of justice. The influence of the concept of modesty on criminal legislation can be said to be very far-reaching, which is mainly reflected in the following two aspects: one is the restriction of the scope of criminal law penalties. This means that the application of other laws is sufficient to suppress a certain illegal behavior, sufficient to protect legitimate rights and interests, by not stipulating it as a crime. The second is the limitation of modesty on the degree of punishment, such as when a lighter sanction can be applied sufficiently to suppress a certain criminal act and protect legitimate rights and interests, a heavier sanction should not be enforced [10].

As far as the pickpocketing behavior is concerned, the infringement of legal interests has not reached a very serious degree. First of all, the infringement of property law is far lower than ordinary theft. Pickpocketing involves the theft of other people's ordinary property and not other people's larger property, therefore, the crime is not as severe from the perspective of the stolen amount. Additionally, pickpocketing crimes only infringe on other's property rights and do not necessarily harm others directly, so it does not need to reach the legal interests infringement that of ordinary theft. In comparison, the infringement of the legal interests of property of pickpocketing crimes is relatively minor.

Secondly, the infringement of personal law interests is relatively minor. Compared with the violation of the right to peace and quiet in the home by burglary, the invasion of the privacy of others by pickpocketing is limited. Although pickpocketing invades the safety distance and privacy of others, and affects the sense of security of others, such infringement and criminal law usually protects the infringement of personal rights if there is a very severe crime, in which a vast majority of people would not advocate for in the criminal law system. Moreover, the use of tools and objects by the perpetrator is not intended to cause injury, as the tools are generally used to improve the efficiency of theft and inconvenience other people's lives, so only the legal interests of other people's safety are threatened, which has not yet risen to the level of danger.

5. Conclusion

Pickpocketing theft is a separate type of theft crime and a unique provision of Chinese criminal law. Although the 2013 Judicial Interpretation has defined the crime of pickpocketing, the exact definition is still not clear, the relevant terms are still vague, and the constituent elements are not clear enough. Therefore, it is necessary to explore the meaning of pickpocketing to analyze in detail the connotation and constituent elements of pickpocketing as stipulated in the 2013 Judicial Interpretation. This article takes the judicial interpretation definitions of public places and carrying to elaborate on the basic concepts while analyzing the controversy and understanding of the academic community, pickpocketing meaning, and elements of the crime. Finally, from the perspective of the principle of modesty in criminal law, it is considered that the unlawfulness of pickpocketing is minor, and its criminalization severity is not in line with the principles of clarity and modesty in criminal law.

Disclosure statement

The author declares no conflict of interest.

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