

Study on the Examination and Judgment of WeChat Record-type Evidence in Criminal Proceedings

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Abstract

In order to solve the problems existing in China at present in the examination and judgment of WeChat record evidence, this paper is based on the relevant laws and regulations in Chinese criminal procedure law, analyze the examination and judgment mechanism of WeChat record evidence, namely, the authenticity examination of the content, original data and storage medium, the relevance examination of WeChat record evidence to examine whether the content of WeChat record evidence is related to the facts to be proved and the legality review of the subject of the evidence, the way of the evidence and the procedure of the evidence collection. The legality review of the subject of the evidence collection, the way of evidence collection and the procedure of evidence collection. On this basis, it further analyzes the problems existing in the current mechanism, and provides certain methodological reference for improving the examination and judgment of WeChat record evidence.

Keywords

Electronic Evidence; Criminal Procedure Law; Authentication Rule; Illegal Evidence Exclusion Principle.

1. Introduction

In his report to the 20th National Congress, Xi Jinping emphasized that "the rule of law on all fronts is a profound revolution in the governance of the country, which has a bearing on the Party's rule and prosperity of the country, the people's happiness and well-being, as well as the long-term stability and security of the Party and the country. The rule of law must be given better play to solidify the fundamentals, stabilize expectations, and benefit the long-term safeguard role, and comprehensively build a modern socialist country on the track of the rule of law." This shows the importance the state attaches to the comprehensive rule of law. In recent years, with the development of online social media, the importance of Wechat records as evidence has also become increasingly obvious.

2. The basic principle of the examination and judgment of the micro letter record type of evidence

According to Article 14 of the Provisions of the Supreme People's Court on Several Provisions on Evidence in Civil Litigation, electronic data includes the following information and electronic files: (a) information published on web pages, blogs, micro blogs and other network platforms; (b) communication information of cell phone text messages, emails, instant messaging, communication groups, and other network application services; (c) information such as user registration information, identification information, electronic transaction records,

communication records (c) user registration information, identity authentication information, electronic transaction records, communication records, login logs and other information; (d) documents, pictures, audio, video, digital certificates, computer programs and other electronic files; (e) other information that can prove the facts of the case in the form of digitized storage, processing and transmission.

Electronic data as a modern information technology, network technology and computer technology derived from a new form of evidence, which has the characteristics of science and technology, virtual and so on, which in judicial practice has produced a lot of new problems. The use of electronic data in criminal proceedings, need to go through the collection and extraction, sealing and storage, technical analysis, in-court production, review and judgment and so on a number of links. Problems or defects in any of these links may affect the authenticity, integrity and relevance of electronic data. With physical evidence, documentary evidence and other traditional physical evidence is different, electronic data usually does not have the distinguishing characteristics or mark, it is easy to be copied, modified and increased or decreased, which makes it impossible to confirm the authenticity of electronic data through the traditional way of identification. If ignore the electronic data extraction, storage and circulation chain of norms, it is likely to cause the electronic data distortion, which leads to the case of the facts of the determination of the error.

In addition, electronic data compared with other evidence also has the following characteristics: first, the intrinsic substance of the intangible. Compared with other directly perceivable form of evidence, electronic data is in essence just a bunch of coding rules dealt with "0" and "1", can not be directly perceived, must be presented through the transformation of the way to play a role in proving. Second, easy to destroy. Compared with other evidence, electronic data is the most fragile, human factors or technical obstacles to the intervention, can make the electronic evidence was tampered with, counterfeiting, damage or destruction. Electronic data is altered, unlike written evidence that is easy to detect and identify, hardly leave any trace. Thirdly, electronic data is highly technical. This is electronic data is different from other types of evidence of another sex, specifically manifested in: one is the existence of electronic data depends on a certain electromagnetic medium, collect and extract the requirements of special technical means; Second, electronic data is the need to rely on a certain information processing technology and equipment in order to show the information it carries. Electronic data in the collection and extraction of the transformation process requires special technical means. Therefore, in cases involving electronic data, the highly technical characteristics of electronic data determine that the investigating authorities must work closely with the technical departments in order to effectively complete the investigation and handling of cases.

In 2011, the concept of "electronic data" officially appeared in the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Endangering the Security of Computer Information Systems. Subsequently, in 2012, the Fifth Session of the Eleventh National People's Congress adopted the Decision on Amending the Criminal Procedure Law of the People's Republic of China, formally recognizing the effectiveness of "electronic data" as evidence. In recent years, through the specialized research of countless legal research experts, the relevant research on electronic data has also developed to a certain level. Prof. He Jiahong once pointed out that "among the four basic links of judicial proof, namely, evidence collection, evidence presentation, cross-examination and authentication, authentication is undoubtedly the most crucial link." Tong Xueyi (2011) pointed out in the study of criminal procedure electronic data, electronic data and the relevance of the case directly affects the effectiveness of its proof, and determine the relevance of the electronic data and the case can start from the following aspects: First, the proposed electronic data to prove what kind of facts to be proved; Second, whether the fact is the substance of the case; Third, the proposed electronic data to solve the

controversial issues in the case. how substantial the issue is. Fan Chongyi (2015) studies the rules of electronic data in China's criminal procedure, and proposes that the problems in the authenticity, integrity, and legality of electronic data are the fundamental reasons for the insufficient proving power of electronic data.

3. The deficiencies in the examination and judgment of micro letter record type evidence

The emergence of Wechat record class evidence to the type of evidence injected fresh blood, but also to China's criminal procedure and the theory of evidence research has brought new difficulties and challenges. These difficulties and challenges are concentrated in the Wechat record evidence search, seizure and other criminal evidence collection procedures, as well as Wechat record evidence of objectivity, completeness, legality and other basic attributes of the examination and judgment.

In recent years for Wechat record evidence has introduced a number of provisions and judicial interpretations, the investigators need to master the technical standards and norms, public prosecutors need to understand the technical evidence review, the trial staff need to master the characteristics of Wechat record evidence and its identification methods, and from the operational level of the Wechat record evidence in criminal cases in the collection of how to preserve and how to court use have made a practical and feasible detailed provisions. Practical and feasible detailed provisions. To a certain extent, the criminal procedure of Wechat record evidence of evidence, evidence, questioning, authentication are said to have a law to follow, but in the above case, we can still find some problems.

1. Wechat record evidence authentication single way

Wechat record type evidence is very easy to fake, easy to be tampered with. However, Renmin University of China School of Law Professor Liu Pinxin that, in terms of the content of a single Wechat record evidence, it is indeed not good to directly determine its authenticity, but Wechat record evidence is essentially a system, and has the stability of the system. Each Wechat record class evidence in addition to its own content, and Wechat record class evidence associated with subsidiary information, associated information, and even other evidence of association, Wechat record class evidence of the content itself and other information in the "pull a hair move the whole body" relationship, such as Wechat record class evidence of any operation, will result in Wechat record evidence content itself and its associated information and even other evidence of the corresponding changes, on the one hand, make any operation becomes difficult to track; on the other hand, also affirmed the Wechat record evidence "not easy to destructive", Wechat record evidence will not be deleted or even formatted because of the simple operation to be removed.

At the same time, Weibo record evidence generated and exist in virtual space, people want to perceive Weibo record evidence, not only need to master certain information technology, but also rely on specific electronic equipment. In judicial practice, the judge faces Weibo record evidence, need to accurately Weibo record evidence and case facts correspond to the virtual attributes of its real meaning, so as to realize the case and the evidence of the association. Therefore, the analysis of Wechat record class evidence relevance, give Wechat record class evidence evidence ability, not only need to Wechat record class evidence and case facts associated, but also the virtual Wechat record class evidence and human objective behavior associated. At the same time, Wechat record class evidence has reliability, Wechat record class evidence within the easy to suffer add, modify, delete and other changes, especially in Wechat record class evidence generation, storage, manifestation, transmission and other aspects, and in judicial practice, this kind of addition, modification, deletion, and other changes, the judge is difficult to review the judgment found. It can be seen that, for Weibo record evidence, if you

want to make it prove the facts of the case of criminal behavior, we must make the virtual Weibo record evidence with reality, relevance, and this special evidence attributes decided to rely on specific auxiliary proof to determine.

This reflects the Wechat record class evidence of its special rules of authenticity, and as an independent type of evidence, will inevitably have an impact on the traditional rules of evidence. Therefore, Wechat record class evidence of identification should not only focus on Wechat record class evidence itself, at the same time should take into account other evidence of identification as well as auxiliary identification of the way, and Wechat record class evidence of identification of the way of singularity will inevitably Wechat record class evidence of the application of a certain impact.

2. Illegal Wechat record type evidence lack of classification

In China's criminal evidence law, the rules of evidence capacity is mainly manifested in illegal evidence exclusion rules. Although China's Criminal Procedure Law establishes the independent status of Wechat record-type evidence, but as in the case of how to determine the identification of Wechat record-type evidence, the judge how to adopt and admit such evidence, but is currently recognized as a challenge, a difficult problem.

People in the examination of Wechat record class evidence, still maintain a traditional evidence thinking mode, that is, seeking a in real life, and is no Wechat record class evidence virtual form of alternatives. For Wechat record class evidence, the citizen's right to privacy, the right to freedom of expression and other basic human rights in the process of Wechat record class evidence collection and extraction is easy to be violated, and Wechat record class evidence rely on the computer system and network environment, etc. is easy to encounter attacks and damage, Wechat record class evidence within the easy to be subjected to add, modify, delete, and other changes, especially in the generation of Wechat record class evidence, storage, and manifestation, Transmission, etc., and in judicial practice, such additions, modifications, deletions and other changes, the judge is difficult to find in the review judgment. In this case, when the Wechat record evidence is unreliable or even illegal, the lack of its type affects the judgment of the judicial personnel on the illegal Wechat record evidence, which should be restricted and excluded, and the application of the exclusion rule of illegal evidence should be realized through a reasonable classification.

4. Improve our country Wechat record class evidence review judgment proposal

Nowadays, the world is undergoing rapid changes, information technology is constantly being updated and modernized, and Internet technology has penetrated into various fields, accompanied by the transformation and upgrading of electronic technology and scientific research and innovation. At the same time that the use of electronic technology is increasingly penetrating into people's daily life, conflicts and disputes about electronic technology are also increasing. In this process, electronic data is gradually exposed as the main evidence of electronic disputes, and the proportion in the litigation is also getting bigger and bigger.

For the consideration of whether electronic evidence can be regarded as the basis for litigation, its authenticity, legitimacy and relevance should be comprehensively examined. In China, the review of the legitimacy of electronic data involves a formal review, while the review of authenticity and relevance does not pay too much attention to the formal review, focusing mainly on the substantive review. Trials involving the authenticity of electronic data have developed rapidly in criminal justice trials in China. There was only one case of electronic data authenticity adjudication on the China Adjudication Documents Online in 2013, which has increased to 12 cases by 2020, showing a significant upward trend. In view of the current attention to the authenticity review in legislation and practice, we urgently need to make

continuous theoretical and empirical summaries by sorting out different types of electronic data review systems and addressing the many controversies presented in the field of application. In addition, for foreign excellent legal culture, to uphold based on itself, fit the actual, real review, scientific reference, to create a diversified, systematic electronic evidence review system. Comprehensive consideration of the central and local systems and the application of differences, the content of all types of review system must be centered around the central norms, can not be deviated from, and at the same time can not exceed the scope of its application. Scientific and reasonable electronic evidence review system, must focus on its content, procedures and methods of comprehensive provisions, the review system to improve, and will be placed in the first electronic data review. Integration of other regulations or interpretations involving evidence review of the relevant system or content, from which the elimination of competing, does not have the applicability, and the current review of the norms contrary to the content, and then categorized and organized. To make the judicial work more standardized, systematic, organized, more lawful. With the development of the times, we need to constantly review the rules to improve and supplement, if necessary, can be verified after adding some new rules in line with contemporary national conditions. And, for the verification of the validity of electronic evidence, great probability will exist in the civil and commercial or criminal field. Based on the differences in the examination of the rules of each field, there will inevitably be a review of competing or conflicting situations, then, we have to start from the principle of legislation, careful consideration, careful analysis, the formation of the form of disciplines to learn from each other and inclusive of each other.

Electronic data are presented in a variety of ways. For the presentation of a variety of forms of electronic evidence, it should be flexible and targeted to use a variety of ways to analyze. At the same time, in the review of the method should also be innovative, in order to supplement the expansion of the authenticity of the means of review, and will be used in the review of the authenticity of new types of electronic data. At present, the domestic in the case of electronic evidence to be the effectiveness of the review, more with the means of forensic examination, the review of the model is relatively fixed. Technical review is to examine whether the electronic evidence storage form is reasonable means necessary. Technical appraisal must be completed by professionals, not through the examination of professionals, it is easy to damage the initial electronic version. Technical appraisal is to modernize the test technology or equipment, the electronic evidence transfer process of storage means, the stability of the storage platform, the security of the mobile link to review. Such as, the investigators will be obtained by the relevant chat information, request a specialized agency with the help of advanced testing means or equipment to verify its validity, so that not only can determine the validity of the evidence, but also at a certain level to achieve the fixation of the electronic evidence, or will be in the form of a report submitted to the judicial organs as the basis of the decision to facilitate the litigation for both sides to better carry out the argumentation of the electronic evidence or corroboration.

Once Wechat record-type evidence enters the litigation field, its authenticity must be scrutinized, because whether it is authentic or not is the key to whether it can be the basis for a case. The examination of the authenticity of Wechat record-type evidence must cover the entire process from extraction to submission, otherwise, the authenticity of the evidence will be lost. In addition to reviewing the validity of the evidence that is directly related to the existence of the case, it is also necessary to review the process of the review, that is, the basis, manner and order of the review. At present, China has a number of judicial interpretations of the authenticity of Wechat record-type evidence has been clearly stipulated, and is also being supplemented in practice. However, with the upgrading and penetration of electronic technology, the type of Wechat record-type evidence is also changing. At present, the provisions of the existing laws and judicial interpretations in China can no longer match the judicial

practice in China, so the problems it has are increasingly highlighted. Therefore, we should draw on the relevant practices and legislative experiences of other countries, combine the applicable principles of the current domestic judicial review, and construct a more systematic review system and standards on the basis of following the relevant rules, so as to ensure the integrity of the data storage chain. Finally, the order of review must be clear and divided into levels, so as to ensure that the final review results are more accurate, and to promote the review work in an orderly manner.

In the future development process, with the progress of science and technology, Weibo record evidence will play a greater role. But at the same time, new problems are constantly emerging, which is an irreversible trend of the times. There is still a long way to go for the improvement of the review system of electric micro-letter record-type evidence.

Acknowledgements

Anhui University of Finance and Economics 2023 College Student Scientific Research and Innovation Fund Project(XSKY23215).

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