

Research on the Crime of Establishing Casinos on WeChat

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Abstract

Establishing casino constitutes a crime in China. A necessary objective constitutive requirement of it is the act of “providing gambling place”. Opening a casino in WeChat is a new way of gambling which has no traditional gambling place. Base on study the guiding Case No. 105 and Case No. 106 of the supreme court of China as well as the interpretation of the authoritative scholars and Article 303 of the Criminal Law supplemented by Opinions and Interpretations, to rational expand the interpretation of relevant legal norms can contain the facts of providing gambling place in order can define that establishing casinos on WeChat constitute the crime of opening a casino.

Keywords

Establish Casino, WeChat, Legal Interpretation, Online Gambling

1. Introduction

In 2018, the Supreme Court of China issued the guiding Case No. 105 and Case No. 106 on the crime of opening a casino. Based on the analysis of the judgment of the guiding case No. 105 by the Supreme Court, this paper studies the current situation of the crime of opening a casino through WeChat in China.

2. The Crime of Opening a Casino in Chinese Law

In gambling, the casino has the role of providing gambling places, organizing gambling, providing gambling equipment and formulating gambling rules, which provides a long-term and stable gambling environment for gamblers. It will make people develop the habit of being passive and lazy. It will corrupt the social atmosphere and disturb the social order.

Compared with the offline casino, the online casino mainly presents following characteristics: 1) diversified gambling methods, such as WeChat group gambling, app gambling, and live gambling; 2) complicated payment methods, such as virtual currency payment, third-party and fourth-party payment platform payment, and sub-platform payment; and 3) expanded behavioral hazards. Online casinos are closely combined with telecom fraud, cross-border money laundering, crimes against citizens' personal information and others, which posing a great threat to the whole society. On the other hand, the online casino is basically a cross-border gambling mode, its virtuality and concealment of the network increase the difficulty of the investigation of the online gambling crime.

At present, there is no special regulation for the management of online gambling crimes in China. When the current criminal law norms, which are mainly aimed at the management of offline gambling crimes, are applied to the management of online gambling crimes, it is easy to interpret the harmfulness of online gambling crimes improperly, which leads to many disputes in the identification of online gambling crimes. However, there is a consensus on the following concepts:

1) To set up a casino: to provide various gambling devices, chips and places for gambling-related activities profitably, and sets various gambling activities modes according to his will to organize gambling-related activities.

2) To establish a casino: to provide the venues and gambling equipment for the gamblers to gamble, and make themselves the master of the casino and make profits from it (Li, 2002).

3) To open a casino: the casino operators themselves as the center, under their control to provide gambling venues for the gamblers, regardless of the survival of the casino (Zhang, 2016).

4) To open a casino, that is, the casino operator to make himself the master of the casino, and under its control to establish and operate the casino behavior (Otani, 2008).

However, in the above views, there is a necessary objective constitutive requirement, that is, as the crime of opening a casino, attention should be paid to the act of "providing gambling place". The difference of the crime of opening a casino mainly lies in whether the casino owner has the purpose of making profits and whether there is a dominant position for the casino. And whether the casino itself needs time to survive.

However, on August 1, 2022, the China Academy of Judicial Big Data officially released *the Special Report on Judicial Big Data on Characteristics and Trends of Information-Related Cyber Crimes (2017.1-2021.12)*. According to the report, from 2017 to 2021, courts at all levels concluded more than 49,000 online gambling cases of first instance. Among them, the year-on-year increase was 59.26% in 2018; That's up from a year ago in 2019, a year-on-year decrease of 5.29% in 2020; In 2021, the year-on-year increase was 15.34%. It can be seen that under the background of the rapid development of the information network. The number of online gambling crimes in China during the period of 2017-2021 is

generally on the rise in waves. Only because of the impact of the global epidemic in 2020, the normal work of courts was affected to a certain extent, so the number of judgments of gambling crimes has decreased, and in the rest of the years, the number of judgments of online gambling crimes has shown an absolute rise.

Combining with the above analysis, we can find that although Internet gambling has gradually become an important crime which can not be ignored among the crime of opening casino and information network crime, it is inevitably due to the need to “provide gambling places” for the establishment of the crime of opening casino in our country, which inevitably makes the crime of Internet gambling enter the difficult predicament of fact identification. First of all, it is difficult to define the existence of “gambling place” in online gambling itself. Different from traditional gambling, the places where crimes take place have changed from concentrated in the past to relatively scattered. Traditional casinos mostly take place in residential areas and urban and rural areas with complex environment, chess and card rooms, hotels and hotels, game halls and even underground places. However, online gambling can break through the characteristics of traditional crimes limited to the space where the organizer, platform operation, service location are not the same, only through the virtual platform, the use of web applications and social software gambling. As for the difficulty of “identification of providing gambling places” for online gambling, Article 2 of the Interpretation on Several Issues concerning the Specific Application of the Law in Handling Criminal Gambling Cases (hereinafter referred to as the Interpretation) issued by the Supreme Court and the Supreme People’s Procuratorate in 2005 clearly stipulated the establishment of gambling websites on computer networks for the purpose of making profits. Whoever acts as an agent for a gambling website and accepts bets shall fall under Article 303 of the Criminal Law for “opening a casino”. In 2010, the Supreme Court, the Supreme People’s Procuratorate and the Ministry of Public Security further clarified the Opinions on Several Issues concerning the Application of the Law to the Handling of Online Gambling Crime Cases (hereinafter referred to as the Opinions): “Using the Internet and mobile communication terminals to transmit gambling videos and data and organize gambling activities”, or “establishing gambling websites and accepting betting; Establishing a gambling website and providing it to others to organize gambling; Acting as an agent for a gambling website and accepting bets; Participation in the gambling website profit sharing one”, belongs to the establishment of casino behavior. The essence of the so-called casino is a fixed business place with a specific space for many people to gather together for gambling activities. Although the traditional casino needs a certain physical space, under the social background of the continuous development of network technology, the virtual space formed by the network platform has the traditional physical space function, and many activities of people can be realized through the network platform. For these activities, there is no difference between cyberspace and real space, or rather, cyberspace has expanded physical space. Opening ca-

sinos on the Internet is one example (Sun, 2019). The relevant provisions in the “Interpretation” affirm that online gambling meets the legal identification of the “crime of opening a casino”. However, the same affirmation also has certain limitations, that is, the network gambling we are going to discuss is always protected by the “legal shell”. The establishment of network gambling websites cannot cover all the situations of network gambling. How to pierce through the legal coat and identify the illegal nature of network gambling has become the top priority for the organizer of network gambling to establish a casino crime.

3. The Guidance Case of the Supreme Court of “Casinos in the Form of WeChat Groups” (Guidance Case No. 105 and Guidance Case No. 106)

3.1. The Basic Case and Verdict of Case No. 105

On February 14, 2016, the defendants Li Zhirong, Hong Liwo and Hong Qingquan, together with Hong 1 and Hong 2 (all at large), employed Hong 3 and others in a rented house next to the Valve base in Yingdu Town, Nan’an City, Fujian Province (later moved to the suite on the fifth floor of Dazhong Electrical Appliance City, Huanjiang Road, Yingdu Town, Nan’an City, Fujian Province). Use smart phones, computers and other devices to establish a WeChat group (nicknamed “Xunlongjin”, renamed “(New) Class of 98 Students Chat” after several times) to attract gamblers for online gambling. As the initiator and investor, Hong 1 and Hong 2 are responsible for the behind-the-scenes management of the whole gang; The defendant Li Zhirong was mainly responsible for finance and maintenance of gambling software; The defendant Hong Liwo was mainly responsible for logistics; The defendant Hong Qingquan was mainly responsible for dealing with disputes with gamblers; The defendant Hong Xiaoqiang for the investor, and introduced Chen Mou and other gamblers to join the WeChat group for gambling. The WeChat gambling group divided its initial capital of 300,000 yuan into 100 capital shares and set up another 10 technology shares. Among them, the defendant Hong Xiaoqiang accounted for 6 capital shares, the defendant Hong Liwo, Hong Qingquan each accounted for 4 technical shares, the defendant Li Zhirong accounted for 2 technical shares.

The gamblers join the WeChat group, transfer the gambling money to the bank’s WeChat or Alipay account (nicknamed “White Dragon ledger House”, “Green Dragon Ledger House”) and count the score value (one yuan is equivalent to one point). After that, according to the lottery results of the game websites such as “PC Egg”, they can gamble in the group by the way of size, single and even betting. The gambling group operates 24 hours a day, with dozens of gamblers in each game and hundreds of thousands of yuan in daily bets. By the time of the crime, the gang had accepted a total of \$3,237,300 in gambling. During the operation of the gambling group, there were two dividends, including 36,000 yuan for defendant Hong Xiaoqiang, 6000 yuan for defendant Li Zhirong, 12,000 yuan for defendant Hong Liwo and 12,000 yuan for defendant Hong

Qingquan.

The People's Court of Zhanggong District in Ganzhou City, Jiangxi Province issued criminal judgment No. 367 (2016) Jiangxi 0702 Xingchu on March 27, 2017: 1) The defendant Hong Xiaoqiang was sentenced to four years in prison and fined RMB 50,000 Yuan for the crime of running a casino. 2) The defendant Hong Liwo was sentenced to four years in prison and fined RMB 50,000 yuan for the crime of running a casino. 3) The defendant Hong Qingquan was sentenced to four years in prison and fined 50,000 yuan for the crime of running a casino. 4) Defendant Li Zhirong was sentenced to four years in prison and fined 50,000 yuan for running a casino. 5) The illegal gains of the four defendants, totaling 66,000 yuan, as well as the articles used in the crime such as 6 mobile phones, 1 laptop computer and 3 desktop computer hosts delivered along with the case, shall be confiscated according to law and handed over to the state Treasury. After the verdict, the four defendants did not appeal, the verdict has taken legal effect (*The Supreme Court of the People's Republic of China, 2018a*).

3.2. The Basic Case and Judgment Results of Case No. 106

From September 2015 to November 2015, Xiang (convicted) worked with the defendants Xie Jianjun, Gao Lei, Gao Erqiao, Yang Zebin and others respectively in Xiaoshan District, Hangzhou to invite others to join the WeChat group he established for the purpose of making profits, and organized others to gamble by grabbing red envelopes in the WeChat group. During the period, the defendants, Xie Jianjun, Gao Lei, Gao Erqiao and Yang Zebin, respectively helped Xiang distribute red envelopes in the gambling red envelopes group, and shared the money from the draw according to the number of gambling red envelopes.

The People's Court of Xiaoshan District, Hangzhou City, Zhejiang Province, made (2016) Zhejiang 0109 Xingchu No. 1736 Criminal judgment on November 9, 2016: 1) The defendant Xie Jianjun, guilty of running a casino, was sentenced to fixed-term imprisonment of three years and six months and fined 25,000 Yuan. 2) The defendant Gao Lei was sentenced to fixed-term imprisonment of three years and three months and fined 20,000 Yuan for the crime of running a casino. 3) The defendant Gao Erqiao was sentenced to three years and three months in prison and fined 15,000 yuan for the crime of running a casino. 4) Defendant Yang Zebin was sentenced to three years in prison and fined 10,000 yuan for running a casino. 5) Only the mobile phones used by the four defendants were confiscated and turned over to the state Treasury; The unrecovered proceeds of the crimes of the four defendants shall continue to be recovered. Xie, Gao Erqiao and Yang Zebin appealed to the Hangzhou Intermediate People's Court in Zhejiang Province. Hangzhou Intermediate People's Court of Zhejiang Province issued criminal judgment No. 1143 (2016) Zhejiang 01 Death Sentence on December 29, 2016: 1) Maintain the conviction part of Item 1, Item 2, Item 3 and Item 4 of Criminal Judgment No. 1736 of Zhejiang 0109 Xingchu of Hangzhou Xiaoshan District People's Court (2016) and the confiscation of

criminal tools and recovery of stolen money of Item 5. 2) The sentencing parts of Item 1, Item 2, Item 3 and Item 4 of Criminal Judgment No. 1736 of Zhejiang 0109 Xingchu of Hangzhou Xiaoshan District People's Court (2016) shall be revoked. 3) The appellant (the defendant in the original trial), Xie Jianjun, was sentenced to three years' imprisonment and fined 25,000 Yuan for the crime of running a casino. 4) The defendant Gao Lei was sentenced to fixed-term imprisonment of two years and six months and fined 20,000 Yuan for the crime of running a casino. 5) The appellant (the defendant in the original trial), Gao Erqiao, is sentenced to fixed-term imprisonment of two years and six months and is also fined 15,000 Yuan for the crime of running a casino. 6) The appellant (defendant in the original trial) Yang Zebin was sentenced to fixed-term imprisonment of one year and six months and fined 10,000 Yuan for the crime of running a casino (*The Supreme Court of the People's Republic of China, 2018b*).

3.3. Analysis of the Reasons for the Judgment

Guiding Cases No. 105 and No. 106 were convicted and sentenced according to the second paragraph of Article 303 of the Criminal Law of the People's Republic of China (hereinafter referred to as the Criminal Law) for the crime of running a casino. Whoever, according to Article 303 of the Criminal Law, gathers people to gamble or make gambling his business for the purpose of profit shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined. Whoever opens a casino shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance and shall also be fined; If the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined. Whoever organizes citizens of the People's Republic of China to participate in gambling outside China, if the amount is huge or if there are other serious circumstances, shall be punished in accordance with the provisions of the preceding paragraph. Whoever opens a casino shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; If the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

In fact, there are certain difficulties in the identification of both cases, that is, whether WeChat group can be identified as a casino. There are two opinions in this case. The first opinion is that WeChat group should not be interpreted as a casino in the crime of setting up a casino and a gambling website stipulated by judicial interpretation. The gambling website is not aimed at the general public, and can be accessed only through the Internet platform; The establishment of "WeChat Group" is very convenient, without any cost, and can be dissolved at any time. Therefore, the defendant's control of WeChat Group is different from the defendant's control of shops, exclusive stores and other physical gambling

places; Secondly, gambling participants gather through WeChat groups and are not open to the non-specific public in the society, which has a certain degree of closeness. Others cannot search the group through the Internet and join it by themselves (Yang et al., 2021). This view mainly refutes the differences in openness and cost between gambling websites and WeChat groups. But it should be made clear that this is just our analysis based on the general form of WeChat groups, but it does not mean that WeChat gambling does not have the characteristics of openness. Often, gambling with closed form will only be convicted and sentenced as mass gambling. However, the parties in this case are not just a small number of people like the general crowd gambling, or are very reluctant to join strangers. On the contrary, in the WeChat group, apart from the defendant and the defendant's friends, there are also unspecified groups invited by the defendant's friends. In a sense, even if WeChat is the medium, there is no denying that the object of gambling is not limited to specific groups, and it has certain openness. The second view holds that the identification of WeChat group as an online casino has a certain legitimacy, because the defendant has the purpose of making profits, has the coercive power to organize and dominate WeChat group, and can set up casino rules as a banker, which is no different from the traditional crime of opening a casino. The court finally adopted the second opinion and found the defendant guilty of running a casino.

In the author's opinion, there are some differences in the starting angles of the two interpretations. The first interpretation method is more based on the network casino in the Interpretation and Opinions, while the second interpretation method is the interpretation of Article 303, paragraph 2 of the Criminal Law. In my opinion, I believe that the first interpretation has some advantages, but even though the facts of the case are the most similar to the current laws and regulations and judicial interpretation, it also pays too much attention to the logic and text interpretation in the legal interpretation, and ignores the important connotation of the system interpretation. It is difficult to defend the crime of operating casinos in the form of gambling websites by sending red packets on WeChat, but this does not mean that the crime of operating casinos cannot defend this kind of crime itself. When we discuss whether the relevant facts can be classified under the norm, we should make reasonable use of the method of "looking back and forth" proposed by Engisch. The so-called "look back and forth" method is like a small ball thrown into the air, constantly bouncing back, and the distance between fact and norm is constantly reduced until it reaches zero. This means that they compromise with each other, one constantly being generalized and abstracted, the other constantly being concretized and specialized, and then arrive at an "intermediate state". However, the process of "compromising norms" is not only to explain norms and make the standards of norms clear, but also to compare different norms and select the legal norms that are most compatible with the facts. This consistency is not only the consistency of external manifestations, but also the consistency of criminal elements of a behavior in essence. It is

also in the process of constantly comparing facts and norms that we should jump out of the limitations of the Interpretation and the 2345 Opinions and analyze in combination with the original article 303 of the Criminal Law.

4. An Analysis on the Conviction of Establishing Casino on WeChat in China Based on the Guidance Cases No. 105 and No. 106

4.1. WeChat Gambling Groups Should Be Interpreted as Casinos under Specific Conditions

First of all, the Supreme Court's views on the Interpretation and Opinions are not limited to the meaning itself, but a reasonable interpretation based on the situation and needs of the society, starting from the purpose of lawmakers, to explore what purpose the rules themselves want to achieve. Therefore, combined with the above perspective analysis, the purpose of the Interpretation is to expand the casino from a tangible physical casino to a gambling website on the computer network, and the key is to deny that "providing a place for substantive gambling" has become an inevitable component of the crime of setting up a casino. Later, the "Opinions" expanded to the use of the Internet, mobile communication terminal behavior, casino continuously expanded, including both tangible physical space and virtual network space, the network casino crime to further expand the interpretation in line with the requirements of social development, and always within the limits of the meaning of the crime of casino. Meanwhile, in combination with the principle of historical interpretation, we need to make it clear that the Opinions and Interpretations do not stipulate whether the crime of opening a casino in the form of WeChat groups is intentionally excluded. However, the fact is that neither the 2005 Interpretation nor the 2010 Opinions can predict and reasonably regulate the new things that came into being in 2011. In other words, it is because WeChat came into being late and has not been included in judicial interpretation and normative documents, instead of the two documents intentionally excluding WeChat group from the definition of casino. Therefore, based on the legislators' purpose and historical limitation factors, we can learn from the fact and correlation analysis that Article 303 of the Criminal Law hopes to maintain social public order. The subsequent Interpretations and Opinions aim to reasonably expand the interpretation of the crime of opening a casino according to the needs of the development of The Times instead of limiting the limitation. Moreover, in combination with the background of The Times, they did not exclude the negative meaning of WeChat group. Therefore, the interpretation of the form of gambling in WeChat group based on this way is reasonable in line with the crime of opening a casino.

4.2. The Necessity to Identify WeChat Groups as Casinos under Specific Circumstances

There is a view of point that if we identify WeChat gambling as mass gambling,

it could not only enough to convict and punish the WeChat gambling, but also could avoid the criticism of violating the principle of legality due to identifying WeChat gambling as the crime of setting up casinos. The Supreme Court respectively compared the two legal norms and fact elements of mass gambling with opening casinos.

The difference between setting up a casino and gathering gambling determines the necessity of identifying gambling by WeChat group as a crime of setting up a casino. From the form we can see that both the behavior of crowd gambling and setting up casino have the characteristic of gathering people/mob, but the former is temporary and transient while the latter is of continuity and stability. The former usually only convene, organize and gather people to gamble, but does not control the gambling place, gambling rules and gambling activities, while the latter controls or dominates the whole (Yang et al., 2021).

In summary, the crime of setting up a casino has the characteristics of “Stability” and “control”. In this case, the defendant Hong Xiaoqiang et al. had run the WeChat group for more than 3 months from it established through to it be closed the crime, and the gambling group operated 24 hours a day, which has the characteristics of continuity and stability. In addition, although the defendants Hong Xiaoqiang and others did not set up a tangible casino, nor did they provide material chips and gambling devices for the casino, they hired others to use smart phones, computers and other devices to establish a WeChat gambling group, and operated the casino by setting gambling rules. If any gamblers did not abide by the established rules, then would be removed from the WeChat group. Through strict control and management of gambling activities within the group, the four defendants made the gambling activities long-term sustained stability.

4.3. The Condition of WeChat Gambling Recognized as Opening a Casino

The previous article has analyzed that WeChat should be considered as a kind of casino if necessary, but it should also be more specific and strict restrictions on the conditions and conditions under which WeChat should be considered as a kind of casino. According to the interpretation of the relevant definitions of mob gambling in the main text of the Interpretation on Several Issues Concerning the Specific Application of Laws in Dealing with Gambling Criminal Cases (hereinafter referred to as the Interpretation), it is not difficult to analyze and conclude that the crime of mob gambling should have a strict definition of the numerical value and the number of people involved. In a sense, the crime of opening a casino should be a branch of gambling crime. However, the Criminal Law separates the crime of opening a casino from the crime of gambling, and according to the main text of the Interpretation, “For the purpose of profit, the establishment of gambling websites on the computer network, or acting as an agent for gambling websites, and accepting bets, belongs to the” opening of casinos “stipulated in Article 303 of the Criminal Law”. In a sense, the crime of

opening casinos seems to have been set a broader standard of admission than the crime of gambling in the interpretation. But in fact, the maximum legal penalty for the crime of opening a casino is 10 years, which is far higher than the maximum legal penalty for gambling crime of 3 years. That is to say, from the perspective of legislators, the social risk of the crime of opening a casino should be higher than that of gambling crime. Therefore, the identification of the concept of “casino” should also be a matter of caution. Especially in the WeChat and network environment, the identification of the concept should not only be relatively clear. In at least two guiding cases, we believe that the concept of WeChat as a casino should have the following characteristics:

1) Control. Controllability is the key characteristic of opening a casino different from gambling (Zong, 2016). Gambling in crowds is often a temporary correction personnel and a choice of venue, with weak control over participants and gambling venues; The establishment of casinos has strong dominance and control in selecting gambling places, formulating gambling rules and managing participants. Although WeChat group is a virtual space, it provides a gambling platform for gamblers. Its establishment is extremely convenient and can be dissolved at any time, which does not prove that the degree of control is weak. On the contrary, because the process of construction and dissolution is relatively flexible, the private relationship between the defendants is closer and firm. The defendant has set clear rules for joining and exiting WeChat group, which greatly increases the difficulty of detecting cases, while on the other hand, it also shows that the defendant has an inestimable control over the case itself.

2) Organization. In the crime of opening a casino, the internal organizational structure of the casino is complete, the division of labor between the actors is clear, there is a definite relationship between the upper and lower levels, and the operation system and financial management system are established. For example, in the guidance case, the defendants engaged in WeChat gambling through division of labor and cooperation. Some were shareholders who contributed money, some were responsible for WeChat gambling group finance and maintenance of gambling software, some were responsible for logistics, and some were responsible for handling disputes with gamblers. In addition, they also hired others to accept gamblers' bets in the group and count gambling wins and losses. A perfect team management system was established between the defendants and employees, the behavior of opening a casino is more organized.

3) Continuity. Gambling in crowds is generally intermittent and sporadic, and has the characteristics of temporary and temporary. After the end of one gathering, the next gambling will be organized again. The opening of a casino has the characteristics of continuity in operation time, and gambling activities can be carried out steadily and continuously in the casino.

4) Openness. The scale of crowd gambling is generally small. Organizers usually use their personal relationships to organize others to gamble in a small range. They have no pursuit of the number of participants, and even most of the crowd gambling excludes the participation of strangers, with the characteristics

of closeness. The opening of a casino has a certain scale, which can attract an unspecified number of people to participate in gambling, and has the characteristics of openness.

5. Summary

After sorting out the whole cases, let's again review the interpretation process of the Supreme Court. Their first step is to distinguish the gambling behavior using WeChat group from the normal recreational behavior, then the nature of the crowd gambling is determined. The second step is to make further distinctions focusing on the differences between the two charges of crowd gambling and opening a casino, and make a legal subsumption. After that, we will find that, obviously, the constitutive requirements of opening a casino are relatively stricter. Only when we checked the facts of the case to meet the two objective requirements of stability and control and defined it as the crime of opening a casino, we found that, the facts of the two guiding cases can not match the interpretation of the past authoritative scholars as well as Article 303 of the Criminal Law supplemented by Opinions and Interpretations, there are certain differences between them. What shall we do now, from the perspective of the author, we should attempt to extend the interpretation of legal provisions within the limits of their meaning by means of historical interpretation and systematic interpretation. Then, according to the analysis method of "looking back and forth" to exam whether the expanded interpretation of legal norms can contain the facts. In this case, we can get the conclusion of it is clear that the use of WeChat groups to open online casinos can be included in the explained crime of opening casinos.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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