

The Use of Rules of Thumb in Cases of Sexual Assault of Minors

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Abstract

Cases of sexual abuse of minors have long faced the problem of difficult prosecution, and in practice more attention has been paid to the use of rules of thumb to solve this problem. The use of rules of thumb in such cases is conducive to the construction of a "victim statement-centred" system of evidence, the examination and judgement of the probative value of the evidence in cases of sexual assault of minors, and the enhancement of the operability of the standard of proof beyond a reasonable doubt. In reality, there are special rules of thumb that are vague in content, the application of character evidence is controversial, the adoption of auxiliary evidence that focuses on the victim's psychology is limited, and the concept of beyond reasonable doubt is ambiguous and ambiguous, so that the application of the rules of thumb in this kind of case is hindered. Therefore, on the basis of drawing on useful overseas experience and summarising China's judicial practice, the supporting mechanism for the application of rules of thumb in cases of sexual abuse of minors should be gradually improved, with a view to solving the problem of the application of rules of thumb in cases of sexual abuse of minors.

Keywords

Cases of sexual assault on minors; Rule of thumb; Minor.

1. Introduction

In recent years, sexual assault crimes against minors have gradually become the most notable type of crimes against minors, and have received a high degree of attention from society as a whole.²⁰²³ In June 2023, China's Supreme People's Procuratorate issued a White Paper on Procuratorial Work with Minors (2022), according to statistics, between 2020 and 2022, although the total number of cases of crimes against minors has decreased, what is more noteworthy is that the number of rape, indecent assault and other sexual assault cases is still showing an upward trend, and in 2022 alone, prosecutors prosecuted 36,957 people for rape, child molestation and other crimes of sexual assault against minors, a year-on-year increase of 20.4 per cent^[1]. Compared with other criminal cases, cases of sexual abuse of minors are characterised by an extreme shortage of evidence, and such cases are often faced with a "one-to-one" situation between the victim's statement and the suspect's confession, which makes it difficult to prosecute the defendant's criminal conduct in practice, and in response to the dilemma of proving this type of case, on 25 May 2023, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly promulgated the Opinions on Handling Criminal Cases of Sexual Abuse of Minors (hereinafter referred to as the "Opinions"), which, compared with the Opinions on Punishing Crimes of Sexual Abuse of Minors According to Law issued by the two High Courts and two Ministries in 2013, fills in China's The Opinions fill the deficiencies in the collection and examination of evidence and judgement in dealing with cases of sexual abuse of minors, and progressively stipulate that the handling of such cases should take into account the special nature of sexual abuse cases and the physical and psychological characteristics of minors, and that the facts of

the case should be determined by a comprehensive analysis based on evidence combined with empirical common sense. Nonetheless, the Opinions have not solved the problem of how the rule of thumb works in sexual assault cases against minors, and how to flexibly use the rule of thumb to solve the problem of proving such cases needs to be further explored. This article will focus on the use of rules of thumb in sexual abuse of minors, mainly discussing the necessity of the use of rules of thumb in such cases, as well as the current use of rules of thumb faced by the dilemma, and put forward to improve the use of rules of thumb supporting mechanism of the idea.

2. The Need to Apply Rules of Thumb In Cases of Sexual Abuse of Minors

The term "rule of thumb" is widely used in the fields of logic and jurisprudence, and has a variety of meanings; in the field of jurisprudence alone, the semantics of a rule of thumb varies from one field to another. Regarding the concept of rules of thumb in jurisprudence, the consensus reached by the academic community can be summarised as follows: rules of thumb are knowledge or laws about the attributes of things or causal relationships summarised from people's daily life experiences[2]. Rules of thumb can be based on its nature and can be distinguished as general rules of thumb and special rules of thumb, general rules of thumb refers to a long time after repeated verification, on behalf of a thing or type of development of the usual trend and law, is the people from the daily life of the social perception and experience of the fact that generally do not need to be proved, only by intuition under the general experience of common sense can be used; special rules of thumb refers to the formation of rules of thumb Is based on special knowledge or experience of the facts, often need to be used in litigation by strict procedures to prove, so China's judicial practice is still the main use of general rules of thumb[3].

Rule of thumb as an important link between the evidence and the facts, will be reasonably used in sexual abuse of minors, can make up for the objective evidence in such cases is extremely short of problems, help to establish "to the victim statement as the centre" of the evidence system; can assist the adjudicator on the case for a comprehensive analysis, to help in this kind of case Evidence of the review of the power of judgement; so that the facts are clear, the evidence is indeed sufficient and exclude reasonable doubt of the standard of proof fully combined to help enhance the exclusion of reasonable doubt of the standard of proof of operability. Therefore, this paper believes that in dealing with cases of sexual abuse of minors, to give full play to the useful role of the rule of thumb, when faced with the lack of evidence, proof of the difficulty of the reality of the problem, we should pay attention to the use of the rule of thumb to find a breakthrough.

2.1. Contributing to a "victim statement-centred" system of evidence

Sexual assault of minors cases due to the hidden nature of strong, delayed, objective evidence is extremely lack of characteristics, a large number of studies have shown that the delayed disclosure of criminal behaviour is more typical of sexual assault of minors[4], which further exacerbates the shortage of evidence in such cases, once the case, the reality is prone to defendants refused to confess, do not admit guilt of the "zero confessions" Phenomenon, so that the case is faced with only the defendant confession and the victim statement of the "one to one" dilemma. In the case of the defendant denies the fact of infringement, the judicial case officers can only to the victim statement as the centre to restore the facts of the case, the inherent lack of evidence will result in the failure of the defendant's criminal prosecution, the rights and interests of minors are difficult to be duly protected. At present, in cases of sexual assault on minors, theoretical research and judicial practice generally agree that a "victim statement-centred" system of evidence should be constructed to solve the above dilemma, and the construction of this system places greater emphasis on the use of rules of thumb.

The rule of thumb is an important method of determining the credibility of the victim's statement, and is a key component in building a "victim statement-centred" system of evidence. The evidence system "centred on the victim's statement" needs to be identified through the victim's statement of the facts of the assault, the standard of review of evidence is based on the credibility of the victim's statement as the core, the adjudicator will be the rule of thumb in the presentation of evidence, questioning procedures, and other evidence of the reinforcement, to be able to form a sufficient to determine the authenticity of the victim's statement[5]. The rule of thumb plays an important role in connecting the victim's statement and the facts of the case, and contributes to the construction of an evidence system "centred on the victim's statement".

2.2. Helping to examine and judge the probative value of evidence in cases of sexual abuse of minors

The judgement of the probative value of evidence is a process in which the adjudicator applies rules of thumb and logic to reconstruct the facts of the case on the basis of the available evidence, and makes a comprehensive judgement of the facts on the basis of the linkage between the evidence and the facts, which itself is not subject to the limitations of the law. In cases of sexual abuse of minors, the rule of thumb is an important method of evaluating the probative value of evidence, the use of the rule of thumb helps in the examination and judgement of the probative value of the evidence in such cases, the importance of which is mainly reflected in the judgement of the victim's statement and paraphrased testimony.

As the most crucial evidence in such cases, the victim's statement relies more on the rule of thumb in the process of reviewing and judging its probative value, and the use of the rule of thumb helps to review and judge the credibility of the victim's statement, thus further affecting the determination of the facts of the case. Articles 30 and 31 of the Opinions point out the contents and methods of the review of the statements of minor victims, whether it is the review of the impact of the victim's age, cognition, memory and ability to express, physical and mental state on the voluntariness and completeness of the statement, or the review of the true will of the minor victim over 14 years of age, all of which require the adjudicator to use the rules of thumb to make comprehensive analyses and judgements.

The use of rules of thumb to round up and assess paraphrased testimony and to explore the value of its probative power has a positive effect on assisting in proving the credibility of the victim's statement and confirming the facts of the case. Due to the sexual assault of minors cases generally occur in confined space, has a strong hidden, difficult to obtain witness testimony with greater probative power, the victim in the assault will usually be told to family members, teachers or other more trusting people, so most of the witness testimony obtained in such cases is relayed by people outside the case from the transmitted evidence, coupled with the transmission of the evidence and the victim's statement of the same source, unable to With its formation of corroboration, in this case, the strict rules of corroboration will weaken the probative power of the evidence, and thus can not play a substantial role, the reality of this type of evidence sometimes can not be used because of improper forensics, further exacerbating the shortage of evidence. Admittedly, we should also pay attention to the value of such paraphrased testimony, to provide space for the application of the rule of thumb, mining paraphrased testimony valuable information, and apply it to the whole case factual reasoning, can play a role in assisting in judging the authenticity of the victim's statement.

2.3. Contributing to the operationalisation of the standard of proof beyond reasonable doubt

In 2012, China's Criminal Procedure Law took "beyond reasonable doubt" as one of the conditions for "clear facts and solid and sufficient evidence", which was specifically expressed as "comprehensive evidence in the whole case, and the facts found have been ruled out beyond

reasonable doubt", reflecting the unity of subjective and objective standards of proof. Reasonable doubt", reflecting the subjective and objective standard of proof. On the one hand, this standard objectively requires that the evidence through the judgement of evidential capacity and probative power, to form a complete chain of evidence, to prove the defendant's criminal facts; on the other hand, subjectively, the requirement to be used to determine the facts of the case has been ruled out beyond a reasonable doubt, that is, there is no contradiction between the evidence, and can be corroborated by each other, and can withstand the rules of thumb and the logic of the test, so that the adjudicator of the case to the facts of the formation of the inner conviction, and ultimately to achieve a "moral". Eventually achieve a "moral certainty"[6]. However, in judicial practice, the pursuit of "objective truth" under the guidance of the concept of proof of proof standard is too harsh, the admission of evidence and factual determination of the standard is easy to formality, so that the subjectivity of the standard of proof is often ignored or even denied, which is tantamount to shaping the adjudicator into a rigid judicial machine, deprived of its discretionary power, and they evaluate the evidence according to their experience, reason and conscience. Their ability to evaluate the probative value of evidence on the basis of experience, reason and conscience has also been denied[7], and its operability in reality is low.

Considering the special nature of the lack of core evidence in cases of sexual abuse of minors, Article 29 of the Opinions points out that "in determining the offence of sexual abuse of minors, we must adhere to the standard of proof that the facts are clear, the evidence is true and sufficient, and the standard of proof that excludes reasonable doubt", which excludes reasonable doubt and the standard of proof that "the facts are clear and the evidence is true and sufficient" are juxtaposed, It will exclude reasonable doubt and "the facts are clear, the evidence is true and sufficient" standard of proof to do juxtaposition provisions, more emphasis on the exclusion of reasonable doubt this standard in this kind of case is more operable use. The rule of thumb comes from the western free conscience system, the adjudicator according to the objective state of the evidence presented by the use of the rule of thumb to form the inner conviction, the use of the rule of thumb precisely fits the operational requirements of the exclusion of reasonable doubt, but also highlights the exclusion of reasonable doubt this focuses on the subjective standard of proof of the characteristics of the standard. Apply the rule of thumb in the judgement of exclusion of reasonable doubt in the case of sexual abuse of minors, can let the adjudicator review this kind of case from the pursuit of objective corroboration rules to allow the rule of thumb subjective judgement, can be supplemented to the insufficiency of corroboration rules of evidence, but also gives the existing evidence and the facts of the case with the subjective judgement of the reasoning and interpretation, enhance the exclusion of reasonable doubt standard of proof. Operability, in addition, can also bridge the gap between the results of the decision and the public expectations, so that the results of the case more in line with the general public's spiritual concepts, more readily accepted by the community, and to improve the authority and credibility of the judiciary.

3. The Dilemma of Applying Rules of Thumb in Cases of Sexual Abuse of Minors

China has a long history of consciously applying rules of thumb, but its theoretical research started late compared to common law countries, and it was not until the late 1990s that the concept of rules of thumb was extended to the field of litigation law in China, and in the long time since then, most of the application and discussion of rules of thumb have been concentrated in the field of civil litigation law. 2010, the two high courts and three ministries jointly issued the Provisions on Several Issues Concerning the Examination of Evidence in Death Penalty Cases, article 33 of which formally takes rules of thumb as a factor to be

considered in determining the facts of a case. In 2010, the two high courts and three ministries jointly issued the Provisions on Several Issues Concerning the Examination and Judgement of Evidence in Death Penalty Cases, in which Article 33 formally takes the rule of thumb as a factor to be considered in determining the facts of the case, and the Criminal Procedure Law of 2012 takes "beyond reasonable doubt" as a subjective standard for judging the clarity of the facts and the adequacy of the evidence. Since then, the term "rule of thumb" has been gradually established in the field of criminal justice, playing an increasingly important role. Legislative guarantees have allowed the use of rules of thumb in judicial proof to continue to grow, and according to empirical research statistics, compared to 2012, the number of judgments involving rules of thumb in the national courts in 2019 increased by 39.6 times[8].

Rule of thumb in different criminal cases play a different proof of effectiveness, for most of the ordinary criminal cases, direct evidence is more sufficient, the case is mainly to direct evidence, such simple and easy to implement, the efficiency of the optimisation of the corroboration method is sufficient to meet the need to find out the case is true, the rule of thumb in this kind of cases only as background knowledge and auxiliary proof of the role[9]; on the contrary, in some direct evidence lacks On the contrary, in some direct evidence lack of cases, strict corroboration rules are not only difficult to play the effectiveness, and to a certain extent will also exacerbate the shortage of evidence, then with the help of empirical rules of indirect evidence and indirect facts of the judgement, so as to determine the facts of the case is particularly important. Cases of sexual abuse of minors are often characterised by an extreme shortage of objective evidence, which also provides the ground for the application of rules of thumb to play their full role.

The rules of thumb for handling cases of sexual abuse of minors include general rules of thumb and special rules of thumb. Of these, the application of the general rules of thumb does not differ greatly from other cases; on the contrary, the content of the special rules of thumb is determined by the type of case and relies on specific professional knowledge and experience, and their application varies according to the different types of cases. Sexual abuse of minors in the case of special rules of thumb is based on the age of minors and physical and mental characteristics, minor victims of sexual abuse may be different from adult language expression and behavioural response[3], but because of the special rules of thumb usually conflict with the general experience and common sense, such as the wrong use of the facts of the whole case will have adverse consequences, so the judicial practice of the application of its more cautious, but nevertheless the proper use of the rule of thumb, the case of sexual abuse of minors. Cautious, nonetheless, its appropriate use in cases of sexual abuse of minors, can pay better attention to the characteristics of minors, play a role in assisting in the judgement of the credibility of the victim's statement, therefore, at present, there is no lack of attempts to emphasise the use of the rule of thumb in cases of sexual abuse of minors in the current legislation and practice, especially the special rule of thumb, for example, article 29 of the Opinions pointed out that, in the determination of the facts of the case, it should be based on evidence, combined with empirical evidence, and should be applied in the Based on evidence, combined with common sense, the special nature of sexual assault cases and the physical and mental characteristics of minors should be fully taken into account; furthermore, in the guiding case issued by the Supreme People's Procuratorate of the rape and indecent assault of a child by Qi Mou, the judge found the facts of the case by applying a special rule of thumb, based on the minor's age characteristics and memory features.

3.1. Vague content of special rules of thumb

One of the most notable problems in cases of sexual assault of minors is that the handling of the case does not distinguish between minors and adults, and the rules of thumb that apply to cases of sexual assault of adults cannot be fully applied to cases of sexual assault of minors, due to the

fact that the content of the special rules of thumb is rather vague in reality, and there is a lack of subjective basis combined with the objective facts in the judgement made by the judicial personnel who interviewed the victim as well as in the judgement on the credibility of the victim's statement. The use of rules of thumb in such cases is also greatly limited by the lack of a subjective basis for combining them with objective facts.

The questioning of minor victims should follow the principle of "protecting minors and discovering the truth of the case" to protect the interests of minors to the greatest extent possible, and reasonable methods of questioning can obtain effective victim statements, so that they can be used to their full effect in the case. However, reasonable and effective questioning method needs special rules of thumb support, due to the special rules of thumb of the content is relatively vague, in practice, the judicial case officers often lack of evidence collection and use of norms to guide. Minor victims usually on the victim experience of the narrative lack of initiative, in order to avoid omission of key details of the case, the case officers have to make appropriate guidance in the enquiry, but due to the lack of special guidance on the enquiry procedure, the judicial case officers do not know how to carry out the enquiry appropriately, as well as what kind of guidance is permissible, which makes it difficult to obtain the evidence obtained by the enquiry to maximise the inclusion of critical information or Even if the victim's statement is obtained, but because it is difficult to identify the boundaries between guided and induced questioning, making the victim's statement, once it is determined to be obtained through induced questioning, its probative value will face the possibility of impairment or even exclusion, the adjudicator in the case of the evidence of the innate deficiencies of the evidence and the evidence of the evidence of poor proof of the premise of the acquired evidence, for this type of evidence it is difficult to rely on the general experience of the general public for a trade-off, the rule of thumb The risk of applying the rule of thumb is aggravated, and the problem that the rule of thumb will not be used and dare not be used in this kind of case is still prominent.

3.2. Controversial application of character evidence

Conditional application of character evidence can be combined with the use of the rule of thumb, to solve the special cases in the proof of the problem, but the application of character evidence is still controversial, to a certain extent, also limits the use of the rule of thumb. Character evidence refers to evidence that can prove a person's character or character traits and then infer that they act in accordance with the character[10]. Common law countries are very cautious about the application of character evidence, because character evidence is usually regarded as evidence unrelated to the facts of the case, and its probative value is so small as to be negligible, and once the unreasonable use of character evidence is prone to mislead the jury and the adjudicator, so its probative role is excluded from the review of evidence in most countries. In fact, the absolute exclusion of character evidence used to prove a particular act is not conducive to the discovery of the case, and sometimes may affect the litigation rights of the parties to the case, based on this common law countries gradually for some special nature of the case set up character evidence rules of exceptions, for example, the parties involved in the sexual assault or indecent assault of a child of a similar act of the evidence of the admissibility of the exception[11]. China's theoretical research on character evidence development is relatively late, although in cases involving minors, series of crimes and adult recidivism and so on there is no lack of character evidence "secret" use of the situation, but our country has not set up the character evidence rules, which also makes in the sexual assault of minors in the case of whether to apply character evidence There is a big controversy, character evidence in such cases is difficult to assist the adjudicator to use the rule of thumb to determine the facts of the case, accordingly, the positive role of the rule of thumb is also subject to constraints.

3.3. Restrictions on the admissibility of ancillary evidence based on the victim's psychology

Due to our country's criminal evidence to prove the power of proof for a long time to the corroboration of proof, most of the cases are focused on the collection and examination of objective evidence, the adjudicator conviction and sentencing often rely on sufficient objective evidence of mutual corroboration of proof, it is easy to ignore the authenticity of individual evidence itself, the adjudicator lack of individual evidence of independent verification methods, the reality is that those who lack of evidence of the substantive evidence of the case will be due to the lack of evidence to prosecute the failure of. In reality, those cases lacking in substantive evidence will fail due to lack of evidence and prosecution. In the case of sexual abuse of minors in the extreme lack of objective evidence, the credibility of the victim's statement is the centre of gravity of the referee's proof activities, the use of the victim's psychological evidence can help the referee to use the rule of thumb to confirm the credibility of the victim's statement. However, in this kind of cases in the proof of activities, the judicial case officers often focus on obtaining the defendant confession, the victim statement, documentary evidence, physical evidence and other facts of the case has a necessary, direct link of evidence, and often underestimate and ignore can prove the suspect and the victim's psychological activities, the state of affairs and other subjective and inference is strong, and act in the case of the essential facts of the facts outside of the fact and inference link of the auxiliary evidence. The admission of ancillary evidence that focuses on the victim's psychology is limited, and the path of applying rules of thumb to comprehensively analyse and judge the veracity of the victim's statement by applying the ancillary evidence collected will also be hindered.

3.4. Vagueness and ambiguity of the concept of beyond reasonable doubt

The use of rules of thumb need to be more clear standard of proof to be implemented, to exclude reasonable doubt as focusing on the subjective aspects of the standard of proof is undoubtedly the most direct reliance on the use of rules of thumb, but because of its concept of ambiguity and ambiguity, its application has become vague, greatly weakened its own standard of proof of the value of at the same time, but also aggravated the use of the rules of thumb of the abstract, to exclude the connotation of the reasonable doubt is not clear Will inevitably affect the rule of thumb in our judicial practice.

Excluding reasonable doubt standard of proof into the law has been ten years, our judges have long been no longer unfamiliar with it, but due to the concept of excluding reasonable doubt in our judicial practice has not been a more unified interpretation, the judges of the concept of its lack of understanding or even misunderstanding of the fundamental effect is to affect the application of the effect of it. Theoretically, the exclusion of reasonable doubt is often defined as "the defendant's criminal facts there is no longer any evidence to support, in line with the experience and logic of doubt", that is to say reasonable doubt can be divided into two kinds of judgement, one is based on the experience and logic of the subjective judgement, the other is the objective evidence to support the objective determination, the judicial practice, the adjudicator usually adopts the second kind of judgement, the second is the objective evidence to support the objective determination[12]. Judicial practice, the adjudicator usually take the second method, the adoption of objective evidence to support the doubt, this practice reflects a considerable portion of the adjudicator on the understanding of reasonable doubt, that is, reasonable doubt must be supported by objective evidence, otherwise this doubt will be found to be groundless doubt is not included in the scope of consideration. Therefore, in some cases where there is little evidence, some judges will make the existence of "reasonable doubt" depend entirely on whether the testimony is "isolated", while neglecting to consider other evidence or to make careful judgement on the testimony[13].

The concept of beyond reasonable doubt is vague, and in judicial practice there is an over-emphasis on the need for a considerable amount of objective evidence to assist in the determination of reasonable doubt, so that the adjudicator, when applying the rule of thumb to form an inner conviction, will have difficulty in making a decision because of the lack of objective evidence, or even make a judgement of acquittal, and will not be able to realise the purpose of combating crime. In fact, the rule of thumb in which if used properly, can effectively solve this dilemma, but because the use of the rule of thumb does not have other objective rules of protection, so that it is more subjective and there is a certain degree of contingency results by the drawbacks, the referee had to simplify the thinking of the subjective argument, the rigid application of the objective method of proof, which cuts down to rule out the reasonable doubt was given to enhance the judicial evidence This approach cuts down on the normative function of enhancing the subjectivity of judicial proof and strengthening criminal reasoning and argumentation, and it curtails the exercise of subjective reasoning in criminal proof, which may indulge the offender in cases where there is insufficient evidence[14]. In the case of sexual assault of minors with extreme shortage of evidence, the adjudicator's understanding of the concept of exclusion of reasonable doubt relates to whether the rule of thumb can be accurately applied to the comprehensive judgement of the victim's statement, and further clarification of the concept of exclusion of reasonable doubt can to a certain extent prevent the adjudicator from ossifying the mode of thinking, provide a greater space for the application of the rule of thumb in cases of sexual assault of minors, and decipher the dilemmas of the application of the rule of thumb. The concept of beyond reasonable doubt can, to a certain extent, prevent the adjudicator from rigid thinking mode, provide more space for the application of rules of thumb in sexual assault cases, and break the dilemma of the application of rules of thumb.

4. Improving the Supporting Mechanism for The Application of Rules of Thumb in Cases of Sexual Abuse of Minors

4.1. Summarising the rules of thumb applicable to cases of sexual abuse of minors

In order to solve the dilemma of applying rules of thumb in cases of sexual abuse of minors due to the ambiguity of the content of the special rules of thumb, China's legislation and judicial organs can draw on the results of more mature research in the field of social sciences, and absorb the beneficial rules of thumb in the extra-territorial area, and summarise the rules of thumb that are applicable to cases of sexual abuse of minors in China. In addition, the highest judicial authority should also play a guiding role, summarise China's judicial practice and local experience in cases involving minors, formulate guidelines for questioning victims of sexual abuse of minors, and give full play to the role of rules of thumb in such cases in conjunction with the guiding cases.

In cases of sexual abuse of minors, reasonable interrogation guidelines need to be based on the establishment of a rapport with the victim, the application of standardised interrogation templates, supplemented by appropriate interrogation techniques, the use of which relies on the summing up of special rules of thumb. The first step in questioning a minor victim is to establish a rapport with him or her and gain the victim's trust, so as to ensure that the questioning process goes smoothly; secondly, with regard to the content of the questioning, in order to avoid the omission of important details of the case and the induced questioning of the judicial case handler, it is recommended that, based on the experience of the practice as well as the rules of evidence of the judgement, the template for standardised questioning should be formulated by enumerating the key points of the questioning, and, in the case in question. In specific cases, judicial case handlers can also make dynamic adjustments according to the actual situation of the victim before questioning; finally, the setting of questioning techniques puts

more emphasis on conforming to the physical and psychological characteristics of minors, and appropriate questioning techniques can guide minors to make accurate and detailed statements about their experiences, reduce the conditions for minors to make false statements, and improve the possibility of minors to make true answers and the accuracy of their statements, and this kind of design has a strong technicality. This kind of technical design is usually developed by psychologists and related associations in extra-territories on the basis of the results of scientific research on children's interviews. In the UK, the "Obtaining the Best Evidence in Criminal Proceedings: Guidelines for the Interviewing of Victims and Witnesses and Guidance on the Adoption of Special Measures", detailed rules are laid down on the interviewing methods and techniques according to the characteristics of the minors, including, but not limited to, the following techniques: only one question is to be asked at a time; questions are to be asked as much as possible. The questions should be as simple as possible, and should not contain abstract words or phrases that are beyond the minor's age; the minor should be given enough time to answer after questioning to ensure the completeness of the answer; the minor should be prompted beforehand when changing the topic, so as to avoid answering the wrong question; and the vocabulary that the minor has gradually mastered at different stages of development should be learnt by using time, people and things familiar to the child as references (e.g. the time, people and things of the minor's own life). The vocabulary that minors gradually acquire at different stages of growth is learnt by using time, people and things that children are familiar with as references (e.g., comparing with a member of the minor's family to learn the height, weight and age of the suspect)[15].

It is not enough to have the rules of reasonable enquiry to guide the acquisition of a victim's statement; at the trial stage, there must still be special rules of thumb to assist the adjudicator in making a judgement on the credibility of the evidence. When encountering difficult cases overseas, the adjudicator can invite child psychologists to participate in the study and judgement of the evidence, or hire experts and expert supporters to testify in court and cross-examine the characteristics of the statements of child victims who have been sexually abused, and some countries have also formulated guides to assist the adjudicator in making judgements on the credibility of the evidence. 2013, the Crown Prosecution Service of the United Kingdom formulated the "Guidelines on the Pursuit of Sexual Assault Crimes against Children", which stipulates that the statements should not be taken as evidence. In 2013, the Crown Prosecution Service (CPS) produced Guidance on the prosecution of child sexual abuse offences, which sets out the factors that should not be taken into account as detracting from the credibility of a child who has been sexually abused, including: failure to report the sexual abuse in a timely manner; inconsistencies in the victim's account of the facts of the case; the victim's apparent consent to the sexual act; and the victim "voluntarily" returning to the accuser[15].

In addition to the above extra-territorial measures, China can also combine the guiding case system to give full play to the guiding and regulating role of guiding cases in the application of rules of thumb. Since the implementation of the guiding case system, its effectiveness in dealing with difficult cases, resolving tendency legal problems and the application of uniform laws and regulations is very significant, the rule of thumb as a practical rule of practice, its own irregularity and instability requires the formation of the use of the rule of thumb to grasp the standard in the summary of the class case[16]. In the guidance case issued by the Supreme Prosecutor for the rape and indecent assault of a child by Qi, the prosecution pointed out that differences and ambiguities in the details of the minor victim's statement were normal phenomena, which happened to be in line with the characteristics of the victim's memory, and that, coupled with the stability of the victim's recounting of the basic facts and circumstances of the case, and the explanation that she was afraid to speak out on the additional circumstances because of the presence of the teacher was in line with the psychology of the child, a point of view which was ultimately adopted by the adjudicator[17], and which shows that by means of

the guidance cases issued by the supreme judicial organ, judicial officers are able to gradually summarise the basic characteristics and patterns of the cases and to form a special rule of thumb for such cases, which is then used in the adjudication of the trial activity.

4.2. Recognition of the evidentiary competence of character evidence and establishment of the scope of the exception

In the case of sexual abuse of minors, the recognition of character evidence evidence of evidential capacity, and establish its exception to the application of the conditions, broaden the scope of such cases of circumstantial evidence, for the application of the rule of thumb to provide greater space, is conducive to cracking the proof of such cases of difficult problems. Although the character evidence in the judicial application of general inadmissible, common law countries for the application of character evidence is usually not adopted as the principle of adoption as an exception, but because of the special nature of sexual offences and harmful, character evidence of the role of such cases gradually highlighted, so the common law countries in such cases in the gradual recognition of character evidence of evidence ability, and set up its exceptions to the application of the situation, these provisions It is also worthwhile for our country to learn from these provisions. In the common law system of legislation and judicial practice, generally believe that sexual offences in the character evidence exceptions to the rules of application should be due to the defendant and the victim of the main body, in the case of sexual assault of minors, usually allow the defendant's bad character evidence exceptions to the application of evidence, on the contrary, the application of the victim's bad character evidence has been restricted.

The United States Federal Rules of Evidence, for example, the defendant character evidence exception can be summarised as "other acts" and "similar acts" exception. Rule 404 of the Federal Rules of Evidence provides for the exception of "other conduct": if character evidence is not used to prove that a person acted in accordance with the character, but is used to prove intent, motive, preparation, plan, identity, etc., then the evidence is admissible. In practice, evidence such as obscene items and photos of the victim found during the search of the suspect's home and electronic products can be used to prove the suspect's motives, and such evidence is also regarded as an exception to the use of character evidence, used to strengthen the adjudicator's inner conviction and to facilitate his or her use of the rule of thumb to determine the facts of the crime by synthesising the whole case, in the Zhang Jiejie case of rape, the public security authorities in the search of the seized items In the Zhang Justice rape case, the public security authorities found photographs of the victim, discs and aphrodisiacs among the items seized in the search, and although this material evidence could not be used to prove that the suspect had committed the crime, it was conducive to the adjudicator's use of rules of thumb to assist in determining the facts of the case by synthesising the evidence in the whole case[18], and the court ultimately recognised this type of character evidence in determining the case. With respect to "similar conduct," Rule 414 of the Federal Rules of Evidence recognises that in criminal cases of child sexual abuse, evidence that the defendant committed the crime of sexual abuse of a child on his behalf may be used to prove any matter relevant to it, that is, evidence of the defendant's criminal propensity to commit the crime is admissible in the adjudication of the case because the defendant committed similar conduct that demonstrates a propensity to commit the crime and has relevance to the facts at issue in the case. admitted in the adjudication, the adjudicator may exceptionally admit character evidence of the defendant's commission of similar acts as circumstantial evidence to be collected and used. In addition, according to psychology and behavioural studies, sexual abuse of minors is more likely to recidivate, the defendant has a previous conviction for sexual abuse of minors or other circumstantial evidence of sexual abuse that has not been convicted of sexual abuse, and

applying it to the proof of this type of case can make it less difficult to bring charges in the case[19].

While recognising the evidentiary capacity of character evidence in cases of sexual abuse of minors and facilitating the prosecution of defendants in such cases, attention should also be paid to the misuse of victim character evidence by setting different standards for the application of bad character evidence from that of the defendant. In order to protect the defendant's right to confrontation, the defendant also has the right to collect and put forward the victim's character evidence, but if the victim and the defendant to apply the same bad character evidence standards, then easy to cause "to the victim's private life as the centre of the trial" phenomenon, so that the adjudicator of the victim bias or misunderstanding, affecting the victim's statement The judgement of credibility, increase the risk of the application of rules of thumb, at the same time, the attack on the character of the victim will also cause indelible secondary damage to the victim. Most foreign countries have set up "rape shield provisions" to avoid the problems caused by this phenomenon, the Federal Rules of Evidence, Rule 412: sexual assault cases, regardless of other legal provisions, the victim's reputation or opinion evidence other than evidence of his past sexual behaviour is not admissible. Applying such provisions to cases of sexual assault of minors can reflect the protection of minors and allow adjudicators to focus the use of rules of thumb on comprehensively determining the truthfulness of the victim's statements.

Acknowledgement of the qualifications of character evidence in cases of sexual assault of minors is of great significance to the prosecution of crimes of sexual assault of minors, and useful attempts have been made in our current judicial practice. In sun moumou rape case, the judicial officer collected to sun moumou had molested student evidence, another collection of the victim's neighbours, teachers and classmates on his family status and usual performance of the testimony, combined with the case of psychological counsellor's analysis, comprehensive other evidence and the use of character evidence to exclude reasonable doubt in the case, and ultimately confirm the case facts[20]. However, we still need to pay attention to the status of character evidence indirect evidence, its proving power should always play a role in assisting the adjudicator to use the rule of thumb to confirm the facts of the case, and must not overpower, which will also become our country to set the character evidence exceptions to the application of the rules should be focused on the issue of concern.

4.3. Application of liberal corroboration rules and emphasis on the admission of ancillary evidence based on the victim's psychological profile

In the early common law countries, it was widely believed among legal professionals that children's testimony was verbal evidence of a high degree of falsity, that children's testimony was considered unreliable, and that this was also true of children's testimony about the facts of the abuse, coupled with the suspicion of forgery and false accusation that often exists in cases of sexual abuse, and so children's testimony needed to be reinforced by other substantial evidence. The rule of corroboration has been a serious impediment to the prosecution of child sexual abuse cases, and as the myth of the unreliability of children's testimony has been challenged by a number of social science studies and pushed by academics, the rule of corroboration of children's testimony in child sexual abuse cases was abolished by the UK in Section 34 of the Criminal Justice Act 1988, and nearly all jurisdictions in the United States abolished the rule of corroboration of children's testimony in child sexual abuse cases in the 1980s. The rule of corroboration in child sexual abuse cases means that in such cases, even if there is only the testimony of the sexually abused child, the adjudicator can use the rule of thumb to form an inner conviction and then make a guilty verdict[5]. China's today's corroboration rules are strikingly similar to the early strict rules of complementary evidence in the common law system, so the application of more relaxed corroboration rules and the

emphasis on the adoption of auxiliary evidence with a focus on the victim's psychology can help to give the rule of thumb more space to be used in the judgement of the credibility of the victim's statement, which undoubtedly provides a new way of thinking to crack the dilemma of the use of the rule of thumb in the case of sexual assault of minors. It is conducive to the successful prosecution of such cases.

Specifically, attention should be paid to the collection of auxiliary evidence that focuses on the psychology of the victim, and the behavioural reactions and psychological changes of the victim in the aftermath of the assault should be uncovered from the auxiliary evidence, combined with professional interrogation methods and approaches or analyses by psychologists, so that the auxiliary evidence will have a substantial guarantee of authenticity. Paraphrased testimony is more typical to the victim's psychological evidence, it refers to the witness in the court statement is not personally perceived facts, but from other people to hear or see the facts related to the case. Paraphrased testimony as a kind of hearsay evidence, it is not the direct source of the original information, because of its witness is not the original testimony of the statement of the person, the authenticity is difficult to distinguish, reliability is difficult to guarantee, in the general criminal case is almost not used, but in the case of sexual abuse of minors, paraphrased testimony as a supporting evidence for the identification of the facts of the case has a positive role, this kind of cases usually appear in the victim's close family members, teachers, classmates As well as the doctor and other third-party witness testimony, the content of the minor victim to relay to the process of sexual assault, this kind of paraphrased testimony is not not true, compared to the statement of the minor victim, may contain more details, or with the victim statement in the statement of part of the statement to form a mutual connection, complementary relationship and credible and reasonable, although for the case of facts of the paraphrase does not become the Although a paraphrase of the facts of the case is not complementary evidence to the victim's statement[21], it allows the adjudicator to apply a rule of thumb to be more certain of the veracity of the victim's statement. In addition, the paraphrased testimony usually contains the victim's demeanour, behaviour and situation when the victim stated the facts of the assault, from which the adjudicator can grasp the development of the psychological state of the underage victim after being assaulted, assisting him or her to use the rule of thumb to construct the facts of the case using the victim's psychological state as an important clue, and combining it with other auxiliary evidence, such as character evidence, for a comprehensive analysis and judgement, so as to make the facts of the case have a more reasonable explanation, and ultimately, to find the facts of the case beyond a reasonable doubt. Ultimately, reasonable doubt is eliminated and the facts of the case are determined.

4.4. Enhancement of reasoning in adjudication documents and publicity on the use of rules of thumb

Clarifying the concept of beyond reasonable doubt and regulating its application is an extremely important part of strengthening the reasoning of the adjudicatory documents. Strengthening the reasoning part of the adjudicatory documents can promote the clarification of the concept of beyond reasonable doubt from the aspect of judicial practice, so as to dispel the concerns of the adjudicators in the application of the rule of thumb. Excluding reasonable doubt is an important embodiment of the use of rules of thumb, can reflect the adoption of evidence and reasoning process, in the judgement documents to strengthen the reasoning part of the documents, especially in the adoption of evidence to exclude reasonable doubt to prove the standard of application, can reduce the referee to use the phenomenon of "jumping to think" directly to the conclusion, and to improve the rules of thumb using Transparency, to a certain extent, can also enhance the public supervision of the use of rules of thumb, to prevent the abuse of rules of thumb, increase the acceptance of the parties to the judicial decision, improve judicial credibility.

The concept of beyond reasonable doubt is determined by the specific method of determining the facts, and at present, the best-interpretation approach can theoretically and reasonably explain the concept of beyond reasonable doubt. The method of best interpretation requires the exclusion of other hypothetical facts that may exist, to determine the best facts, in the spirit of the principle of removing the false and reserving the truth, the distinguishing feature of the exclusion and reasonable doubt is the requirement that the determination of the facts of the case to have uniqueness, to exclude the possibility of the existence of other facts, and to retain the best factual conclusions, which is not essentially to require that the determination of the facts to arrive at a state of complete certainty. From this it can be seen that the method of best interpretation and the concept of excluding reasonable doubt are conceptually identical, and the process of excluding reasonable doubt is the process of applying the method of best interpretation to exclude other possibilities of facts.

The method of best explanation makes the concept of beyond reasonable doubt clearer and its application in practice more operational. The method emphasises the storytelling of the facts of the case, i.e. a logical and complete statement of the facts, excludes contradictory or doubtful facts through the rule of thumb synthesis of other evidence in the case, focuses on the interpretation of the evidence to ensure that the facts are found to be coherent and reasonable, and ultimately sifts through the complete facts with the best causality argument. This precisely fits the path of sexual abuse of minors, judicial case officers effectively collect victim statements and other evidence related to the facts of the case, the adjudicator to the victim statement as the centre of the combination of other evidence to form a number of complete assumptions of the facts, and the use of the rules of thumb, especially special rules of thumb to comprehensively analyse and judge the key facts of the case, for example, in the judgement of the sexual consent of minors over 14 years of age. Adjudicators should take full account of their age stage and relevant background, and their performance before and after being violated, etc., to make a comprehensive judgement, rather than simply taking explicit consent or opposition as the sole basis, which is also the main idea embodied in Article 31 of the Opinions. The specific application of the standard of proof beyond reasonable doubt by using the method of best interpretation in the adjudication documents can make the facts of the case coordinate with the relevant evidence, presenting more real facts of the case, and the clearer subjective line of argument can make up for the defect of insufficient objective evidence to a certain extent. In addition, the public referee documents on the one hand can avoid the rule of thumb in the exclusion of reasonable doubt in the application of subjective arbitrariness, on the other hand, prudent and thorough exclusion of reasonable doubt of the argumentation method can let the rule of thumb has more objective presentation, the final case facts are more easy for the public to accept. In addition, the principle of the most favourable to minors should be followed in the publicity of the decision documents, focusing on the protection of minors' privacy and avoiding the occurrence of secondary harm.

5. Summary

Reasonable use of rules of thumb in cases of sexual abuse of minors can, to a large extent, solve the problems of proof in such cases, and the need for rules of thumb has been increasingly noted in theory and judicial practice. If we want to solve the problem of applying rules of thumb in this kind of cases, the most crucial thing is to pay attention to the physical and mental peculiarities of minors, and be familiar with the cognitive and expressive ability of minors at different ages and stages of development as well as the characteristics of the minors in the case, and the deeper we understand the vulnerable group of minor victims, the more we can reflect the special protection for the minors, and the more we can comprehensively apply the rules of thumb in the case, especially applying the special rules of thumb in the case. The comprehensive

use of rules of thumb in the case, especially the use of special rules of thumb different from adult cases, in order to more accurately evaluate the evidence in such cases, and the flexible use of evidence to solve the dilemma of proof in the case. Drawing on extra-territorial experience to recognise the evidential capacity of character evidence, exceptionally applying character evidence, applying more lenient corroboration rules, attaching importance to the adoption of auxiliary evidence based on the victim's psychology, broadening the adjudicator's space for applying rules of thumb, comprehensively analysing and judging the credibility of the victim's statement, and, after co-ordinating the various types of evidence, giving full play to the role of rules of thumb as a bridge and link to form an effective connection between the facts of the case, and, finally, applying the best interpretation method to improve the proof of exclusion of reasonable grounds. Use the best explanation method to improve the operability of the exclusion of reasonable doubt, strengthen the reasoning of the referee documents, so that the referee dares to use the experience at the same time, but also be able to play a supervisory role on its behaviour, effectively avoid the abuse of the rule of thumb. Of course, the use of rules of thumb in cases of sexual abuse of minors, still need more "institutionalised" safeguards, on the use of illegal rules of thumb in the theory and practice of the relief also urgently need further research.

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