SPC Guiding Case No. 104: Case of Li Sen, He Limin, Zhang Fengbo et al. for Destroying Computer Information Systems

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Criminal / crime of destroying computer information systems / interference with environmental quality monitoring sampling / data distortion / serious consequences

Holding

The environmental quality monitoring system is a computer information system. Anyone who blocks the sampling equipment of an environmental quality monitoring system with cotton gauze or other objects, interfering with sampling and causing serious distortion of the monitoring data, commits the crime of destroying computer information systems.

Basic Facts

The automatic ambient air monitoring station of Chang'an District, Xi'an City ("Chang'an Sub-station") was one of the 13 state-controlled air stations in Xi'an City designated by the Ministry of Environmental Protection (the "Ministry of Environmental Protection"). Through the automatic ambient air quality monitoring system, it collected and processed monitoring data and transmitted the data hourly to the China National Environmental Monitoring Center (the "Monitoring Center"). On the one hand, the data was released to the public in real time through a website; on the other hand, it was used to compile monthly, quarterly, and annual reports on the national ambient air quality status, which were released nationwide. The Chang'an Sub-station was one of the city's two state-directly-managed monitoring sub-stations, and its operation and maintenance was entrusted by the Monitoring Center to Wuhan Yuhong Environmental Protection Industry Co., Ltd. Without permission, personnel other than the operation and maintenance party were not allowed to enter at will.

On February 4, 2016, the Chang'an Sub-station was moved back to the roof of the Power Building in the South Campus of Xi'an University of Posts and Telecommunications in Chang'an District, Xi'an City. Taking advantage of the opportunity of assisting in the relocation of the sub-station, the defendant Li Sen secretly kept the key to the sub-station and secretly memorized the password of the sub-station's monitoring computer. Thereafter, until March 6, 2016, the defendants Li Sen and Zhang Fengbo entered the Chang'an Sub-station on multiple occasions and blocked the sampler with cotton gauze, interfering with the data collection function of the automatic ambient air quality monitoring system inside the sub-station. The defendant He Limin knew of the acts of Li Sen and others but did not stop them, only requiring Li Sen to bring down the air pollution figures. The defendant Li Sen also repeatedly instigated the defendants Zhang Nan and Zhang Xiao to interfere with the sub-station's automatic monitoring system using the above method, causing the sub-station's automatic monitoring data to be abnormal on multiple occasions and severely distorted during multiple periods, affecting the normal operation of the national automatic ambient air quality monitoring system. In order to prevent the crimes from being exposed, on March 7 and March 9, 2016, at the instigation of the defendant Li Sen, the defendants Zhang Nan and Zhang Xiao twice entered the Chang'an Sub-station and deleted the surveillance video. In February and March 2016, the Chang'an Sub-station's hourly monitoring data had already been transmitted in real time to the Monitoring Center, released to the public through the website, and used by the Ministry of Environmental Protection to compile the assessment

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and ranking of the air quality status of 74 cities nationwide for February and March 2016 and the first quarter. On March 5, 2016, the Monitoring Center, during routine data review, discovered that the Chang'an Sub-station's data was significantly low, and upon inspection found that the Chang'an Sub-station's monitoring data had been falsified. The public security organ then arrested the five defendants, Li Sen, He Limin, Zhang Nan, Zhang Xiao, and Zhang Fengbo. At trial, the defendants Li Sen, Zhang Fengbo, Zhang Nan, and Zhang Xiao all admitted that the accusations were true. The defendant He Limin argued at trial that he had merely tacitly acquiesced in and tolerated Li Sen's acts of blocking the sampler, and requested that he be acquitted.

Judgment

On June 15, 2017, the Intermediate People's Court of Xi'an City, Shaanxi Province, rendered Criminal Judgment (2016) Shaan 01 Xing Chu No. 233: (1) the defendant Li Sen committed the crime of destroying computer information systems and was sentenced to fixed-term imprisonment of one year and ten months; (2) the defendant He Limin committed the crime of destroying computer information systems and was sentenced to fixed-term imprisonment of one year and seven months; (3) the defendant Zhang Fengbo committed the crime of destroying computer information systems and was sentenced to fixed-term imprisonment of one year and four months; (4) the defendant Zhang Nan committed the crime of destroying computer information systems and was sentenced to fixed-term imprisonment of one year and three months; and (5) the defendant Zhang Xiao committed the crime of destroying computer information systems and was sentenced to fixed-term imprisonment of one year and three months. After the judgment was pronounced, none of the defendants appealed, and the judgment took legal effect.

Reasoning

The court's effective judgment held that the acts of the five defendants violated state provisions. Article 68 of the Environmental Protection Law of the People's Republic of China prohibits tampering with, forging, or instigating others to tamper with or forge monitoring data; Article 126 of the Atmospheric Pollution Prevention and Control Law of the People's Republic of China prohibits falsification in the supervision and management of atmospheric environmental protection; and Article 7 of the Regulations on the Safety Protection of Computer Information Systems of the People's Republic of China prohibits endangering the security of computer information systems. By blocking the sampler to forge or instigate the forging of monitoring data, the five defendants in this case falsified and violated the above state provisions.

The acts of the five defendants destroyed a computer information system. Article 11 of 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 provides that "computer information system" and "computer system" mean systems with the function of automatically processing data, including computers, network equipment, communication equipment, automated control equipment, and the like. Pursuant to Paragraph 1 of Article 10 of 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 Environmental Pollution, the act of interfering with the sampling of an environmental quality monitoring system, causing serious distortion of the monitoring data, is an act of destroying a computer information system. The Chang'an Sub-station was a state-controlled automatic ambient air quality monitoring station. The monitoring data it produced was directly transmitted to the Monitoring Center through system software, released to the public in real time through the government websites of the Ministry of Environmental Protection and the Monitoring Center, and participated in the calculation and real-time release of the ambient air quality index. The air sampler is an important component of the ambient air quality monitoring system. The PM10 and PM2.5 monitoring data are the two most important indicators in the assessment of the comprehensive ambient air pollution index. By blocking the sampling hole of the sampler with cotton gauze or removing the sampler, the defendants necessarily caused changes in the airflow field inside the sampler, causing distortion of the monitoring data

and affecting the correct assessment of ambient air quality. This was an act of interfering with the functions of a computer information system, causing the computer information system to be unable to operate normally.

The acts of the five defendants caused serious consequences. (1) The defendants Li Sen, Zhang Fengbo, Zhang Nan, and Zhang Xiao repeatedly blocked and removed samplers to interfere with sampling, and the defendant He Limin knew of the acts of Li Sen and others but did not stop them, only requiring Li Sen to bring down the air pollution figures. (2) The defendants' acts of interference caused significant abnormalities in the monitoring data. From February to March 2016, the particulate matter monitoring data of the Chang'an Sub-station repeatedly showed trends inconsistent with those of surrounding sub-stations. The PM2.5 data of the Chang'an Sub-station was abnormal during two periods — from 18:00 on February 24 to 16:00 on February 25, and from 04:00 on March 3 to 19:00 on March 6 — while the PM10 data was abnormal during three periods — from 18:00 on February 18 to 08:00 on February 19, from 20:00 on February 25 to 08:00 on February 21, and from 19:00 on March 5 to 23:00 on March 6. Among these, from 19:00 to 22:00 on March 5, 2016, the PM10 data of the Chang'an Sub-station dropped from 361 to 213, a decrease of 41%, while the average value of surrounding sub-stations rose by 14% (from 316 to 361); from 16:00 to 17:00 on March 6, the monitoring value of the Chang'an Sub-station rose from 188 to 426, an increase of 127%, while the average value of other sub-stations changed little (from 318 to 310); and from 17:00 to 19:00 on March 6, the value of the Chang'an Sub-station dropped from 426 to 309, a decrease of 27%, while the average value of other sub-stations changed little (from 310 to 304). It was thus evident that the defendants' acts of blocking the samplers were sufficient to cause serious distortion of the monitoring data. The serious distortion of the above data was corroborated by the fact that the Monitoring Center, during routine data review, discovered that the Chang'an Sub-station's PM10 data was significantly low. (3) The distorted monitoring data had been transmitted to the Monitoring Center in real time and released to the public. The hourly average concentration data of the Chang'an Sub-station's air quality monitoring had already been released in real time through the Internet. (4) The distorted monitoring data had been used to compile monthly and quarterly reports for environmental assessment. The Ministry of Environmental Protection had already adopted the above false data in the ranking of air quality in 74 key cities nationwide for February and March 2016 and the first quarter, released it to the public, and reported it to the State Council, affecting the assessment of the national atmospheric environmental governance situation, damaging government credibility, and misleading environmental decision-making. Accordingly, the acts of the five defendants of interfering with sampling caused serious consequences and satisfied the element of "serious consequences" under Article 286 of the Criminal Law.

In summary, the five defendants all constituted the crime of destroying computer information systems. In view of the fact that the five defendants all truthfully confessed their crimes and showed repentance after arriving at the public security organ, they could be given lighter punishment in accordance with the law.

Relevant Legal Provisions

Paragraph 1 of Article 286 of the Criminal Law of the People's Republic of China.

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