SPC Guiding Case No. 147: Case of Zhang Yongming, Mao Weiming, and Zhang Lu for Intentional Damage to Famous Historic and Cultural Sites

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Keywords

Criminal / crime of intentionally damaging famous historic and cultural sites / famous historic and cultural sites under state protection / serious circumstances / expert opinion

Holding

1. The core scenic area of a scenic and historic interest area falls within the "famous historic and cultural sites under state protection" prescribed in Article 324(2) of the Criminal Law. Where a person carries out destructive activities such as driving rock bolts into a world natural heritage site within the core scenic area, thereby seriously damaging the naturalness, originality, integrity, and stability of the natural heritage, the person may, after comprehensively considering the characteristics and degree of damage to the relevant geological relics, be determined to have intentionally damaged famous historic and cultural sites under state protection with "serious circumstances."

2. Where appraisal is needed for a specialized issue in a criminal case but no appraisal institution exists, a person with specialized knowledge may be appointed or engaged to issue a report on the specialized issue of the case, and the relevant report may be used as evidence in criminal proceedings.

Basic Facts

Around April 2017, the defendants Zhang Yongming, Mao Weiming, and Zhang Lu, after contacting each other through WeChat, agreed to go to the Sanqingshan Scenic and Historic Interest Area to climb the rock pillar known as "Giant Python Rising from the Mountain" (also called Giant Python Peak). At around 4 a.m. on April 15, 2017, Zhang Yongming, Mao Weiming, and Zhang Lu, carrying tools such as an electric drill, rock bolts (expansion bolts made of stainless steel), an iron hammer, and ropes, arrived at the bottom of Giant Python Peak. Defendant Zhang Yongming climbed first, while Mao Weiming and Zhang Lu held the ropes below to protect Zhang Yongming's safety. During the climb, Zhang Yongming drove rock bolts in dangerous places, using the electric drill to bore holes into the rock body of Giant Python Peak, then hammering the rock bolts into the holes, tightening them with a wrench, and laying ropes on the rock bolts. Through this method, Zhang Yongming climbed to the top of Giant Python Peak at around 6:49 a.m. Mao Weiming followed behind Zhang Yongming pulling ropes for protection, and climbed to the top of Giant Python Peak at around 7 a.m. along the ropes laid by Zhang Yongming. At the top of Giant Python Peak, Zhang Yongming gave the excess tools to Mao Weiming, who descended along the ropes and took the excess tools back to the hotel, and then returned to Giant Python Peak and climbed to a point more than 10 meters up Giant Python Peak, where he was discovered and persuaded to come down by staff of the Sanqingshan Management Committee and then controlled by the police. When Zhang Yongming and Mao Weiming began their climb, Zhang Lu pulled ropes to protect Zhang Yongming; afterwards Zhang Lu returned to the hotel to retrieve a drone, then returned to Giant Python Peak and climbed to the top along the ropes laid by Zhang Yongming at around 7:30 a.m., and used the drone to film at the top. Under the persuasion of the staff, Zhang Lu and Zhang Yongming successively descended to the bottom of Giant Python Peak at around 9 a.m. and 9:40 a.m. and were controlled by the police. Upon on-site inspection,

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Zhang Yongming had driven 26 rock bolts into Giant Python Peak. Upon expert evaluation, the acts of the three defendants caused serious damage to the geological relic site of Giant Python Peak.

Judgment

On December 26, 2019, the Shangrao Intermediate People's Court of Jiangxi Province rendered the criminal judgment (2018) Gan 11 Xing Chu No. 34: 1. defendant Zhang Yongming committed the crime of intentionally damaging famous historic and cultural sites and was sentenced to one year of fixed-term imprisonment and a fine of RMB 100,000; 2. defendant Mao Weiming committed the crime of intentionally damaging famous historic and cultural sites and was sentenced to six months of fixed-term imprisonment with a one-year suspension, and a fine of RMB 50,000; 3. defendant Zhang Lu committed the crime of intentionally damaging famous historic and cultural sites and was exempted from criminal punishment; and 4. the criminal tools seized in the case, including four mobile phones, one drone, two walkie-talkies, climbing ropes, an iron hammer, an electric drill, and rock bolts, were confiscated. After the judgment was pronounced, Zhang Yongming appealed. On May 18, 2020, the Jiangxi Provincial Higher People's Court rendered the criminal ruling (2020) Gan Xing Zhong No. 44, rejecting the appeal of defendant Zhang Yongming and affirming the original judgment.

Reasoning

The court's effective judgment held that the main issues of focus in this case were:

I. On the issue of evidence admission in this case.

In this case, regarding the degree of serious damage caused to Giant Python Peak by the three defendants' act of driving 26 rock bolts, there is currently no statutory judicial appraisal institution nationwide capable of conducting the appraisal, yet whether serious damage was caused is the key to whether the defendants constitute a crime. According to Article 87 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China: "Where appraisal is needed for a specialized issue in a case but there is no statutory judicial appraisal institution, or where laws or judicial interpretations permit examination, a person with specialized knowledge may be appointed or engaged to conduct the examination, and the examination report may serve as a reference for conviction and sentencing. ... Where, upon notice by the people's court, the examiner refuses to appear in court to testify, the examination report may not serve as a reference for conviction and sentencing." Therefore, engaging a person with specialized knowledge in accordance with law to examine the fact of whether the act of driving 26 rock bolts caused serious damage to Giant Python Peak is reasonable, reasonable, and lawful. The four geological experts in this case had all long engaged in research in the field of geoscience, all possessed professional knowledge in the field of geoscience, had published numerous papers or monographs in the field of geoscience, or had presided over major scientific research projects in geoscience, and had the ability to evaluate the specialized issue in the field of geoscience concerning the damage to Giant Python Peak. All four experts were "persons with specialized knowledge." The expert opinions issued by the four experts were based on the authorized entrustment of the investigating authority, relied on their own professional knowledge and on-site inspection and evidence examination, and, after full discussion and analysis, gave clear professional opinions from a professional perspective on the damage caused to Giant Python Peak by the driving of rock bolts, jointly signed by them. Moreover, upon notice by the court, two of the four experts appeared in court as examiners, gave a detailed explanation of the process of forming the "expert opinion," and accepted questioning by the prosecution, the defense, and the trial personnel. The "expert opinion" had clear conclusions, lawful procedures, and credibility. In summary, the "expert opinion" in this case satisfied the statutory requirements from subject to procedure, and from an evidentiary perspective, the "expert opinion" fully satisfied Article 197 of the Criminal Procedure Law and Article 87 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law concerning persons with specialized knowledge issuing examination reports, and could serve as a reference for conviction and sentencing.

II. On the issue of the result of damage in this case.

Sanqingshan was approved by the State Council as a national key scenic and historic interest area in 1988, was inscribed on the World Natural Heritage List in 2008, and was inscribed on the World Geopark List in 2012. Giant Python Peak, as the core iconic landscape of Sanqingshan, is unique and extremely precious; it is not only a non-renewable rare natural resource asset, but also a sustainably usable natural asset, and has great scientific value, aesthetic value, and economic value for all humanity. Giant Python Peak is a giant granite rock pillar formed through long-term natural weathering and gravity collapse, with a vertical height of 128 meters and a diameter of only 7 meters at its thinnest point. In this case, the four experts lawfully engaged by the investigating authority, after on-site inspection, evidence examination, and scientific analysis, gave an "expert opinion" on the value, origin, and structural characteristics of the geological relic site of Giant Python Peak and the damage caused by the three defendants' acts to the pillar of Giant Python Peak. From the professional perspective of geoscience, the four experts considered that the defendants' act of driving rock bolts and climbing caused permanent damage to Giant Python Peak, the core landscape of the world natural heritage, destroying the basic attributes of the natural heritage, namely its naturalness, originality, and integrity, and in particular, driving at least four rock bolts into the fragile section of the pillar of Giant Python Peak increased the fragility of the pillar structure, that is, caused damage to the stability of Giant Python Peak, and the 26 rock bolts would directly induce and aggravate physical, chemical, and biological weathering, form new fissures, accelerate the erosion process of the granite pillar, and even cause collapse. According to Article 4(2)(1) of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Obstructing the Management of Cultural Relics, combined with the "expert opinion," it should be determined that the acts of the three defendants caused "serious damage" to famous historic and cultural sites, thereby violating Article 324(2) of the Criminal Law and constituting the crime of intentionally damaging famous historic and cultural sites.

The core scenic area of a scenic and historic interest area is a famous historic and cultural site protected by China's Criminal Law. The Sanqingshan Scenic and Historic Interest Area is inscribed on the World Natural Heritage List and the World Geopark List, and the geological relic site of Giant Python Peak is its precious iconic landscape and most core part, which is both a non-renewable rare natural resource asset and a sustainably usable natural asset, and has great scientific value, aesthetic value, and economic value. The defendants Zhang Yongming, Mao Weiming, and Zhang Lu violated the order of social administration, climbed Giant Python Peak in a destructive manner, drilled holes and drove 26 rock bolts into the granite pillar of Giant Python Peak, causing serious damage to Giant Python Peak with serious circumstances, and their acts constituted the crime of intentionally damaging famous historic and cultural sites and should be punished in accordance with law. The criminalization of the three defendants in this case is not only a negative evaluation of their acts, but also a warning to the public not to damage famous historic and cultural sites under state protection, thereby guiding the public to establish a correct concept of ecological civilization and to cherish and treat well the natural resources and ecological environment on which humanity depends for survival and development. The penalties imposed by the court of first instance based on the status and role of the three defendants in the joint crime and the sentencing circumstances were not improper. Zhang Yongming's and his defender's appellate arguments requesting an acquittal could not be established and were not adopted. The original judgment found the criminal facts of the three defendants clearly, the evidence was reliable and sufficient, the conviction was accurate, the sentencing of the three defendants was appropriate, and the trial procedure was lawful.

Relevant Legal Provisions

Article 324 of the Criminal Law of the People's Republic of China.

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