SPC Guiding Case No. 27: Case of Zang Jinquan et al. for Theft and Fraud

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

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on June 23, 2014.

Keywords

Criminal / theft / fraud / use of information networks

Holding

Where a person uses information networks to lure another into clicking a false link and, through a computer program implanted in advance, actually steals property, constituting a crime, the person shall be convicted and punished as the crime of theft; where a person fabricates goods or services available for transaction and deceives another into clicking a payment link to obtain property, constituting a crime, the person shall be convicted and punished as the crime of fraud.

Basic Facts

I. Theft

On June 1, 2010, the defendant Zheng Biling, after defrauding the victim Jin of RMB 195, learned that Jin's China Construction Bank online banking account held deposits of more than RMB 305,000 with no daily payment limit, and telephoned the defendant Zang Jinquan to conspire to commit the crime jointly. After Zang Jinquan arrived at an internet cafe, he sent Jin a false link, on the pretext that he had not yet seen a record of Jin's successful payment, which displayed a transaction amount of RMB 1 but was actually implanted with a computer program to pay RMB 305,000, falsely claiming that after Jin clicked the RMB 1 payment link, he would be able to view the record of successful payment. Induced by this, Jin clicked the false link, and the RMB 305,000 in his CCB online banking account was immediately transferred through the platform of Shanghai 99Bill Information Service Co., Ltd., via the computer program preset by Zang Jinquan, to the "kissal23" account that Zang Jinquan had registered in advance with Fuzhou Haidu Sunshine Information Technology Co., Ltd. Zang Jinquan used RMB 116,863 of it to purchase a large quantity of game point cards, which he sold for cash on his Taobao store "Xiaoquan Xiansheng O." After the case was discovered, the public security organ recovered RMB 187,126.31 of the stolen money and returned it to the victim.

II. Fraud

Between May and June 2010, the defendants Zang Jinquan, Zheng Biling, and Liu Tao each opened Taobao stores under false identities that had no goods to supply, and attracted buyers with low prices. The three defendants first registered an account on an online game website and preset a top-up program for that account, with the top-up amount set at the amount the buyer intended to pay, and then implanted the code of that top-up program into a false Taobao link. After negotiating the price of the goods with the buyer, the three defendants each sent the false Taobao link to the buyer through the Aliwangwang chat tool on the pretext of facilitating the buyer's shopping. The buyer, mistaking the link for a Taobao link, clicked it to shop and pay, believing that the payment would be remitted to the public account set up by Alipay for escrow transactions, but the payment was actually transferred through the preset program to the private account of the online game website at Alipay, and then to the top-up account that the defendants had registered in advance with the online game website. After obtaining the buyers' payments, the three defendants purchased game point cards and Tencent QQ coins on the online game website, then uniformly placed them for cash sale on Zang

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Jinquan's Taobao store "Xiaoquan Xiansheng O" as agreed in advance, with all proceeds remitted to Zang Jinquan's ICBC bank card and distributed by Zang Jinquan according to the agreed method based on the profit amounts.

After conspiring, the defendants Zang Jinquan, Zheng Biling, and Liu Tao successively went to internet cafes in Suzhou, Wuxi, Kunshan, and other places in Jiangsu Province to commit crimes by the above means. Zang Jinquan defrauded RMB 22,000 and profited more than RMB 5,000; Zheng Biling defrauded and profited more than RMB 5,000; and Liu Tao defrauded and profited more than RMB 12,000.

Judgment

On June 1, 2011, the Hangzhou Intermediate People's Court of Zhejiang Province rendered Criminal Judgment (2011) Zhe Hang Xing Chu Zi No. 91: (1) the defendant Zang Jinquan was convicted of theft and sentenced to thirteen years of imprisonment with deprivation of political rights for one year and a fine of RMB 30,000, and convicted of fraud and sentenced to two years of imprisonment with a fine of RMB 5,000, with a combined sentence of fourteen years and six months of imprisonment, deprivation of political rights for one year, and a fine of RMB 35,000; (2) the defendant Zheng Biling was convicted of theft and sentenced to ten years of imprisonment with deprivation of political rights for one year and a fine of RMB 10,000, and convicted of fraud and sentenced to six months of imprisonment with a fine of RMB 2,000, with a combined sentence of ten years and three months of imprisonment, deprivation of political rights for one year, and a fine of RMB 12,000; and (3) the defendant Liu Tao was convicted of fraud and sentenced to one year and six months of imprisonment with a fine of RMB 5,000. After the judgment was pronounced, Zang Jinquan appealed. On August 9, 2011, the Zhejiang Higher People's Court rendered Criminal Ruling (2011) Zhe Xing San Zhong Zi No. 132: dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment held: Theft is the act of secretly stealing public or private property for the purpose of unlawful possession; fraud is the act of defrauding public or private property by fabricating facts or concealing the truth for the purpose of unlawful possession. As for characterizing an act of unlawfully possessing property that employs both secret theft and deception, theft and fraud should be distinguished based on the principal means adopted by the person and whether the victim had the awareness of disposing of the property. Where the decisive means by which the person obtained the property was secret theft, with the deception merely creating conditions for or covering the theft, and the victim did not "voluntarily" deliver the property, it should be determined as theft; where the decisive means by which the person obtained the property was fraud, with the victim "voluntarily" delivering the property based on mistaken understanding and the theft being merely an auxiliary means, it should be determined as fraud. In the context of information networks, where a person uses information networks to lure another into clicking a false link and actually steals the other's property through a computer program implanted in advance, constituting a crime, it shall be convicted and punished as the crime of theft; where a person fabricates goods or services available for transaction and deceives another into clicking a payment link to pay for goods to obtain property, constituting a crime, it shall be convicted and punished as the crime of fraud. In this case, the defendants Zang Jinquan and Zheng Biling used a preset and implanted computer program to secretly steal a huge sum of money from another's online banking account, and their acts both constituted the crime of theft. Zang Jinquan, Zheng Biling, and the defendant Liu Tao, for the purpose of unlawful possession, defrauded others of relatively large amounts of payment for goods by opening false online stores and using forged shopping links, and their acts all constituted the crime of fraud. The several crimes committed by Zang Jinquan and Zheng Biling should be punished cumulatively in accordance with law.

As for the argument raised by the defendant Zang Jinquan and his defender that the act of unlawfully obtaining the RMB 305,000 in the victim Jin's online banking account constituted fraud rather than theft — upon investigation, after Zang Jinquan and the defendant Zheng Biling learned that Jin's online banking account held funds, they formed the intent to unlawfully possess them by implanting a computer program;

they then, in online chats, induced Jin to agree to pay RMB 1, while actually creating a fake Taobao link that ostensibly paid "RMB 1" but paid RMB 305,000, causing Jin's online banking account's RMB 305,000 to be unlawfully transferred to Zang Jinquan's registered account immediately after Jin clicked it, without Jin's knowledge or volition. It can thus be seen that the decisive means by which Zang Jinquan and Zheng Biling obtained the property was secret theft; luring the victim into clicking the false "RMB 1" link was an auxiliary means of committing the theft, merely creating conditions for or covering the theft, and the victim did not "voluntarily" deliver the huge sum of property. The bank deposit was actually obtained by stealing through the concealed, pre-implanted computer program, which satisfies the elements of the crime of theft, and under Articles 264 and 287 of the Criminal Law it should be convicted and punished as the crime of theft. Therefore, the above argument and defense opinion raised by Zang Jinquan and his defender were inconsistent with the facts and legal provisions and were not accepted.

Relevant Legal Provisions

Articles 264 and 266 of the Criminal Law of the People's Republic of China.

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