

SPC Guiding Case No. 270: Case of Cheng [X]ming for Dangerous Driving

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

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Keywords

Criminal / crime of dangerous driving / extraction of blood samples / criminal investigation act / examination of defective evidence

Holding

1. Whether the extraction of a blood sample by a public security organ from a person suspected of driving a motor vehicle while intoxicated, performed before the case is filed for criminal investigation, constitutes an administrative compulsory measure or a criminal investigation act shall be determined through comprehensive consideration of factors such as the purpose of the act, the use to which the blood sample will be put, and the progress of the legal proceedings. Where the public security organ, on the basis of the result of a breath alcohol test or other circumstances, considers that the person is suspected of a criminal offense and extracts a blood sample for the purpose of collecting and preserving evidence, the act of extracting the blood sample is a criminal investigation act and does not fall within the scope of administrative litigation.

2. Where the procedures for extracting, sealing, delivering, and testing a blood sample are irregular, whether the expert opinion on the blood alcohol content may be used as evidence for deciding the criminal case shall be determined in accordance with the rules for examining evidence in criminal proceedings.

Basic Facts

At around 15:57 on March 27, 2022, defendant Cheng [X]ming drove a car after drinking in a public parking lot of a building in Dongcheng District, Beijing, and scraped another car parked in a parking space; the building staff immediately reported the matter to the police. After the police arrived and found that Cheng [X]ming was suspected of drunk driving, they administered a breath alcohol test to him, which showed a blood alcohol content of 191 mg/100 mL, and accordingly notified medical personnel to come and extract his blood sample. After the sample was sent for testing, Cheng [X]ming's blood alcohol content was found to be 241.3 mg/100 mL. According to the traffic accident determination, Cheng [X]ming bore full responsibility for the accident. After the incident, Cheng [X]ming compensated the owner of the scraped vehicle for the economic loss.

Judgment

The Dongcheng District People's Court of Beijing rendered the criminal judgment (2022) Jing 0101 Xing Chu No. 369 on September 29, 2022: defendant Cheng [X]ming was convicted of the crime of dangerous driving and sentenced to three months of criminal detention and a fine of RMB 6,000. After the judgment was pronounced, Cheng [X]ming appealed on the grounds that the blood collection procedure was irregular and the expert opinion could not serve as the basis for deciding the case. The Beijing Second Intermediate People's Court rendered the criminal ruling (2022) Jing 02 Xing Zhong No. 376 on March 22, 2023: the appeal was dismissed and the original judgment was affirmed.

During the second instance of the criminal case, Cheng [X]ming brought an administrative lawsuit before the people's court, requesting confirmation that the administrative compulsory measure of extracting his blood

sample taken by the public security organ on March 27, 2022 was unlawful. After trial, the Dongcheng District People's Court of Beijing found that the challenged act was a criminal investigation act and did not fall within the scope of administrative litigation, and rendered the administrative ruling (2023) Jing 0101 Xing Chu No. 26 on May 24, 2023, dismissing Cheng [X]ming's lawsuit. After the first instance judgment was pronounced, Cheng [X]ming appealed on the ground that the act of extracting the blood sample in issue was not a criminal investigation act and fell within the scope of administrative litigation. The Beijing Second Intermediate People's Court rendered the administrative ruling (2023) Jing 02 Xing Zhong No. 967 on August 22, 2023, dismissing the appeal and affirming the first instance ruling. After the second instance judgment was pronounced, Cheng [X]ming applied for retrial on the same grounds. The Beijing High People's Court rendered the administrative ruling (2023) Jing Xing Shen No. 3134 on March 13, 2024, dismissing Cheng [X]ming's retrial application.

Reasoning

There were two focuses of dispute in this case: first, whether the public security organ's extraction of a blood sample before the criminal case was filed constituted a criminal investigation act and whether an administrative lawsuit could be brought against it; and second, how the irregularities in the procedures for extracting, sealing, and delivering the blood sample should be examined and handled in accordance with the law.

I. Characterization of the public security organ's extraction of a blood sample from a drunk-driving suspect before the case is filed.

The expert opinion on blood alcohol content is key evidence for determining whether a person was intoxicated when driving a motor vehicle on a road. Because the alcohol content in human blood changes over time, if the public security organ were required to extract a blood sample and send it for testing only after discovering a drunk-driving suspect and filing the case against him for criminal investigation, this would clearly fail to satisfy the evidence-collection requirement of promptly collecting and preserving evidence and accurately measuring the suspect's blood alcohol content at the time of driving. Therefore, in practice, after a preliminary examination using a breath alcohol tester or other means reveals that a suspect is suspected of drunk driving, a blood sample is generally extracted and sent for testing, and it is only after the test result is obtained that a decision is made on whether to treat the matter as a criminal offense. Accordingly, the nature of the act of extracting a blood sample and sending it for testing should be determined on the basis of the result of the breath alcohol test and the purpose of extracting the blood sample for testing. Where a breath alcohol test reveals that a suspect has reached the drunk-driving threshold, or where the suspect displays the state of intoxication but refuses to undergo the breath alcohol test, and the public security organ, in order to further accurately measure the suspect's blood alcohol content, extracts a blood sample and sends it for testing, this satisfies the need to promptly collect and preserve evidence. Where the public security organ uses the expert opinion on blood alcohol content as the basis for finding that the suspect was intoxicated and files the case for criminal investigation, even if the extraction of the blood sample occurred before the case was filed, it is still a criminal investigation act.

In this case, after receiving the traffic accident report, the police responded and found that defendant Cheng [X]ming's demeanor clearly displayed signs of drinking. They immediately used a breath alcohol tester to conduct a preliminary examination, which showed a blood alcohol content of 191 mg/100 mL, far exceeding the 80 mg/100 mL drunk-driving threshold, and he was suspected of the crime of dangerous driving. The police immediately notified blood collection personnel to extract Cheng [X]ming's blood sample. Upon testing, Cheng [X]ming's blood alcohol content was 241.3 mg/100 mL. On this basis, the public security organ found that Cheng [X]ming was suspected of the crime of dangerous driving and filed the case for criminal investigation. As analyzed above, the public security organ's extraction of Cheng [X]ming's blood sample and sending it for testing was a criminal investigation act conducted in accordance with the law and did not fall within the scope of administrative litigation.

II. Examination and handling when the procedures for collecting the blood sample are irregular.

Paragraph 1 of Article 126 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China (Fa Shi [2021] No. 1) provides: "Where the collection of material evidence or documentary evidence fails to comply with statutory procedures and may seriously affect judicial impartiality, it shall be supplemented and corrected or a reasonable explanation shall be provided; where it cannot be supplemented and corrected or a reasonable explanation cannot be provided, the evidence shall be excluded." Accordingly, where a procedural defect in the collection of material evidence or documentary evidence can be supplemented and corrected or reasonably explained without affecting the objectivity of the evidence, the evidence shall be admitted.

In this case, the photograph of the sealed blood sample bag showed that the officers who signed it were Yang [X]yi and Zhang [X]chun, which was inconsistent with the names of officers Jing [X] and Zhang [X]wen recorded in the blood testing work record issued by the public security organ as the officers who signed the sealed bag; the record of "two blood samples extracted, each sample no less than 3 mL" recorded in the blood testing work record was inconsistent with the record of "two test tubes, total blood sample volume 3 mL" in the confirmation of testing items issued by the testing institution. In response, the public security organ issued a corrective explanation: the names of the officers recorded in the blood testing work record were erroneous; the testing institution received two tubes of Cheng [X]ming's blood samples, each tube containing approximately 3 mL of blood. Upon examination, evidence such as the dispatch record, the breath alcohol test sheet, and the photograph confirming receipt of the blood samples proved that officers Yang [X]yi and Zhang [X]chun, after responding to the call, first administered a breath alcohol test to Cheng [X]ming on the spot, then notified blood collection personnel to extract Cheng [X]ming's blood samples, hand-wrote their signatures on the sealed bags of the two tubes of blood samples, and handed them to officers Jing [X] and Zhang [X]wen to deliver to the testing institution; when the staff prepared the blood testing work record on a computer, they mistakenly entered the names of Jing [X] and Zhang [X]wen. Cheng [X]ming's two tubes of blood samples were all sent for testing, and the "total blood sample volume 3 mL" recorded in the confirmation of testing items referred to the total volume of a single tube of blood sample, which was a defect in the wording used. In summary, after being supplemented and corrected, the above defective evidence did not affect the objectivity of the blood samples. The expert opinion on blood alcohol content was made on this basis by a qualified testing institution and qualified testing personnel in accordance with statutory procedures, and its conclusion was truthful and credible, and should be used as evidence for deciding the case.

Relevant Legal Provisions

Article 133-1 of the Criminal Law of the People's Republic of China.

Article 126 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China (Fa Shi [2021] No. 1).

Article 1 of the Interpretation of the Supreme People's Court on the Application of the Administrative Litigation Law of the People's Republic of China (Fa Shi [2018] No. 1).

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