SPP Guiding Case No. 2: Case of Xin Yuanlong for Kidnapping

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Holding

In lodging a protest against a death penalty case, the correct conditions for applying the death penalty shall be grasped, the standard of proof shall be strictly observed, and the duty of legal supervision over criminal adjudication shall be performed in accordance with the law.

Basic Facts

The defendant Xin Yuanlong, male, born on February 1, 1959, Han ethnicity, from Ningbo City, Zhejiang Province, with a senior high school education, was placed in criminal detention on September 15, 2005 on suspicion of the crime of kidnapping, and was arrested on September 27, 2005.

The defendant Xin Yuanlong, out of financial difficulty, formed the intent to kidnap a child and extort property from the family, and repeatedly went to Cixi City, Zhejiang Province to survey the location and select a victim. On the morning of August 18, 2005, Xin Yuanlong drove his own Tongbao van with license plate Zhejiang B3C751 from Ningbo City to the vicinity of the University for the Elderly on Tuanquan Branch Road, Hushan Subdistrict, Cixi City, to wait for an opportunity to commit the crime. At around 1:00 p.m. that day, Xin Yuanlong saw the girl Yang XX (female, born June 1, 1996, a third-grade student at Hushan Dongmen Primary School, Cixi City, Zhejiang Province, who died in this case at the age of nine) walking alone carrying a schoolbag. He lured Yang XX onto the vehicle on the pretext that “Teacher Chen is looking for you,” trapped her under a plastic bathtub, and drove to the mountain behind “Qianhu Renjia” in Dongqianhu Town, Ningbo City. At around 10:00 p.m. that night, Xin Yuanlong obtained the phone numbers of her father and home from Yang XX, then drove her to the vicinity of an air-raid shelter in Suanshan Village, Xinqi Town, Beilun District, Ningbo City, where he killed her by covering her mouth and nose, and then buried her. On August 19, Xin Yuanlong took a train to Guangde County, Anhui Province, where he purchased a Bird 1220 mobile phone. At around 12:00 a.m. on August 20, he called the Yang household, claiming that he had kidnapped Yang XX and demanding that her father bring a ransom of 600,000 yuan to Changxing County, Huzhou City, Zhejiang Province, before 6:00 p.m. on the 25th of that month to exchange for his daughter. Xin Yuanlong then took a train to Wuhu City, Anhui Province to make the extortion call; because he had lost the slip of paper on which the phone number was recorded, he misremembered the last four digits of the victim’s home phone number, 2353, as 7353. When the call connected, he heard the person answering speak with a Ningbo accent, whereas Yang XX’s father spoke Mandarin, so Xin Yuanlong suspected that public security personnel had intervened and stopped the extortion. On September 15, 2005, Xin Yuanlong was captured by public security organs. He confessed to the kidnapping and murder, and led public security personnel to identify the burial site, where a set of remains was recovered, and two strands of Yang XX’s hair were extracted from his Tongbao van with license plate Zhejiang B3C751 (identified by forensic DNA testing as belonging to the remains and hair of the victim Yang XX). The public security organs seized one Bird 1220 mobile phone from the defendant Xin Yuanlong.

Procuratorate Performance of Duties

The case of the defendant Xin Yuanlong’s kidnapping was placed on file for investigation by the Cixi City Public Security Bureau of Zhejiang Province, and was transferred on November 21, 2005 to the Cixi City People’s Procuratorate for review and prosecution. On November 22 of the same year, the Cixi City People’s Procuratorate informed Xin Yuanlong of his procedural rights such as the right to retain a defender, and also informed the victim’s close relatives of their procedural rights such as the right to retain an agent ad litem. In accordance with the provisions on case jurisdiction, on November 28 of the same year, the Cixi City People’s

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Procuratorate submitted the case to the Ningbo City People's Procuratorate for review and prosecution. The Ningbo City People's Procuratorate interrogated the defendant Xin Yuanlong in accordance with the law and examined all the case materials. On January 4, 2006, the Ningbo City People's Procuratorate initiated a public prosecution against Xin Yuanlong for the crime of kidnapping before the Ningbo Intermediate People's Court.

On January 17, 2006, the Ningbo Intermediate People's Court of Zhejiang Province lawfully formed a collegial panel and publicly tried the case. The court held that the defendant Xin Yuanlong, for the purpose of extorting property, kidnapped and killed another person, and his acts constituted the crime of kidnapping; that his methods were cruel and the consequences serious, and that he should be severely punished in accordance with the law; and that the charge brought by the procuratorial organ was established.

On February 7, 2006, the Ningbo Intermediate People's Court rendered a first-instance judgment: first, the defendant Xin Yuanlong committed the crime of kidnapping and was sentenced to death, deprived of political rights for life, and had all his personal property confiscated; second, the defendant Xin Yuanlong shall compensate the plaintiffs in the incidental civil action, Yang Baofeng and Zhang Yubin, the victim's death compensation of 317,640 yuan and funeral expenses of 11,380 yuan, totaling RMB 329,020 yuan; third, the Tongbao van with license plate Zhejiang B3C751 and one Bird 1220 mobile phone used by the defendant Xin Yuanlong in committing the crime were confiscated.

Xin Yuanlong, dissatisfied with the criminal portion of the first-instance judgment, appealed to the Zhejiang Provincial Higher People's Court.

On October 12, 2006, the Zhejiang Provincial Higher People's Court lawfully formed a collegial panel and publicly tried the case. The court held that the defendant Xin Yuanlong, for the purpose of extorting property, kidnapped and killed another person, and his acts constituted the crime of kidnapping; that the circumstances of the crime were especially serious and the social harm extremely great, and that he should be severely punished in accordance with the law; however, in light of the specific circumstances of the case, the death penalty imposed on Xin Yuanlong need not be executed immediately. On April 28, 2007, the Zhejiang Provincial Higher People's Court rendered a second-instance judgment: first, the sentencing portion concerning Xin Yuanlong in the Ningbo Intermediate People's Court's criminal incidental civil judgment (2006) Yong Xing Chu Zi No. 16 was revoked, and the remaining portions of the judgment were affirmed; second, the defendant Xin Yuanlong committed the crime of kidnapping and was sentenced to death with a two-year reprieve, deprived of political rights for life.

The victim Yang XX's father, dissatisfied, petitioned the Zhejiang Provincial People's Procuratorate on June 25, 2007, requesting a protest.

The Zhejiang Provincial People's Procuratorate, upon examination, held that the Zhejiang Provincial Higher People's Court's second-instance judgment changing Xin Yuanlong's sentence to death with a two-year reprieve was indeed erroneous, and on August 10, 2007 requested the Supreme People's Procuratorate to lodge a protest under the trial supervision procedure. The Supreme People's Procuratorate dispatched personnel to Zhejiang to specially verify the relevant circumstances of the case. The Procuratorial Committee of the Supreme People's Procuratorate deliberated the case twice and held that the facts of the defendant Xin Yuanlong's kidnapping crime were clear and the evidence reliable and sufficient, that he should be sentenced to death with immediate execution in accordance with the law, and that the Zhejiang Provincial Higher People's Court's change of sentence to death with a two-year reprieve on the ground of "the specific circumstances of the case" was indeed erroneous and should be corrected. The reasons are as follows:

First, the facts of Xin Yuanlong's kidnapping crime were clear and the evidence reliable and sufficient. The physical evidence, documentary evidence, witness testimony, the defendant's confession, expert conclusions, and the on-site inspection record in the case could form a complete chain of evidence. The

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public security organs located the remains of the victim Yang XX based on Xin Yuanlong's confession, and many concealed details in Xin Yuanlong's confession — such as the burial site, the posture of the body in the soil, the body not wearing shoes or socks, the absence of a schoolbag in the burial pit, the reason for dialing the wrong extortion number, the number and content of the extortion calls, and the accent of the person answering the phone — were corroborated by other evidence.

Second, the Zhejiang Provincial Higher People's Court's second-instance judgment was indeed erroneous. The second-instance change of sentence was based on two alleged doubts in the evidence. The first was that the witness Fu Shihong, who sold the Bird 1220 mobile phone to Xin Yuanlong, stated in his testimony that the phone's serial number differed from that of the phone seized by the public security personnel, so there was doubt about the identity of the phone. The second was that the witnesses Song Lijuan and Ailimaimaitiniyazi testified that they saw a middle-aged woman lead away a little girl with features similar to those of the victim on the day of the incident, so the possibility of another person committing the crime could not be ruled out. Upon examination, both doubts could be eliminated. With regard to the identity of the phone, upon examination, when the public security personnel questioned Fu Shihong, they mistakenly recorded the ID number of Hong Yijun, the original owner of the Bird 1220 mobile phone, as the phone's serial number. The List of Items Transferred with the Case submitted by the Ningbo City People's Procuratorate to the Ningbo Intermediate People's Court stated that the serial number of the Bird 1220 mobile phone was 350974114389275, and evidence such as the Second-Hand Goods Transaction Voucher by which Hong Yijun sold the phone to Fu Shihong clearly proved that the phone seized from Xin Yuanlong was the phone used to demand the ransom, and that the phone was in the Ningbo Intermediate People's Court, so the doubt about the identity of the phone could be eliminated. With regard to whether a middle-aged woman committed the crime, the original case file evidence could establish that the "middle-aged woman leading away a little girl" described in the testimony of Song Lijuan and Ailimaimaitiniyazi was unrelated to this case. The place where the middle-aged woman led away the little girl, as described in the testimony of Song Lijuan and Ailimaimaitiniyazi, was about 200 meters to the east of the kidnapping scene and was not the same place where Xin Yuanlong kidnapped Yang XX. Ailimaimaitiniyazi's testimony described the entrance of the computer training school south of the Dior Café, not the place where Xin Yuanlong committed the kidnapping. The place where the middle-aged woman led away the little girl, as described in Song Lijuan's testimony, was the crossroads south of the Dior Café, not the kidnapping scene outside the north wall of the University for the Elderly, because Song Lijuan's position was blocked by buildings and she could not see the kidnapping scene outside the north wall of the University for the Elderly; this doubt had also been eliminated. In addition, the appearance and other details of the little girl mentioned by the two witnesses also did not match Yang XX.

Third, the crime committed by Xin Yuanlong was extremely serious, and he should be sentenced to death with immediate execution. First, Xin Yuanlong meticulously premeditated the crime and had extremely deep subjective malice. To carry out the kidnapping, Xin Yuanlong carefully premeditated the crime, repeatedly "surveyed the location" in Cixi City, and chose a relatively secluded and deserted place as his driving route. Xin Yuanlong lured Yang XX onto the vehicle on the pretext that "Teacher Chen is looking for you," which was consistent with the surname of the teacher surnamed Chen who was in charge of the Cambridge English training class at the Cixi University for the Elderly. Xin Yuanlong lived in Yinzhou District, Ningbo City, but chose to carry out the kidnapping in Cixi City, Ningbo City, chose to kill the victim in Beilun District, Ningbo City, and then carefully carried out the extortion of ransom, going to Guangde County, Anhui Province to purchase a Bird 1220 mobile phone, using a mobile phone card purchased elsewhere, and going to Xuancheng City and Wuhu City, Anhui Province to make the extortion calls and requiring the victim's father to deliver the ransom in Changxing County, Zhejiang Province. Second, the consequences of Xin Yuanlong's crime were extremely serious and the social harm extremely great. After committing the kidnapping, in order to prevent his crime from being discovered, Xin Yuanlong, after obtaining the victim's family information, killed Yang XX, who was only nine years old, on the same day, burned Yang XX's

schoolbag, and discarded the shoes that came off while Yang XX struggled, thereby destroying evidence of the crime. After Xin Yuanlong was brought to justice, his attitude toward confessing was poor: he initially refused to confess and concealed the source of the mobile phone used in the crime; although he later confessed, he fabricated that another person had participated in the joint commission of the crime. Xin Yuanlong's criminal acts not only deprived the victim of her life and caused irreparable and enormous suffering to the victim's family, but also seriously affected the sense of security of the local people. Third, the second-instance change of Xin Yuanlong's sentence to death with a two-year reprieve was not accepted by the victim's family or the local people. The victim's family strongly demanded that Xin Yuanlong be sentenced to death with immediate execution, and the local people also found it hard to accept the second-instance change of sentence to death with a two-year reprieve, demanding that the judicial organs severely punish Xin Yuanlong.

On October 22, 2008, the Supreme People's Procuratorate, in accordance with Paragraph 3 of Article 205 of the Criminal Procedure Law of the People's Republic of China, lodged a protest with the Supreme People's Court. On March 18, 2009, the Supreme People's Court instructed the Zhejiang Provincial Higher People's Court to form a separate collegial panel to conduct a retrial of the Xin Yuanlong case.

On May 14, 2009, the Zhejiang Provincial Higher People's Court formed a separate collegial panel to publicly try the case. The court held that the defendant Xin Yuanlong, for the purpose of extorting property, kidnapped and killed another person, and his acts constituted the crime of kidnapping; that his criminal methods were cruel, the circumstances egregious, the social harm enormous, and he showed no remorse, and that he should be severely punished in accordance with the law; and that the procuratorial organ's opinion seeking correction of the second-instance judgment was tenable. The opinions of Xin Yuanlong and his defender seeking to uphold the second-instance judgment lacked sufficient grounds and were not adopted.

On June 26, 2009, the Zhejiang Provincial Higher People's Court, in accordance with Paragraph 2 of Article 205, Article 206, and Item (2) of Article 189 of the Criminal Procedure Law of the People's Republic of China, and Paragraph 1 of Article 239, Paragraph 1 of Article 57, and Article 64 of the Criminal Law of the People's Republic of China, rendered a judgment: first, the sentencing portion concerning the original defendant Xin Yuanlong in the Zhejiang Provincial Higher People's Court's criminal judgment (2006) Zhe Xing Yi Zhong Zi No. 146 was revoked, and the remaining portions of that judgment and the Ningbo Intermediate People's Court's criminal incidental civil judgment (2006) Yong Xing Chu Zi No. 16 were affirmed; second, the original defendant Xin Yuanlong committed the crime of kidnapping and was sentenced to death, deprived of political rights for life, and had all his personal property confiscated, and the judgment was submitted to the Supreme People's Court for approval in accordance with the law.

The Supreme People's Court, upon review, held that the defendant Xin Yuanlong's act of kidnapping and killing another person for the purpose of extorting property constituted the crime of kidnapping; that his criminal methods were cruel, the circumstances egregious, and the consequences serious, and there were no statutory mitigating circumstances; and that the facts found in the Zhejiang Provincial Higher People's Court's retrial judgment were clear, the evidence reliable and sufficient, the conviction accurate, the sentencing appropriate, and the trial procedure lawful.

On November 13, 2009, the Supreme People's Court, in accordance with Article 199 of the Criminal Procedure Law of the People's Republic of China and Paragraph 1 of Article 2 of the Provisions of the Supreme People's Court on Several Issues Concerning the Review of Death Penalty Cases, rendered a ruling approving the Zhejiang Provincial Higher People's Court's criminal judgment (2009) Zhe Xing Zai Zi No. 3 sentencing the original defendant Xin Yuanlong to death, deprivation of political rights for life, and confiscation of all personal property for the crime of kidnapping.

On December 11, 2009, the defendant Xin Yuanlong was lawfully executed.

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