SPP Guiding Case No. 260: Case of Xu Mou for drug trafficking (retrial protest)

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Keywords

Retrial protest / transporting drugs / "zero confession" / technical investigation evidence / facial recognition appraisal / voiceprint appraisal

Holding

For a drug transportation crime with "zero confession," a complete proof system shall be constructed through indirect evidence such as the connection between the person, the drugs, and the movement trajectory. For major drug crimes detected through technical investigation measures, technical investigation evidence materials play a key role in determining the facts of the case; where the public security organ has not transferred them along with the case, the technical investigation evidence materials shall be obtained in accordance with law. For technical evidence such as expert opinions, substantive examination shall be conducted around legality, relevance, and authenticity; where necessary, a person with specialized knowledge may be entrusted to conduct the examination, so as to comprehensively determine whether they can serve as the basis for determining the case. Where a people's procuratorate, based on newly discovered evidence, finds it sufficient to prove that the facts found in an effective judgment of a people's court are indeed erroneous, it shall supervise and correct them in accordance with law.

Basic Facts

The defendant, Xu Mou, male, born in July 1976, a salesman in the used-car industry.

On October 22, 2013, the defendant Xu Mou drove a car rented from a car rental company in Guangzhou, Guangdong Province, to an electronics mall in Dongguan to purchase a set of speakers. At about 19:00 the next day, he arrived in the urban area of Lianjiang City; two hours later, he continued driving to Fangchenggang City, Guangxi Zhuang Autonomous Region. At about 23:34, when Xu Mou reached the toll station exit of Fangchenggang City, he ran through the checkpoint and refused inspection, and later abandoned the car and fled near the second bridgehead of the cross-sea bridge in Fangchenggang City. Investigators seized more than 3,500 grams of methamphetamine powder and more than 660 grams of ketamine from the speakers and a black handbag in the trunk of the vehicle he was driving. On June 24, 2015, Xu Mou was captured by the public security organ. After being brought to justice, he refused to admit that he had driven to Fangchenggang City, claiming that the vehicle he was driving had been driven away by a person called "Dian San" in Lianjiang City, Guangdong Province. It was also found that during his period of flight, Xu Mou had committed other crimes such as robbery and illegal possession of drugs (the specific facts are omitted).

On May 10, 2016, the People's Procuratorate of Fangchenggang City, Guangxi Zhuang Autonomous Region, initiated a public prosecution against Xu Mou for the crimes of transporting drugs, robbery, and illegal possession of drugs before the Fangchenggang Intermediate People's Court, Guangxi Zhuang Autonomous Region. On June 20, 2017, the Fangchenggang Intermediate People's Court sentenced the defendant Xu Mou to death, with deprivation of political rights for life and confiscation of all personal property, for the crime of transporting drugs; to a fixed-term imprisonment of nine years and a fine of 10,000 yuan for the crime of robbery; and to a fixed-term imprisonment of eight years and a fine of 8,000 yuan for

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the crime of illegal possession of drugs. With combined punishment for multiple crimes, it decided to execute the death penalty, with deprivation of political rights for life and confiscation of all personal property. Xu Mou, dissatisfied, appealed. On December 29, 2017, the Guangxi Zhuang Autonomous Region Higher People's Court, upon trial, held that some facts in the original trial were unclear and the evidence insufficient, and ruled to revoke the original judgment and remand the case for retrial.

During the retrial, the public security bureau of Fangchenggang City entrusted a judicial appraisal center in Zhejiang to compare whether the four driver photos captured by the highway surveillance system of the vehicle involved before and after it passed through Lianjiang City were of the same person and whether they were of Xu Mou. The expert opinion held that the four driver photos were left by the same person, but that the "dark spot-like mark" on the head and face of the driver in the four photos constituted a stable feature (a mole or nevus), which differed from the absence of a spot-like nevus at the corresponding position on Xu Mou's face, and therefore the four driver photos were not of Xu Mou.

On December 28, 2018, the Fangchenggang Intermediate People's Court held a new hearing in this case, did not admit the expert opinion that the driver photos were not of Xu Mou, and rendered the same judgment as the first instance based on the comprehensive evidence of the whole case. Xu Mou, dissatisfied, appealed again.

During the second appeal, in order to determine whether the expert opinion was objective, scientific, and accurate, the People's Procuratorate of Guangxi Zhuang Autonomous Region entrusted the Physical Evidence Appraisal Institute of the Public Security Bureau of Qinzhou City, Guangxi Zhuang Autonomous Region, to conduct a new appraisal. The expert opinion held that the position of the dark spots, the "dark spot-like mark," on the head and face of the driver in the photos captured by the highway surveillance of the vehicle involved was not fixed, and was not a valuable stable feature of a person, and could not serve as the basis for individual identification or exclusion of individual identification.

On May 25, 2020, the Guangxi Zhuang Autonomous Region Higher People's Court, upon trial, held that the expert opinion of the Zhejiang judicial appraisal center that the person who drove the vehicle transporting drugs was not Xu Mou did not conflict with the expert opinion of the Physical Evidence Appraisal Institute of the Qinzhou Public Security Bureau or with the other evidence on file, and lawfully admitted that expert opinion as the basis for determining the case; although the GPS trajectory of the vehicle involved and the call location of mobile phone number 8789 under Xu Mou's name overlapped, it could not be confirmed that that mobile phone number was used by Xu Mou at the time of the crime; Xu Mou argued that during the crime the vehicle had been driven away by "Dian San," and that "Huang Jiu" and his girlfriend could testify, but the public security organ failed to locate those persons for verification. The evidence on file could not lead to the sole conclusion that Xu Mou was the drug transporter; accordingly, it held that the evidence on file had not formed a closed evidence chain and had not reached the standard of proof for criminal cases, that the facts of Xu Mou's crime of transporting drugs were unclear and the evidence insufficient, and declined to determine them. It ruled to revoke the conviction and sentence for Xu Mou's crime of transporting drugs, affirmed the convictions and sentences for the crimes of robbery and illegal possession of drugs, and decided to execute a fixed-term imprisonment of sixteen years and a fine of 18,000 yuan.

Procuratorate Performance of Duties

(1) Requesting and filing the protest

On January 5, 2021, the People's Procuratorate of Guangxi Zhuang Autonomous Region, holding that the effective second-instance judgment had improperly admitted evidence and that the failure to determine the crime of transporting drugs was indeed erroneous, requested the Supreme People's Procuratorate to file a protest in accordance with trial supervision procedure.

After accepting the case, the Supreme People's Procuratorate, to determine whether the expert opinion issued by the Zhejiang judicial appraisal center that the driver photos involved were not of Xu Mou was

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scientific, entrusted the Judicial Appraisal Science Research Institute of the Ministry of Justice to re-conduct facial recognition appraisal on the same examination materials, obtaining an expert opinion consistent with that of the Physical Evidence Appraisal Institute of the Qinzhou Public Security Bureau; obtained from the public security organ the call audio of the user of mobile phone number 8789 during the period of the crime acquired through technical investigation means, extracted Xu Mou's voiceprint samples, and entrusted an appraisal institution to conduct voiceprint appraisal, with the expert opinion holding that the caller was Xu Mou; and entrusted the Judicial Appraisal Center of the Supreme People's Procuratorate to conduct technical evidence examination of the expert opinions on file, which held that the facial recognition expert opinions of the Physical Evidence Appraisal Institute of the Qinzhou Public Security Bureau and the Judicial Appraisal Science Research Institute of the Ministry of Justice, and the voiceprint expert opinion of the appraisal institution, were scientific and accurate, and that the Zhejiang judicial appraisal center had erroneously determined the feature of the head and face mark (a mole or nevus) of the driver in the photos of the vehicle involved, and its expert opinion that the driver photos were not of Xu Mou lacked a scientific basis.

Upon decision after discussion by the Procuratorial Committee of the Supreme People's Procuratorate, the Supreme People's Procuratorate filed a protest with the Supreme People's Court on March 23, 2022.

(2) Opinions and reasons for the protest

After supplementing new evidence, the Supreme People's Procuratorate held that the facts of the original defendant Xu Mou's crime of transporting drugs were clear and the evidence reliable and sufficient, and should be determined, and that the original effective judgment should be corrected. The reasons were as follows:

1. The original evidence on file all pointed to Xu Mou. First, a large amount of physical evidence seized at the scene all pointed to Xu Mou. Through on-site inspection by the public security organ, extraction of physical evidence, entrusted appraisal, and subsequent investigation, it was determined that the vehicle involved in which the drugs were seized had been rented by Xu Mou, and that the speakers, black handbag, mobile phone, and bank documents in the vehicle all belonged to Xu Mou, and the cigarette butts and short-sleeved shirt extracted from the vehicle all showed Xu Mou's DNA. The police officers who intercepted the vehicle at the highway checkpoint also proved that there was only one driver in the vehicle when it ran through the checkpoint. Second, mobile phone number 8789 obtained through technical investigation measures had been registered under Xu Mou's real name, and its call locations were consistent with the GPS trajectory of the vehicle involved.

2. There was new evidence proving that the user of mobile phone number 8789, which always accompanied the trajectory of the vehicle involved, was Xu Mou. The voiceprint appraisal proved that the caller was Xu Mou, and the audio also showed that the caller stated that the car he was driving was rented, that he had driven through Beihai to Fangchenggang, and that he had been stopped by the police, which corroborated objective facts such as the car rental contract, the GPS trajectory of the vehicle involved, and the fact that someone ran through the checkpoint at the time of the crime.

3. The second-instance court's reason that there was contrary evidence proving that the person who drove and transported the drugs was not Xu Mou could not stand. The second-instance court erroneously admitted the expert opinion of the Zhejiang judicial appraisal center that the driver photos were not of Xu Mou. Upon re-entrusted appraisal and technical evidence examination, that expert opinion had erroneously determined the head and face features of the driver in the photos of the vehicle involved, and could not serve as the basis for determining the case.

4. Xu Mou's defense of innocence contradicted the evidence on file and was contrary to common sense. Xu Mou's defense that he had lent the vehicle involved to his friend "Dian San" at 19:00 on October 23, 2023, in Lianjiang City and had not driven the vehicle thereafter contradicted the expert opinion that the driver before

and after the vehicle passed through Lianjiang City was the same person, and also contradicted the consistency between the trajectory of mobile phone number 8789 and the trajectory of the vehicle involved. At the same time, Xu Mou had never been able to provide true and valid information about “Dian San” for verification, and he did not report to the police or search for the rented vehicle after it was seized by the public security organ, and his defense was clearly contrary to common sense.

(3) Outcome of the protest

On September 28, 2022, the Supreme People’s Court rendered a retrial decision, ordering the Guangxi Zhuang Autonomous Region Higher People’s Court to retry this case. On April 27, 2023, the case was heard in open court, and the People’s Procuratorate of Guangxi Zhuang Autonomous Region applied for a person with specialized knowledge to appear in court and explain the expert opinion. On January 8, 2025, the Guangxi Zhuang Autonomous Region Higher People’s Court rendered a judgment, finding Xu Mou guilty of the crime of transporting drugs and sentencing him to death with a two-year reprieve, with deprivation of political rights for life and confiscation of all personal property; with combined punishment with the crimes of robbery and illegal possession of drugs, it decided to execute death with a two-year reprieve, with deprivation of political rights for life and confiscation of all personal property.

Guiding Significance

(1) For a drug transportation crime with “zero confession,” emphasis shall be placed on examining and using indirect evidence to prove that the criminal facts were committed by the defendant, and on constructing a complete evidence chain. The case-fact information contained in indirect evidence, especially objective evidence, shall be fully explored, and a comprehensive judgment shall be made as to whether the indirect evidence can form an evidence chain, so as to accurately identify the perpetrator. It may be examined, with emphasis, whether there are fingerprints and DNA of the defendant on the packaging of the drugs, so as to analyze and determine whether the seized drugs were within his or her control. By examining mobile phone base station positioning, traffic information, and road surveillance footage, it may be analyzed and determined whether there is a spatiotemporal association between the defendant’s movement trajectory and the drug transportation trajectory. By examining the defendant’s call records, text messages, and chat records, it may be analyzed and determined whether the defendant is associated with the drug crime. By examining whether there are abnormal capital flows in the transfer records, it may be analyzed and determined whether the defendant collected or paid drug money.

(2) For major drug crimes detected through technical investigation measures, where the investigation organ has not transferred the technical investigation evidence materials along with the case and the other evidence on file cannot sufficiently prove that the defendant committed the crime, the technical investigation evidence materials may be obtained. In handling cases, people’s procuratorates shall pay attention to collecting, examining, and verifying evidence materials obtained through technical investigation measures, such as call recordings and electronic data. For call recordings collected through technical investigation measures, voiceprint appraisal may be entrusted to determine the perpetrator, and the voiceprint expert opinion may serve as the basis for determining the defendant’s identity.

(3) For technical evidence such as expert opinions, substantive examination shall be conducted, and where necessary, a person with specialized knowledge may be designated or employed to provide opinions. For expert opinions, substantive examination shall be conducted as to whether the appraisal institution and appraisers have statutory qualifications, whether the source, extraction, seizure, weighing, sampling, preservation, and submission for examination of the examination materials conform to law, whether the appraisal procedures are lawful, whether the appraisal basis is sufficient, whether the appraisal methods and process are scientific, whether the demonstration and analysis are objective, comprehensive, and rigorous, and whether the expert opinion is relevant to the facts of the case, so as to reach an examination conclusion on whether to admit it, in light of the evidence of the whole case. Where there is doubt about an expert opinion, or where there are two or more expert opinions on the same issue that contradict each other,

re-appraisal or supplementary appraisal may be conducted, or a person with specialized knowledge may be designated or employed to examine and provide opinions. Where necessary, a person with specialized knowledge may be applied to appear in court to express opinions on relevant specialized issues.

(4) In handling criminal protest cases, the work of strengthening and correcting evidence before and after the protest shall be intensified. Where the facts found in an effective judgment or ruling of a people's court are proved to be indeed erroneous by supplementing and collecting new evidence, the originally charged criminal facts have been ascertained, the evidence is reliable and sufficient, and the original effective judgment or ruling needs to be corrected, a protest shall be filed in accordance with trial supervision procedure without the need for a new prosecution, if the matter does not exceed the scope of the charge in the indictment; if it exceeds the scope of the charge in the indictment, a new prosecution is required.

Relevant Legal Provisions

Article 347 of the Criminal Law of the People's Republic of China.

Articles 154 and 254 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment).

Articles 334, 583, and 591 of the Criminal Procedure Rules of the People's Procuratorates (Gao Jian Fa Shi Zi [2019] No. 4).

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