SPP Guiding Case No. 8: Case of Yang Zhouwu for Dereliction of Duty, Perverting the Law for Personal Gain, and Bribery

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Keywords

Crime of neglect of duty; crime of perverting the law for personal gain; crime of bribery; causation; concurrent punishment for multiple crimes

Holding

There are two main points in the holding of this case. First, the determination of causation in a dereliction-of-duty crime: if a staff member of a state organ bearing supervisory duties fails to conscientiously perform his or her supervisory duties, thereby failing to effectively prevent the occurrence of a harmful consequence, then such dereliction of duty, which possesses “causal force” over the harmful consequence, shall be determined to have a causation relationship with the harmful consequence in the sense of criminal law. Second, the punishment principle where a dereliction-of-duty crime is accompanied by bribery: where a staff member of a state organ commits a dereliction-of-duty crime and accepts bribes, thereby simultaneously constituting the crime of bribery, except where Article 399 of the Criminal Law provides otherwise, concurrent punishment shall be imposed for the dereliction-of-duty crime and the crime of bribery.

Basic Facts

The defendant Yang Zhouwu, male, born in 1958, formerly the director of the Tongle Police Station of the Longgang Branch of the Shenzhen Municipal Public Security Bureau.

The criminal facts are as follows:

I. The crime of neglect of duty

On July 9, 1999, the Wuwang Dance Hall in Longgang District, Shenzhen, operated by Wang Jing (handled in a separate case), was established with the approval of the Shenzhen administration for industry and commerce, with its business address on Longping Road, Longgang District. In 2006, the dance hall’s business license was lawfully revoked. On September 8, 2007, Wang Jing, without approval from the relevant departments, operated the Wuwang Club in Sanhe Village, Longdong Community, Longgang Subdistrict, with the Tongle Police Station as the police station of jurisdiction. The defendant Yang Zhouwu had served as the director of the Tongle Police Station since October 2001. A few days before the opening, in order to obtain the favor of the Tongle Police Station toward the Wuwang Club, Wang Jing hosted a dinner for the defendant Yang Zhouwu and others at the Chuanxiang Restaurant operated by Yang Zhouwu’s wife, He Xiaochu. Thereafter, during information collection, file establishment, and routine inspections of the Wuwang Club, the police officers of the Sanhe responsibility area of the Tongle Police Station discovered that Wang Jing could not provide necessary certificates such as a fire safety permit and an entertainment business permit, and that the name and address on the copy of the business license provided did not match the actual situation and had expired. After learning of this, Yang Zhouwu did not urge the responsibility-area police officers to promptly shut down the Wuwang Club in accordance with the law. The responsibility-area police officers also discovered that the Wuwang Club had public security hazards during its operations, such as operating beyond permitted hours and exceeding permitted capacity, involvement in pornography and drugs, failure to equip professional security personnel, and the occurrence of multiple public security cases; Yang Zhouwu neither lawfully ordered the Wuwang Club to suspend business for rectification nor ordered the responsibility-area police officers to follow up and supervise the Wuwang Club’s rectification.

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In March 2008, pursuant to the arrangement and deployment of the “mine-clearing” campaign in Longgang District, the Tongle Police Station established a special “mine-clearing” action group, with Yang Zhouwu serving as the group leader. The relevant departments notified the Tongle Police Station on March 12, 2008 of the public security and fire safety hazards of the Wuwang Club, but Yang Zhouwu did not urge the responsibility-area police officers to follow up and implement the rectification measures, resulting in the Wuwang Club’s safety hazards not being promptly eliminated.

From June to August 2008, the Guangdong Provincial Public Security Department organized a “hundred-day information battle.” Yang Zhouwu did not urge the responsibility-area police officers to truthfully report the Wuwang Club’s operation without a license or permit, and did not take corresponding handling measures against the Wuwang Club. The Wuwang Club failed to obtain fire safety acceptance approval in accordance with the requirements of the Fire Protection Law and the Provisions on the Administration of Fire Safety Supervision and Examination of Construction Projects, and failed to pass the pre-opening fire safety inspection, yet opened and operated without authorization, and failed to implement safety management systems and measures during its operation, leading to a catastrophic fire on the evening of September 20, 2008, causing the serious consequences of 44 deaths and 64 injuries. In this catastrophic fire accident, Yang Zhouwu and personnel of other relevant entities bore important responsibility.

II. The crime of perverting the law for personal gain

In the early hours of August 12, 2008, Jiang Jun, Wang Chunrong, Zhao Zhigao, and others, after consuming at the Wuwang Club, had a verbal dispute with several other customers who were taking the same elevator as they left; the Wuwang Club’s security personnel came to intervene. During the dispute, Yi Chenggui, a security guard of the Wuwang Club, and five people including the employee Luo Xiantao fought with Jiang Jun and others on the first floor of the Wuwang Club, causing Jiang Jun minor injuries and Wang Chunrong and Zhao Zhigao slight injuries. Yang Zhouwu instructed that a case be filed for investigation against Luo Xiantao, Yi Chenggui, and five others of the Wuwang Club on suspicion of intentional injury. The next day, the Tongle Police Station lawfully placed the persons involved in the case in criminal detention. After the incident, Wang Jing, the person in charge of the Wuwang Club, called Yang Zhouwu on multiple occasions and sought mediation through Yang Zhouwu’s wife, He Xiaochu, requesting that his employees be spared criminal punishment. For this purpose, Wang Jing gave He Xiaochu RMB 30,000 yuan in the parking lot of the Longgang Central City Post Office. After receiving the money, He Xiaochu sent a text message to inform Yang Zhouwu. Although Yang Zhouwu knew that the case was not one that could be handled through mediation, he still agreed to help, and assigned Liu Libiao, who was not the case-handling police officer for this case, to be responsible for coordinating the mediation, facilitating a settlement between the two sides on September 6, 2008 through compensation of RMB 110,000 yuan. Yang Zhouwu then arranged for the case-handling police officers to close the case through mediation. The relevant personnel of the Wuwang Club were released from criminal detention on September 7 and were not pursued for criminal liability.

III. The crime of bribery

From September 2007 to September 2008, Yang Zhouwu took advantage of his position to seek benefits for Wang Jing, the person in charge of the Wuwang Club, and, alone or through his wife He Xiaochu, accepted benefit fees from Wang Jing totaling RMB 300,000 yuan.

Procuratorate Performance of Duties

On September 28, 2008, Yang Zhouwu was placed on file for investigation by the Shenzhen Municipal People’s Procuratorate on suspicion of the crime of perverting the law for personal gain, was placed in criminal detention on October 25, arrested on November 7, and the investigation was concluded and the case transferred to the Longgang District People’s Procuratorate of Shenzhen for review and prosecution on November 13. On November 24, 2008, the Longgang District People’s Procuratorate of Shenzhen initiated a public prosecution against the defendant Yang Zhouwu for the crimes of neglect of duty, perverting the law

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for personal gain, and bribery before the Longgang District People's Court. During the first-instance trial, the trial was adjourned once. On May 9, 2009, the Longgang District People's Court of Shenzhen rendered a first-instance judgment, holding that the defendant Yang Zhouwu, as the director of the Tongle Police Station, bore supervision and administration duties over the entertainment venues within his jurisdiction; that he knew the Wuwang Club was operating without a lawful business license and had numerous fire safety and public security hazards, yet was grossly irresponsible and failed to conscientiously perform his duties, allowing the Wuwang Club, which should have been ordered to suspend business for rectification or been shut down, to continue its illegal operation for as long as one year, ultimately leading to a catastrophic fire causing 44 deaths and 64 injuries and major losses to the lives and property of the people, and that his acts constituted the crime of neglect of duty with especially serious circumstances; that the defendant Yang Zhouwu, knowing that the beating case involving Jiang Jun and others at the Wuwang Club should be subject to criminal punishment and did not meet the requirements for closing through mediation, still instructed that the case be closed through mediation, constituting the crime of perverting the law for personal gain, but in view of the fact that Yang Zhouwu also accepted bribes while committing the act of perverting the law for personal gain, and that such bribery facts had already been prosecuted, he should be convicted and punished for the single crime of bribery in accordance with Article 399 of the Criminal Law; that the defendant Yang Zhouwu, as a state functionary, took advantage of his position to illegally accept a large amount of money from Wang Jing, the person in charge of the Wuwang Club, and to seek benefits for him, and that his acts constituted the crime of bribery; and that the defendant Yang Zhouwu, before being subjected to compulsory measures, took the initiative to confess all his bribery facts, which constituted voluntary surrender, and had his wife He Xiaochu return all the illicit gains on his behalf, so he could be given a lighter punishment in accordance with the law. In accordance with Paragraph 1 of Article 397, Paragraphs 1 and 4 of Article 399, Paragraph 1 of Article 385, Article 386, Item (1) of Paragraph 1 and Paragraph 2 of Article 383, Article 64, Paragraph 1 of Article 67, and Paragraph 1 of Article 69 of the Criminal Law of the People's Republic of China, the defendant Yang Zhouwu was convicted of the crime of neglect of duty and sentenced to five years of fixed-term imprisonment; convicted of the crime of bribery and sentenced to ten years of fixed-term imprisonment; with a combined term of fifteen years, a fixed-term imprisonment of thirteen years was determined to be executed; and the illicit gains of RMB 300,000 yuan accepted as bribes were recovered, confiscated in accordance with the law, and turned over to the State treasury. After the first-instance judgment, the defendant Yang Zhouwu did not appeal within the statutory period, and the procuratorial organ did not lodge a protest, so the first-instance judgment became legally effective.

Relevant Legal Provisions

Articles 397, 399, 385, and 69 of the Criminal Law of the People's Republic of China.

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