SPP Guiding Case No. 182: Song Moumou Case of Dangerous Driving (Second-Instance and Retrial Protest)

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Keywords

Successive protest; dangerous driving; internal supervision and restraint over non-prosecution decisions; examination and determination of judicial appraisal opinions.

Holding

People’s procuratorates shall lawfully and normatively exercise the power of non-prosecution and strengthen internal supervision and restraint over non-prosecution decisions through means such as record-filing review, with a focus on improving the level of examination and prosecution work and the quality of case handling. Where there are two or more judicial appraisal opinions on the same specialized issue and their conclusions are inconsistent, procuratorial personnel shall pay attention to conducting substantive examination from aspects such as the compliance of the appraisal subject, the legality of the appraisal procedure, the scientific nature of the appraisal method, the sufficiency of the appraisal materials, and the reasonableness of the analysis and argumentation. For cases in which a protest is filed, in order to ensure the effect of the protest, the procuratorial organ may further strengthen the evidence through its own investigation, fully support the protest opinions and grounds, and, through successive protest and sustained supervision, comprehensively perform the duty of supervision over criminal trials and safeguard judicial fairness.

Basic Facts

Defendant Song Moumou, male, born in February 1980, a former staff member of a certain bureau of Haikou City, Hainan Province.

At about 20:22 on November 16, 2015, defendant Song Moumou drove a car from west to east on Binhai Avenue in Haikou City, turned right into Changyi Road, and stopped at the east gate of Changyi New Village, where he got out of the car and walked to the sidewalk across the road to sleep. This process was observed by armed police officer Zhang Moumou, who was on guard duty at the east gate of Changyi New Village. Zhang Moumou reported the matter to platoon leader Wen Moumou and squad leader Chen Moumou, who immediately went to the scene to check. Urban management officers patrolling the road at the time discovered the situation and reported it to the police, and traffic police subsequently arrived at the scene to handle the matter. Upon blood testing, the alcohol concentration in Song Moumou’s blood sample was 213mg/100ml. At about 19:40 on the same day, victim Zhang Mou was struck by a vehicle while riding an electric bicycle at the intersection of Changan Road and Binhai Avenue in Haikou City, and the offending vehicle fled the scene. Upon appraisal, the debris at the accident scene was separated from the right front part of the front of Song Moumou’s car, confirming that the right front part of the front of the car collided with the rear of the electric bicycle. Victim Zhang Mou’s injury was assessed as minor injury. On November 18 of the same year, Song Moumou was granted bail pending trial by the Haikou Municipal Public Security Bureau on suspicion of the crime of dangerous driving. After the incident, Song Moumou’s wife Wu Moumou reached an agreement with victim Zhang Mou, paying one-time compensation of 42,000 yuan for the victim’s economic losses, and Zhang Mou expressed forgiveness to the car owner.

After the public security organ concluded its investigation, on December 18, 2015, it transferred the case to the People’s Procuratorate of Xiuying District, Haikou for examination and prosecution on suspicion of the crime of dangerous driving. On June 3, 2016, the Xiuying District Procuratorate held that the facts of Song

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Moumou's dangerous driving in this case were unclear and the evidence insufficient, failing to meet the conditions for prosecution, and issued a decision not to prosecute Song Moumou, filing it with the higher-level procuratorate for record-filing review on the same day. After review, the Haikou Municipal Procuratorate reported the matter to the Hainan Provincial Procuratorate. After examination, the Hainan Provincial Procuratorate held that the non-prosecution decision was erroneous and required the Xiuying District Procuratorate to correct it. On March 23, 2017, the Xiuying District Procuratorate revoked the original non-prosecution decision and, on the 29th of the same month, initiated a public prosecution against Song Moumou for the crime of dangerous driving. On September 28, 2017, the Xiuying District People's Court, after trial, held that the facts of the procuratorial organ's accusation of Song Moumou for dangerous driving were unclear and the evidence insufficient, and acquitted Song Moumou.

Procuratorate Performance of Duties

(1) First second-instance protest. On October 9, 2017, the Xiuying District Procuratorate filed a protest with the Haikou Intermediate People's Court. On November 18, 2017, the Haikou Municipal Procuratorate supported the protest.

In response to the first-instance court's grounds for acquittal — that "the evidence relied on by the procuratorial organ to prove that the vehicle involved was driven by Song Moumou was all indirect evidence, which could not yet form a complete chain of evidence, could not rule out the possibility that another person drove the vehicle during the relevant period, could not rule out reasonable doubt on the basis of the existing evidence, and made it difficult to reach a sole conclusion; the facts of the procuratorial organ's accusation of the defendant for dangerous driving were unclear and the evidence insufficient" — the Haikou procuratorial organs held that the first-instance court had one-sidedly accepted the defendant's defense, which was indeed erroneous, and that the evidence on record was sufficient to prove that Song Moumou was the driver of the vehicle involved at the time of the incident.

First, there was sufficient evidence to prove that Song Moumou was the driver of the vehicle at the time of the incident. The testimony of eyewitness Zhang Moumou in this case was objective and detailed, and his testimony was stable and consistent on multiple occasions, capable of proving that Song Moumou got out of the car and that there was only one person in the car at the time; the testimony of multiple witnesses such as Wen Moumou all proved that Song Moumou was the person lying drunk on the sidewalk by the green belt; documentary evidence such as the report on the police response, the report on arrival at the scene, and the Road Traffic Accident Determination also determined that Song Moumou was the driver of the vehicle.

Second, Song Moumou's defense that the car was not driven by him should not be accepted. Song Moumou argued that the car was driven by "Wei Mou," but the identity information of "Wei Mou" could not be verified, and his mobile phone number had been disconnected; Song Moumou's defense regarding how he came to know "Wei Mou" and the two of them meeting by chance and eating together was self-contradictory; eyewitness Zhang Moumou proved that Song Moumou got out of the driver's seat, and multiple witnesses proved that no one accompanied Song Moumou as he lay drunk by the roadside and that there was no one else in the car; Song Moumou stated that he drank only one can of beer, but one can of beer causing Song Moumou's blood alcohol concentration to reach as high as 213mg/100ml nearly five hours after the meal — a state of severe intoxication with heavy vomiting — was contrary to common sense. Therefore, Song Moumou's defense was not corroborated by other evidence, and his defense exceeded everyday life experience and was of doubtful authenticity; Song Moumou's defense should not be accepted.

At the same time, in order to fully explain the protest opinions and grounds, after filing the protest, the procuratorial organ extracted the surveillance video material from the road section where the incident occurred and entrusted it to the Guangdong Jiesite Audio-Visual Materials Judicial Appraisal Institute for appraisal. The appraisal opinion (hereinafter the "Yue Jiesi image appraisal opinion") was: "The submitted surveillance video records: at 20:20:41 on November 16, 2015, the driver of the silver-gray suspect car appearing on the monitored road surface of 'Binhai Avenue–Changyi Road' and the person subject to

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appraisal, Song Moumou, are the same person."

On December 28, 2017, the Haikou Intermediate People's Court ruled to remand the case to the Xiuying District People's Court for retrial. During the retrial by the Xiuying District People's Court, defendant Song Moumou challenged the "Yue Jiesi image appraisal opinion," and the Xiuying District People's Court separately entrusted the Judicial Appraisal Center of Southwest University of Political Science and Law and the Guangdong Tianzheng Judicial Appraisal Center to re-appraise the identity between the aforesaid video surveillance images and defendant Song Moumou. On September 20 and 21, 2018, the Judicial Appraisal Center of Southwest University of Political Science and Law and the Guangdong Tianzheng Judicial Appraisal Center respectively issued written opinions holding that the facial image of the subject material was highly blurred and did not meet the conditions for video facial-image appraisal. On December 4, 2018, the Xiuying District People's Court, after trial, held that the evidence proving Song Moumou's commission of the crime of dangerous driving was insufficient and reasonable doubt could not be ruled out, and again acquitted Song Moumou.

(2) Second second-instance protest. On December 13, 2018, the Xiuying District Procuratorate filed a protest for the second time. On May 17, 2019, the Haikou Municipal Procuratorate supported the protest.

In addition to the protest grounds raised in the first second-instance protest, the Haikou Municipal Procuratorate raised the following protest opinions and grounds:

First, the Xiuying District People's Court's failure to adopt the "Yue Jiesi image appraisal opinion" was improper. The content of the "Yue Jiesi image appraisal opinion" was objective and truthful, the appraisal procedure was lawful, and the appraisal institution and appraisers were qualified; it should be adopted and used as one of the pieces of evidence in this case. First, the evidence retrieved on record, such as the qualification certificates of the appraisal institution and appraisers and the qualification certificates of the two appraisers retrieved by the investigation organ from the Guangdong Provincial Department of Justice, proved that the appraisal institution and appraisers were qualified. Second, the appraisal opinion and the earlier opinion of "the person is a male" issued by the same image appraisal center in its first appraisal were appraisal opinions issued on the basis of different entrustment scopes; they were not contradictory but rather further confirmed the facts of this case. Moreover, this piece of evidence was only one of the pieces of evidence in this case, not the only one; this piece of evidence, together with the other evidence on record, jointly reached the degree of proof of being reliable and sufficient and jointly proved the facts of this case. Third, the opinions issued by the Judicial Appraisal Center of Southwest University of Political Science and Law and the Guangdong Tianzheng Judicial Appraisal Center, to which the Xiuying District People's Court re-entrusted the appraisal, that "the same subject material cannot be appraised," could not negate the objective authenticity of the "Yue Jiesi image appraisal opinion."

Second, the Road Traffic Accident Determination and the Notice of Handling of Road Traffic Safety Violations issued by the road traffic administration department were an important link in the chain of evidence in this case, determining that the accident occurred because Song Moumou drove a motor vehicle while intoxicated and fled the scene after the accident, and because the party Zhang Mou drove an electric bicycle outside the non-motorized vehicle lane; on this basis, Song Moumou was determined to bear full responsibility for the accident. This piece of evidence corroborated Zhang Moumou's testimony and was consistent with the facts proved by other evidence, forming a chain of evidence; the first-instance judgment's failure to adopt it was clearly improper.

The Haikou Intermediate People's Court, after trial, held that the testimony of witness Zhang Moumou used to prove the facts of this case was not corroborated by other evidence and could not rule out reasonable doubt; both the Judicial Appraisal Center of Southwest University of Political Science and Law and the Guangdong Tianzheng Judicial Appraisal Center determined that the same subject material did not meet the conditions for facial-image appraisal, whereas the "Yue Jiesi image appraisal opinion" reached an identity conclusion based on the same subject material, and upon comparison and argumentation the "Yue Jiesi

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image appraisal opinion" lacked reliability. The original judgment's determination of facts and application of law were correct, and it was therefore correct to find the defendant Song Moumou not guilty. On September 2, 2019, the Haikou Intermediate People's Court rendered a final ruling rejecting the protest and affirming the original judgment.

(3) Retrial protest. On September 29, 2019, the Haikou Municipal Procuratorate held that the original judgment was indeed erroneous and requested the Hainan Provincial Procuratorate to file a protest under the trial supervision procedure. On December 27, 2019, the Hainan Provincial Procuratorate filed a protest with the Hainan Provincial High People's Court. During the protest period, the case-handling prosecutor newly discovered video footage captured by the road-surface surveillance at the scene of the incident, and entrusted the Judicial Appraisal Center of the Shanghai Municipal People's Procuratorate to conduct an identity appraisal between the driver of the car appearing in the footage and the original defendant Song Moumou. The appraisal opinion again confirmed that the style and color of the jacket worn by the driver of the car that night and the driver's hairline and nose features, compared with the style and color of the jacket worn by the car owner Song Moumou when he lay drunk and when his blood was drawn, and his hairline and nose features, displayed similar or identical characteristics. Comprehensively analyzing the original evidence and the newly retrieved and presented new evidence, the evidence of the entire case was more reliable and sufficient and the chain of evidence more complete, completely ruling out the possibility of another person driving the car and enabling the sole conclusion that Song Moumou drove while intoxicated.

(4) Result of the protest. On June 7, 2021, the Hainan Provincial High People's Court adopted the protest opinions, ruled to revoke the original judgment, and changed the judgment to find defendant Song Moumou guilty of the crime of dangerous driving, sentencing him to six months of criminal detention and a fine of 20,000 yuan.

Guiding Significance

(1) People's procuratorates shall lawfully and normatively exercise the power of non-prosecution and strengthen internal supervision and restraint over non-prosecution decisions. Under the Criminal Procedure Rules of the People's Procuratorates, where a higher-level people's procuratorate finds that a lower-level people's procuratorate's non-prosecution decision is indeed erroneous, it shall revoke the decision or instruct the lower-level people's procuratorate to correct it. For cases involving relatively great controversy or relatively great influence, where a lower-level people's procuratorate decides not to prosecute after examination, it shall promptly file the decision with the higher-level people's procuratorate for record-filing review; where the higher-level people's procuratorate discovers an error, it shall promptly correct it. To ensure the fairness of non-prosecution decisions, procuratorates at all levels shall fully understand the importance of establishing and improving the record-filing review work system, promptly discover and correct erroneous decisions, and, where it is necessary to organize a hearing, promptly convene a non-prosecution hearing; they shall strengthen business guidance for lower levels and, through such means as periodic analysis, situation reporting and summarizing similar cases, focus on improving the level of examination and prosecution work and the quality of case handling.

(2) In handling protest cases, people's procuratorates shall fully perform their legal supervision functions and persist in successive protest and sustained supervision to ensure the fairness of case adjudication results, demonstrating prosecutorial responsibility through the objective and fair handling of "minor cases." Procuratorial organs shall fully perform their legal supervision functions; higher-level procuratorates shall strengthen guidance over the protest work of lower-level procuratorates, closely focusing on the key points of protests and strictly applying protest standards, so as to form a combined force of supervision. Where a court does not adopt a correct protest opinion of a lower-level procuratorate, the higher-level procuratorate shall provide strong support and, together with the lower-level procuratorate, supervise successively, persisting in the protest to the end and ensuring, through the sustained supervision of higher- and lower-level procuratorates, that erroneous judgments are supervised and corrected. Every "minor case" shall be handled

with care and dedication; this is a basic requirement of the procuratorial organ's duty of objectivity and fairness and demonstrates prosecutorial responsibility and devotion to the people.

(3) Strengthen substantive examination of judicial appraisal opinions to ensure the objectivity and scientific nature of examination conclusions. Where a people's procuratorate discovers that there are two or more appraisal opinions on the same specialized issue in a case and their conclusions are inconsistent, it may, where truly necessary, lawfully decide to conduct supplementary appraisal or re-appraisal. Judicial appraisal opinions shall be subject to strengthened analysis, comparison and judgment and differentiation, with substantive examination conducted from aspects such as the compliance of the appraisal subject, the legality of the appraisal procedure, the scientific nature of the appraisal method, the sufficiency of the appraisal materials, and the reasonableness of the analysis and argumentation, and, in combination with the other facts and evidence of the case, a scientific examination conclusion shall be reached through analysis.

Relevant Legal Provisions

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

Criminal Procedure Law of the People's Republic of China (2018 Revision), Articles 228, 232, 236 and 254.

Criminal Procedure Rules of the People's Procuratorates (for Trial Implementation) (effective in January 2013), Articles 425 and 591 (now Articles 389 and 591 of the Criminal Procedure Rules of the People's Procuratorates, effective in 2019).

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