

OPINIONS OF EXPERTS BASED UPON ARGUMENTATION REGARDING THE FRAUD CASE AGAINST PENG CHU-BIN AND WU JUN

A number of individuals accepted the invitation of the Song Tao Law Firm and engaged in discussion and argumentation regarding procedural and substantive issues related to the conclusion the Guangdong Province Shenzhen Municipal Intermediate People's Court came to in its criminal judgment that Peng Chu-Bin and Wu Jun committed the crime of fraud. That judgment is identified as Shen Zhong Fa Xing Er Chu Zi Di No. 178. The discussion and argumentation was based upon material provided by the Song Tao Law Firm, such as the judgment, complaint, and evidence submitted by the prosecution and defense in the course of the trial. The following people participated in the discussion and argumentation: Professor Chen Xing-Liang and Professor Wang Jian-Cheng of the Beijing University Law School, Professor Zhang Ming-Kai of the Tsinghua University Law School, Professor Chen Wei-Dong of Renmin University of China Law School, Professor Qu Xin-Jiu and Professor Hong Dao-De of the Criminal Administration of Justice Institute at China University of Political Science and Law, Professor Wang Min-Yuan of the Law Research Institute within the Chinese Academy of Social Sciences, Professor Gu Xiao-Rong of the Shanghai Law Studies Association, Professor You Wei of the East China University of Politics and Law, and Professor Dong Bing-Xin of the Shanghai Academy of Social Sciences. The People's Forum Department of the People's Daily newspaper, the Special Edition Department of the Legal Daily newspaper, and the Legal Committee of the China Democratic League sent their representatives to be present during the discussion and argumentation of the experts.

1. BASIC SITUATIONS THAT THE JUDGMENT AFFIRMED WHICH RELATE TO THE ISSUES TO BE ARGUED

The complaint accused defendants Peng Chu-Bin, Wu Jun, etc., of following criminal suspects Yi Yungao, Wang Yu-Hua, Que Dao-Xiu, Wang Yu-Yi, Tang Hua-Lie, Wu Wen-Tou, Huang He-Lou, Wang Hua-Qing, Li De-He, Yu Li-Hua (all of whom have fled) and falsely using the name of religion to engage in fraudulent activities. The judgment acknowledged the fact that "there was great debate between the prosecution and defense over the nature of the conduct of defendants Peng Chu-Bin and Wu Jun." The court thought:

"The existing evidence demonstrates the following: After defendants Peng Chu-Bin and his wife Yu Li-Hua began following Yi Yungao as their master, they used the process of treating patients to boast about criminal suspect Yi Yungao, to provide people with the *Master Yi Yungao* and other material to read, and to poison people's minds. They also actively introduced to Yi Yungao some people who did not understand the situation, such as victims Lau Pak Hun and Liu Juan. They also made known to people who visited Yi Yungao the idea that offerings must be made to the master and the more one offers, the more good fortune one will have. With respect to Yi Yungao luring victims into being duped so that he could accumulate wealth by unfair means, objectively speaking, they played an active role. Additionally, during the time Yi Yungao was active in Shenzhen, defendant Peng Chu-Bin did some registering of people, playing of videotapes, etc. directly at Yi Yungao's place of activity. In short, defendant Peng Chu-Bin's conduct had the effect of providing certain assistance to the crimes of fraud committed by Yi Yungao's gang. It should be concluded that his conduct constitutes that of an accomplice to the crime of fraud. The court does not support the contention of his defense counsel that he is innocent.

“The existing evidence demonstrates the following: During the course of following Yi Yungao, defendant Wu Jun must have clearly known the illegality of Yi Yungao’s request that defendant Wu Jun wear policeman clothes when accompanying Yi Yungao during outside activities or the receiving of visitors. Defendant Wu Jun’s conduct had the effect of providing certain assistance to the crimes of fraud committed by Yi Yungao’s gang. It should be concluded that his conduct constitutes that of an accomplice to the crime of fraud. The court does not support the contention of his defense counsel that he is innocent.”

2. OPINIONS OF THE EXPERTS BASED UPON ARGUMENTATION REGARDING THE ABOVE-MENTIONED SITUATIONS WHICH THE JUDGMENT AFFIRMED

After serious analysis of the relevant material and thorough discussions, the experts think that in the areas of legal process and application of substantive law this case has obvious improprieties and the judgment contains serious flaws.

(1) FLAWS IN THE JUDGMENT WITH RESPECT TO LEGAL PROCEDURE

1. Whether Defendants Peng Chu-Bin and Wu Jun, as Accessories, Can Be Tried Individually

In normal situations, with respect to collaborative crimes, defendants who appear in court can be individually tried even if the principal culprit and accessories do not appear in court. However, this is based on the premise that the requirements for bringing charges and holding a trial must be met. This means that if a criminal suspect does not appear in court, that will not influence the conclusion of the court regarding the nature of the conduct of a defendant who does appear in court. If the nature of the conduct of a criminal suspect who does not appear in court—especially if such suspect is a principal culprit in a collaborative crime—has a decisive effect upon a defendant who appears in court, then it is inadvisable to individually try such defendant who appears in court. In the present case, making conclusions about the nature of the conduct of defendants Peng Chu-Bin and Wu Jun was dependent upon criminal suspects Yi Yungao and others, who did not appear in court. The judgment admits that the conduct of defendants Peng Chu-Bin and Wu Jun only amounted to “objectively speaking, they played an active role” and they “had the effect of providing certain assistance.” Trying defendants Peng Chu-Bin and Wu Jun based solely upon “objectively speaking, they played an active role” and they “had the effect of providing certain assistance” is clearly illegal.

2. The Judgment Reflects Bias in the Adoption of Evidence Submitted by the Prosecution and Defense

The judgment shows that the court adopted a great deal of the prosecution’s evidence as the basis for its convictions. This is not improper per se. However, after evidence submitted by the defense is listed in the judgment, the court does not explain the reasons why it did not adopt such evidence. However, some of the evidence the defense submitted to the court that the experts saw was truly sufficient to influence the determination of the nature of this case. The court should have explained the reasons why it did not adopt the evidence of the defense. A standard, qualified judgment must be a reasonable judgment.

3. The Length of the Hearing of This Case Far Exceeded the Time Limit Specified in the Criminal Procedure Law

According to the provisions of Article 168 of the Criminal Procedure Law, when a People’s Court hears a public prosecution case, it should pronounce its judgment within one month of accepting a case; at the latest, no more than one month and a half. One of the situations

specified in Article 126 of that law is as follows: With the approval or decision of a Provincial Higher People's Court, an Autonomous Region Higher People's Court, or a Higher People's Court of a Municipality Directly Under the Central Government, that time limit can be extended one month. Furthermore, even if this time period begins to run from the time the case is heard rather than from the time the case is accepted, a judgment was rendered in this case only after two years. The length of the hearing of this case obviously far exceeded the time limit specified in the Criminal Procedure Law and thus violated the Criminal Procedure Law.

(2) FLAWS IN THE JUDGMENT'S APPLICATION OF SUBSTANTIVE LAW

1. No Evidence Proves That Defendants Peng Chu-Bin and Wu Jun Participated in Criminal Activities Relating to Fraud

The objective characteristics of the crime of fraud are using the methods of fabricating facts and concealing the truth to gain through deception public or private property. That is, for this crime to stand, there must be the fact of illegal possession of property. However, the evidence listed in the judgment cannot prove that defendants Peng Chu-Bin and Wu Jun used the methods of fabricating facts and concealing the truth to gain through deception public or private property. It cannot even be concluded that defendants Peng Chu-Bin and Wu Jun gained through deception public or private property. All the more so, it cannot be proven that criminal suspects Yi Yungao et. al., who did not appear in court, illegally possessed other people's property. The basic fact that the judgment affirmed is that the property of the victims in this case was not transferred. The "victims" in this case are Lau Pak Hun and Liu Juan. However, the property of Lau Pak Hun at all times remained under Lau Pak Hun's own name. The International Wisdom & Mercy VDA S.A. that Lau Pak Hun registered in Hong Kong was at all times owned by Lau Pak Hun. Ownership rights were never transferred to any other person. Proof of this includes the complaint that Lau Pak Hun filed in Hong Kong against Wong Hiu Shui and others for seizing Lau Pak Hun's property as well as the judgment of the Hong Kong court, which affirmed that Lau Pak Hun has ownership rights in the International Wisdom & Mercy VDA S.A. and concluded that the conduct Wong Hiu Shui and others constituted a crime. This is an undeniable fact. The International Wisdom & Mercy VDA S.A. in Hong Kong is totally unrelated to Yi Yungao and the others. How, then, could they have committed fraud? Lau Pak Hun's RMB\$21,000,000 investment in Shenzhen was to be used for a specific company project. The ownership rights in that money belong to Lau Pak Hun. They have never been transferred to any other person. Of course, they have never been transferred to Yi Yungao and the others. Evidence of this fact is the investment certificate of Lau Pak Hun. The property of Liu Juan at all times remained under Liu Juan's own name. None of her property was transferred to Yi Yungao or other people. In the judgment, it is concluded that Liu Juan was "swindled" out of two sums of money totaling more than RMB\$40,000,000. One sum of money was for Liu Juan's investment with Wu Wen-Tou to form a partnership to do business. Evidence of this is the agreement signed by both persons. That investment had nothing whatsoever to do with Yi Yungao. The other sum of money was used to purchase real estate. Liu Juan believes that she was cheated when she purchased that real estate. However, the fact that Liu Juan purchased that real estate objectively exists. Moreover, the real estate that she purchased still belongs to Liu Juan. Such real estate purchase has nothing whatsoever to do with Yi Yungao. In short, the judgment concludes that Lau Pak Hun and Liu Juan are "victims" in this case, yet there are no facts indicating that any of their property was swindled. The "victims" themselves also deny that they are "victims" in this fraud case. Therefore, on what grounds does the court conclude in its judgment that Yi Yungao and the others engaged in fraudulent criminal activities? It cannot even be concluded that criminal suspect Yi Yungao and the others committed fraud. There are no

criminals. It cannot be established that there is a principal culprit. The court held that defendants Peng Chu-Bin and Wu Jun were accessories to the crimes of fraud committed by Yi Yungao and the others. On what basis can one speak of their fraudulent activities?

2. There Is No Evidence To Prove That Defendants Peng Chu-Bin and Wu Jun Had the Subjective Intent To Participate in Fraud

As accessories to the crime of fraud, it is legally required that defendants Peng Chu-Bin and Wu Jun clearly knew that criminal suspect Yi Yungao and the others were engaging in fraudulent criminal activity, yet they still participated in such criminal activity. That is, it is legally required that they had the subjective intent to participate in fraudulent criminal activity. However, not one item of evidence listed in the judgment can prove that defendants Peng Chu-Bin and Wu Jun had such a subjective intent. As a result, in its judgment, the court had no choice but to use phrases such as “objectively speaking, they played an active role” and they “had the effect of providing certain assistance” as reasons to convict defendants Peng Chu-Bin and Wu Jun. Given such reasons for conviction, it is difficult to avoid the suspicion that they were found guilty for objective reasons only.

(3) APPLICATION FLAWS IN THE JUDGMENT REGARDING THE CONFISCATION OF ILLEGALLY OBTAINED PROPERTY

According to the provisions of Article 64 of the Criminal Law, all property that criminals illegally obtain should be retrieved or ordered to be returned with compensation. The legal property of victims should be returned to them promptly. Prohibited articles and property of criminals that criminals use to commit crimes should be confiscated. The third item at the end of the judgment states, “The illegally obtained property of the criminals that has been seized shall be confiscated according to the law and handed over to the national treasury.” When one compares this to the provisions of the Criminal Law, one can see that the content of this item is vague.

1. Which property is the judgment referring to in the phrase “illegally obtained property”? Why did the judgment not enumerate in a list the illegally obtained property that should be confiscated?

2. Since the judgment concluded that Lau Pak Hun and Liu Juan were victims in this case, why is it still necessary to hold the seized property of victims Lau Pak Hun and Liu Juan and not return such property to them promptly?

The experts think that given the great effort that is currently being exerted to strengthen the establishment of the legal system, given such many and such obvious errors that have appeared in the criminal judgment identified as (2003) Shen Zhong Fa Xing Er Chu Zi Di No. 178 issued by the Guangdong Province Shenzhen Municipal Intermediate People’s Court, such judgment should not have been rendered. We suggest that it be rectified.

September 3, 2005, Beijing

LIST OF EXPERTS WHO ATTENDED THE MEETING

Chen Xing-Liang	Vice-Dean, Professor, Teacher of Doctorate Degree Holders at Beijing University Law School	signed
Wang Jian-Cheng	Professor, Teacher of Doctorate Degree Holders at Beijing University Law School	signed
Zhang Ming-Kai	Professor, Teacher of Doctorate Degree Holders at Tsinghua University Law School	signed
Qu Xin-Jiu	Dean of the Criminal Administration of Justice Institute at China University of Political Science and Law	signed
Hong Dao-De	Professor at China University of Political Science and Law	signed
Chen Wei-Dong	Professor, Teacher of Doctorate Degree Holders at Renmin University of China Law School	signed
Gu Xiao-Rong	Vice-President of the Shanghai Law Studies Association	signed
Dong Bing-Xing	Professor at the Graduate School of the Shanghai Academy of Social Sciences	signed
You Wei	Director, Professor at the Administration of Justice Research Center of the Shanghai East China University of Politics and Law	signed
Wang Min-Yuan	Researcher at the China Law Research Institute	signed
Zheng Yong-Jie	Director of the Special Edition Department of the Legal Daily newspaper	signed
Lu Zheng	Vice-Director of the Legal Committee of the China Democratic League	signed
Wei Chun-Jiang	Director of the People's Forum Department of the People's Daily newspaper	signed