

Path Analysis of the Application of "Poisonous Tree Fruit" in the Field of Criminal Law in China

Lin Zhang¹

¹ School of Law and Political Affairs, Guangdong Ocean University, Zhanjiang, China

Correspondence: Lin Zhang, School of Law and Political Affairs, Guangdong Ocean University, Zhanjiang, Guangdong, China. E-mail: 1486488218@qq.com

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Abstract

Although our country has established the exclusion rule of illegal evidence, there is no clear legislation on the evidence derived from illegal evidence. Therefore, the choice of "the fruit of the poison tree" leaves a huge space for controversy. Behind its choice not only implies the further coordination of procedural justice and substantive justice, but also becomes an important driving force to promote the modernization of China's judicial process.

Keywords: the fruit of the poison tree, procedure justice, hierarchical management

1. The Development Source of "the Fruit of the Poisonous Tree" and the Background and Reason Analysis of Advocating the Rule

1.1 Development Source of "the Fruit of Poisonous Trees"

The modern illegal evidence exclusion rule originated in the British "CowMonroe principle", excluding improper confessions or unfree confessions from evidence, after which the United States inherited and developed the fruit of poisonous trees rule, which originated in the Wangson drug crime but was ultimately established in 1920 *Silfne Rumba Lumber Co. v. United States*, where the court noted that illegally obtained evidence should not be used to obtain other evidence because the originally illegally obtained evidence corrupted all other evidence subsequently obtained. At this point, the rule of "the fruit of the poison tree" was established, which has since provided relevant reference significance for various national legislation.

1.2 Advocate the Background and Reasons of the Exclusion Rule of "the Fruit of Poisonous Trees"

Once the rule was established, the question of whether the clues found by legal means should be adopted through illegal evidence became the focus of controversy in all circles of law. Although our country does not directly recognize the "fruit of the poisonous tree" rule in laws and regulations, we can still find the legislative reference significance on the rule in it. Article 56 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment) stipulates that criminal suspects collected by illegal methods such as torture, the confession of the defendant, witness testimony collected by illegal methods such as violence and threat, and the statements of the victim shall be excluded. If the material evidence is collected and the documentary evidence does not conform to the legal procedures and may seriously affect the judicial justice, a correction or reasonable explanation shall be made; if no correction or reasonable explanation can be made, the evidence shall be excluded. Through this law, we can know that our country for illegal speech evidence "poisonous tree" adopt absolute exclusion rule, and for illegal physical evidence "poisonous tree" through the discretion of the judge (judge the seriousness of the evidence on judicial justice), left more room for the exclusion of physical evidence, so determine its relative exclusion rule. Lawmakers hope to achieve the coordination of fairness and justice through the law, which is the embodiment of the prototype of the "fruit of the poisonous tree", cutting off the seeds of the "poisonous tree", but the choice of the "poisonous fruit" leaves a huge controversial space for the relevant legislation.

Illegal evidence exclusion rule has not been mentioned in the height of the legislative level, our country about the "fruit of poisonous tree" evidence exclusion rule has not been established in the law, so because the use of illegal evidence of "poisonous fruit" evidence ability to the judge, make common, and to maintain modern criminal justice process justice, need to establish perfect illegal evidence exclusion rule, realize the fruit of poisonous tree rules missing in the criminal field in China. (Note 1) Combined with China's own unique geographical resources and long history influence, less than other countries are stimulated by foreign civilization

and adjust, therefore, in the field of criminal justice in China really establish and perfect the fruit of "poison tree" illegal evidence exclusion rule to stimulate the Chinese rule of law progress has important practical significance.

2. The "Fruit of the Poisonous Tree" Exclusion Rule Application of the Dispute

2.1 Application of "the Fruit of a Poisonous Tree" the Proof Force of Indirectly Admitting Illegal Evidence Is Contrary to the Legal Principle of Procedural Justice

If through illegal evidence, then use the evidence using legal means found clues, affirm the value of the clues, also admitted the value of the same logical chain of illegal evidence, fundamentally indulge the illegal law enforcement judicial behavior, for the public security judicial organs staff using torture and other illegal way to force the criminal suspect, the defendant provide evidence to open the gap. Herbert McDonnell once said: "During the trial, the defendant lied, the witnesses lied, the defense lawyers and prosecutors lied, and even the judge lied, but the physical evidence does not lie." But once the legitimate value and admissibility of the illegal evidence is affirmed, the physical evidence can also lie. In a dissent in the Supreme Court ruling that Japanese-American citizens were held in the concentration camp case, Robert Haughwout Jackson said that if a government official violated the constitution, but if the court subsequently accepted the action, the past event would become part of the constitutional principle. This part has its own reproductive power, but what it produces destroys the constitutional principles themselves.

2.2 The Application of "the Fruit of Poisonous Trees" Is Conducive to Safeguarding the Rights of the Criminal Suspects and the Defendants

Influenced by China's traditional historical concept, the two sides of the prosecution and defense have always been in an unequal position in Chinese criminal cases, and the establishment of the "fruit of the poisonous tree" rule is conducive to safeguarding the rights of criminal suspects and defendants through due process. Negative value of "poison", to cut off the application of the illegal evidence chain, for the denial of the public security judicial staff based on reasonable reasons for the criminal suspect, the defendant torture behavior, because of the case, further reduce the possibility of torture, to safeguard the criminal suspect, the rights of the defendant.

2.3 The Application of "the Fruit of the Poisonous Tree" Blocks the Proceedings and the Investigation of the Facts of the Case

Abandon the rejection of the "poison fruit" reduces the evidence available in the case. If the "poison fruit" is the key evidence to prove the facts of the case, it will not be conducive to the criminal proceedings and make the progress of the investigation of the facts of the case stagnant.

In addition, if the "poisonous fruit" is completely abandoned, but the "poisonous fruit" itself has three characteristics of evidence, but because its source is polluted and one size fits all, it is easy to lead to the unfair result of the case and violates the original intention of realizing substantive justice. Under the premise of human society in China, because of the exclusion of "poison" injustice, makes many criminal suspects, the defendant to escape legal sanctions more easily shake people's trust in legal justice, cause the explosive growth of social bad speech, long public dissatisfaction, is not conducive to the stability of social order.

3. The "Fruit of Poisonous Tree"

First of all, the fundamental purpose of the "toxic fruit" choice is to find a balance between procedural justice and substantive justice, human rights protection and judicial justice. Contemporary judicial justice needs to achieve substantive justice through the process, but if it is always confined to the framework of the process, it may lead to the stagnation of the judicial process and the "suspension" of the facts of the case.

The realization of procedural justice should not be a rigid and rigid normative framework, but should be flexible to the extreme situation of cases within the scope of the general framework. Maintain the order of the procedure on the premise of finding out the facts of the case and realizing the substantive justice. The limited application of "the fruit of poisonous tree" in the field of criminal law in China is an important embodiment of this jurisprudence, and how the limited application to "the fruit of poisonous tree" is the content mentioned in the later text.

Secondly, the author holds a negative attitude towards the application of the "fruit of the poisonous tree" proposed by some scholars, which is conducive to safeguarding the rights of the criminal suspects and the defendants. Standardizing the behavior of public security and judicial staff and ensuring the fairness of litigation order is the fundamental policy to safeguard the rights of criminal suspects and the defendants, rather than protecting their rights by abandoning the "poisonous fruit" and allowing them to escape the possible existence of legal responsibility.

4. To Briefly Analyze the Practical Dilemma of Practicing "the Fruit of Poisonous Trees" in China

First, the Chinese nation started with the Yellow River basin as its cradle, forming its unique self-sufficient small-scale peasant economy, and created the development of its acquaintances and clanism under the control of paternity. Family ethics has often become an important means to maintain social order, and has always played a long history and a profound influence in Chinese society. The Chinese people's legal awareness is relatively weak, heavy affection, light legal system, "litigation for shame" and "intimacy" have been deeply rooted in the hearts of the people for a long time. The unity of blood relationship and geography of Chinese feudal society makes this culture lack of change and development. Ordinary people highly idealized morality and the rule of law, opening the gap between the humane and professional legal logic and the simple moral sense of the people. Therefore, once the "illegal evidence exclusion rule of the fruit of the poisonous tree" is established, the suspect and the defendant escape legal sanctions in some cases, which will inevitably cause an uproar like the "Simpson case" and be greatly opposed by the public.

Second, our country as a populous country, in order to achieve unified management and resource order, with reference to other litigation mode development using authority mode, in this mode, the public security judicial organs in accordance with the authority to find out the facts of the main promoter of the case, both sides in an unequal position, for the defense "distrust" consciousness against the defense of unfavorable illegal evidence, in such a structural framework, the defense "defense" effect compared with the prosecution, in practice is frequently the public security judicial staff "presumption of guilt" the injustice. The consequences of such a model of litigation have also become a big obstacle to establishing the illegal evidence exclusion rule of "the" fruit of the poisonous tree ".

Third, the provisions of our law on the exclusion of illegal evidence are still not perfect enough. Such as our country on the scope of the scope of illegal evidence is relatively empty, the provisions on criminal cases excluding illegal evidence, article 1, using torture illegal means of criminal suspect, the defendant confession and using violence, threats and other illegal means to obtain witness testimony, the victim statement, belongs to the illegal speech evidence. The law only regulates the torture for an illegal means, no other specific illegal means, illegal evidence definition standard fuzzy, so under some special conditions, such as the law without specific provisions, how to judge the behavior of the public security judicial staff is legal, and then how to determine the illegal evidence. In Article 2 of the Provisions on Several Issues Concerning the Strict Elimination of Illegal Evidence in Handling Criminal Cases, the confession made against his will by the violent methods of beating, illegal use of restraint AIDS or the bad means of disguised meat punishment, so that the criminal suspect and the defendant suffer unbearable pain, shall be excluded. And how to judge the criminal suspect, the defendant suffered unbearable suffering, if with the medical appraisal institutions to judge the unbearable pain requirements is too high, but if according to the crime of the suspect, the defendant's confession, its subjective assumption and exists to escape legal liability and lie hinder the possibility of the procedure.

To sum up, although the exclusion of illegal evidence in Chinese law seems reasonable, it leaves a huge judgment space for the judge. It is uncertain even which tree the "poisonous tree" is, and how to determine which tree is the "poisonous fruit".

5. The Limited Application of the "Poisonous Tree Fruit" Evidence Rules in China Is the Thinking

Next, the author assumed that a certain situation, A is a vicious murderer, police officer B has long hated this, so the use of torture to force him to confess the criminal facts, a surrender into a confession to record of its killing facts notes. According to the "fruit of the poisonous tree" rule, then A's notes cannot become an important evidence to determine the facts of the case, which will most likely arrest the proceedings, and even make the case a "pending case". So can this be allowed, even to ensure procedural justice? The answer, naturally, is no.

Therefore, the application of the "the fruit of the poisonous tree" naturally has its limitations. In the author's opinion, two standards are applied to the application of toxic fruit respectively. On the one hand, it starts from the dual standard of the attribute of the evidence itself and the status in the facts of the case. If from the means of illegal acquisition, the evidence itself is related to the facts of the case, so it can be accepted as one of the reasons, but if the evidence itself has the ability to have three conditions, is not the conclusive evidence of the facts of the case (even without the evidence, the facts can still be found out, the proceedings can still proceed), as "poison", exclude applicable. On the other hand, starting from the results of the adoption of evidence, to measure the importance of the social public interest and the toxic fruit evidence, to judge whether the social public interest and whether it will allow the guilty to escape sanctions. To provide a justification for the application of the "poisonous fruit" breakthrough procedural framework.

To sum up, the author is more inclined to separate the ability to prove evidence from the means of illegally

obtaining evidence of public security judicial organs. Although the public security judicial organs violate the legal procedures in the means of obtaining the evidence, it cannot therefore become the only standard to determine the ability to prove the evidence. We exclude illegal evidence is to achieve the purpose of entity justice results, and the evidence use banned single reason to ban, for illegal evidence and illegal evidence use using "sitting" exclusion often incomplete evidence in judicial practice, the facts are not clear, obviously against us to achieve the fundamental purpose of entity justice. In addition, it will even cause the public distrust of the law, and the majesty of the law is difficult to compromise.

At the same time, in order to better regulate the judicial procedures and realize the substantive justice, the legislators should tighten the illegal behavior standards of the public security judicial organs, and match the corresponding supervision and punishment system to increase the punishment of the illegal public security judicial organs. Of course, in order to better achieve the balance between judicial justice and human rights protection, neither the exclusion of illegal evidence nor the punishment of illegal public security and judicial personnel can be "one size fits all". Under the general principle, the exclusion rule of illegal evidence should still be taken. However, for the purpose of great social impact, in order to ensure the authenticity and relevance of the evidence, the application of illegal evidence even if the evidence is "polluted" by the public party. The illegal public security judicial personnel should also be convicted and sentenced according to the specific circumstances, illegally obtaining evidence under the need of obtaining relevant evidence.

To sum up, in the issue of the evidence acquisition and the implementation of the evidence use, the two will be separated, and then the hierarchical management in the two fields. The sentencing procedure of the public security judicial staff shall be judged on the basis of the ability of the use of illegal evidence and the dual standard of the public interest and the influence on the "admissibility" of the illegal evidence.

6. Epilogue

The limited application of "the fruit of the poison tree" in the field of criminal law in China is the key point to further coordinate the substantive justice and procedural justice, human rights protection and judicial justice. To limit the application of the applicable norms of "poisonous fruit" within its own ability to prove it, the role of the facts of the case, and the legitimacy of the social and public interest. Not no use, but the restrictions apply.

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Note

Note 1. Introduction to Chinese Law History Huang Yuansheng was published by Guangxi Normal University Press in July 2018.

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