

Case illustrations of the shortage of evidence in judicial proof

Case report

As a cognitive process, judicial proof differs from usual society processes because it is one of the most important knowledge bases for dispute resolution in society. As a method of adjudication which must deal with all sorts of social disputes and conflicts, judicial rulings require the approval or acceptance of the public. And the basis for this approval and acceptance is judicial power. Judicial power can rely superficially on a state's power or authority, but its intrinsic building block must be judicial impartiality. Judicial cases are events of the past, so judges cannot establish the facts directly and must use the indirect means of reviewing a range of evidence to do so. There are two types of evidence: the first is "potential evidence", which objectively exists when a case happens. The second is "real evidence", which is collated and used by either those handling the case or the parties involved in the case. There is always less "real evidence" than "potential evidence". Therefore, it is very common to see the shortage of evidence in the judicial process.

The case of Peng Yu, Nanjing

On 20th November 2006, a 64 year-old retired woman surnamed Xu was waiting for a bus at Nanjing's Shuiximen Square station when two buses arrived at the same time. Xu rushed towards the second bus, which had fewer passengers. As she passed the back of the first bus, a 26 year-old man, Peng Yu, was the first passenger to alight by the rear door. Peng, anxious to catch his connection, happened to glance backwards and found Xu lying on the ground. He immediately helped her up and, together with her family who were soon on the scene, took her to hospital. While there, he paid over 200RMB in medical fees on Xu's behalf. The diagnosis found that Xu had sustained a fracture of the left femoral neck in the fall, and had to be hospitalized for hip replacement surgery, necessitating fees in the tens of thousands. Xu filed an action against Peng in Nanjing's Gulou District Court on 12th January 2007, accusing him of having caused injury to her through a collision, and claiming compensation for medical and nursing expenses, disability, and emotional distress totaling 136,000RMB.

The main evidence in the case included:

- i. The statements of the two parties. The plaintiff Xu alleged that, on the morning of 20th November 2006, she was waiting for a number 83 bus at Nanjing's Shuiximen bus station. At approximately 9.30am, two number 83 buses pulled into the station. Just as the plaintiff was preparing to get on board the second of the two vehicles, the defendant alighted at speed from the back door of the first bus, knocking down the plaintiff and causing a fracture to the neck of her left femur, resulting in hospitalization and surgical treatment. The defendant Peng argued that at the time of the incident he was the first passenger to alight from the bus. Before he did so, other passengers still on board were pushing him. However, after alighting there was no collision between him and the plaintiff. The defendant in no way harmed the plaintiff, in fact, after discovering that she had fallen to the ground, he helped her out of a desire to do a good deed.
- ii. The testimony of an eyewitness from the scene, Chen Erchun.

Volume 6 Issue 1 - 2018

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Received: December 22, 2017 | **Published:** January 05, 2018

The witness stated that he did not see how the plaintiff fell; he first became aware of her when she was already on the ground, at which time the defendant was already helping her.

Transcripts of conversations at the local police station. After the incident, the City Center police station in the Transport Security Division of Nanjing's Public Security Bureau processed the incident according to the law, and produced transcripts of all conversations. The date of the electronic files of these transcripts and file notes was 21st November 2006, that is, the day after the incident. Their contents demonstrated that Peng claimed that he had not collided with Xu, but that she had run into him. During the trial, the officer in charge of the investigation appeared in court and described the process of the investigation, and testified that Peng Yu had admitted that there had been contact between the two parties.

On 3rd September 2007, Gulou District Court issued its verdict. The judgment ruled that there had been a collision between the two parties, but the key facts of the case were unclear (i.e. whether the defendant had run into the plaintiff, or *vice versa*) and, therefore, the defendant should pay only 40 per cent of the plaintiff's costs. Neither of the two parties was satisfied with the ruling and appealed to the higher courts. A second trial in the Nanjing Intermediate Court was about to start when Peng and Xu reached a settlement: Peng agreed to make a single payment of 10,000RMB in compensation to Xu; both parties agreed that neither would publish any discussions or material relating to the case in the media (including but not limited to television, radio, newspapers, magazines, and online publications); and, both parties agreed that, once charges were withdrawn, neither would seek enforcement of the ruling from the civil case heard in Gulou District Court.¹

¹For written judgment see: Xu v. Peng Yu for Personal Injury Compensation, *Peking University Law Database* www.pkulaw.cn, Reference CLIC.85983; and also Xu Jiling, Nanjing Government Announces: Peng Yu Admits Knocking over the Old Lady Xu, *Liaowang News Weekly*, from *Phoenix News website* http://news.ifeng.com/society/1/detail_2012_01/16/12003299_1.shtml.

The case of Xu Yunhe, Tianjin

On 21st October 2009, at around 11am, Xu Yunhe was driving a car with the local registration plate HAK206 north along Huiqu Road in the Hongqiao area of Tianjin. He was approaching the Red Star Macalline furniture retail store when an elderly woman surnamed Wang climbed over the safety barrier running west-east and fell to the floor injured. Xu Yunhe took her to the People's Hospital for treatment. The case later came to court when there was a dispute between the parties over whether or not there had been a collision, and over financial compensation.

The main evidence in the case included:

- i. The statements of the two parties. The plaintiff Wang claimed that the front of the car driven by the defendant hit her leg and, after she was hit, she lay across the bonnet before falling to the ground. The defendant Xu alleged that the plaintiff leapt over the safety barriers on Hongqi Road and in the process of doing so fell onto the first lane of cars running north along the Hongqi Road. He immediately applied the brakes and steered to the left and, when his car stopped in front of the plaintiff, neither of them came into contact with the other.
- ii. The evidence provided by the plaintiff. Including: photographs taken by the plaintiff of the car with the registration plate HAK206, proving that paint had come off the vehicle in certain places; medical bills, prescriptions and statement of expenses, medical certificate showing lost working time, the expert testimony classifying the plaintiff's injuries as a level eight disability, and the receipt for the costs of the expert examination.
- iii. The expert opinion. The *Expert Opinion on Road Traffic Accident Evidence Traces* submitted by the Tiantong Forensic Science Center in Tianjin, stated: "It has not been possible to ascertain the place where the passenger vehicle with the license plate HAK206 came into contact with a human body". Later a supplementary statement from the same body explained that the meaning behind that statement was that they could not be sure that the vehicle had come into contact with Ms Wang, but neither could they eliminate that possibility.

On 16th June 2011, the People's Court in the Hongqiao District of Tianjin found Xu Yunhe 40 per cent responsible, and ordered him to pay Wang compensation of 108,606.34RMB, which included 87,454.80RMB in disability damages. The defendant did not accept the verdict and lodged an appeal. On 22nd August 2011, the Tianjin Number 1 Intermediate People's Court opened its hearing of the case. Having obtained the consent of both parties, the court appointed the Forensic Expert Center at the Institute of Forensic Science under the Ministry of Justice to assess Wang's injuries. On 28th December 2011, the Center published *Expert Opinion Number 157 (2011)*, which found that "the damage to Wang's right knee is consistent with an injury resulting from contact with a large, blunt, external force. This injury would be difficult to sustain from a simple fall, and it is possible that they were caused by contact with a car." On 19th January 2012, the Tianjin Number 1 Intermediate People's Court rejected Xu Yunhe's appeal and upheld the initial ruling.²

²For written judgments see: Wang Xiuzhi v. Xu Yunhe for Road Traffic Accident Personal Injury Compensation, Reference CLI.C.515512 and Xu Yunhe and Wang Xiuzhi Road Traffic Accident Personal Injury Compensation Appeal Case, Reference CLI.C.1339057, both *Peking University Law Database*, www.pkulaw.cn. See also *360Baik* Encyclopaedia entry for Xu Yunhe, http://baik.so.com/doc/3136413.html.

The case of Wu Weiqing, Guangdong

At around 1pm on 31st December 2013, Wu Weiqing (male, 45) from Zhangxi town in Dongyuan County, Guangdong Province, was riding his motorbike from Zhonglian village towards Zhangxijiezhèn. When he reached a section of road called Zhonglian Street (a tarmacked road, 3.6 meters wide), he came up behind Zhou (male, 79) walking with the support of a stick in the middle of the road. After Wu Weiqing overtook Zhou from the right, he realized that the man had fallen to the floor, so he immediately stopped the motorbike by the roadside and went back to help him. Zhou claimed that Wu had knocked him down. Wu denied this, but still took Zhou to hospital and paid his medical bill. The following day, Zhou's relatives demanded over 100,000RMB in compensation from Wu. The two parties asked the police to mediate in this dispute. According to the records kept by Zhangxi police station, Wu acknowledged that he had sounded his horn when he was on that section of road, but denied colliding with Zhou. Zhou insisted that he had been knocked down by Wu and also denied hearing the horn of a motorbike. Mr Zhou's daughter said she believed that, if Wu had not knocked her father down, he would not have been so kind as to take him to hospital and pay his medical fees. On the third day following the incident, Wu called his family to list his grievances, and then committed suicide by drowning himself in a pond.³

Dongyuan County police station set up an investigation team to look into the incident. They questioned the parties involved, their family and other connected people and collected evidence, but were unable to ascertain if the old man fell down, or was run over by Wu Weiqing. Both parties stuck to their own version of events. Although Zhou contradicted himself in his original statement about whether he fell or was run over, when questioned formally by police he insisted he was knocked down by Wu and said, "If he didn't knock me down, how could I have got such bad injuries?" Wu's decision to commit suicide to prove his innocence attracted public sympathy, but the investigators could not use his suicide as proof that Zhou's fall was accidental. There were no direct eyewitnesses in the case. A villager who lived near the scene, also called Zhou, overheard the initial argument between the two parties but did not see the incident personally.

Lan Xiaodong, who worked with Wu at a building company, said that before he died, Wu had called him to ask if he was responsible if his horn had scared someone. Mr Lan asked if Wu had hit the old man, and Wu replied that he had not.⁴ A week later, the investigation team published its conclusion: "There is no surveillance footage from the scene and, despite lengthy investigations and interviewing many witnesses, the police have not been able to identify any direct eyewitnesses. From the investigation of the scene, the examination of the location of the wounds and of the injured party's skin, an inspection of the vehicle concerned and testimony from other interested parties, we have reached the conclusion that there is currently no direct evidence to prove whether or not the two parties were involved in a collision or scrape, however neither can we eliminate other reasons that might have caused Zhou Huoqian to fall to the ground and sustain injuries." Neither side was satisfied with the conclusions published by

³See *People Website*, 'I Helped Him, I Didn't Hit Him', Man Drowns Himself to Prove Innocence], http://edu.people.com.cn/n/2014/0107/c1053-24041290.html.

⁴See *China News Network*, Man Who Helped Old Man Then Accused of Knocking Him Over Kills Himself to Prove Innocence; Before Death Tells Daughter He Doesn't Want to Die, http://www.chinanews.com/sh/2014/01-07/5708453.shtml.

the police.⁵ At the time of writing, Wu Weiqing was already deceased and Zhou was still recuperating, but the truth behind the incident was still uncertain.⁶

In all three cases above, there were shortages in the evidence presented for judgment. Because neither eyewitness testimony nor surveillance footage existed, the only evidence to prove what had happened were the statements from the parties concerned. It is difficult to avoid selfish subjectivity and bias in statements of this nature, because of individuals' vested interest in the outcome. Moreover, it is very easy for perception and memory to be influenced and distorted by both subjective and objective factors. In incidents such as these, the perceptions and memories formed instantly by the parties concerned may not necessarily be a precise reflection of objective fact. In other words, even if someone is truthful, the content of their statement may not match what actually happened.

For instance, when an old person falls they may claim they were knocked over, but they may have made a cognitive error. Therefore, in a situation where both parties adhere to conflicting versions of events, judges must rely on other evidence to establish the facts of the case. In the three case illustrations above, however, neither side

was able to put forward sufficient evidence to support their position, which therefore slightly obscures the disputed facts. Take the written judgment in Xu Yunhe's first trial where, despite the plaintiff's testimony, the investigation records and the expert opinion issued by the forensic science centers, the court was unable to establish that the defendant's vehicle had come into contact with the plaintiff, but also unable to eliminate that possibility.⁷ When establishing the facts of a case, judges should have sufficient evidence, but in reality, there are frequently shortages of evidence. For this reason, laws and regulations must be specific and clear and the public must be aware of them, so that they can predict how they might be applied. In short, judicial impartiality develops at the macro level and is implemented at the micro level, and the only real justice is concrete justice.

Funding

None.

Acknowledgments

None.

Conflicts of interest

This research was funded by the authors and we declare that there are no conflicts of interest.

⁵Zheng Tianhong and Wu Tao, Briefing on the Dongyuan, Guangdong Case 'Man Who Helps Old Man Falsely Accused, Commits Suicide': No Evidence to Prove 'Man Knocked Down Old Man', *Xinhua News*, http://news.xinhuanet.com/legal/2014-01/14/c_118964733.htm. Zeng

⁶The information on the three case studies above was collated by Zhang Xiaomin, PhD student at Renmin University of China from 2012-2016.

⁷Wang Xiuzhi v. Xu Yunhe CLIC.515512, *Peking University Law Database*, www.pkulaw.cn.