

# Three levels of examination of expert opinions in criminal cases in China: an analysis from a forensic perspective

## Abstract

The expert opinion has a strong evidentiary effect due to its professionalism, which is widely used in criminal cases. To avoid the abuse of this type of evidence, several strict examination shall be carried out step by step, which includes formal review, specialist review and in-depth substantive review in terms of its formal and substantive content.

**Keywords:** expert opinions, criminal cases, formal review, specialist review, in-depth substantive review

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## Introduction

The expert opinion is the key to conviction and sentence in some criminal cases, which is also a product of a high degree of legal and other professional knowledge. Compared to other forms of evidence, the expert opinion is designed to solve problems that require the use of specialized knowledge and experience to make judgment. Nevertheless, due to the limitations of individual cognition and the development of disciplinary knowledge in the subjective judgement of personnel, there are some limitations in the formation of expert opinions. Thus, the review and examination of expert opinions plays a pivotal role in ensuring their proper use in criminal cases. This paper will primarily focus on a typical case of Chen Lin and Kuang Huzhou intentional injury to illustrate how People's Court in China exam expert opinions. Then this paper will analyze three levels of examination of the expert opinions conducted by judges from the surface to the substantive and the problems existed of this method, ending up with proposing some ways to strengthen the review of expert opinions, so as to ensure the authenticity and legality of this type of evidence.

## Methods

### Case study

Chen Lin and Kuang Huzhou intentional injury case has provide a typical example of examination of the expert opinion for People's Court of China in criminal cases. The judgement of this case presented the issue of improper using expert opinions in criminal cases by procuratorates and the judge excluded this piece of evidence by conducting three levels of review of expert opinions step by step,<sup>1</sup> which is worthy of note for practitioners.

### The case of Chen Lin and Kuang Huzhou intentional injury

On 4 June 2013, the defendant Chen Lin went to the Hongda Advertising and Graphic Shop in the Yunxian General Trade Mall to make copies of the business licence of the Ruyi Hotel. Chen Lin asked the shopkeeper Huang to change the date of the licence, but the shopkeeper Xiao Mou1 told Chen Lin that he was not able to change it, and Chen Lin and Xiao Mou1 had an argument about it. Afterwards, Xiao Mou1 called Li Mou1 to tell him about the incident, and Li Mou1 then rushed back to Chen Lin to discuss the matter and a physical fight

broke out between the two parties. The defendant, Kuang Huzhou, who was near the scene of the fight, came to stop the fighting. In the process of persuasion, Kuang Huzhou's glasses were knocked off by Li Mou1 and Kuang Huzhou punched Li Mou1 in the left eye. The defendant Chen Lin's wife Li Mou2 came to the scene and scolded Li Mou1. The defendant, Li Minjie and Li Minshing, were passing by and saw what was happening, so they beat Li Mou1 to help Chen Lin and Kuang Huzhou. On 2 November 2013, the defendant, Kuang Huzhou, came to the police station to confess the fact that he had fought with Li Mou 1. On 9 September 2013, Li Mou1 went to the forensic identification centre of Kunming Medical University on his own, and this institution accepted and made the identification on the same day. On 10 September 2013, the Yunxian Public Security Bureau Aihua Police Station signed a commission letter on the extent of Li Mou1's injury, without attaching relevant test materials.

### Legal analysis

In the above mentioned case, the court conducted three levels of review of the expert opinion cited by the public prosecution authorities, holding that there are three flaws: Firstly, the subject of this evidence does not comply with the legal requirements for initiating the appraisal process. According to the Provisions on Procedures for Handling Criminal Cases by Public Security Organs, if a person with specialized knowledge needs to be hired to conduct an appraisal, an appraisal commission letter should be made by the head of the public security organ at or above the county level. Since the appraisal in this case was commissioned by a police station of a county public security bureau, the subject does not meet the legal requirements, thus the appraisal procedure violates the legal provisions. Another problem is that the appraisal was accepted and made on 9 September 2013, but the commission letter issued by the public security organ was on 10 September 2013, which is also in violation of the appraisal procedure. The last problem lies in the source of identification materials. The process of identification and the catalogue of attachments of the expert opinion are based on a copy of the outpatient medical record of the Second People's Hospital of Yunnan province, but there is not such material in the source of the attached materials, which means the source of the submitted materials and the sample was unknown.

In a nutshell, the court shall not recognize this expert opinion according to the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic

of China. The court finally excluded the expert opinion presented by procuratorate and determined that defendants were not guilty.

## The problems of the review of expert opinions in China

In 2010, the two High Courts and three Ministries of China jointly issued the Rules for the Exclusion of Illegal Evidence and the Rules of Evidence for Handling Death Penalty Cases, which added rules for the cross-examination and review of expert opinions. By and large, there are three levels of review: formal review, relatively specialist review and in-depth substantive review.

The formal review, the shallowest one, is primarily to check whether the expert opinion is satisfied with all of the formal elements provided by law. For example, whether there are more than two experts signed their signature on the appraisal document, and whether the experts and the institutions are authorized. In addition, the subject matter of the expert opinion has to be a professional issue, and legal issues or issues of common sense do not fall within the appraisal scope. In contrast, the specialist review is medium in depth and can cover both procedural and substantive aspects, but requires a certain level of expertise. That means only the relevant technical personnel with professional knowledge is competent to conduct the examination. In the same way, the in-depth substantive review must also be carried out by technical staff with specialist knowledge, but to a greater extent, and often involving the judgement and analysis of relevant source material (such as the reading of pathological sections, the interpretation of imaging data, etc.).<sup>2</sup> Even though the above-mentioned three levels of review could help the judge to review expert opinions in a large extent, there are still some problems in examining the authenticity and legality of the expert opinions.

First and foremost, there is no mechanism to supervise the initiation of the appraisal process. since the investigative authorities can initiate the appraisal process at their will, and the appraisal is carried out by their internal appraisal agency, which results in the problem of self-investigation and self-evaluation. What makes it worse is that the defence has no right to participate in the appraisal process, and their only right to be informed of the appraisal opinions may even be denied.<sup>3</sup> As a result, there is a high risk of the misuse of expert opinions, even causing unjust and false cases.

Moreover, although there are such rules of exclusion of illegal evidence and expert witness appearance in court to cross-evidence provided in China's Criminal Procedure Law, these rules do not come into play in practice. The main reason is that the decision-making power of the expert witness to testify in court lies with the people's court. In other words, the judge can make a decision on the expert witness to testify in court based on the specific needs and the actual situation of the trial, while the public prosecutor, parties or defense counsel only have the right to apply and suggest for the expert witness to testify in court. This can easily lead to excessive discretion for people's courts and judges in the issue of expert witnesses appearing in court to testify. In judicial practice, some judges, in order to pursue judicial efficiency, even if the public prosecutor or the defense lawyer applied for the expert witness to testify in court, the judge often refused to allow it, which obviously does not meet the requirements of procedural justice, and indirectly infringes the rights of both parties to participate in the trial as well.<sup>4</sup>

Another problem is that if the expert does not appear in court, the prosecution can read out the expert opinions to qualify them as evidence. In many wrong cases, the Court did not make full use of expert aids to examine and respond to the issues in dispute in expert

opinions.<sup>5</sup> Consequently, the judge relies heavily on the written materials to review the expert opinions, which sometimes could be the main reasons for wrong cases.<sup>6</sup> Take the "Zhang Yuhuan case" as an example, one of the main factor leading to the wrong sentence is not paying attention to the cross-examination of the expert opinion.<sup>7</sup>

## The ways to strengthen the review of expert opinions

To strengthen the review of expert opinions in criminal cases, several measures could be adopted: paying attention to the cross examination of expert opinions at trials, endorsing the defendants the right to initiate the appraisal procedure, making full use of expert supporters and improving the supervision mechanism of judicial expert management.

Firstly, the legitimacy and legality of the initiation of the appraisal process will directly determine the acquisition of the expert opinions, and determine their reliability and eligibility for evidence from the source. Therefore, as to the initiation of the appraisal process, the defendants shall have the right to supervise and remedy in this very start process.<sup>8</sup> Specifically, it is necessary not only to establish the condition rules of the reappraisal process, but also to give the parties dissatisfied with the court's decision relief measures from the procedure. For example, the parties could appeal if they the judge or procurator refused to initiate the appraisal process. Meanwhile, the procuratorial authorities should exercise timely supervision over the identification of the investigating authority, and the parties may also apply to the procuratorial authorities for supervision. Additionally, in some cases, when the public security and judicial organs did not initiated the appraisal procedure, the parties shall have the right to entrust the appraisal on their own.<sup>9</sup>

Secondly, the cross-examination of the controversial expert opinions should be guaranteed and underscored. At trials, the judge should fully hear and reasonably treat the claims and reasons of the prosecution and the defence regarding the expert opinions, and clarify the points of contention between the two sides regarding the expert opinions. Especially, the defendant's views to some extent could help judge to effectively review expert opinions. Take the Huang Xin intentional murder case as an example, it was the attorney who found the flaws in the expert opinions which adopted wrong methods to do the appraisal and the DNA sample resources were also unclear.<sup>10</sup>

Thirdly, the support of experts is also of utmost importance to ensure the authenticity and admissibility of the expert opinions. As a type of evidence with a high degree of objectivity, the expert opinions could be incomprehensible to judges. That's because judges are limited by their knowledge structure and sometimes do not have a thorough understanding of forensic identification standards and procedures. Even experienced judges are unable to reach a fully correct understanding, bringing certain risks to the review and admissibility of forensic identification opinions.<sup>11</sup> In that case, the judge and defendants should have the right to hire expert supporters to review the expert opinions. Last but not least, promoting the trial-centered trial in court, guaranteeing the defendant's right to obtain effective judicial remedies is also conducive to strengthen the review of the expert opinions at trials, as well as help people's court to prevent the occurrence of unjust and false cases to a large extent. These measures are also effective to protect human rights and safeguard judicial fairness and justice.

## Conclusion

In summary, the expert opinions must be thoroughly reviewed and exam-ed, both the formal elements of specialization and the

substantive elements of scientific, objective content and compliance with the relevant standards according to the provisions of law. In the handling of criminal cases, practitioners must be highly alert to the authenticity of the expert opinions so as to lay a solid foundation for the accurate determination of the facts of the case.

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## Conflicts of interest

Authors declare that there is no conflict of interest.

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