

The High People's Court of Jiangxi Province
Criminal Ruling

(2020) Gan Xing Zhong No. 44

The original public prosecution organ is the Shangrao People's Procuratorate of Jiangxi Province.

The appellant (the accused in the first instance), ZHANG Yongming, male, born on September 27, 1973, Han nationality, primary school education, individual business operator, residing in Jiaojiang District, Taizhou City, Zhejiang Province. He was put under administrative detention for 10 days since April 15, 2017 by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security for disturbing the order in the scenic area as he climbed the Python Peak of the Sanqing Mountain without authorization by hammering pitons into the rock mass. On suspicion of intentional damage to the place of historical and cultural interest, he was released on bail for the pending trial on April 25, 2017, placed under residential surveillance on August 12, 2019, approved to be arrested by the court of first instance on December 3, 2019, and arrested by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security on the next day. Now, he is detained at the Shangrao Detention House.

The defender ZHANG Xinchuan, is a lawyer at the Jiangxi Xianhe Law Firm.

The accused in the first instance, MAO Weiming, male, born on August 24, 1975, Han nationality, junior high school education, unemployed, residing in Huangyan District, Taizhou City, Zhejiang Province. He was put under administrative detention for 7 days since April 15, 2017 by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security for disturbing the order in the scenic area as he climbed the Python Peak of the Sanqing Mountain without authorization by hammering pitons into the rock mass. On suspicion of intentional damage to the place of historical and cultural interest, he was released on bail for the pending trial on April 22, 2017, placed under residential surveillance on August 12, 2019, approved to be arrested by the Court of First Instance on December 3, 2019, and arrested by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security on the next day. He was released on probation on December 30, 2019, and now is at home awaiting trial.

The accused in the first instance, ZHANG Lu, female, born on March 14, 1982, Han nationality, bachelor's degree, bank clerk, residing in Jiaojiang District, Taizhou City, Zhejiang Province. She was put under administrative detention for 7 days on April 15, 2017 by the Sanqing

Mountain Branch of the Shangrao Bureau of Public Security for disturbing the order in the scenic area as she climbed the Python Peak of the Sanqing Mountain without authorization by hammering pitons into the rocks. On suspicion of intentional damage to the place of historical and cultural interest, she was released on bail for the pending trial on April 22, 2017, placed under residential surveillance on August 12, 2019, and released on bail for the pending trial on December 30, 2019. Now she is at home awaiting trial.

The Shangrao Intermediate People's Court made the criminal judgment (2018) Gan 11 Xing Chu No. 34 on December 26, 2019 regarding the case of intentional damage to the place of historical and cultural interest filed by the Shangrao People's Procuratorate of Jiangxi Province against the accused ZHANG Yongming, MAO Weiming and ZHANG Lu. After the judgment was announced, the defendant ZHANG Yongming refused to accept the sentence and lodged an appeal. The present court assembled a collegial bench in accordance with law, which concluded that facts in the case are clear and decided not to hold the trial, after reviewing the case files, interrogating the appellants by law, and considering opinions of the Defending Counsel. The trial is now closed.

Fact-finding in the first instance: Around April 2017, the accused, ZHANG Yongming, MAO Weiming, and ZHANG Lu contacted on WeChat and agreed to go to the Sanqing Mountain National Park to climb the "Gigantic Python Rising in the Mountain" (also known as the Python Peak). At around 17:00 pm on April 14, 2017, ZHANG Yongming, MAO Weiming and ZHANG Lu checked in at the "Goddess Hotel" at the Sanqing Mountain National Park. At around 4:00 am on April 15, 2017, ZHANG Yongming, MAO Weiming, and ZHANG Lu brought an electric drill, pitons (expansion bolts made from stainless steel), a hammer, ropes and other tools to the foot of the Python Peak. The defendant ZHANG Yongming climbed first, and the other two defendants MAO Weiming and ZHANG Lu pulled the ropes to protect ZHANG Yongming's safety. When climbing, ZHANG Yongming drilled pitons in dangerous places, drilled holes into the rock mass with an electric drill, drove the pitons into the holes with a hammer, tightened them with a wrench, and then attached the rope to the pitons. In this way, ZHANG Yongming climbed to the top of the Python Peak at about 6:49 am in the morning. MAO Weiming followed ZHANG Yongming all the way to protect him by pulling the rope, and climbed to the top of the Python Peak at around 7:00 am along the rope laid by ZHANG Yongming. At the top of the Python Peak, ZHANG Yongming gave extra tools to MAO Weiming, who got down from the Peak along the rope, took extra tools back to the "Goddess Hotel", and then returned to the Python Peak. When climbing for more than

10 meters on the Python Peak, MAO Weiming was noticed by the staff of the Sanqing Mountain Management Committee, and was controlled by the police after getting off from the Python Peak. When ZHANG Yongming and MAO Weiming began to climb, ZHANG Lu was pulling the rope to protect them. Then, ZHANG Lu returned to the hotel to collect a drone and went back to the Python Peak. She reached the top of Python Peak at around 7:30 am with the rope laid by ZHANG Yongming, and filmed with the drone on the top. Under the persuasion of the staff, ZHANG Lu and ZHANG Yongming reached the foot of the Peak at around 9:00 am and 9:40 am, respectively, and were put under control by the police. Through on-the-spot investigation, ZHANG Yongming hammered 26 pitons into the rock mass of the Python Peak. According to the Expert Opinions, actions of the three defendants have caused serious damage to the geological heritage of the Python Peak.

The above facts are supported by the following evidence, and the Expert Opinions and experts' testimonies in court are used as reference for conclusion of the case.

1. The Case Registration Form San Gong (Jin) Shou An Zi [2017] No. 0074, case records, pictures of the arrest, videos of the arrest and supplementary notes provided by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security prove the fact that ZHANG Yongming, MAO Weiming and ZHANG Lu were arrested and brought to justice by the public security organ on the spot.

2. Household Registration gives proof of the fact that ZHANG Yongming, MAO Weiming and ZHANG Lu were over 18 years old and reached the legal age of criminal responsibility at the time of committing the crime, and had no illegal or criminal records before the case.

3. WeChat chatting records among ZHANG Yongming, MAO Weiming and ZHANG Lu and the supplementary note prove that the three accused discussed the process of the climbing the Python Peak and have the cognition of the illegality of climbing the Python Peak, with the subjective intention of committing a crime. (1) WeChat chatting records between ZHANG Yongming and ZHANG Lu: On March 24, 2017, ZHANG Lu said, "It is also one of dreams of life to be in jail on the Sanqing Mountain." "Being arrested and imprisoned for two days is nothing but tasting the meals in the jail." On April 8, 2017, ZHANG Yongming sent a picture of the Python Peak to ZHANG Lu, and said, "This one first." On April 12, ZHANG Lu shared a web link titled "Climbing the Giant Python, Dangerous!" with ZHANG Yongming, and said, "How stupid they are, sleeping for a night before getting on the top." "I've searched all the news, all saying they only

climbed 60 meters, and no one got onto the top so far." "They failed to do so." ZHANG Yongming said, "Let's do it." ZHANG Lu replied, "Ok." "Hope we can make it." "..... But it seems that losses from illegal climbing cannot be compensated by insurance." (2) WeChat chatting records between MAO Weiming and ZHANG Lu: On April 4, 2017, ZHANG Lu said, "Think about it. Being arrested together is also a life experience." MAO Weiming said, "Go ahead." "Just do it." ZHANG Lu said, "I'm ready to be arrested." MAO Weiming replied, "For me, just throw the handle after the blade." On April 14, ZHANG Lu said, "The darker it is, the less visible we will be." "Let's climb before dawn." (3) WeChat chatting records between ZHANG Yongming and "Jian Dan (WeChat name)" on March 24, 2017, saying, "It is also one of dreams of life to be in jail on the Sanqing Mountain." "Being arrested and imprisoned for two days is nothing but tasting the meals in the jail." (4) WeChat chatting records between ZHANG Lu and "Dao Feng (WeChat name)", saying, "Not afraid of being arrested, then the Sanqing Mountain is the choice, as no one climbed before."

4. The working record of electronic evidence inspection Rao Shi Gong (Wang An) Kan [2017] No. 006 provided by the Network Security Team of the Shangrao Bureau of Public Security (hereinafter referred to as "the electronic evidence record"), with 9 CDs attached, prove that there are 98,740 WeChat messages on ZHANG Yongming's mobile phone (WeChat name: Bao Ma), 354,745 WeChat messages and 160 video clips on ZHANG Lu's mobile phone (WeChat name: A Gen Ting), and 83,442 WeChat messages on MAO Weiming's mobile phone (WeChat name: Na Zhi Shi Cuo Jue).

5. ZHANG Lu's mobile phone, videos taken by the drone, screenshots and the supplementary note prove that ZHANG Yongming and MAO Weiming climbed with a hammer, a wrench, a climbing gear and other tools, and ZHANG Lu saw hooks on the route when climbing.

6. The climbing route picture identified by ZHANG Yongming, written records and videos of ZHANG Yongming, MAO Weiming and ZHANG Lu identifying the climbing route and relevant information they gave, prove their route of climbing the Python Peak.

7. Record of On-the-site Inspection and Investigation San Gong (Xing) Kan [2017] No. 0405 provided by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security, the orientation sketch map of the site, the planimetric sketch map of the site, and "photos of the scene in the case of intentional damage to the place of historical and cultural interest by ZHANG Yongming and others dated April 15, 2017" San Gong (Xing) Zhao [2017] No. 0405 (Copy No.

01) attached with videos taken by the investigating drone, prove that 18 pitons were found on the east side of the column of the Python Peak, and another 8 pitons were found on the north side of the column.

8. The information note on "number of pitons on the site in the case of intentional damage to the place of historical and cultural interest by ZHANG Yongming and others" issued by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security serves the basis for ascertaining that there are 26 pitons.

9. The Seizure Decision, List of Seized Items, photos of physical evidence and the supplementary note by the witness prove that the public security organ seized four mobile phones, a hammer, an electric drill, ropes, a knife, a climbing gear (made of stainless steel), two pitons (made of stainless steel), two intercom devices, a helmet, a front light, a drone and other climbing and photographic tools.

10. Three written decisions on administrative penalty prove that ZHANG Yongming, MAO Weiming and ZHANG Lu were put under administrative detention for ten days, seven days and seven days, respectively, from April 15, 2017, by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security, for disturbing the order in the scenic area by climbing the Python Peak with pitons and ropes.

11. ZHANG Lu's check-in record at the "Goddess Hotel" prove the fact that ZHANG Lu checked in at the "Goddess Hotel" at 16:49 pm on April 14, 2017.

12. Information note on honorary titles of the Sanqing Mountain National Park, relevant documents of the honors and the supplementary note prove that the Sanqing Mountain National Park was evaluated as a national key scenic area in 1988, included in the World Heritage List by the UNESCO World Heritage Center in 2008 as the seventh World Natural Heritage site in China, and the first in Jiangxi Province, rated as a national 5A tourist attraction by the National Tourism Administration on September 6, 2011, and incorporated into the List of UNESCO Global Geoparks at the 11th International Conference on UNESCO Global Geoparks on September 21, 2012.

13. The Letter of Overall Planning of the Sanqing Mountain National Park, the Map of Overall Planning of the Sanqing Mountain National Park and the supplementary note show that the former Ministry of Construction of the People's Republic of China replied to the Jiangxi Provincial People's Government on November 2, 2005, requiring that specific measures must be taken to strengthen protection for natural and cultural heritage in the scenic area, strictly protect

natural landscape and resources in the scenic area including the mountain pillar, terrain and landform, and preserve the authenticity and integrity of heritage value in the scenic area.

14. Witness ZHANG, who has been proved to be a staff member at the Law Enforcement Team of the Management Committee of the Sanqing Mountain National Park, gave testimony that, at around 7 o'clock on the morning of April 15, 2017, ZHANG received a call from FAN, who claimed that there were tourists climbing to the top of the "Gigantic Python Rising in the Mountain" without permission. At around 7:20 am, when ZHANG was rushing to the "Gigantic Python Rising in the Mountain", ZHANG saw a woman and a man in red clothes on the top of the Python Peak, and a man in yellow pants was getting down by pulling the rope, who arrived at the foot of the Python Peak at around 7:30 am. Then, ZHANG requested the man to ask the other two persons to get down as soon as possible on the intercom. Later, the other two people got down successively, the woman first and the man in red later. All the three people were taken away by the public security organ. ZHANG saw the three people were bound with ropes, heard the sound of hammering, and saw a drone in the sky.

15. Witness WANG gave testimony that WANG was about to leave the gate of the "Goddess Hotel" for the "Jade Terrace" to see the sunrise and take pictures at 5:00 am on April 15, 2017. After taking pictures at the Jade Terrace, WANG received the call from JI Yongsheng, Director of the Party and Political Affairs Office of the Management Committee, on the way back close to the "Azaleas Villa", and was asked to rush to somewhere around the "Gigantic Python Rising in the Mountain" to take some photos as there were tourists climbing the Python Peak. At around 7 o'clock, ZHANG reached the "Goddess Hotel" and happened to see a man bounded with ropes getting on the top of the Python Peak. The man bent down and walked a few steps, punched holes in the rock on the top of the Python Peak with an electric drill, fixed the rope with the drilled holes and then threw the rope down. Then, the other man used the rope to climb upward from the place at 3/4 of the height of the column of the Python Peak where a pine was growing. When he almost reached the top, the man standing on the top stretched out his hand to pull him. Several minutes later, the second man on the top went back to the place growing a pine along the rope. At that time, WANG noticed that there was a woman next to the pine, and these two people chatted for several minutes, and then the woman climbed to the top along the rope. The second man reaching the top got down to the foot of the Python Peak along the rope from the place where a pine was growing. After the woman reached the top, she chatted with the first man there, while looking around. After

a while, the woman used a drone to take videos. After that, she collected the drone, and got down and back to the place growing a pine, and the man also got down from the top while collecting the ropes. When the man arrived at the place growing a pine, the woman directly got down to the foot of the Python Peak, and the man also got down while collecting the ropes. When they all arrived at the foot, they were taken away by the police. The second man that reached the top got down at around 7:30 am, while the other two people arrived at the foot at around 9:00 am. WANG saw that they have bags, ropes and a drone, and heard the sound of hammering. WANG saw the first man on the top was punching holes with an electric drill, and the sound of the electric drill was very loud.

16. Witness YAN gave testimony that, as the General Manager of the Sanqing Mountain Tourism Industry Development Group Co. Ltd., at around 6:20 am on April 15, 2017, YAN received a call from JI Yongsheng, Director of the Party and Political Affairs Office of the Management Committee and was told that there were some people climbing the Python Peak. After that, YAN rushed to the Python Peak from home at Zihu Town. When YAN arrived at a pavilion down the Python Peak, YAN saw someone sitting on the top of the Python Peak. Walking closer, YAN found someone in red was climbing upward. At around 7:40 am, YAN arrived at the steps at the foot of the Python Peak, and met Deputy Head of the Management Committee of the Scenic Area FAN, Director of the Party and Political Affairs Office of the Management Committee JI Yongsheng and the firefighters. At that time, a man in yellow pants was climbing upward from the foot of the "Gigantic Python Rising in the Mountain". JI Yongsheng shouted at the man several times and asked him to get down. About ten minutes later, the man in yellow pants got down from the "Gigantic Python Rising in the Mountain". They began to explain to him that here is a World Natural Heritage site where climbing is prohibited, and told him to ask his companions to get down quickly over intercom devices. After more than half an hour, a woman in red coat got down from the top along the rope, and after another half an hour, a man in red coat and safety helmet got down from the "Gigantic Python Rising in the Mountain". The woman got down at nearly 9:00 am, and the other man got down at around 9:30 am.

17. Witness FAN gave testimony that at around 6:20 am on April 15, 2017, FAN received a call from YAN Guozhong, member of the CPC Committee of the Sanqing Mountain National Park. On the phone, YAN said he was told by Director of the Party and Political Affairs Office of the Management Committee JI Yongsheng that some people were climbing the "Gigantic Python

Rising in the Mountain" scenic spot. Then, FAN contacted WANG at the service station close to the "Gigantic Python Rising in the Mountain" and ask WANG to see what happened. After looking into the situation, WANG replied to FAN on the phone that there were three people climbing the "Gigantic Python Rising in the Mountain". Then, FAN rallied staff of the Management Committee to the "Gigantic Python Rising in the Mountain". At around 7:30 am, when FAN reached a pavilion down the Python Peak, FAN saw a person on the top of the Peak, and the other person in red was climbing upward along the rope from a platform with some plants down from the top. At around 7:50 am, FAN reached the sedan chair service station at the foot of the "Gigantic Python Rising in the Mountain", and saw someone on the top was pulling ropes, and leaning as if taking pictures. At around 8:06 am, YAN and JI Yongsheng reached the fork road at the "Penguin Presenting a Peach" scenic spot, and saw a man in yellow pants was climbing upward from the foot of the peak, and had climbed over 10 meters high. Then they shouted at the man and asked him to get down. They shouted several times and the man reached the foot. They asked the man to call the two people on the top to get down over the intercom. A woman in red coat got down from the top along the rope at around 9:00 am, and the other man in dark red coat and white safety helmet climbed down the "Gigantic Python Rising in the Mountain". After reaching the foot, they were taken to the public security organ by the police.

18. Witness LIN who has been proved to be the person in charge of the "Goddess Hotel" in the Sanqing Mountain area, gave testimony that ZHANG Lu booked a room at the hotel on the Internet at 13:24 pm on April 14, 2017, and checked in at the hotel at around 16:30 pm on the same day.

19. Written records of identification by JI Yongsheng, MAO Weiming and ZHANG Lu testify that (1) JI Yongsheng have identified that ZHANG Yongming, MAO Weiming and ZHANG Lu are the three people climbing the Python Peak. (2) MAO Weiming has identified that ZHANG Yongming and ZHANG Lu are the two people climbing the Python Peak together with him. (3) ZHANG Lu has identified that ZHANG Yongming and MAO Weiming are the two people climbing the Python Peak together with her.

20. The "Expert Appointment Letter" San Gong (Zhi) Pin Zi [2017] No. 0006 issued by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security on April 29, 2017 proves that the public security organ appointed LUO Zhaohua, ZHANG Baiping, YIN Guosheng and ZHAO Zhizhong as the experts.

21. Certificates of professional titles and resumes of LUO Zhaohua, ZHANG Baiping, YIN Guosheng and ZHAO Zhizhong and the supplementary note prove that LUO Zhaohua, a professor at the China University of Geosciences (Beijing), ZHANG Baiping, a researcher at the Institute of Geographic Sciences and Natural Resources Research of the Chinese Academy of Sciences, ZHAO Zhizhong, a researcher at the Institute of Geomechanics of the Chinese Academy of Geological Sciences, and YIN Guosheng, a senior engineer with professorship at Institute of Geological Survey of Jiangxi Province, are four experts on geoscience with the expertise to provide the Expert Opinions in this case.

22. The "Opinions on Damage to the Python Peak, A World-Class Geological Heritage Site, in the Sanqing Mountain National Park, Caused by Climbing of Three Tourists on 15 April" (hereinafter referred to as the "Expert Opinions") testifies that the acts of the three accused have caused serious damage to the Python Peak, the core landmark at the World Natural Heritage site. The contents of the Expert Opinions are as follows. On April 28 and 29, 2017, entrusted by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security, four geoscience experts, LUO Zhaohua, ZHANG Baiping, YIN Guosheng and ZHAO Zhizhong, formed the expert panel to engage in study, discussion and analysis of severity of the damage to the Python Peak, a world-class geological heritage site, of the Sanqing Mountain, caused by climbing of three tourists on April 15. Members of the expert panel, through field survey, evidence examination and extensive discussion, have reached the following opinions. (1) Value of the Python Peak of the Sanqing Mountain as a geological heritage site: The Sanqing Mountain, with geological heritage landscape of forested granite pillars and peaks as the main constituents, has remarkable universal value across the world and is a world-class geological heritage. It was therefore included in the World Natural Heritage List in 2008, and the List of UNESCO Global Geoparks in September 2012. The geological heritage site of the Python Peak is a precious and landmark in the Sanqing Mountain National Park, which is not only a non-renewable rare natural resource, but also a natural asset for sustainable utilization, with significant scientific, aesthetic and economic value. (2) Cause of Formation and structural features of the geological heritage site of the Python Peak: The geological heritage site of the Python Peak is a giant granite column formed by dissection of multiple joint structures of granite, which was later under long-term natural weathering and gravity disintegration, with a vertical height of 128 meters and a diameter of only 7 meters at its smallest point. There are multiple (multi-directional) structural surfaces on the granite column formed by

dissection of joint structures. The Granite is a vulnerable rock. It is a completely isolated granite column due to the existence of multiple surfaces of dissection of joint structures and as a result of the long-term natural weathering and gravity disintegration. In normal natural conditions, it remains the relative stability and balance under the long-term natural weathering and gravity disintegration. However, under abnormal external forces (such as earthquakes and other natural and man-made external forces), this isolated slender granite column with multiple surfaces of dissection of joint structures may lose its natural balance and collapse. (3) Severity of the damage to the geological heritage site of the Python Peak arising from the climbing of tourists: The three tourists, who punched holes with an electric drill, nailed expansion bolts (25 in total, see the material objects and statistics for detail), and climbed upward with ropes, have brought the following impact and damage to the geological heritage site of the Python Peak (the granite column). ① The 25 expansion bolts nailed into the geological heritage site of the Python Peak (the granite column) have caused serious damage to basic properties (naturalness, primitiveness, integrity) of the World Natural Heritage (a world-class geological heritage site). ② The 25 expansion bolts are iron and steel materials, which, once being nailed, will directly induce and aggravate its physical, chemical and biological weathering, give rise to new cracks, and accelerate erosion of the granite column, and even cause collapse. ③ The most slender section of the geological heritage site of the Python Peak (the granite column) has multiple sets of multi-directional joint structural surfaces, and is the most vulnerable part of the granite column. However, at least four expansion bolts were nailed into this part, which exacerbate the vulnerability of the granite column structure. In conclusion, the three tourists who climbed the Peak on April 15 have caused serious damage to the Python Peak.

23. The written record of notification of the Expert Opinions testifies that the Sanqing Mountain Branch of the Shangrao Bureau of Public Security has notified ZHANG Yongming, ZHANG Lu and MAO Weiming of the Expert Opinions by law.

24. Two experts, ZHANG Baiping and YIN Guosheng made an explanation on the Expert Opinions in the court, to testify that the acts of the three tourists caused serious damage to the Python Peak, the core landscape of a World Natural Heritage site. (1) Main contents of the testimony given by the expert ZHANG Baiping in court: The UNESCO World Natural Heritage is the highest-level natural landscape across the world jointly identified by grass-root scientists, national scientists and international scientists, and the home country of the site has the obligation

and responsibility to provide the strictest protection. The Sanqing Mountain is a very important and typical granite landform of rock pillars and various landscape, especially the Python Peak. From professional point of view, the formation of the Python Peak is a peculiar phenomenon, because it is spheroidal weathering of granite, and it is rare to see very high granite column after the weathering. The Python Peak, an independent granite column with a vertical height of 128 meters is a very peculiar phenomenon in the geological circle worldwide. Therefore, it is very precious, and should be under the strictest protection as the core landscape of the Sanqing Mountain Natural Heritage. Damage to an object should be evaluated in consideration of the value of the object. The Python Peak, the core part of a World Natural Heritage site, differs from an ordinary rock in value. Damage to the Python Peak cannot be equated with that to a rock. It is a World Natural Heritage site, the highest-level landscape across the world. The 25 pitons drilled into it have constituted serious damage from professional perspective, and, if pulled out, will cause consequential damage to it. (2) Main contents of the testimony given by the expert YIN Guosheng in court: as World Natural Heritage, it should have the uniqueness and identifiability globally and internationally. The most unique landscape with world value and landmark significance of the Sanqing Mountain are two, namely, the "Python Peak" and the "Oriental Goddess Peak". 25 pitons were found in the field investigation, which have caused serious damage to the Python Peak. What the natural heritage displays is a process of natural evolution, which is irreversible. If something has been damaged, it will never be restored even being repaired. It will be a permanent damage. No matter whether the pitons will be pulled out, consequential damage will be caused. If not pulled out, those pitons are expansion bolts made of iron and steel materials, which will get rusty and eroded by the action of water. Through observation, the tourists punched holes with an electric drill on integral rocks of the Python Peak, and then hammered pitons into the holes, which create a gap between the piton and the hole. The gap will be more vulnerable to hot, rainy, and freezing conditions, which will accelerate the process of weathering. Especially when it freezes, as the volume of water will expand when it turns into ice. In those conditions, the gap will accelerate the weathering process and shorten the life of the Python Peak. If the pitons are pulled out, the situation may be even worse, leaving holes exposed to heat and rain. Exposure to external air and moisture, or freezing and other comprehensive physical and chemical reactions will bring greater negative impact compared with the situation where the pitons are not pulled out. Pitons will accelerate the weathering process of the Python Peak but currently there is no specific data to explain that.

However, there is no doubt that the weathering process will be faster, according to basic scientific principles and basic knowledge of exogenic geological process. By now, we can only give a qualitative conclusion, that is, acceleration. We cannot say only the collapse of the Python Peak is the consequence of the damage. We cannot deem the damage to the Python Peak, a World Natural Heritage site, equivalent to that to a piece of ordinary granite. These are two different notions.

25. The confession and defense by the accused ZHANG Yongming, testify that (1) They are rock climbing enthusiasts passionate about climbing "pillars". This time, they came to the Sanqing Mountain, after discussing on WeChat and on the phone. At around 10:00 am on April 14, 2017, ZHANG Yongming drove to the residence of MAO Weiming and picked him up, got in touch with ZHANG Lu on the way, and asked ZHANG Lu to take the train to Yushan. At around 15:00 o'clock, they picked up ZHANG Lu close to the highway. After arrival at the Sanqing Mountain at around 17:00 o'clock, ZHANG Lu went up the mountain by the cableway, and checked in at the "Goddess Hotel". Later, ZHANG Yongming and MAO Weiming took the cableway to go up and join ZHANG Lu at the hotel. After check-in, they put their tools in the room, and then went outside to find the "pillar". They found the "Gigantic Python Rising in the Mountain", walked around it for a while, and found a path hidden behind the plank road leading to the foot of the rock mass of the Peak. Returning to the hotel, they decided to climb the "Gigantic Python Rising in the Mountain" before dawn. At around 3 o'clock in the morning on April 15, they departed the hotel for the "Gigantic Python Rising in the Mountain". They walked to the foot of the Peak alongside a path, sorted out their tools there till around 4 o'clock. Then ZHANG Yongming climbed up first and hammered pitons into the rock mass in dangerous places. MAO Weiming and ZHANG Lu were below to protect him, by pulling the rope. In this way, even when ZHANG Yongming fell down, he would not fell to the ground if the rope is pulled. If there was no one to protect him, the climbing would be dangerous, and slow down. ZHANG Yongming climbed the peak with hands, bringing an electric drill, hooks and pitons. After climbing more than ten meters, he found it became quite steep, and began to drill holes with the electric drill, while MAO Weiming and ZHANG Lu were pulling the rope at the foot to make sure his safety. It took about 1 hour for him to climb up to the top. After reaching the top, he delivered the electric drill, extra pitons and other tools by using the safety rope to MAO Weiming, who brought those tools back to the hotel. ZHANG Lu climbed up to the top with the rope laid by him. ZHANG Yongming drilled holes mainly in places around some ten meters and thirty or forty meters away from the foot, and ten or twenty meters away from

the top. He drilled a dozen of holes in total, but could not recall the exact number. He drilled holes in places where it was difficult to climb, and left holes, pitons, hooks and a steel tube on the rock mass. He brought an electric drill, about twenty pitons, eleven or twelve hooks, three carabiners, two or three flat belts, an ascender, a hammer, a wrench, a safety helmet and two static ropes. MAO Weiming brought a safety belt and hooks. ZHANG Lu brought a safety belt, hooks and a drone. They were discovered before 7 o'clock, and reached the foot at around 8 or 9 o'clock. They were asked to get down by the staff of the scenic area, and were taken to the public security organ by the police as soon as they reached the foot. (2) They climbed without being approved by the management authority of the scenic area. They began to climb at around 4 o'clock in the morning, because it was not easy to be noted by the staff of the scenic area. They were afraid of being discovered by the staff, who would prohibit them from climbing. (3) ZHANG Yongming knew the Sanqing Mountain was a national 4A scenic area more than ten years ago, and was not clear what level it was now. He knew the "Gigantic Python Rising in the Mountain" was a pillar that no one climbed onto the top before, so he wanted to challenge himself.

26. The confession and defense by the accused MAO Weiming testify that (1) At around 9 am on April 14, 2017, ZHANG Yongming called him and invited him to rock climbing in some places such as the Sanqing Mountain and the Guifeng Mountain in Jiangxi. MAO agreed. At around 10 o'clock, ZHANG Yongming drove him from Taizhou to the Sanqing Mountain, and left the highway in Yushan at around 14:30 pm. They picked up ZHANG Lu not far away from the entrance of the highway, who arrived in Yushan by the bullet train from Hangzhou. Then, they went to the Sanqing Mountain together, and got up to the mountain by cableway. ZHANG Lu had booked a room at the "Goddess Hotel" on the mountain on her way. Off the cableway, they went to the hotel and put their tools in the room. Then, they hung out and passed by the "Gigantic Python Rising in the Mountain". ZHANG Yongming observed the rock mass, saying that it was granite in good condition, favorable for climbing with tools, and safe, and that tomorrow they could climb this one. They decided to climb the "Gigantic Python Rising in the Mountain" before dawn on the next day. At around 3:00 am on the next day, they got up and left for the "Gigantic Python Rising in the Mountain", and began to climb at around 4 o'clock. Zhang Yongming climbed up first by hammering pitons and fixing the rope. He followed the ZHANG Yongming, and ZHANG Lu was at the foot to protect them. Later, ZHANG Lu went back to the hotel to collect a drone. As ZHANG Yongming continued to climb, he was there to protect him. Through more than two-hour climbing,

ZHANG Yongming reached the top and threw the rope down. He also reached the top with the rope, and stayed there for several minutes. Then, ZHANG Yongming asked him to bring extra tools back to the hotel. He got down from the top with two bags. Returning to the Peak from the hotel, he got down after climbing more than 10 meters under the persuasion of the staff. ZHANG Lu reached the top along the rope, and the two people took videos by the drone on the top. ZHANG Lu and ZHANG Yongming got down to the foot at around 9:00 am and 9:40 am, respectively. When they arrived at the foot, all of them were taken to the police station. When climbing, ZHANG Yongming said he brought 30 pitons, and hammered about 20 pitons into the rock mass of the "Gigantic Python Rising in the Mountain". ZHANG Yongming climbed up by hammering pitons and fixing the rope. It was ZHANG Yongming who drilled holes and hammered pitons. They brought static ropes, expansion bolts (with hooks), an electric drill, a drill bit, an ascender, a descender, carabiners, a hammer, a chisel, a knife, a battery charger, safety belts, a drone and other tools and devices. (2) They contacted each other on the phone, WeChat and intercom for the trip to the Sanqing Mountain. Both ZHANG Yongming and ZHANG Lu mentioned to him about climbing the Sanqing Mountain. This time, the trip to the Sanqing Mountain was proposed by ZHANG Yongming. He and ZHANG Lu both agreed. Then, they came to the Sanqing Mountain together. He knew the Sanqing Mountain is a national 5A scenic area. Climbing the "Gigantic Python Rising in the Mountain" is their arbitrary action without the permission by relevant authorities.

27. The confession and defense by the accused ZHANG Lu and her statement made under administrative punishment testify that (1) A week ago, ZHANG Lu made an agreement with "Bao Ma" (ZHANG Yongming) and "Cuo Jue" (MAO Weiming) that they would go to the Sanqing Mountain National Park to climb the "Gigantic Python Rising in the Mountain" together this weekend. On April 14, 2014, ZHANG Lu traveled from Hangzhou to Yushan by high-speed railway, and ZHANG Yongming and MAO Weiming traveled by car. ZHANG Lu arrived in Yushan at around 14:00 pm, and met ZHANG Yongming and MAO Weiming at around 16:00 pm. Later, they came to the Sanqing Mountain together by ZHANG Yongming's car. ZHANG Lu booked a room at the "Goddess Hotel" on the Internet, went up the Mountain first, and checked in at the "Goddess Hotel" at around 17:00 pm. ZHANG Yongming and MAO Weiming went up the Mountain and reached the "Goddess Hotel" subsequently. Later on, she went to a terrace adjacent to the "Gigantic Python Rising in the Mountain" to test the drone, while ZHANG Yongming and

MAO Weiming were hanging out around the "Gigantic Python Rising in the Mountain", not clear of what they did exactly. At around 18:00 pm, the other two people called her to be back to the hotel for dinner on the intercom. While having dinner, ZHANG Yongming and MAO Weiming decided to climb the "Gigantic Python Rising in the Mountain". At around 1:50 am on April 15, they were at the gate of the "Goddess Hotel", putting the tools in order and making preparation for the climbing. At that time, she took a picture by mobile phone of ZHANG Yongming and MAO Weiming, who were sorting out the tools. After that, they went back to the room at the hotel and chatted. They left the hotel at around 4:00 am. She could not recall the exact time of leaving but remembered that they had to open the headlights when going outside, while dawn was just breaking when they arrived at the foot of the "Gigantic Python Rising in the Mountain", and they did not open the headlights in the whole process of climbing. Reaching the foot of the "Gigantic Python Rising in the Mountain", after brief preparation, ZHANG Yongming and MAO Weiming began to climb. ZHANG Yongming took the lead to climb, and made protective points on the way upward, by hammering some pitons into the rock mass to fix ropes. At that time when it was still dark, she could not see MAO Weiming in that condition (in the grove), and only knew that MAO Weiming was also climbing. The rope was connected with ZHANG Weiming, as one end of the rope was tied to him. ZHANG Lu was in contact with ZHANG Yongming over the intercom, holding the rope at the foot of the Peak. When the other two people were climbing while laying the rope on the way, ZHANG Lu was at the foot to protect them by pulling the rope. More than 10 minutes later, ZHANG Lu told ZHANG Yongming and MAO Weiming over the intercom that she was going back to collect the drone at the hotel to take some aerial videos on the top of the "Gigantic Python Rising in the Mountain". When she returned to the "Gigantic Python Rising in the Mountain", she asked ZHANG Yongming and MAO Weiming over the intercom that whether she could climb now, and they replied yes. She began to climb with the rope and tools at around 5:00 am, and reached the first terrace on the rock mass of the "Gigantic Python Rising in the Mountain" at around 6:00 am. Shortly after taking some pictures of the surrounding landscape by mobile phone, she continued to climb as ZHANG Yongming had already laid the second rope. On the way upward, she saw MAO Weiming going downward along another rope, and asked him via telecom if he was going back to the hotel, and to bring back the backup battery of the drone if so. Then, she climbed onto the top of the "Gigantic Python Rising in the Mountain" and the sun had risen when she got onto the top. She ate something together with ZHANG Yongming and had a rest on

the top, and then assembled the drone to take some aerial videos for about 40 minutes. Later, when the public security officers asked them to get down over MAO Weiming's intercom, they collected the drone and got down from the Peak. ZHANG Yongming followed her on the way downward, climbing down while collecting the ropes. Afterwards, they were brought to the public security office by the police. She took a drone, a safety belt, a safety helmet, hooks, a climbing gear, a helmet, a flat belt and an intercom device with her. (2) ZHANG Lu knows that the Sanqing Mountain is a 5A scenic area and a World Natural Heritage site, and drilling holes and hammering nails into the rock mass when climbing will jeopardize the scenic spot, and is aware that their climbing activity may be punished by the public security organ, and behaviors of climbing over railings, carving and smudging in the Sanqing Mountain would result in fines. Deciding to climb at four and five o'clock in the morning is out of fear of being found later when tourists gather. They wanted to leave as soon as finishing climbing, and did not expect to be arrested.

28. The personal statement by ZHANG Yongming on the time of arrival on the top, the confession by ZHANG Lu and the confession by MAO Weiming testify that (1) ZHANG Yongming reached the top of the Python Peak at around 6:49 am on April 15, 2017. (2) MAO Weiming began to climb at around 4:00 am and reached the top of the Python Peak at around 7:00 on the morning of April 15, 2017. When climbing, he saw hooks and knew ZHANG Yongming had hammered pitons. (3) ZHANG Lu began to climb at around 5:30 am, reached the top of the Peak at around 7:30 am, and got down from the Peak at around 8:40 on the morning of April 15, 2017. When climbing, she saw hooks, and knew the other two people climbed by hammering pitons.

The court of first instance holds that: The World Natural Heritage is a common asset to all mankind, and should be under the strictest legal protection as a non-renewable and rare natural resource asset. The accused ZHANG Yongming, MAO Weiming and ZHANG Lu, who drilled holes and hammered pitons into the rock mass of the Python Peak, have caused serious damage to the Python Peak, a core landmark of the Sanqing Mountain National Park, which is on the World Natural Heritage List and the List of UNESCO Global Geoparks under the state key protection, and the circumstances are serious. Their acts are in violation of Paragraph 2 of Article 324 of *the Criminal Law of the People's Republic of China*, and have constituted the crime of intentional damage to the place of historical and cultural heritage. They are found guilty upon accusation by the public prosecution organ, which is therefore supported by the court.

It constitutes a joint crime, as the three accused colluded with each other to commit the crime beforehand, collaborated with each other in the process of climbing, and jointly completed the action of climbing. In the joint crime, the accused ZHANG Yongming is deemed as the principal criminal, as he firstly came up with the idea of climbing the Python Peak, and personally committed the crime of drilling holes and hammering pitons. Given his confession, he may be imposed a lighter sentence. As it is the first and casual offense, and he has acknowledged the offense, he may be dealt with leniency at the discretion of the court. The ten-day administrative detention imposed on the accused ZHANG Yongming can be deducted from the term of imprisonment.

The accused MAO Weiming is deemed as an accessory criminal, as he pulled the protective rope all the time when ZHANG Yongming was climbing to protect him and helped ZHANG Yongming collect tools, playing an assisting role in the joint crime, and may be imposed a lighter sentence. Given his confession and repentance, and as it is the first and casual offense, he may be dealt with leniency at the discretion of the court.

Given her confession and repentance, the accused ZHANG Lu may be dealt with leniency at the discretion of the court. The defendant ZHANG Lu is deemed as an accessory criminal, as she only pulled the protective rope at the beginning of ZHANG Yongming and MAO Weiming's climbing to protect them, playing an assisting role in the joint crime, but produced a lesser impact than that of MAO Weiming, with slight circumstances of crime, and therefore can be exempt from criminal punishment.

With all that said, for the purpose of maintaining the order of social management, protecting places of historical and cultural interest, preserving World Natural Heritage sites, and sustaining the harmonious co-existence of human beings and the nature, with consideration of facts, circumstances and consequences of criminal acts of the accused ZHANG Yongming, MAO Weiming and ZHANG Lu, in accordance with Paragraph 2 of Article 324, Paragraph 1 of Article 25, Paragraph 1 and 4 of Article 26, Article 27, Article 37, Article 52, Article 64, Paragraph 3 of Article 67 and Article 72 of *the Criminal Law of the People's Republic of China*, Paragraph 1 of Article 4 and Para.1, Paragraph 2 of Article 4 of *the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Application of Laws in Criminal Cases Against Administration of Cultural Relics*, the court of first instance made the judgment as follows: I . The accused ZHANG Yongming is sentenced to one-year imprisonment and fined

100,000 Yuan for the crime of intentional damage to the place of historical and cultural interest. The fine shall be paid immediately upon validation of the judgment. (The term of imprisonment shall be counted from the date of judgment enforcement. If the defendant was in custody before the enforcement of judgment, the number of days in custody shall be deducted from the term of imprisonment. Accordingly, the term of imprisonment is from December 4, 2019 to November 23, 2020.) II. The accused MAO Weiming is sentenced to imprisonment for six months with a one-year probation, and fined 50,000 Yuan (already paid) for the crime of intentional damage to the place of historical and cultural interest. (Term of probation shall be counted from the date when the judgment is made.) III. The accused ZHANG Lu commits the crime of intentional damage to the place of historical and cultural interest and is exempt from criminal punishment. IV. Criminal tools being detained in the case, including four mobile phones, one drone, two intercoms devices, rock-climbing ropes, a hammer, an electric drill and pitons, etc. are confiscated.

The accused ZHANG Yongming lodged an appeal, claiming that: 1. Facts are not clear and evidence is not sufficient in the original judgment, as the Expert Opinions are inadmissible. 2. Acts of ZHANG Yongming are not likely to cause damage to the Python Peak. 3. ZHANG Yongming does not have the subjective intention to damage the Python Peak. 4. There is insufficient evidence for Zhang Yongming's conviction and sentencing in the first instance. The court of second instance is requested to acquit him.

ZHANG Yongming's defender put forward the following defense opinions and appeals: 1. The original judgment finds that ZHANG Yongming's acts cause "serious damage" to the Python Peak, which is unclear in facts and insufficient in evidence. (1) The Expert Opinions are not the statutory "(Expert) Examination Report" and thus inadmissible. (2) The Expert Opinions are completely contrary to the research report made by QIU Liangming, former Head of the Institute of the Northeastern Jiangxi Geological Brigade. The Defense Counsel submitted an "Application for Evidence Investigation and Collection", pleading with the court of second instance for taking the research report made by QIU Liangming in 2001 on overall stability of the Python Peak as evidence from the Institute of the Northeastern Jiangxi Geological Brigade under the Jiangxi Bureau of Geology and Mineral Exploration, where, a large number of climbing practices have negated the Expert Opinions in this case. (3) In fact, ZHANG Yongming's acts are unlikely to cause "serious damage" to the Python Peak. If ZHANG Yongming's act of hammering pitons constitutes the crime of intentional damage to the place of historical and cultural interest, then how

would the act of the Management Committee of the Sanqing Mountain National Park of installing the monitoring system on the Python Peak be defined? 2. Due to controversies over evidence in this case, ZHANG Yongming should be acquitted of a charge by the principle of "presumption of innocence". 3. ZHANG Yongming has the statutory and discretionary circumstances for lighter, mitigated or exempted punishment. (1) ZHANG Yongming made a confession, which is statutory circumstance. (2) There are two discretionary circumstances. Firstly, a piton about 8 cm in length and 1 cm in diameter, once being nailed, it only penetrates into the rock mass for 2 or 3 cm. Secondly, there is no sign indicating "no climbing" around the Python Peak, and *the Management Regulations of the Sanqing Mountain National Park* does not prohibit climbing. (3) ZHANG Yongming is a first-time and an occasional offender. The court of second instance is requested to decide on acquittal, or lighter and mitigated punishment – applicable to probation or exemption from punishment, due to insufficient evidence and untenable accusation.

Evidence adduced in the judgment made by the Shangrao Intermediate People's Court for fact-finding in the case has been presented in court and cross-examined in the first instance. After review and examination, the present court hereby acknowledges fact-finding and evidence adduced in the first instance.

In response to grounds of appeal lodged by the appellant ZHANG Yongming and defense opinions of his Defense Counsel, based on facts and evidence of the case and relevant legal provisions, it is decided as follows:

I. About Evidence Admissibility

Regarding the claim and defense opinion of ZHANG Yongming and his defender about inadmissibility of the Expert Opinions.

Through investigation: 1. In this case, the acts of the three accused of hammering 26 pitons have caused serious damage to the Python Peak. Currently, there is no statutory judicial authentication and appraisal institution across the nation that can appraise the severity of the damage. However, whether it constitutes serious damage is the key to whether the acts of the defendants constitute a crime. According to Article 87 of *the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China*, "Where a specialized issue in a case needs to be appraised but there is no statutory judicial authentication and appraisal institution, or an organ that can carry out the appraisal by law or by judicial interpretations, a person with expertise can be designated or appointed to conduct such an

appraisal, and the appraising report can be used as reference for conviction and sentence. ... If, upon notification by the people's court, the appraiser refuses to testify in court, the appraising report may not be used as reference for conviction and sentence." Therefore, it is sensible, reasonable and lawful to appoint those with the expertise to appraise whether the act of hammering 26 pitons constitutes serious damage to the Python Peak.

2. The four geoscience experts appointed in this case, LUO Zhaohua, a professor at the China University of Geosciences (Beijing), ZHANG Baiping, a researcher at the Institute of Geographic Sciences and Natural Resources Research of the Chinese Academy of Sciences, ZHAO Zhizhong, a researcher at the Institute of Geomechanics of the Chinese Academy of Geological Sciences, and YIN Guosheng, a senior engineer with professorship at Institute of Geological Survey of Jiangxi Province, all have been engaged in geoscientific research for a long time with professional knowledge on geoscience, and have published a large amount of papers or literature on geoscience or presided over key research projects on geoscience, and thus are capable of appraising the specialized issue in the field of geoscience of the severity of the damage to the Python Peak. All the four experts are the "persons with expertise".

3. The four experts are entrusted by the investigating organ with the authority to provide explicit Expert Opinions with their signatures on the severity of damage to the Python Peak from professional perspectives based on their expertise, field survey and evidence examination, and through in-depth discussion and analysis. And, upon the notification by the court, two of the four experts appeared in court as appraisers, gave a detailed explanation of the formation of the Expert Opinions, and were cross-examined by both the prosecuting and the defending parties as well as the judges. The Expert Opinions have clear conclusions, lawful procedure and strong credibility.

To sum up, it is deemed that the Expert Opinions in this case completely conform to the legal requirements from the substance to the procedure. Moreover, the experts appeared in court and accepted the cross-examination by both the prosecuting and the defending parties as well as the judges. Therefore, from the perspective of evidence, the Expert Opinions are admissible as reference for conviction and sentence, according to Article 197 of *the Criminal Procedure Law*, and Article 87 of *the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China* concerning appointing a person with specialized knowledge to provide an appraisal report. The claim and defense opinion of ZHANG Yongming and his defender about inadmissibility of the Expert Opinions have neither factual nor

legal basis, are not established, and therefore dismissed by the present court.

II. About Damage

Regarding the claim and defense opinion of ZHANG Yongming and his defender that the act of climbing by hammering pitons is unlikely to cause "serious damage" to the Python Peak, and pleading for taking the research report made by QIU Liangming in 2001 on overall stability of the Python Peak as evidence from the Institute of the Northeastern Jiangxi Geological Brigade under the Jiangxi Bureau of Geology and Mineral Exploration.

Through investigation: 1. With regard to the claim and defense opinion of ZHANG Yongming and his defender that ZHANG Yongming's act of climbing by hammering pitons is unlikely to cause "serious damage" to the Python Peak. The Sanqing Mountain was listed as one of the national key scenic areas with the approval by the State Council in 1988, and incorporated into the List of the World Natural Heritage in 2008 and into the List of UNNESCO Global Geoparks in 2012. As a core and landmark scenic spot of the Sanqing Mountain, the Python Peak is unique and precious, which is not only a non-renewable rare natural resource, but also a natural asset for sustainable utilization, with significant scientific, aesthetic and economic value for the entire mankind. The Python Peak is a giant granite column formed as a result of long-term natural weathering and gravity disintegration, with a vertical height of 128 meters and a diameter of only 7 meters at its smallest point. In this case, the four experts appointed by the investigating organ by law have provided the Expert Opinions on values, cause of formation and structural features of the geological heritage site of the Python Peak, and the severity of damage to the column of the Python Peak arising from acts of the three accused, based on field survey, evidence examination and scientific analysis. The four experts deem that acts of the accused, including hammering pitons and climbing, have caused permanent damage to the Python Peak, a core landmark in a World Natural Heritage site, and have disrupted the naturalness, primitiveness, and integrity of the natural heritage. Especially, the at least four pitons hammered into the vulnerable part of the column of the Python Peak exacerbate the vulnerability of its structure and therefore damage its stability. The 26 pitons will directly induce and aggravate its physical, chemical and biological weathering, give rise to new cracks, and accelerate erosion of the granite column, and even cause collapse. "Serious damage" has been appraised in the Expert Opinions. In conclusion, the claim and defense opinion of ZHANG Yongming and his defender that the act of climbing by hammering pitons is unlikely to cause "serious damage" to the Python Peak are not established, and therefore dismissed by the

present court.

2. With regard to request by ZHANG Yongming's defender for adducing new evidence. According to Article 52 of *the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China*, "Where the defense counsel directly requests the People's Court to collect and adduce evidence materials from relevant organs or individuals, if the evidence is considered to be necessary by the People's Court, and is not appropriate or possible to be collected and adduced by the defense counsel, the People's Court should approve the request." Through investigation by the court, clue to the evidence that the defender applied to adduce comes from an article published on the "Jiangxi Daily" on October 19, 2001 titled "Climbing the Giant Python, Dangerous!" This article quotes QIU Liangming from the Institute of the Northeastern Jiangxi Geological Brigade under the Jiangxi Bureau of Geology and Mineral Exploration that the stability of the "Giant Python" is not a big problem, and the geological survey organ had carried out a feasibility study on the overall stability of the rock mass of the Python Peak. However, this article also mentions that the geological survey organ specially underlines that when climbing, do not strike or drill holes as far as possible in points where cracks are expanding, so as not to jeopardize local image of the "Giant Python", and do not hang overweight objects unilaterally, so as to keep balance of stress on it. The study on stability in this report cannot prove that ZHANG Yongming's action of hammering pitons does not constitute serious damage to the Python Peak as claimed by the defender, and the "Python Peak Climbing Contest" mentioned in this article was not held in fact. To sum up, the present court deems that it is not necessary to collect the study by QIU Shuliang on overall stability of the Python Peak in 2001 from the Institute of the Northeastern Jiangxi Geological Brigade under the Jiangxi Bureau of Geology and Mineral Exploration, and therefore does not support this request raised by the defender.

III. About Subjective Intention

Regarding the defense opinion of ZHANG Yongming in the appeal that he did not have the subjective intention of causing damage to the Python Peak.

Through investigation, it is found that the three accused were aware of the illegality of climbing the Python Peak, and even knew that it might result in imprisonment, but still climbed the Python Peak. When the court of second instance brought ZHANG Yongming to trial, ZHANG Yongming claimed that the WeChat messages he sent were not written by him, but only copied

and forwarded by him. The defense cannot deny the fact that he has the cognition of the illegality of climbing the Python Peak, and his wrongful cognition of the law does not affect the nature and harmful consequences of his action. ZHANG Yongming acknowledged that he had the intention to climb the Python Peak by hammering pitons, but did not have the intention to damage the Python Peak. Climbing as a sport activity is mainly categorized into free climbing and climbing with tools. It is evident that climbing with tools will exert negative impact on the natural environment to a certain degree, and the key is whether the negative impact is within the lawful and reasonable scope. Paragraph 1, Article 4 of *the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Application of Laws in Criminal Cases Against Administration of Cultural Relics* stipulates that "the core landmark in a scenic area" shall be deemed as the "place of historical and cultural interest under state protection" prescribed in Paragraph 2 of Article 324 of *the Criminal Law*. The three accused in this case are frequently engaged in climbing activities, and fully aware of the uniqueness of the Python Peak as the core landmark in the Sanqing Mountain National Park, but hammered 26 pitons into the rock mass without the expert evaluation, which have caused overall damage to the granite column from the foot up. They have the laissez-faire intention to the damage of the Python Peak as a matter of fact. ZHANG Yongming's claim in the appeal that he did not have the subjective intention to damage the Python Peak is not grounded or established, and therefore dismissed by the present court. As for the monitoring facilities around the Python Peak, they were installed by the Management Committee of the Sanqing Mountain National Park after the occurrence of the case, to prevent climbing activities for protecting the public interest. It is not relevant to the case.

IV. About Whether the Acts in the Case Constitute a Crime

Regarding the claim and defense opinion of ZHANG Yongming and his defender in the appeal that ZHANG Yongming should be acquitted by the principle of "presumption of innocence" due to insufficient evidence for conviction and sentence.

Through investigation, the fact, in which, the three accused climbed the Python Peak by hammering pitons and have caused serious damage to the Python Peak as a consequence, is sufficiently and irrefutably evidenced by WeChat chatting records among the three accused, written records of inquiries by the public security organ, written records of on-the-site investigation, original videos shot by the accused, testimonies of witnesses, tools for committing the crime being detained on the site including mobile phones, a drone, intercom devices, climbing

ropes, a hammer, an electric drill, pitons, etc., and the Expert Opinions. Acts of the three accused of intentionally damaging the place of historical and cultural interest under national legal protection have led to the consequence of serious damage. As per Para.1, sub-para 2, Article 4 of *the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Application of Laws in Criminal Cases Against Administration of Cultural Relics*, the three defendants are in "serious circumstances" in the *Criminal Law* and commit the crime of intentional damage to the place of historical and cultural interest in violation of Paragraph 2 of Article 324 of *the Criminal Law*. The claim and defense opinion of ZHANG Yongming and his defender in the appeal that ZHANG Yongming should be acquitted by the principle of "presumption of innocence" due to insufficient evidence for conviction and sentence are inconsistent with the facts, nor established, and therefore dismissed by the present court.

V. About the Sentence

Regarding the claim and defense opinion of ZHANG Yongming's defender in the appeal that ZHANG Yongming has the statutory and discretionary circumstances for lighter and mitigated punishment or exemption from punishment, which should be fully considered.

Through investigation, the existing evidence shows that acts of the accused ZHANG Yongming, MAO Weiming and ZHANG Lu have constituted a joint crime, as the three defendants colluded with each other to commit the crime beforehand, collaborated with each other in the process of climbing, and jointly completed the action of climbing. In the joint crime, the defendant ZHANG Yongming is identified as the principal criminal, as he firstly came up with the idea of climbing the Python Peak, and personally committed the crime of drilling holes and hammering pitons. According to Section 2 of Article 324 of *the Criminal Law of the People's Republic of China*, "Whoever intentionally damages or destroys places of historical and cultural interest under state protection, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined." The court of first instance, when deciding the one-year imprisonment, has already fully considered the circumstances where ZHANG Weiming had made a confession, was a first-time and occasional offender, and had acknowledged the mistakes, and accordingly imposed lighter punishment at its discretion. The defense opinion of ZHANG Yongming's defender in the appeal repeating that ZHANG Yongming has the statutory and discretionary circumstances for lighter and mitigated punishment or exemption from punishment has neither factual nor legal basis, and therefore is

dismissed by the present court.

The present court holds that: The core landmark of a scenic area is deemed as a place of historical and cultural interest under the protection of the *Criminal Law* in China. The Sanqing Mountain National Park is on the List of the World Natural Heritage and that of the UNESCO Global Geoparks. The geological heritage site of the Python Peak, as the precious and landmark landscape and the core part of the Sanqing Mountain, is not only a non-renewable rare natural resource, but also a natural asset for sustainable utilization, with significant scientific, aesthetic and economic value. The accused ZHANG Yongming, MAO Weiming and ZHANG Lu, in violation of the social management order, climbed the Python Peak in a destructive manner by drilling holes and hammering 26 pitons into the granite column of the Python Peak, which caused serious damage to the Python Peak. Their acts are serious in circumstances, and have constituted the crime of intentional damage to the place of historical and cultural interest that should be punished by law. The sentencing of the three accused in this case is not only a negative evaluation of their acts, but also a warning to the general public against destroying places of historical and cultural interest under the state protection, so as to guide the public to have a correct sense of values on ecological civilization, and cherish and care for natural resources and ecological environment that the human beings rely on for survival and development. Given the positions, functions and circumstances of sentencing of the three accused in the joint crime, the criminal punishment decided by the court of first instance is not inappropriate. The appeal by ZHANG Yongming and his defender for acquittal is not established, and therefore dismissed by the present court. The original judgment is made with clear criminal facts of the three accused, irrefutable and sufficient evidence, and accurate conviction and appropriate sentences for the three accused, under the lawful judicial procedure. As per Para. 1, sub-para 1, Article 236 of *the Criminal Procedure Law of the People's Republic of China*, the court decides as follows:

I . Dismissing the appeal lodged by the accused ZHANG Yongming;

II . Upholding the original judgment.

This ruling is final.

Presiding Judge HU Shuzhu

Judge HUANG Xunrong

Judge WANG Huijun

May 18, 2020

Judge Assistant WANG Qian

Clerk WAN Miaomiao