

Case

A Case of Special Fraud: Convicted of Receiving Cash from Another's Mailbox

(Supreme Court, September 27, 2019; Hanrei-Jihō No. 2495, p. 93)

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[Facts]

The defendant was implicated as a so-called “receiver” in a special fraud case and charged with fraud.

The defendant received a request from an unnamed person to pick up a package containing cash at an apartment. Based on this request, the defendant entered the apartment complex's main entrance on November 18 and 22, 2016, opened the mailbox, and took out a package sent by victim A. The defendant later handed the package to the collector. This mailbox was not the defendant's mailbox, but the mailbox for a vacated apartment. In this way, the defendant conspired with unnamed persons to defraud victim A of a total of 3.5 million yen in cash on two occasions (Case 1: Completed Fraud).

Subsequently, the defendant was further asked to defraud victim C of cash in the same manner. On December 7, 2016, the defendant used the same modus operandi to retrieve a package that had arrived in a mailbox at the apartment building. However, this package contained counterfeit money, so he was unable to collect the cash (Case 2: Attempted Fraud).

It should be noted that throughout Cases 1 and 2, the defendant received instructions from a caller using the same telephone number.

The defendant was charged with these two acts. The main issues in this case were whether the defendant was found to have intent to commit fraud and whether he could be said to have conspired with an unnamed person. The trial court found the defendant guilty of intent to commit fraud. The appellate court found the defendant guilty of the attempted fraud, but determined that he lacked criminal intent in the completed fraud charge.

(1) First trial: On December 22, 2017, the Shizuoka District Court heard the above criminal charges in detail and found the defendant guilty. The court sentenced the defendant to four years and eight months in prison. The defendant filed an appeal.

(2) Second trial: On July 20, 2018, the Tokyo High Court reversed the judgment of the first trial in the completed fraud case (Case 1) and acquitted the defendant of the completed fraud charge. The High Court upheld the trial court's judgment in the attempted fraud case (Case 2) on the grounds that the facts found in the judgment of the first trial were correct.

The trial and appellate court disagreed in their assessment of whether the defendant had intent to commit fraud and from what facts the defendant's intent could be found. The Shizuoka District Court held that the defendant could be presumed to have committed willful misconduct in the attempted fraud case.

On that basis, the trial court found the defendant's intent to defraud because:

(a) the completed fraud case and the attempted fraud case were presumed to be committed by the same fraud group, and

(b) when the defendant removed the package from the mailbox in the completed fraud case, he was talking to a person at the same telephone number that he was talking to when he committed the attempted fraud case.

On appeal, the Tokyo High Court held that the circumstances that existed at the time of the attempted fraud did not necessarily indicate that the defendant also intended to commit fraud at the time of the completed fraud. According to this judgment, the facts (a) and (b) are not related to the intention of the defendant in the completed fraud case and the intention of the defendant in the attempted fraud case. In the completed fraud case, the trial court should have considered whether the defendant can be found to have intended or conspired to commit fraud only in the circumstances of this case. From the circumstances described, it is not enough to presume that the defendant may have taken out the package sent by the victim of fraud. At the very least, without the fact that similar package retrievals have been repeated in the past, or that similar retrievals have been made in other apartments, a deliberate presumption that defendant "may be retrieving a package sent by a victim of fraud" cannot be made. Therefore, a doubt remains to infer the defendant's knowledge of fraud. Based on this judgment, the appellate court overturned the finding of defendant's intent to commit fraud in the completed fraud case.

The prosecutor appealed the decision.

[Summary of Judgment]

The Supreme Court reversed the Tokyo High Court and made its own judgment, holding that it was appropriate to affirm the judgment of the trial court, and the defendant was guilty of both charges.

The Supreme Court's reasoning was as follows:

(a) At the request of the unnamed person, the defendant took the package out of the mailbox using the notably unnatural method of taking the missed delivery notice from the carrier out of another person's mailbox and brought it to the collector. Furthermore,

(b) it is usually unthinkable for the residents of an apartment complex to ask a third-party defendant to pick up a package from the mailbox without telling them how to unlock the security lock, open the mailbox, etc. Considering the above,

(c) it can be reasonably presumed that the defendant was aware that the client intended to receive the package sent to the address of the apartment's resident, even though

the client was not a resident of the apartment complex. Therefore, it can also be inferred that

(d) the sender of the package sent the package under the mistaken belief that the addressee residing in the apartment complex would receive the package, and that the defendant was aware that the package he received could have been sent based on fraud.

In conclusion, it was found that the defendant took out and received each package in this case with the knowledge that his actions may have involved fraud. The defendant was convicted of intent to defraud and conspiracy with his accomplices.

[Comments]

In cases of special cash delivery fraud such as this one, the question of whether the victim or the recipient of cash from the courier (the receiver) is guilty of intent to commit fraud has long been debated. In cases of special fraud, the receiver denies knowing that the package contained fraudulently obtained money, and denies intent to commit fraud and engage in conspiracy. In fact, there are many cases where the receiver is used as a carrier without knowing that he or she is involved in fraud.

Against this backdrop, in recent years, a series of High Court cases have been handed down finding intent and conspiracy to commit such fraud by the receivers. For example, on December 11 and 14, 2018, the Supreme Court rendered judgments on two special fraud cases of the same type as this cash transfer. In each case, the defendant pretended to be the addressee of the package, received the package at the request of another person, received packages multiple times, handed them to the collector (repetition of the same action), and received compensation (receipt of reward). In both cases, the Court found it sufficiently persuasive that the package was sent based on a crime such as fraud. Furthermore, the Court stated that the facts of both cases strongly suggested that the defendants themselves were aware of the possibility that the act of sending the packages would constitute fraud and ruled that the defendants were co-principals of the crime of fraud by *dolus eventualis*. On the other hand, these decisions held that the fact that the defendants had repeatedly taken out similar packages in the past, or had taken out similar packages in other apartments, is not essential to infer the defendant's intent to defraud. From these circumstances, it became clear that the Court's fact-finding of the receiver in special fraud cases depended on the individual circumstances of each case.

In such special fraud cases, the assessment of indirect facts to infer intent is problematic. In contrast to the judgment of the appellate trial, which stated that only an abstract recognition can be inferred about the finding of intent, the Supreme Court determined the defendant's intent on the grounds of "unnaturalness in the manner in which he acted" by taking a missed delivery notice out of another person's mailbox and receiving a package upon request.

Legal academics criticized this Supreme Court decision for its crude fact-finding.

According to this criticism, allowing a presumption based on “unnatural” actions alone as in the manner of this judgment would make it almost impossible for any defendant show a lack of intent in cases where the intention of the receiver is at issue. In this case, victim A thought that B was the recipient of a package, and victim C thought that D was the recipient, but a completely unrelated receiver actually received each package. The Court found this case to be a type of special fraud that caused the victim (sender) to make a mistake about the recipient, and held that the receiver in this case had intent to commit the fraud because “the actions were unnatural.” However, even if there was something suspicious about the receipt of the package, the defendant may not have thought that the package contained money from fraud, but rather drugs, jewelry, or a cell phone contracted in someone else’s name. Therefore, it should not be possible to find clear intent to defraud from these facts alone, even though the Supreme Court did so.

Special fraud is becoming more complex these days, and it is expected that similar cases will continue to occur. The egregious nature of special fraud such as this case is that ordinary people who have no intention of participating in the fraud may be selected as receivers and become involved by deceit. More careful and specific judgments are expected in the future.

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