

People's Procuratorate of Taizhou City, Jiangsu Province vs. Wang Guiping for Endangering Public Security by Dangerous Means, Selling Fake or counterfeit Products, and Falsely Declaring Registered Capital

August, 2008, the High People's Court of Jiangsu Province

Public prosecutor: the People's Procuratorate of Taizhou City, Jiangsu Province

Defendant: Wang Guiping, 42 years old, arrested on Jun. 6, 2006.

The People's Procuratorate of Taizhou City, Jiangsu Province launched a public prosecution before the Intermediate People's Court of Taizhou City, Jiangsu Province against Wang Guiping, the defendant, for endangering public security by dangerous means, selling counterfeit or fake products, and falsely declaring registered capital.

The indictment alleged:

I. The defendant, Wang Guiping, committed the crime of endangering public security by dangerous means.

In January 2005, the defendant gained the trust of Qiqihaer Second Pharmaceutical Corporation using a counterfeited business license, medicine manufacturing license, and a medicine registration certificate of "Taixing Chemical Plant of China National Geological & Mining Corporation". In September 2005, Niu Zhongren a purchaser of Qiqihaer Second Pharmaceutical Corporation (prosecuted for a causing serious accident crime in another case), ordered one ton of medical propylene glycol from Wang

Guiping at the price of 14 500 yuan per ton. Knowing that diethylene glycol cannot be used in medicine, Wang Guiping bought one ton of diethylene glycol from Huabang International Trade Corporation at the Bonded Area of Zhangjiagang at the price of 7200 yuan per ton, and in the name of “Jiangsu Meiqi Fine Chemical Corporation”, sent the diethylene glycol as medical propylene glycol on September 22nd to Qiqihaer Second Pharmaceutical Corporation through Changzhou Yutian Logistics Corporation. Wang Guiping also sent by post to Niu Zhongren five counterfeited product quality certificates numbered 050919 to place on the barrels containing the diethylene glycol.

In March 2006, Qiqihaer Second Pharmaceutical Corporation used the fake medical propylene glycol with the batch number of 050919, which had been bought from Wang Guiping, to manufacture Armillarisin A injection with specifications of 10ml: 5mg and the batch number of 06030501. Qiqihaer Second Pharmaceutical Corporation sold those injections to Guangzhou Jinhengyuan Pharmaceutical Trade Corporation on March 28th and April 21st, and Guangzhou Jinhengyuan Pharmaceutical Trade Corporation sold them all to Guangdong Pharmaceutical & Health-care Product Corporation. Guangdong Pharmaceutical & Health-care Product Corporation then sold 3600 injections to the Third Affiliated Hospital of Sun Yat-sen University of Guangdong on April 7th, 17th, and 25th. The hospital began using the injections in clinical practice on April 19th, 2006, and applied the injections to over 60 patients, causing 15 patients to suffer acute renal failure and other more severe conditions.. As a result of the injections, 14 patients died, including Wu Mingyuan.

II. The defendant, Wang Guiping, committed the crime of selling fake or substandard products.

From January of 2005 to April of 2006, Wang Guiping passed off industrial propylene glycol as medical propylene glycol and diethylene glycol as ethylene

glycol and poly propylene glycol, and sold them to Qiqihaer Second Pharmaceutical Corporation, Chongqing Shuangqiao Applied Chemical Industry Corporation, and Ningbo Qianqianxiu Daily Necessities Corporation respectively, with sales amount totaling RMB297 310 yuan. The details are as follows:

1. In January, 2005, Wang Guiping passed 1 ton of industrial propylene glycol off as medical propylene glycol, and sold it to Qiqihaer Second Pharmaceutical Corporation, with the sales amount at RMB14 500 yuan;
2. In December, 2005, Wang Guiping passed 12.65 tons of diethylene glycol off as ethylene glycol, and sold it to Chongqing Shuangqiao Applied Chemical Industry Corporation, with the sales amount at RMB107 525 yuan;
3. In April, 2006, Wang Guiping passed 18.4 tons of diethylene glycol off as ethylene glycol, and sold it to Chongqing Shuangqiao Applied Chemical Industry Corporation, with the sales amount at RMB145 360 yuan;
4. In April, 2006, Wang Guiping passed 2.25 tons of diethylene glycol off as poly propylene glycol, and sold it to Ningbo Qianqianxiu Daily Necessities Corporation respectively, with the sales amount at RMB29 925 yuan.

III. The defendant, Wang Guiping, committed the crime of falsely declaring registered capital.

In September 2005, without actually investing the registered capital, the defendant, Wang Guiping, supplied through other people counterfeited documents such as cash debit notes, bank statements, bank confirmations, etc., with the total value of RMB5 million yuan, to Zhang Zhongren at Nanjing Zhengyilianhe Accounting Firm, and thus obtained a capital verification report. Wang Guiping was then issued a business license by Taixing Industry & Commerce Administration Bureau for Jiangsu Meiqi Fine Chemical Industry Corporation with registered capital of RMB5 million yuan.

In sum, the defendant, Wang Guiping, caused many deaths by passing diethylene glycol off as medical propylene glycol and selling the diethylene glycol to pharmaceutical companies. The circumstances were especially flagrant, and the consequences were especially serious. When marketing the products, Wang Guiping passed the fake products off as genuine ones. When applying for company registration, Wang Guiping obtained the registration by deceiving the competent company registration authority through falsely declaring the capital to be registered with falsified certificates, and the amount of the falsely registered capital was huge. Wang Guiping's act violated Paragraph 1 of Article 115, Article 140, and Paragraph 1 of Article 158 of the *Criminal Law of the People's Republic of China* (hereinafter referred to as the *Criminal Law*), and Wang Guiping shall be investigated for criminal responsibility for crimes of endangers public security, selling fake or substandard products, and falsely declaring registered capital. The public prosecutor requested the court to try the case according to law.

The defendant, Wang Guiping, argued that he had no objection to the nature-determining and fact-finding of the public prosecutor's prosecution for the crimes of selling fake or substandard products, and falsely declaring registered capital. But he argued that the prosecutor's prosecution against him for endangering public security by dangerous means was not well-grounded on facts. He did not know beforehand that the diethylene glycol he sold to Qiqihaer Second Pharmaceutical Corporation would be used in medicine. He did not know the diethylene glycol passed off as medical propylene glycol used in medicine would cause so many deaths. Knowing that diethylene glycol was generally used for industrial products and could not be used in medicine, in order to avoid accidents, he drank a little diethylene glycol before selling it, and had no serious conditions other than a little scorching pain in the stomach, so he thought it would not cause serious consequences to pass propylene glycol off as medical propylene glycol, otherwise he would not have sold it. Therefore

he argued that his act only constituted the crimes of selling fake or substandard products, and falsely declaring registered capital, but did not constitute the crime of endangering public security by dangerous means. He also reported information and clues of criminal activities conducted by other people., and thus requested a lighter or mitigated punishment.

In the trial at first instance, the Intermediate People's Court of Taizhou City found that:

I. The facts about Wang Guiping being suspected of committing the crime of endangering public security by dangerous means

In January, 2005, the defendant, Wang Guiping, gained the trust of Qiqihaer Second Pharmaceutical Corporation with counterfeited business license, medicine manufacturing license, and a medicine registration certificate of "Taixing Chemical Plant of China National Geological & Mining Corporation". In September 2005, Niu Zhongren, a purchaser of Qiqihaer Second Pharmaceutical Corporation (prosecuted for causing serious accident in another case), ordered 1 ton of medical propylene glycol from the defendant at the price of RMB14 500 yuan per ton. Knowing that diethylene glycol cannot be used in medicine, however, for the purpose of obtaining interests Wang Guiping bought 1 ton of diethylene glycol from Huabang International Trade Corporation at the Bonded Area of Zhangjiagang at the price of RMB7200 yuan per ton, and in the name of "Jiangsu Meiqi Fine Chemical Corporation" sent the diethylene glycol as medical propylene glycol on September 22nd to Qiqihaer Second Pharmaceutical Corporation through Changzhou Yutian Logistics Corporation. Later, Wang Guiping also sent by post to Niu Zhongren 5 counterfeited product quality certificates numbered 050919.

In March 2006, Qiqihaer Second Pharmaceutical Corporation tested the

fake medical propylene glycol (the batch number of 050919), and found that its relative density was higher than normal values, but in order to meet the manufacturing schedule, the company violated the regulations by making a false test report, and used that batch of propylene glycol in the manufacturing of Armillarisin A injection with specifications of 10ml: 5mg and the batch number of 06030501. The company then sold the injections to Guangzhou Jinheng Pharmaceutical Trade Corporation on March 28th and April 21st, and Guangzhou Jinheng Pharmaceutical Trade Corporation sold them all to Guangdong Pharmaceutical & Health-care Product Corporation. Guangdong Pharmaceutical & Health-care Product Corporation then sold altogether 3600 injections to the Third Affiliated Hospital of Sun Yat-sen University of Guangdong on April 7th, 17th, and 25th. The hospital began using the injections in clinical practice on April 19th, 2006, and applied the injections to over 60 patients, causing 15 patients to suffer acute renal failure and other more severe conditions. As a result of the injections, 14 patients died, including Wu Mingyuan. The Centre of Forensic Science of Southern Medical University examined the body of Wu Mingyuan and concluded: (1) Wu Mingyuan died from multiple organ failures; (2) There was a causality between Wu Mingyuan's toxic nephropathy and renal failure and diethylene glycol intoxication; (3) Diethylene glycol intoxication may have a deteriorating effect on Wu Mingyuan's hepatic necrosis and hepatic failure; (4) The possibility that diethylene glycol has effect on brain, spleen, and testicles is not ruled out.

II. The facts about Wang Guiping being suspected of committing the crime of selling fake or substandard products

From January of 2005 to April of 2006, Wang Guiping passed off industrial propylene glycol as medical propylene glycol, and diethylene glycol as ethylene glycol and poly propylene glycol, and sold them to Qiqihaer Second

Pharmaceutical Corporation, Chongqing Shuangqiao Applied Chemical Industry Corporation, and Ningbo Qianqianxiu Daily Necessities Corporation respectively, with sales amount totaling RMB297 310 yuan. The details are as follows:

1. In January, 2005, Wang Guiping passed 1 ton of industrial propylene glycol off as medical propylene glycol, and sold it to Qiqihaer Second Pharmaceutical Corporation, with the sales amount at RMB14 500 yuan;
2. In December, 2005, Wang Guiping passed 12.65 tons of diethylene glycol off as ethylene glycol, and sold it to Chongqing Shuangqiao Applied Chemical Industry Corporation, with the sales amount at RMB107 525 yuan;
3. In April, 2006, Wang Guiping passed 18.4 tons of diethylene glycol off as ethylene glycol, and sold it to Chongqing Shuangqiao Applied Chemical Industry Corporation, with the sales amount at RMB145 360 yuan;
4. In April, 2006, Wang Guiping passed 2.25 tons of diethylene glycol off as poly propylene glycol, and sold it to Ningbo Qianqianxiu Daily Necessities Corporation respectively, with the sales amount at RMB29 925 yuan.

III. The facts about Wang Guiping being suspected of committing the crime of falsely declaring registered capital

In September 2005, without actually investing the registered capital, Wang Guiping supplied through other people counterfeited documents such as cash debit notes, bank statements, bank confirmations, etc., with the total value of RMB5 million yuan, to Zhang Zhongren at Nanjing Zhengyilianhe Accounting Firm, and in this way obtained a capital verification report. Wang Guiping then was issued by Taixing Industry & Commerce Administration Bureau a business license for Jiangsu Meiqi Fine Chemical Industry Corporation with registered capital of 5 million yuan.

The facts above were proved by— the defendant’s statement; the testimonies of over 70 witnesses, including Zhou Dongjun, Wang Zhanjiang, Hong Guolan, etc.; *Explanation on the Issues about Taixing Chemical Plant of China National Geological & Mining Corporation* provided by Jiangsu Food and Drug Administration; quality certificates; test requisition forms; sample forms a test record and a subsidiary material test report provided by Qiqihaer Second Pharmaceutical Corporation; a business license; a medicine manufacturing license; a medicine registration certificate of “Taixing Chemical Plant of China National Geological & Mining Corporation” counterfeited by Wang Guiping; the involved value-added tax invoices, purchase and sales contracts, warehouse warrants, delivery bills, and inspection form provided by Guangdong Pharmaceutical & Health-care Product Corporation; the list of patients using Armillarisin A injection and *The Conditions of the Patients Who Died in the Armillarisin A Accident* provided by the Third Affiliated Hospital of Sun Yat-sen University of Guangdong; the test report by the National Institute for the Control of Pharmaceutical and Biological Products; the medicine sampling record and certificate provided by Guangdong Food & Drug Administration; the examination report and test report of Armillarisin A injection samples provided by Guangdong Institute for Drug Control; an examination report of Heilongjiang Institute for Drug Control; the examination conclusion provided by the Centre of Forensic Science of Southern Medical University, *Less-than-truck-load Transport Enquiry Form and Receipt of Jiangdu Dongbei Transport Company*; the examination report of propylene glycol counterfeited by Wang Guiping; the situation briefing provided by Qiqihaer Food & Drug Administration Inspection Detachment; the examination report numbered 2006C0208 provided by Jiangsu Institute for Drug Control; the cash debit notes, bank statements, and bank confirmations counterfeited by Wang Guiping; etc.

Upon the trial at first instance, the Intermediate People's Court of Taizhou City held that:

The defendant, Wang Guiping, caused many deaths by passing diethylene glycol off as medical propylene glycol and selling the diethylene glycol to pharmaceutical companies. The circumstances were especially flagrant, and the consequences are especially serious. His act constituted the crime of endangering public security by dangerous means. Wang Guiping argued that he did not know whether or not diethylene glycol was used in medicine manufacturing, and whether or not the medicine containing diethylene glycol was harmful to human health. However, according to Wang Guiping's occupation, experience, and cognitive ability, when the pharmaceutical companies ordered medical propylene glycol, Wang Guiping should have known that the diethylene glycol he was going to sell to the companies would be used in medicine manufacturing, and finally be used in clinical practice. In addition, according to the discovered facts, before Wang Guiping sold the diethylene glycol, he drank a little himself, and he confessed that because he did not have severe conditions other than a little scorching pain, he sold the diethylene glycol, passing it off as medical propylene glycol. It was thus evident that Wang Guiping knew beforehand that diethylene glycol could not be used for medicine manufacturing, and was aware that his act might cause harmful consequences to society. However, he allowed such consequences to occur, leading to the substandard Armillarisin A injection manufactured with the fake medical propylene glycol in it by Qiqihaer Second Pharmaceutical Corporation. Because the injection was not targeted for a particular group, and diethylene glycol intoxication caused major harm to human health. Wang Guiping's act constituted the crime of endangering public security by dangerous means, and he shall be investigated for criminal responsibility.

When marketing the products, Wang Guiping passed the fake products off

as genuine ones—he passed off industrial propylene glycol as medical propylene glycol, and diethylene glycol as ethylene glycol and poly propylene glycol—with sales amount exceeding RMB200 000 yuan. The defendant's behavior constituted the crime of selling fake or substandard products. When applying for company registration, Wang Guiping obtained the registration by deceiving the competent company registration authority through the use of falsified certificates while declaring the capital to be registered. Moreover, the amount of the falsely registered capital was huge. This act constituted the crime of falsely declaring registered capital. Wang Guiping committed several offences and shall be given a combined punishment for several crimes in accordance with the criminal law.

Wang Guiping argued that he reported the information and clues of other people's criminal activities, but according to the facts found in this case, the clues he reported were not verified.

In sum, the public prosecutor's prosecution was clear in its fact finding, supported by reliable and sufficient evidence, and accurate in determining the nature of the case; it shall thus be supported according to law. Therefore, based on Article 110, Paragraph 1 of Article 115, Article 140, Paragraph 1 of Article 158, Paragraph 1 of Article 56, Paragraph 1 of Article 57, Article 69, and Paragraph 1 of Article 64 of the *Criminal Law*, on My. 2rd, 2008, the Intermediate People's Court of Taizhou City ruled that:

I. The defendant, Wang Guiping, shall be sentenced to life imprisonment and be deprived of his political rights for life for the crime of endangering public security by dangerous means; the defendant shall be sentenced to fixed-term imprisonment of three years and also be fined 300 000 yuan for the crime of selling fake or substandard products; the defendant shall be sentenced to fixed-term imprisonment of two years and also be fined RMB100 000 yuan for

the crime of falsely declaring registered capital; it was determined that the punishment to be executed was life imprisonment and deprivation of political rights for life, a fine of RMB400 000 yuan.

II. The illegal gains of 297 310 yuan of the defendant, Wang Guiping, shall be confiscated.

Against the above judgment of first instance, Wang Guiping appealed to the Higher People's Court of Jiangsu Province. The main appeal grounds were: (1) The judgment of first instance was improper in the determination that the act of the appellant constituted the crime of endangering public security by dangerous means. The act of the appellant was of the nature of selling fake or substandard products or negligently endangering public security by dangerous means. The appellant did not know that diethylene glycol would cause severe harm to human health, so he did not have the criminal intent of endangering public security by dangerous means. In addition, there was no causality as stipulated in the *Criminal Law* between the act of the appellant and the ultimate serious consequences, because Qiqihaer Second Pharmaceutical Corporation's act of producing and selling fake medicine had the deciding effect on the ultimate consequences. (2) The sentence of first instance was too heavy. The facts of endangering public security by dangerous means that were determined by the judgment of first instance had already been truthfully confessed by the appellant, before he was under compulsory measures, during the investigation by the administrative organs, so his act shall be regarded as voluntary surrender. The facts of selling fake or substandard products and falsely stating registered capital that were determined by the judgment of first instance were voluntarily confessed by the appellant, after he was under compulsory measures, so his act shall be considered as truthfully confessing other offences and be considered as voluntary surrender. After the appellant was arrested, he showed good repentance when the judicial organs investigated the case, thus shall be given a lighter or mitigated punishment.

After trial, the People's High Court of Jiangsu Province confirmed the facts found by the court of first instance.

Upon trial at second instance, the People's High Court of Jiangsu Province held that:

As for the appellant's grounds of appeal, that there was no causality as stipulated in the *Criminal Law* between the act of the appellant and the ultimate serious consequences, and that the judgment of first instance was improper in the determination that the act of the appellant constituted the crime of endangering public security by dangerous means, according to the facts discovered in the case, the appellant not only knew that the diethylene glycol bought by the pharmaceutical companies was to be used in medicine producing, but also knew that diethylene glycol could not be used in medicine, without harm to others health. For the purpose of obtaining illegal interests, however, the appellant allowed the harmful consequences to occur, and had the indirect criminal intent of endangering public security by dangerous means. In this case, although Qiqihaer Second Pharmaceutical Corporation used the diethylene glycol passed off by the appellant as propylene glycol to produce medicine, and did not test the medicine according to rules, and there was some independency in the company's act, the causality between the appellant's act and the serious consequences could not be denied. The appellant shall bear criminal responsibility according to law. This appeal reason of the appellant could not be supported.

The appellant argued that he had given himself up to the Procuratorate, his attitude toward acknowledgement of his guilt was good, thus the sentence of first instance was too heavy. As the investigation organs had obtained the basic facts that the appellant intentionally passed propylene glycol off as medical propylene glycol and sold it to Qiqihaer Second Pharmaceutical

Corporation before the first inquiry to the appellant. And during the first inquiry, the appellant did not make a truthful confession, concealing the fact that he passed propylene glycol off as medical propylene glycol and sold it to Qiqihaer Second Pharmaceutical Corporation. The facts determined in the trial at first instance concerning selling fake or substandard products and falsely declaring registered capital were also found by the investigation of the investigation organs, and the appellant made his confession passively as the investigation organ had already found some evidence and facts.

According to the investigation script of the appellant on May 12th, 2005 by Taizhou Food & Drug Administration, during the investigation, the appellant also concealed the fact that he passed propylene glycol off as medical propylene glycol and sold it to Qiqihaer Second Pharmaceutical Corporation. Therefore, the reason for the appeal, that the appellant had conducted voluntary surrender, shall not be supported. After the appellant was arrested, he showed good repentance when the judicial organs investigated the case, but as his criminal act caused serious consequences, the sentence of first instance was not improper.

In sum, the appellant, Wang Guiping, passed propylene glycol off as medical propylene glycol and sold it to pharmaceutical companies. The medicine caused serious consequences after being put into the market. 15 patients suffered acute renal failure or other more severe conditions, and 14 patients died; the appellant's act constituted the crime of endangering public security by dangerous means. The appellant passed fake products off as genuine ones, and the sales amount of the fake products exceeded 290 000 yuan; the appellant's act constituted the crime of selling fake or substandard products. When applying for company registration, the appellant obtained the registration by deceiving the competent company registration authority through using falsified certificates when declaring the capital to be registered, and the amount of the falsely registered capital was huge; his act constituted the crime

of falsely stating registered capital. The appellant committed several offences and shall be given a combined punishment for several crimes in accordance with law. The judgment of first instance was clear in its fact finding, supported by hard and sufficient evidence, accurate in determining the nature of the crime, correct in the application of law, proper in the sentence, and legal in the trial procedure, and should be maintained.

Hence, in accordance with Article 189 (1) of the Criminal Procedure Law of the People's Republic of China, on August 28, 2008, the High People's Court of Jiangsu Province ruled:

To dismiss the appeals and judgment of the first instance maintained.

This ruling should be final