

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

UNITED STATES OF AMERICA)
)
v.) No. 2:19-CR-14-JRG-MCLC
)
XIAORONG YOU a/k/a SHANNON YOU,)
)
Defendant.)

ORDER OF DETENTION PENDING TRIAL

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for resolution. This case is before the Court on Defendant’s motion for pretrial release on conditions [Doc. 20]. Representing the United States was Assistant United States Attorney Timothy Harker; representing Defendant, who was present, were Attorney Thomas Jessee and Corey Shipley. Based on the testimony of the witnesses, the Pretrial Services Report presented by the United States Probation Officer, arguments of counsel, the proposed Defendant’s motion for pretrial release, along with its attachments, Defendant’s request for judicial notice in support of her motion for pretrial release [Doc. 21], the Court finds that the Defendant should be detained pending trial.¹

Defendant is charged with a conspiracy to commit theft of trade secrets in violation of 18 U.S.C. § 1832(a)(5); seven counts of theft of trade secrets in violation of 18 U.S.C. § 1832(a)(3); and one count of wire fraud in violation of 18 U.S.C. § 1343. Based on these charges, the rebuttable presumption of detention does not apply. That notwithstanding, “[p]retrial detention can be ordered based on a judicial finding of either substantial danger to the community or risk of flight; only one is required.” *United States v. Hefner*, No. 3:18-CR-00136, 2019 WL 612704, at

¹ The Pretrial Services Report is filed as a Sealed Exhibit A to this Order.

*1 (E.D. Tenn. Feb. 13, 2019)(citations and quotations omitted). The Government has the burden to prove Defendant is a risk of flight by a preponderance of the evidence and a danger to the community by clear and convincing evidence. 18 U.S.C. § 3142(f). In this case, the Government argues that Defendant is both a risk of flight and poses a danger to the community based on the damage she can do to intellectual property rights if she were released and disclosed her specialized knowledge. The Court will not address whether a defendant can be a danger to the community based on damage she can cause to intellectual property as there is a sufficient basis to detain her on grounds she poses a serious risk of flight and that there are no conditions or combination of conditions that will reasonably assure Defendant's appearance at trial.

In reaching this conclusion, the Court must consider the factors listed in 18 U.S.C. § 3142(g): (1) the nature and circumstances of the offense (in particular whether it is an offense which is violent or nonviolent in nature, or involves narcotics); (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or to the community that would be posed by the person's release.

The indictment charges Defendant with conspiring to steal trade secret information that cost over \$119,000,000 to develop. [Doc. 1, *Indictment*, ¶ 1]. It alleges that she conspired with co-defendant Lui Xiangchen, who resides in China, to convert trade secret information pertaining to such matters as the formulation for bisphenol-A-free, (also known as BPA-free) that prevents the contents of a container from interacting with the internal surface of the container over time, and a newly-developed bisphenol-A-free polyolefin dispersion coating for the inside of food and drink cans, such as aluminum soda cans, that protect both the can from corrosion and its contents from contamination by the can's material, among other things. *Id.* at ¶ 1(c)]. If she is convicted of the

conspiracy count or the theft of trade secret counts, she faces no more than ten years of imprisonment. If she is convicted of wire fraud, she faces not more than 20 years imprisonment.

Defendant is a well-educated naturalized citizen from China. She earned a Ph.D. in Polymer Engineering, and is, according to the testimony at the hearing, well known in this field of study. She is alleged to have conspired with an individual, Xiangchen, in China. Xiangchen remains in China. Their relationship began in March 2017, when he introduced himself to Defendant. In May 2017, Defendant advised Xiangchen that she has all “foreign technology” needed for a collaboration project regarding BPA-free formulations. The next month, Xiangchen advised Defendant that he is preparing a “Thousand Talents Program” application for her completion. This program, sponsored by the Chinese government, recognizes leading experts in scientific research and provides funding for approved projects. It is a means of encouraging scientists to bring cutting-edge technology to China. The provincial government for Shandong Province also sponsored a similar program as the Thousand Talents Program entitled “Yishi-Yiyi.” It also paid monetary awards to “successful applicants with proposals to bring technology to the province.” *Id.* at ¶ 11. While working for a U.S. company with access to trade secret information, she applied for both of these grant-like programs.

As part of the application process, from August 17, 2017 through August 23, 2017, Defendant allegedly travelled to China and defended her Yishi-Yiyi application and met again with Xiangchen. On August 31, 2017, her U.S. employer terminated her, but another U.S. employer immediately hired her starting September 1, 2017. While in their employment, she returned to China on September 17, 2017, and unbeknownst to her new employer, she defended her Thousand Talents Program application and again met with Xiangchen. On January 23, 2018, she learned she won the Yishi-Yiyi program with “funding of 12 million.” She also won the

Thousand Talents Program that provided funding over and above that provided by winning the Yishi-Yiyi program. On April 8, 2018, she told Xiangchen that she needed to know specifics for her potential employment position in China, and that she does not intend to do anything “until she sees the money.” She also acknowledged that she is taking a risk in the United States and does not want to give away the technology without being compensated.

On April 27, 2018, she returned to China and remained there through May 23, 2018. At this point, she allegedly signed an employment contract with Weihai Jinhong Group (WJG) and soon after began receiving compensation deposited into her bank account in China. This account is apparently being controlled by one of her family members in China. In May 2018, Defendant tells Xiangchen that she will identify laboratory equipment very soon. The next month, she takes photos of proprietary lab equipment belonging to her U.S. employer. On June 21, 2018, she uploaded onto her Google drive hundreds of files of her employer containing trade secret information. On June 22, 2018, her employer terminated her employment and recovered a hard drive from Defendant’s house on which they discovered not only their own trade secret information but also trade secret information from her prior employers and that of others.

In August and September 2018, she travelled to China and Italy and met with Xiangchen and the WJG president and was allegedly introduced to an Italian company for a possible joint venture. On November 7, 2018, she traveled to Italy again and met with the WJG president, Chinese provincial governmental leaders, and Italian company executives in an effort to form a joint partnership. They did not reach an agreement.

Defendant was arrested on February 14, 2019 in Lansing, Michigan. She was employed at that time and was living in an apartment she had rented on December 1, 2018. Though she had lived there for over two months, she only had a folding chair, one folding table, and a mattress in

her apartment. She also had in her possession a bag that contained numerous foreign currencies, her passport, her diploma, multiple identifications, her naturalization papers, and bank statements from a bank in China.

She has substantial connections to China. Her mother still lives in China as does her sister and an aunt who has been assisting in managing her personal finances at her bank in China. While she claims she does not own any property in China, she told her supervisor at one U.S. company that she did own property there and that she intended to retire there. She also has some funds deposited in bank accounts in China. At the hearing, the Special Agent testified that the FBI estimated that at least \$70,000 was deposited in various accounts in China over which she had some connection based on their analysis of the text messages retrieved from her phone.

All of this evidence strongly suggests that she poses a serious flight risk and weights in favor of her detention. While she owns a home in Johnson City, Tennessee, but she has no family here. She travelled to China on five occasions since August 2017.² She has substantial connections to China. Her mother still lives there, a sister lives there, as well as an aunt. She signed an employment contract with a company in China, expressing her intent to work for them. Indeed, she is receiving a paycheck, even while she was working for companies here in the United States. She expressed interest in moving to China, asking for property with a beach front, and told a supervisor she intended on retiring there. Her strong economic connections to China suggest a strong motive to flee.

In addition, the furnishings of her Lansing, Michigan apartment are consistent with someone who is ready to leave in a moment's notice. Although she has substantial assets to afford

² Defendant argued in her request for release that she only “traveled to China infrequently, on average once every few years.” [Doc. 20, pg. 3].

furnishing her apartment, she has elected to have only a folding chair, a folding table, and a single mattress. That does not suggest she is settling into a new job, beginning a new career. Rather, it appears like she lining up at the starting line waiting for the gun to go off. To be sure, if she wanted to leave quickly, she was ready to do so. Given her financial resources, (she has a net worth of over a million dollars with no debt), she has the means to flee. She has developed connections with the Chinese government and is currently employed by a Chinese company. Her success in the Thousand Talents Program and the Yishi-Yiyi program illustrates that she is extraordinarily talented and desired in China. In fact, because she won those programs, the Special Agent testified that they get preferential treatment going through customs in China. Her motivation to flee to China is supported by the fact that the United States does not have an extradition treaty with China. For example, Xiangchen cannot be extradited to face these charges in the United States. If Defendant makes it there, neither will she. Finally, the Court notes that the amount of time she faces also is an element going to the risk of flight. The Government advised that they believed her Sentencing Guideline range was from 210-262 months. If that is true, then that also is factor relevant to her motivation to leave this country.

The Court does not find that the risk of flight can be mitigated by living in Atlanta, Georgia with her husband under electronic monitoring. Although her daughter, who travelled from Los Angeles, California, to Greeneville, Tennessee, to testify at the detention hearing, her husband was no where to be seen. Her husband only filed an affidavit in support of Defendant. While he claimed in the affidavit that he has a “happy marriage” the evidence presented at the hearing was that they had not lived together in years.

The Court notes that some aspects of her history and characteristics weigh in favor of release, some do not. On one hand, she has no criminal convictions. But on the other hand, she

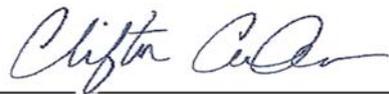
has engaged in criminal acts unbeknownst to her prior employers. For example, she signed under oath that she did not have in her possession any of her prior employer's trade secret information, and yet she had uploaded hundreds of files containing that very information onto her Google drive. She has no history of any substance abuse issues or mental health problems. She is no longer employed here in the United States, but her employment prospects in China are excellent. Indeed, she very well may still be receiving a paycheck from WJG. This combined with her financial resources weigh in favor of detention.

Finally, the nature and seriousness of the danger to any person or the community that would be posed by her release is a neutral factor. The Government argues that if the Court were to release her, she *could* damage the property interests of U.S. companies. The Court need not decide whether that is what is contemplated by the statute as the other factors favor detention.

The Court finds that no conditions of release or combination of conditions, including considering the proposed conditions suggested by Defendant, would reasonably assure her appearance as required. Accordingly, the Court finds that she should be detained pending trial.

Defendant is committed to the custody of the Attorney General or a designated representative for confinement in a corrections facility separate, to the extent practical, from persons awaiting or serving sentences or held in custody pending appeal. The Defendant must be afforded a reasonable opportunity to consult privately with defense counsel. On order of a United States Court or request of an attorney for the Government, the person in charge of the corrections facility must deliver the Defendant to the United States Marshal for a court appearance.

SO ORDERED:



UNITED STATES MAGISTRATE JUDGE