
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : **CRIMINAL COMPLAINT**

v. :

BING XU, : Mag. No. 07-7140 (ES)
a/k/a "Xu Bing"

I, Sara Tyler, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.

Sara Tyler, Special Agent
Department of Homeland Security,
Immigration and Customs Enforcement

Sworn to before me and subscribed in my presence,
on October 31, 2007, at Newark, New Jersey

HONORABLE ESTHER SALAS
UNITED STATES MAGISTRATE JUDGE

Signature of Judicial Officer

ATTACHMENT A

On or about October 29, 2007, in Essex County, in the District of New Jersey, and elsewhere, defendant BING XU, a/k/a, "Xu Bing," did fraudulently and knowingly attempt to export from the United States merchandise, articles, and objects contrary to a law and regulation of the United States, and receive, buy, and facilitate the transportation of such merchandise, articles, and objects prior to exportation, knowing the same to be intended for exportation contrary to a law and regulation of the United States, in violation of Title 18, United States Code, Sections 554 and 2.

ATTACHMENT B

I, Sara Tyler, a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement, having conducted an investigation and having discussed this matter with other law enforcement officers who have participated in this investigation, have knowledge of the following facts, which are stated below, in substance and in part:

1. On or about June 22, 2007, an individual named "Sherley from Everbright Sci& Tec Co., Ltd." (hereinafter "Everbright") contacted an undercover law enforcement agent (hereinafter "U/C"), via electronic mail ("e-mail"), regarding the purchase of night-vision technology, which would include an image intensifier. Sherley indicated that she was aware that the U/C had "ways to export [the night-vision technology] to China."
2. On or about June 26, 2007, Sherley advised, via e-mail to the U/C, that the night-vision technology was for use in China by either Chinese law-enforcement or "China Wild Animals Protections Association." Sherley indicated that, among other things, she was interested in ordering a "whole set of 9350XL night vision for Canon XL camcorders, including 9350CIU3-F-1600 Common Module Central Intensifier" (hereinafter "F-1600 Night-Vision technology").
3. The F-1600 Night-Vision technology is classified as a United States Munitions List item, which is controlled for export from the United States under specific United States Department of State regulations. As such, it is against federal law to export the F-1600 Night-Vision technology without a license to do so issued by the United States Department of State ("State Department").
4. On our about June 27, 2007, Sherley advised, via e-mail to the U/C, that a prior company had submitted a licensing request, on behalf of Everbright, for the F-1600 Night-Vision technology and that this request had been denied. Nonetheless, Sherley requested that the U/C ship these items to China and requested information regarding the shipping process. Law enforcement officers were able to confirm that a license request had been made on behalf of Everbright and that the State Department had denied it.
5. On or about June 29, 2007, via e-mail to the U/C, Sherley provided a shipping address in Nanjing, China. Sherley also indicated that the adaptors for the F-1600 Night-Vision technology did not require a license and suggested that the U/C ship the adaptors to China separately from the licensable technology.
6. On or before August 6, 2007, the U/C received from Everbright a wire transfer of funds representing payment for the adaptors, which are not subject to licensing requirements.

7. On or about August 9, 2007, Sherley sent an e-mail message to the U/C providing the U/C with a new e-mail address to be used for their discussions. Sherley indicated, in substance and in part, “[a]s you know, many of our businesses are secret, and my new email box is safer for our business. My former email box . . . uses the USA server and I think maybe it not so safe for our business.”

8. On or about August 29, 2007, Sherley advised, via e-mail to the U/C, that Everbright was willing to prepay for the F-1600 Night-Vision technology and take delivery of those items in the United States.

9. On or about September 5, 2007, Sherley sent an e-mail to the U/C ordering “two image intensifiers,” referring to the F-1600 Night-Vision technology and requesting a “new proforma invoice for them.”

10. On or about September 24, 2007, Sherley sent an e-mail to the U/C indicating that a manager with Everbright “will be in Washington, D.C. from Oct.26 - Oct. 31, and hopes to meet you there at that time.” On or about September 30, 2007, Sherley advised that the purpose of her manager’s trip was to attend a night vision exposition in Washington, D.C.

11. On or about September 27, 2007, Sherley confirmed, via e-mail to the U/C, that the manager, identified as defendant XU, would fly to New York on October 25, 2007 or October 26, 2007, and then travel to New Jersey to meet with the U/C for the purpose of taking possession of the F-1600 Night-Vision technology.

12. On or about October 8, 2007, Sherley confirmed, via e-mail to the U/C, that she wished to purchase the F-1600 Night-Vision technology.

13. On or about October 25, 2007, the U/C received a wire transfer of funds -- \$14,080.00 -- from Everbright, representing payment for the F-1600 Night-Vision technology.

14. On or about October 26, 2007, defendant XU arrived in the United States via Air China, flight number 981, arriving at John F. Kennedy Airport, in New York, New York.

15. On or about October 27, 2007, defendant XU met with the U/C and made the following statements, in substance and in part. Defendant XU asked whether or not the U/C had received the money that had been wired to the U/C from Everbright for payment for the F-1600 Night-Vision technology. Defendant XU further indicated that he supervises everyone at Everbright, including Sherley. Defendant XU explained that he was interested in only the newest night-vision technology, which was being made in the United States.

16. On or about October 28, 2007, defendant XU met with the U/C and made that following statements, in substance and in part. Defendant XU repeatedly stated that he understood the specifics of the deal between him and the U/C. Defendant XU explained that this business is dangerous because this technology cannot legally be sold to him in the United States. Defendant XU indicated that Sherley would provide some of the shipping instructions, and indicated that he understood when the U/C advised that it was too dangerous to make a business-to-business shipment. Defendant XU further acknowledged that it would be problematic for him to attempt to carry the F-1600 Night-Vision technology out of the United States himself. Defendant XU further stated that he wished to develop an ongoing business relationship with the U/C to ship additional technology to China and explained that his contracts were with the Chinese government so money would not be a problem, even in larger deals. With respect to the e-mail

communications between Sherley and the U/C, defendant XU explained that Sherley, who speaks English, was the translator for his communications with the U/C and that he was familiar with the content of all of the U/C's e-mails to Sherley and that he provided the information to Sherley that she included in all of the e-mail responses to the U/C. Defendant XU expressed concern, however, about how open Sherley and the U/C's e-mail conversations were and indicated that law enforcement agencies had documented techniques for investigating these offenses. The U/C indicated that it would be impossible to get a license for the sale of this technology to defendant XU, and defendant XU agreed.

17. On or about October 29, 2007, defendant XU met with the U/C and made the following statements, in substance and in part. Defendant XU advised the U/C that the U/C should remove all markings and serial numbers from the F-1600 Night-Vision technology prior to shipping it.

18. On or about October 29, 2007, defendant XU was interviewed by law enforcement officers and, after being advised of his rights pursuant to Miranda v. Arizona, 386 U.S. 436 (1966), stated the following in substance and in part. Defendant XU admitted to wiring money to the U/C. He further admitted that he was going to purchase the F-1600 Night-Vision technology from the U/C. Defendant XU further stated that he was aware that a prior license application had been made, on Everbright's behalf, to authorize the sale of this technology to Everbright and that that license application had been denied.

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