

FILED

UNITED STATES COURT OF APPEALS

DEC 05 2013

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HUI HSIUNG, AKA Kuma,

Defendant - Appellant.

No. 12-10492

D.C. No. 3:09-cr-00110-SI-8
Northern District of California,
San Francisco

ORDER

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HSUAN BIN CHEN, AKA H.B. Chen,

Defendant - Appellant.

No. 12-10493

D.C. No. 3:09-cr-00110-SI-9
Northern District of California,
San Francisco

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AU OPTRONICS CORPORATION,

Defendant - Appellant.

No. 12-10500

D.C. No. 3:09-cr-00110-SI-10
Northern District of California,
San Francisco

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AU OPTRONICS CORPORATION
AMERICA, INC.,

Defendant - Appellant.

No. 12-10514

D.C. No. 3:09-cr-00110-SI-11
Northern District of California,
San Francisco

Before: THOMAS and McKEOWN, Circuit Judges, and KENDALL, District Judge.*

Hui Hsiung and Hsuan Bin Chen (collectively “defendants”) have filed a renewed motion for bail pending appeal pursuant to 18 U.S.C. § 3143(b).¹ Bail pending appeal is appropriate if the defendants demonstrate “(1) that [they are] not likely to flee or pose a danger to the safety of any other person in the community if released; (2) that the appeal is not for purpose of delay; (3) that the appeal raises a substantial question of law or fact; and (4) that if that substantial question is determined favorably to defendant[s] on appeal, that decision is likely to result in

* The Honorable Virginia M. Kendall, District Judge for the U.S. District Court for the Northern District of Illinois, sitting by designation.

¹The defendants previously filed a motion for bail pending appeal, which a motions panel of this Court denied on January 22, 2013.

reversal or an order for a new trial of all counts on which imprisonment has been imposed.” *United States v. Handy*, 761 F.2d 1279, 1283 (9th Cir. 1985).

The government opposes the defendants’ motion, but raises no arguments regarding likelihood of flight, danger to the community, or delay. Similarly, before the district court, the government focused on whether there was a substantial issue on appeal and did not oppose bail on any other ground. In its district court filing, the government stated in a footnote that the flight risk question was “debatable,” but offered nothing in terms of evidence or argument on this ground and stated that it was unnecessary for the district court to decide the issue. Nothing in the record indicates that the defendants are likely to flee or to pose a danger to the community if released on bail. The defendants voluntarily traveled from Taiwan, which has no extradition treaty with the United States, to stand trial in the Northern District of California. Following trial and post-trial proceedings, they self-surrendered pursuant to the district court’s order of January 28, 2013. The defendants were convicted of nonviolent crimes, and no history of violence has been brought to our attention. We conclude there is no indication that this appeal is for purposes of delay.

The government argues that the defendants have not raised substantial issues on appeal and that the renewed motion should be denied on that basis. “[A]

substantial question is one of more substance than would be necessary to a finding that it was not frivolous” and is described as “fairly debatable.” *Id.* (citation omitted). We conclude that the defendants have raised substantial questions of law or fact, which, if decided in their favor are likely to result in reversal of the convictions. *See id.* In making this determination, we express no opinion on the ultimate merits or outcome of the appeal; we simply determine that the defendants have raised at least one “fairly debatable, or fairly doubtful” question of law or fact. *Id.* Accordingly, the defendants have satisfied the requirements for release on bail pending resolution of their appeal.

Because the district court is most familiar with the defendants’ circumstances, we remand to the district court for the limited purpose of considering and setting the terms and conditions of the defendants’ release on bail pending appeal. In imposing terms and conditions of bail, the district court may, of course, consider all the appropriate factors to ensure that there is no likelihood of flight. Accordingly, the defendants’ motion for bail pending appeal is **GRANTED**, subject to the terms and conditions imposed by the district court..