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The "I Was Just Trying to Land a New Job" Defense to Criminal Trade Secret Theft Charges

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On February 28, 2008, Hanjuan Jin, a Chinese-born former software engineer for Motorola, arrived at Chicago O'Hare Airport en route to Beijing. During a random customs check, officials discovered that she had a one-way ticket to China (http://articles.chicagotribune.com/2012-08-31/business/ct-biz-0830-moto-theft--20120831_1_trade-secret-case-hanjuan-jin-trade-secrets), \$31,252 in cash, thousands of confidential documents regarding Motorola's iDEN cell phone technology, and ties to the Chinese military. Her excuse for travelling with thousands of confidential and proprietary Motorola documents in her suitcase? Jin said (<https://www.casetext.com/case/united-states-v-hanjuan-jin/>) that she planned to refresh her knowledge of the work she had done over the past years with Motorola, "so that I can prepare myself for further career going [*sic*]."

Not surprisingly, this defense was not successful. Saying that you stole your former employer's secrets to help your career prospects will not endear you to anybody. Moreover, the government proved that Jin was communicating with a Chinese company and the Chinese military for which the stolen iDEN documents would likely be useful — to Motorola's detriment. A federal jury in Illinois found Jin guilty of trade secret theft, and she was sentenced to four years in prison (http://www.huffingtonpost.com/2012/08/29/hanjuan-jin-motorola_n_1840833.html). The Seventh

Circuit affirmed (<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2013/D09-26/C:12-3013;J:Posner;aut:T:fnOp:N:1211110:S:0>) her conviction on September 26, 2013, and implied that it believed the four-year prison sentence was lenient.

While seemingly ridiculous, the "I was just trying to educate myself to further my career prospects" defense may actually be a viable defense to federal criminal trade secret misappropriation charges in certain circumstances. Here's why: A finding of criminal trade secret misappropriation attaches only if one can prove beyond a reasonable doubt that the individual (1) used or intended to use the trade secret for the economic benefit of anyone other than the owner, and (2) knew or intended that use of the trade secret would injure the trade secret's owner. 18 U.S.C. 1832(a) (<http://www.law.cornell.edu/uscode/text/18/1832>). To the extent a defendant claims to be using trade secret documents simply for personal edification or helping her career, as was initially alleged here, that claim may prevent a finding as to the second element.

Consider a situation in which an individual accesses and reviews confidential materials belonging to her current or previous employer, not for the purpose of benefitting a competitor or harming her employer but rather for the purpose of drafting her resume. The employee's purpose might be to show the prospective employer the types of projects the individual is capable of handling, or to refresh her memory on a technology or protocol before an interview. If the goal is merely to bolster that individual's resume and ability to interview, does that meet the requirements of knowing or intending that use of a trade secret would injure the trade secret's owner? Arguably, such motive, absent anything more, would prevent a finding of requisite knowledge or intent. At the very least, an arrest before the individual has used the materials in a way that is demonstrably to the detriment of the individual's former or current employer may make obtaining a criminal conviction a challenge.

3

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