

Belief That Information Is a Trade Secret, Even If It Isn't, Is Enough to Be Convicted for Attempted Theft of Trade Secrets

Article By:

Peter A. Steinmeyer

A federal judge in Chicago recently held that an individual can be convicted of attempting to steal a trade secret, even if the information at issue did not actually constitute a trade secret, *so long as* the individual *believed* that the information was a trade secret.

In [United States of America v. Robert O'Rourke Opinion](#), Judge Andrea R. Wood denied a post-conviction motion for a new trial in a case involving attempted and actual trade secret theft. The decision involved a metallurgical engineer and salesperson, Robert O'Rourke, who resigned his employment to take a position as vice president of research and development for a China-based competitor. Shortly before his last day, he entered his employer's facility and downloaded over 1900 documents from its network onto a personal hard drive. His employer discovered this and alerted law enforcement, and O'Rourke was stopped by Customs and Border Patrol officials while attempting to board a flight to China with the hard drive containing the downloaded documents. At trial, he was convicted of actual and attempted trade secret theft.

In a post-conviction motion for a new trial, O'Rourke argued, among other things, that he could only be convicted of attempted trade secret theft if the information at issue *actually* constituted a trade secret. Judge Wood rejected this claim, analogizing the situation to one involving attempted distribution of illegal drugs, explaining that "a would-be cocaine buyer cannot avoid criminal responsibility even if the only substances he managed to purchase were fakes planted by police officers." Judge Wood further explained that "one who intends to steal trade secrets with the goal of harming a company and enhancing a competitor does not receive a 'get out of jail free card' just because he incorrectly believed something to be a trade secret when it turns out that the information was not valuable or confidential enough to be a trade secret."

In other words, when it comes to attempted criminal trade secret theft, intent is what matters.

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