

PROBLEM 6 (Direct and Cross Examination)

STATE V. CARROLL (Paul O'Rourke) (Amanda Jones)

Evelyn Carroll is charged with theft of confidential information in violation of Nita Criminal Statutes 18 Nita Code § 794. Carroll is an employee of Pear Electronics, an emerging producer of microchip technology in Silicon Valley, Nita. She was arrested as part of an ongoing investigation by the Nita Bureau of Investigation (NBI) into a series of thefts of microchip designs from Pear and other chip makers. Paul O'Rourke, a Special Agent for the NBI, had been working on the investigation for several months before Carroll's arrest. He has been a Special Agent since graduating from the Nita University School of Law in 1999. He has specialized in the investigation of industrial espionage cases, and has taken numerous courses in advanced surveillance techniques. As a result of the investigation, O'Rourke had identified George Moore as the prime suspect in the thefts. Moore was known by O'Rourke for several years as a reputed broker of stolen electronic technology. It was believed that Moore had systematically recruited mid-level employees at numerous companies in Nita's Silicon Valley who, in turn, provided him with stolen technology. O'Rourke's report follows.

REPORT

November 10, 2006: Pursuant to court approved interception of George Moore's home telephone (see transcript attached) learned that within the next three days a prototype of Pear Electronic's new "Platinum" chip would be passed from a Pear employee, identity unknown, to George Moore. Drop was to be made at a phone booth outside the Cove Bar & Grill at 1201 Front Street in Nita City.

November 11, 2006: Set up surveillance with Special Agent Richard Robinson outside Cove Bar. Robinson took 8:00 a.m. to 8:00 p.m. shift. I was on surveillance from 8:00 p.m. to 8:00 a.m. Position taken up in unmarked vehicle some 60 feet from drop. Vehicle parked facing south on the west side of Front Street. Inspected phone booth for anything unusual. Phone booth found clean. No unusual activity observed on this shift.

November 12, 2006: Surveillance continues. No unusual activity observed.

November 13, 2006: Surveillance continues. No unusual activity on Robinson's shift. At 8:00 p.m., I resume surveillance after checking phone booth which is still clean. At 2:00 a.m. on 11/14 subject sighted. Subject approaches from north of phone booth, enters, looks around furtively, places small container in phone book compartment of booth, exits and proceeds north in direction of approach. Subject is female, 5'5", approximately 125 lbs., wearing tan trench coat.

Surveillance continues. At 2:10 a.m. Moore arrives in black, late model domestic sedan, parks in front of drop, enters booth. As Moore exits booth, he is apprehended and searched. Recovered a small metal container containing microchip with Pear logo. The item seized was in the lining of raincoat.

November 14, 2006: Attempted to interview Moore, but he insisted on counsel and refused to sign waiver. Proceeded to Pear Electronics. Spoke with head of security, Stephen Ketainek. Informed he had a suspect. I was shown a photograph of subject. I made positive ID of woman who made drop. Located and arrested Carroll. After full explanation of her rights, she knowingly waived the same and submitted to an interview by this special agent. She denied taking anything from Pear and denied ever being in the phone booth on Front Street. Suspect claims she was home with her sleeping child at time drop was made.

[Signed]

Paul O'Rourke,
SA Nov. 14, 2006

During his investigation O'Rourke believed that George Moore had systematically recruited mid-level employees at numerous companies in Nita's Silicon Valley, who, in turn, provided him with stolen technology.

The following is a statement from a friend and co-worker of the Defendant, by the name of Amanda Jones.

STATEMENT OF AMANDA JONES

My name is Amanda Jones. I am a thirty-five-year-old single mother of my son Jimmy. I work for Pear Electronics, and I have for four years. I was under investigation for stealing confidential information and then giving it to a man by the name of George Moore. I do not know George Moore. No formal charges were ever made against me, so I assume they realized I had nothing to do with stealing anything from Pear.

Evelyn Carroll also works at Pear Electronics and she has worked there for three years. She came to the company directly out of school where she got her associates degree in computer technology. To the best of my knowledge, she did not have any previous employment in the field of technology. Pear Electronics has been her one and only job in this field.

Evelyn and I are both single mothers and have developed a friendship throughout the time that she has been working at Pear Electronics. Because of family and work obligations, neither of us has a lot of spare time. However, the free time that we do have we tend to spend together. We spend our workdays together, and when we can, we share a babysitter and go out socially. We talk both about work and about personal situations that arise in our everyday lives. We are each other's confidants. I know that recently Evelyn has been concerned about her finances because her son's father was behind on his support payments.

Pear Electronics is a very large company that employs over 300 employees. There are many female employees that work at Pear Electronics. I'm sure many of them had access to the chip that was stolen.

On the evening of November 13, 2006, Evelyn and I got a sitter and went out to a couple of clubs. Given Amanda's money situation, it was my treat, but as it turned out there were a couple of guys who bought us drinks, so it really didn't cost much. I brought my son Jimmy to her home where the sitter was and left him there. We then went out to a club and danced some. Evelyn had several drinks as I was the designated driver. I know she said she was very tired when I dropped her off and picked up my son at 11:30 p.m. No, I didn't see or talk to her after that until the next morning. I then drove the sitter home and was at my apartment at about 12:15. I did see Evelyn the next morning at work. We chatted about our evening out. She did not appear unusual in any way, although she seemed a little groggy. I kidded her about having too much to drink.

I heard from Evelyn the night of November 14 and she told me she had been arrested for stealing a computer chip. She told me they said she dropped the chip on Front Street at about 2:00 a.m. on November 14, 2006. That's impossible, she was home with her son. I'm sure she never stole anything. She's not that kind of person. You have just informed me that she was previously arrested and convicted for a misdemeanor of passing a bad check in 2001, but that doesn't change my opinion of her. I have no reason to think that she would do anything dishonest now.

Amanda Jones read and signed the deposition making no corrections.

Attached to this problem is a diagram of the waterfront area where the surveillance occurred. Assume that this is a part of O'Rourke's report and was drawn by him.

Moore has refused to testify and his case has been severed. Carroll has pleaded not guilty and

her case is going to trial first. Assume that the trial judge has ruled the wiretap of Moore is admissible. Assume further that the metal container and the Pear computer chip are also admissible.

Part A

The case is now at trial. The State calls Special Agent O'Rourke as its first witness.

For the State, conduct a direct examination of Special Agent O'Rourke.

For the Defendant, conduct a cross examination of Special Agent O'Rourke.

For the State, conduct any necessary redirect examination.

Part B

The first witness for the Defendant is Amanda Jones.

For the Defendant, conduct a direct examination of Amanda Jones.

For the State, conduct a cross examination of Amanda Jones.

WIRETAP TRANSCRIPT Subject: George Moore Location: Moore residence, 38 Brighton Road, Nita City Date: November 10, 2006 Time: 8:00 p.m.

Moore: Hello.

Unknown: George?

Moore: Yeah.

Unknown: Do you have a line on the Pear chip yet?

Moore: Yeah.

Unknown: When's it comin' in?

Moore: Two, three days max.

Unknown: Are you using the same drop?

Moore: What's it to you?

Unknown: We really need this chip, and I don't want you and your guy getting caught.

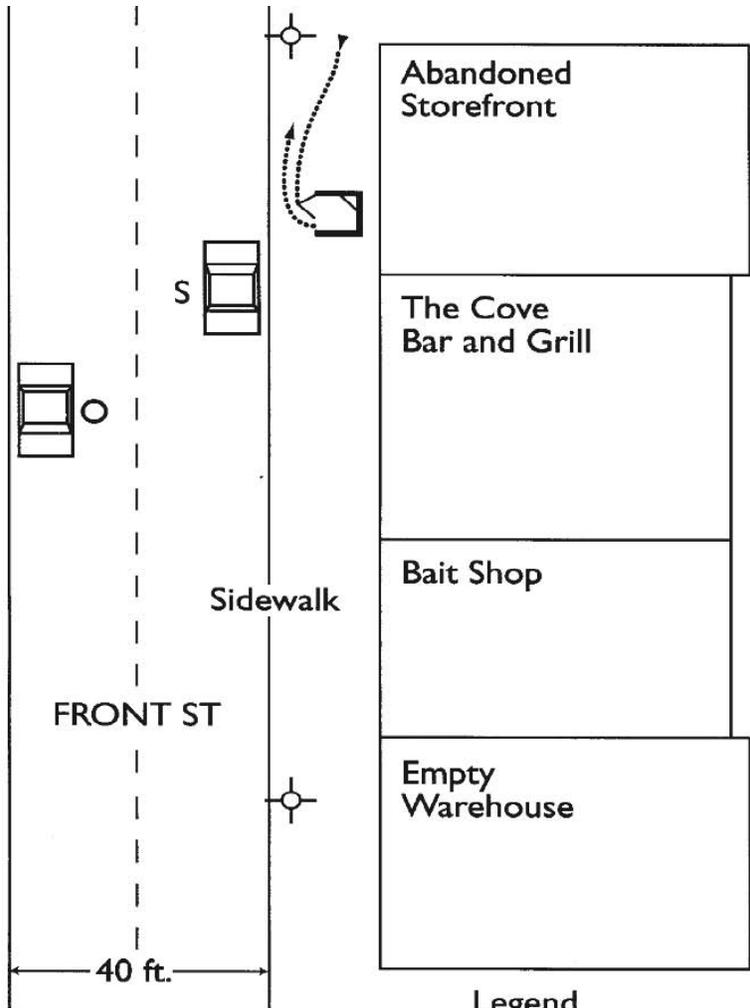
Moore: Front Street, near the Cove has worked for the last six months. It will work this time, too. You worry about the money; I'll worry about the chip.

Unknown: You're the boss. I'll be in touch.

End of transmission.

Problem 6: EXHIBIT 1

Front Street and Four Buildings



Legend

-  Street Lamp
-  Phone Booth
-  O'Rourke
-  Suspect