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Russian Says \$90M Hack-And-Trade Verdict Cannot Stand

By [Chris Villani](#) · [Listen to article](#)

Law360 (March 13, 2023, 5:45 PM EDT) -- A Kremlin-linked Russian national convicted of running a \$90 million hack-and-trade scheme told a judge Monday that the verdict cannot stand because Boston federal prosecutors did not have enough evidence tying the case to Massachusetts.

Vladislav Klyushin sought to undo the Valentine's Day verdict with an argument that his attorneys pressed throughout the trial: The alleged crimes had, at best, weak links to Massachusetts.

Klyushin was accused of running a scheme to hack into [Donnelley Financial Solutions](#) and Toppan Merrill LLC, two firms that companies use to file quarterly earnings reports with the [U.S. Securities and Exchange Commission](#). He and his cohorts then traded on the ill-gotten information and achieved unfathomable success, prosecutors alleged.

But Klyushin argued Monday that none of the essential elements of the charged crimes actually took place in Massachusetts, where the trial was held and where he has been jailed since 2021.

"To be sure, they inescapably occurred in at least the districts where Toppan Merrill's and DFIN's 'servers' were 'located' and duplicitously 'accessed,'" the [motion for acquittal](#) states. "But in stark contrast, '[no] protected computer was accessed and no data ... obtained' here in Boston."

At most, Boston was nothing more than a "pass through" as a site that the government claimed allegedly was associated with an intermediate IP

address assigned at random by a virtual private network.

That link, Klyushin argued, is not enough to sustain a conviction.

"To backfill venue for a crime that plainly was committed in the American states and districts housing Toppan [Merrill]'s and DFIN's computers smacks of forum shopping," the filing states. "In effect, a contrary holding would allow the government to prosecute, in any district it chooses, any foreign national whose conduct significantly touches, substantially impacts and largely takes place within identifiable districts in the United States. That is not, and cannot be, the law."

A chunk of the motion cites the government's own manual for prosecuting computer crime. Klyushin cited the guidance as he claimed the link to Massachusetts amounts to dumb luck on the part of prosecutors.

"Far from an essential conduct element ... any remote and attenuated connection to Massachusetts or this district was an incidental fortuity — the epitome of a 'circumstance element,'" he argued. "It follows that the verdict cannot stand."

[Jurors rejected](#) the forum argument when Klyushin made it during the trial, as well as his defense that the government's case was filled with gaping holes and inferences. The Russian national argued that there was no direct evidence that he was involved in any hacking, and that his trading record was not as strong as the government made it out to be.

His lawyer argued that Klyushin made for a "convenient target" due to his nationality and ownership of an IT company that provides media monitoring and cybersecurity for the Kremlin.

Prosecutors claimed that Klyushin and his co-conspirators, all of whom are still at large, traded almost exclusively on earnings reports filed through DFIN and Toppan Merrill, despite the fact that those two firms only filed about 44% of all earnings reports during the more than two years in which prosecutors say the scheme unfolded.

During the trial, a statistician with the SEC testified that the probability of Klyushin randomly trading on DFIN and Toppan Merrill earnings reports so often is less than one in a trillion. He gave the same odds to Klyushin and the others betting correctly on surprise earnings reports 86% of the time.

In addition to challenging the venue, Klyushin's lawyer, Maksim Nemtsev, has cited the one-in-a-trillion statistic as the most "inflammatory" piece of evidence in the government's case and a possible point for the appeal.

"It would be harder than getting hit by a lightning bolt and winning the lottery at the same time," Nemtsev said following the verdict.

The attorney did not return a comment request Monday afternoon. A representative for the U.S. attorney's office declined to comment.

According to the government, Klyushin alone netted \$21 million from the scheme on an initial \$2 million investment, a 900% return that exponentially outpaced the stock market's 25% return during the time period in which the scheme allegedly took place.

Combined with his other associates, the scheme netted nearly \$90 million on an initial investment of \$9 million, prosecutors said.

The government is represented by Seth Kosto and Stephen E. Frank of the [U.S. Attorney's Office for the District of Massachusetts](#).

Klyushin is represented by Maksim Nemtsev of the Law Offices of [Martin G. Weinberg PC](#) and Marc Fernich.

The case is USA v. Vladislav Klyushin et al., case number [1:21-cr-10104](#), in the [U.S. District Court for the District of Massachusetts](#).

--Additional reporting by Brian Dowling. Editing by Dave Trumbore.

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Marc Fernich

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Case Information

Case Title

[USA v. Klyushin et al](#)

Case Number

[1:21-cr-10104](#)

Court

Massachusetts

Nature of Suit

Judge

[Patti B. Saris](#)

Date Filed

April 06, 2021

Law Firms

- [Martin G. Weinberg Attorney at Law](#)

Companies

- [Donnelley Financial Solutions Inc.](#)

Government Agencies

- [U.S. Attorney's Office for the District of Massachusetts](#)
- [U.S. District Court for the District of Massachusetts](#)
- [U.S. Securities and Exchange Commission](#)

[Law360 Names Practice Groups Of The Year](#)

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