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# Server Link Can't Save Russian Hacking Verdict, Judge Told

By [Brian Dowling](#) · [Listen to article](#)

Law360 (May 23, 2023, 2:43 PM EDT) -- A Kremlin-linked Russian national convicted over an alleged \$90 million hacking and insider trading scheme said Tuesday the mere use of a virtual private network server in downtown Boston to route computer communications wasn't enough to land the case in Massachusetts.

Lawyers for Vladislav Klyushin told U.S. District Judge Patti B. Saris that the government's decision to charge the case in Boston, as opposed to other federal districts with firmer ties to the hacking allegations, is fatal to the prosecution and counter to the Sixth Amendment right to be tried where the crime was committed.

"The language of the two operative constitutional provisions requires that a crime have been committed in this state and in this district, and our position is no crime — no crime — was committed here," said Klyushin attorney Marc Fernich.

"No essential conduct occurred here," the attorney added. "No act was performed here, therefore no crime was committed here within the meaning of Article III and the Sixth Amendment, which exists solely for defendants and that protects any defendant in any country from being prosecuted based on prosecutorial whim."

Klyushin and several accomplices in Russia were charged with hacking into [Donnelley Financial Solutions](#) and Toppan Merrill LLC several times in October and November 2018 to steal unreleased earnings reports and trade using the ill-gotten insider information. A jury [convicted](#) Klyushin in February.

Both sides traded sharply worded post-trial briefs, with prosecutors claiming Klyushin's team was "[whistling past the evidence](#)" to seek acquittal and the defendant calling the government's venue mistake an "[own goal](#)."

The government claimed the hackers' use of a virtual private network, or VPN, hosted on a server in Boston to make their Russian computer appear as if it was a U.S.-based computer was enough to charge the case in Massachusetts.

But Klyushin's attorneys argued that the Boston server was a tunnel for computer traffic rather than a part of the scheme that amounted to the required essential conduct to establish Massachusetts as a venue for the case.

In fact, the venue question is "painfully easy," Fernich said. Evidence showed the hacked Donnelley Financial servers were in Illinois, and the location of the Toppan Merrill servers, not disclosed at trial, would also be an obvious locale for the case.

"For whatever reason, they didn't want to do it that way," Fernich said. "They wanted to push the envelope. They wanted to make a test case, and they wanted to play with fire, and that's why we are here."

Assistant U.S. Attorney Seth Kosto countered that the use of the VPN server did amount to essential conduct because it let the Russian hackers disguise themselves to gain entry to the Donnelley servers. The subterfuge enabled the hackers to "further the intended fraud," an essential element of the crime, he added.

"The hiding began right here on Summer Street," Kosto said, referencing the servers' location.

Judge Saris admitted she struggled with the venue question, particularly whether choosing to use a VPN while in Russia amounts to conduct that occurs wherever the VPN server may be.

The judge took the venue question under advisement, hinting she would defer ruling on it until she had the chance to read the [U.S. Supreme Court's](#) pending decision in *Smith v. U.S.*, an appeal in a Florida trade-secrets prosecution that [raised questions](#) about venue and double jeopardy.

Still, Judge Saris hinted that her eventual ruling on the venue question could leave intact the conviction on the conspiracy hatched in Russia and scheduled Klyushin's sentencing for July 19.

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 as well as by Marc Fernich.

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

--Additional reporting by Chris Villani. Editing by Philip Shea.

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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](#)
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- [3 Justices Pave Way For Habeas Relief After Graft Theory Falls](#)
- [4 DOJ Tells Court DEA Is Not An 'Agency' For FOIA Purposes](#)
- [5 DOJ, Drug Buyers Rip Teva's Criminal Probe Doc Bid In MDL](#)
- [6 E. Jean Carroll Says Trump Owes Her \\$10M In Damages](#)
- [7 Deloitte IP Theft Prosecutor Ousted Over US Atty Conflict](#)

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