



Miedel & Mysliwiec LLP

November 24, 2020

VIA ECF

Hon. Laura Taylor Swain
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

**RE: United States v. Andrei Tyurin
15-Cr-333**

Dear Judge Swain:

Andrei Tyurin is scheduled to be sentenced by the Court on December 3, 2020. On November 5th, Mr. Tyurin submitted an extensive sentence memorandum to the Court. On November 12th, the government filed its Opposition. I write, briefly, to reply to the government's Opposition memorandum.

A. The Government Inflates Mr. Tyurin's Role

Gery Shalon and Ziv Orenstein were arrested in Israel in July 2015. In its November 2015 S-1 indictment, charging Shalon, Orenstein, Joshua Aaron, and labeling Andrei Tyurin as CC-1, the government carefully detailed the charged criminal schemes. *See* ECF No. 14. It made clear that Shalon was the undisputed founder and leader of the sprawling international enterprise, the individual who created illegal online casinos, illegal credit card processing companies, originated illegal pump and dump schemes, and invented the idea that hacking into the databases of competitors, auditors, and financial firms would provide competitive advantages:

- “At all relevant times, SHALON was the leader and self-described “founder” of a sprawling cybercriminal enterprise that encompassed all of the criminal schemes described herein. SHALON’s cybercriminal enterprise operated through hundreds of employees, co-conspirators and infrastructure in over a dozen countries.” (S-1 Indictment, § 1)
- “From approximately 2012 to mid-2015, GERY SHALON, the defendant, orchestrated massive computer hacking crimes against U.S. financial institutions, financial services corporations, and financial news publishers, including the largest theft of customer data from a U.S. financial institution in history [...].” (S-1 Indictment, ¶ 16)

- “In addition to directing the U.S. Financial Sector Hacks, GERY SHALON, the defendant, directed computer network hacks and cyberattacks against numerous United States and foreign companies outside of the financial sector.” (S-1 Indictment, ¶ 17)
- “Also in furtherance of the conspiracy, at various times, SHALON directed a co-conspirator not identified herein (“CC-1”) to execute network intrusions at particular companies in an effort to steal customer data *as identified by SHALON*.” (emphasis added) (S-1 Indictment, ¶ 20(b))
- “As a further part of the conspiracy, as CC-1 engaged in particular network intrusions *at SHALON’s direction*, CC-1 and Shalon discussed the nature of the data CC-1 was locating and stealing *at SHALON’s direction*, various issues CC-1 encountered while hacking into the networks, and SHALON’s receipt and use of the stolen data.” (emphasis added) (S-1 Indictment, ¶ 20(e))

Now, five years later, Andrei Tyurin, the first non-cooperating conspirator in the scheme to be sentenced, has, in the government’s view, graduated to “partner” status in Shalon’s criminal enterprise. *See* Govt. Opposition at 1 (“partner and co-conspirator”), 2 (“Shalon and his coconspirators ran a variety of criminal business”), 23 (“the two were criminal partners”). There is no dispute that Andrei Tyurin played an integral role in Shalon’s criminal schemes, in that his hacking allowed Shalon to gain illegal access to cyber systems that permitted him to remain competitive and to maximize profits. However, the suggestion that Mr. Tyurin was a “partner” in Shalon’s criminal enterprise, or “ran” any criminal businesses, is fundamentally incorrect.

As described in the indictment, Shalon’s criminal empire was “sprawling.” S-1 Indictment, at ¶ 1. Andrei Tyurin, however, was not in any way responsible for creating any of Shalon’s schemes. The online casinos, processing companies, bitcoin exchanges, pump and dump schemes – all were invented entirely by Shalon (and perhaps other, unknown, associates). Mr. Tyurin had nothing to do with their creation. Andrei Tyurin also did not “run” any of Shalon’s operations, unlike Aaron and Orenstein, who appeared to play a more central role in managing Shalon’s market manipulation schemes and credit card processing operations, respectively. Andrei Tyurin was not involved in creating “at least 75 shell companies and bank and brokerage accounts around the world,” or “fraudulently using approximately 200 purported identification documents, including over 30 false passports that purported to be issued by the United States and at least 16 other countries.” S-1 Indictment, ¶ 19. Nor did Mr. Tyurin, unlike “Shalon[,] conceal[] at least \$100 million in Swiss and other bank accounts.” *Id.* at ¶ 18.

As is described in its Opposition, the government invested significant resources and time in trying to catch Mr. Tyurin. It is understandable that the government now wants to see a return on that investment. But it should not do so by inflating Mr. Tyurin’s role in these crimes, which are sufficiently serious without the government’s exaggerations. Mr. Tyurin was Shalon’s employee. He worked at Shalon’s direction, not on his own initiative. He was paid by Shalon. The ideas about which companies to hack to further Shalon’s interests all came from Shalon. It is of course no surprise that in a seven year criminal relationship, in which the boss relied on the technical expertise of his employee, there would be occasional dialogue about best approaches, or mutual brainstorming on how to accomplish a particular goal. That does

not, however, transform the employee with technical expertise into a partner. Indeed, the chats between Shalon and Tyurin cited by the government show the largely one-sided relationship between the two men. The vast majority of communications were directed from Shalon to Tyurin, not the other way around. Tyurin took his orders from Shalon, and was frequently oblivious about the reasons for Shalon's requests. For example, this is their first discussion about the JP Morgan Chase hack:

Shalon: I'll show you now
Shalon: J.P. Morgan Chase
Shalon: We need to [break into] these :)
Tyurin: Bank?
Shalon: Aha.
Tyurin: And what do they have there?
Shalon: Asset managers
Shalon: The biggest ones,
Shalon: Investment bank.
Tyurin: Well [we need] them only for the information.
Tyurin: There are no databases there though?
Shalon: How so?
Shalon: All America is there,
Shalon: All databases,
Shalon: Of their investors
Tyurin: How is that?
Shalon: JP Morgan
Tyurin: Are they offering some service?
Shalon: Read about them please.
Shalon: Yes.
Tyurin: Yes, I read.
Shalon: They offer investments
Shalon: To all of America
Shalon: Aside from the Internet,
Tyurin: You mean, they take other people's money and invest it?
Shalon: You can also come to their office
Shalon: And say: 'I have 5k,
Shalon: Invest it for me!' :)
Shalon: Yes.
Shalon: Money from funds and private sector.
Tyurin: And what can it give us?
Shalon: Database
Shalon: Plus their portfolio.
Tyurin: What I mean is what are we going to do with it?
Shalon: The same thing
Shalon: That we are doing now.
Tyurin: But those dudes don't play on the exchange,
Tyurin: They simply give money.
Shalon: Of course they play.

June 1, 2014, 15:52:18 to 16:16:08. In these communications, Tyurin appeared to be clueless about what Shalon intended to do with any databases obtained from Chase, and seemed to believe they were related to Shalon's gambling operations.

It is true that Shalon needed Tyurin to keep ahead of both his competitors and possible detection by auditors and law enforcement. Tyurin's ability to provide Shalon with unique access allowed Shalon to maximize his profits. But to be clear, Shalon's ability to operate his criminal schemes did not "depend" on Mr. Tyurin. First, Shalon surely would have found another hacker to assist him if Mr. Tyurin had been unwilling or unable. Second, as noted above, Shalon created his various criminal schemes by himself, without Tyurin's participation. Even the market manipulation scheme, which relied on lists of potential targets derived from Tyurin's hacks, could have been perpetrated (as many are) without stealing lists of customers from financial institutions. Andrei Tyurin participated in serious crimes and must face the consequences of that conduct. The Court should judge him for what he did, however, not for the government's newly inflated version of his culpability.¹

B. The Government Downplays Mr. Tyurin's Resistance to Participating in Further Crimes

In its Opposition, the government suggests that Mr. Tyurin's failure to steal money from individual account holders or to monetize stolen credit or debit card information in "carder" schemes was due to his fear of getting caught, not any moral qualms he may have harbored. In so doing, the government points to chats between Shalon and Tyurin in which Tyurin repeatedly resisted Shalon's more adventurous schemes by claiming he was worried about detection. *See* Govt. Opposition, at 20-21. Although fear of detection certainly played a role in Mr. Tyurin's conduct, his consistent resistance to Shalon's more nefarious urgings was due in large part to his own, perhaps arbitrary, line about what he was willing to do and what he was not.

The relationship between Shalon and Tyurin was hardly equal. Shalon was Tyurin's boss, and if Tyurin wanted to stay in Shalon's employ, which he did, he needed to placate his boss. The chats, seen in their entirety, reveal Shalon to be an unscrupulous win-at-all cost individual who was at constant war with his competitors. He was therefore continually exerting pressure on Tyurin to destroy and delete data in the systems of competitors and the casino software company.² He also pressed Tyurin to steal money using different schemes and

¹ The government also urges the Court to penalize Mr. Tyurin for his and Shalon's joint efforts to hide their tracks after the Chase hack was discovered. *See* Govt. Opposition, at 10-12. This argument, commonly made by the government, remains inherently mystifying. It is simply unclear how a person who tries not to get caught by flushing drugs down the toilet, or burying a body, or destroying servers that have digital footprints, is somehow *more* culpable, more guilty, than a person who leaves drugs strewn all over the apartment, abandons the dead body at the site of the murder, or leaves servers with incriminating information untouched. Both the careful and the careless individual have committed the same crime, and are equally culpable.

² *See e.g.* Chats from Sept. 4, 2014, 01:28:26 to 01:53:30: ("Shalon: Fucking tired of you sons of bitches; Tyurin: And what will we be able to do?; Shalon: To delete all their databases; Shalon: If they fuck around; Shalon: Down all the servers; Tyurin: It's a bad idea; Shalon: They are illegal firm they will never be able to do anything; Tyurin: As long as we have access we have databases; Tyurin: By breaking everything, we are not making ourselves any favors, I think; Shalon: No, that's for just in case; ... Tyurin: it's a bad idea to break everything; Tyurin: How much time did it take us to get it; Tyurin: How many databases are there and still collecting; Tyurin: I don't

methods.³ Mr. Tyurin resisted all of these efforts, but of course he could not do so by pointing out to Shalon how morally wrong it was. Accordingly, he fixated on concerns regarding detection, since Shalon was similarly worried about getting caught. The reality is, however, that Mr. Tyurin did not want to destroy databases and did not want to steal people's money because he knew it was wrong. As noted, this was his effort to draw a line, to rationalize and defend his actions to himself. He knew that his conduct was not only illegal, but morally wrong. But at least -- he told himself -- he was not draining people's accounts or stealing their identities in order to engage in fraud. That rationalization does not diminish his culpability for the crimes he did commit, but it does distinguish him from others who used their hacking skills for more damaging ends.

For these and all the other reasons submitted to the Court, I respectfully urge the Court to impose a sentence well below the advisory guideline range, and to allow Mr. Tyurin to return to his wife and young daughter as soon as possible.

Thank you for your consideration.

Sincerely,

/s/

Florian Miedel

cc: AUSA Eun Young Choi (ECF and email)

think it makes sense to break all of it just to make it difficult for them").

³ See e.g. Chats from May 12, 2014, 1:50:17 to 1:50:47: ("Shalon: These are his stocks; Shalon: We need to sell his stocks; Tyurin: Ah; Shalon: Cash balance is zero; Tyurin: Easy to get caught; Tyurin: Don't sell; Tyurin: They will catch the ip; Shalon: Of course not; Tyurin: - mine; Shalon: I'm just looking").