

IN THE
SUPREME COURT OF THE UNITED STATES

IGOR GRUSHKO,

LOWER CASE NO. 20-10438-F

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

APPENDIX – VOLUME TWO

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CHARLES G. WHITE, ESQ.

CHARLES G. WHITE, P.A.
Counsel for Petitioner
1031 Ives Dairy Road
Suite 228
Miami, FL 33179
Tel: (305) 914-0160
Fax: (305) 914-0166
Florida Bar No. 334170

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REPORT AND RECOMMENDATION OF U.S.
MAGISTRATE JUDGE RECOMMENDING MOTION
TO SUPPRESS BE DENIED

2019 WL 5017467

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United States District Court, S.D. Florida.

UNITED STATES of America,

v.

Denis **GRUSHKO** and

Igor **Grushko**, Defendants.

Case No. 18-20859-CR-SMITH/OTAZO-REYES

Signed 07/19/2019

Attorneys and Law Firms

Jonathan Douglas Stratton, **United States** Attorney's Office,
Miami, FL, for **United States** of America.

REPORT AND RECOMMENDATION

ALICIA M. OTAZO-REYES, **UNITED STATES**
MAGISTRATE JUDGE

*1 THIS CAUSE came before the Court upon Defendants Denis **Grushko** and Igor **Grushko's** ("Defendants") Motion to Suppress Searches and Seizures (hereafter, "Motion to Suppress") [D.E. 71]. This matter was referred to the undersigned by the Honorable Rodney Smith, **United States** District Judge, pursuant to Title 28, **United States** Code, Section 636 [D.E. 97]. The undersigned held an evidentiary hearing on this matter on June 24, 2019 [D.E. 89]. For the reasons stated below, the undersigned respectfully recommends that the Motion to Suppress be DENIED.

PROCEDURAL AND FACTUAL BACKGROUND

In November 2017, Target Corporation ("Target") retail stores contacted law enforcement regarding an investigation related to a fraudulent scheme, whereby several individuals used victims' names and credit/debit card numbers to purchase goods and later obtain Target Merchandise Return Cards ("MRCs") that they then used to purchase high-end goods to resell for profit. See **United States** of America's Response in Opposition to Defendants' Motion to Suppress (hereafter, "Response") [D.E. 79 at 1-2]. Using Target's surveillance video and Sixt Rent a Car ("Sixt") agency records, the

investigating officers were able to identify the individuals allegedly involved in the scheme as Igor **Grushko**, Denis **Grushko** and Vadym Vozniuk ("Vozniuk") and to ascertain their home addresses. *Id.* Igor **Grushko** and Denis **Grushko** were confirmed to be residents of 3222 NW 31st Terrace, Oakland Park, Florida, 33309 ("the 3222 Residence"), and Vozniuk was confirmed to reside directly next door, at 3224 NW 31st Terrace, Oakland Park, Florida, 33309 ("the 3224 Residence"). *Id.*

On November 6, 2018, Defendants, along with co-defendant Vadym Vozniuk, were charged in a three-count indictment with the following offenses:

Count 1 (as to Defendants and Vozniuk):

Conspiracy to Commit Access Device Fraud, from July 2, 2017 through March 29, 2018, in violation of 18 U.S.C. § 1029(b)(2).

Count 2 (as to Vozniuk):

Use of Unauthorized Access Devices, from December 3, 2017 through March 27, 2018, in violation of 18 U.S.C. § 1029(a)(2).

Count 3 (as to Igor **Grushko**):

Use of Unauthorized Access Devices, from October 10, 2017 through March 29, 2018, in violation of 18 U.S.C. § 1029(a)(2).

See Indictment [D.E. 3].

On November 9, 2018, after conducting surveillance at the 3222 Residence and obtaining arrest warrants for Defendants, law enforcement approached the 3222 Residence to arrest Denis **Grushko** and Igor **Grushko**. See Response [D.E. 79 at 3]. After Defendants were arrested, law enforcement officers obtained a search warrant for the 3222 Residence, which resulted in the seizure of multiple items related to access device fraud and identity theft. *Id.* at 3-5.

On April 2, 2019, Defendants were charged in a nine-count Superseding Indictment with the following additional offenses:

Count 4: Possession of Fifteen or More Unauthorized Access Devices, on November 9, 2018, in violation of 18 U.S.C. § 1029(a)(3).

Count 5: Possession of Device-Making Equipment, on November 9, 2018, in violation of 18 U.S.C. § 1029(a)(4).

*2 Count 6: Production of a False Identification Document, on November 9, 2018, in violation of 18 U.S.C. § 1028(a)(1).

Counts 7-9: Aggravated Identity Theft, on November 9, 2018, in violation of 18 U.S.C. § 1028A(a)(1).

See Superseding Indictment [D.E. 51]. Vozniuk was not charged with any additional offenses.

Defendants seek to suppress all evidence seized from the 3222 Residence pursuant to the search warrant, on the grounds that it was obtained as the result of an unlawful search. See Motion to Suppress [D.E. 71]. Defendants argue that the search warrant is invalid because law enforcement had no authority to enter the 3222 Residence on the basis that Defendants had been identified outside the 3222 Residence prior to the initial entry. Thus, Defendants argue that all evidence observed during a protective sweep of the 3222 Residence was illegally observed and could not give rise to the probable cause necessary to support the search warrant. The government responds that law enforcement was initially unable to identify Igor Grushko as one of the individuals outside the 3222 Residence; therefore, they lawfully entered and performed a protective sweep of the 3222 Residence to effectuate the arrest of Igor Grushko authorized by the arrest warrant; and observed in plain view items that gave rise to probable cause for the search warrant.

APPLICABLE LAW

1. The Fourth Amendment's Protection Against Illegal Searches

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” and provides that “no Warrants shall issue, but upon probable cause.” U.S. Const. amend. IV. “In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” *United States v. Watkins*, 760 F.3d 1271, 1278 (11th Cir. 2014) (citations omitted). “[I]t is a cardinal principle that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated

exceptions.” *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (citations omitted).

“[F]or Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” *Payton v. New York*, 445 U.S. 573, 603 (1980). “[F]irst, there must be a reasonable belief that the location to be searched is the suspect’s dwelling, and second, the police must have ‘reason to believe’ that the suspect is within the dwelling.” *United States v. Magluta*, 44 F.3d 1530, 1533 (11th Cir. 1995). “[I]n order for law enforcement officials to enter a residence to execute an arrest warrant for a resident of the premises, the facts and circumstances within the knowledge of the law enforcement agents, when viewed in the totality, must warrant a reasonable belief that the location to be searched is the suspect’s dwelling, and that the suspect is within the residence at the time of entry.” *Id.* at 1535. “In evaluating this on the spot determination, as to the second *Payton* prong, courts must be sensitive to common sense factors indicating a resident’s presence.” *Id.* “[S]uch ‘common sense factors’ must also guide courts in evaluating the first *Payton* prong.” *United States v. Bervaldj*, 226 F.3d 1256, 1263 (11th Cir. 2000).

*3 “The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Maryland v. Buie*, 494 U.S. 325, 337 (1990). A protective sweep “occurs as an adjunct to the serious step of taking a person into custody for the purpose of prosecuting him for a crime,” and “the arresting officers are permitted in such circumstances to take reasonable steps to ensure their safety after, and while making, the arrest.” *Id.* at 333–34. “[A] protective sweep, aimed at protecting the arresting officers, if justified by the circumstances, is nevertheless not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found. The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” *Id.* at 335–336.

For the plain view doctrine to apply, “[i]t is, of course, an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed. There are, moreover, two

additional conditions that must be satisfied to justify the warrantless seizure. First, not only must the item be in plain view; its incriminating character must also be 'immediately apparent.' " Horton v. California, 496 U.S. 128, 136 (1990) (citations omitted).

2. Veracity of a Search Warrant Affidavit

An affidavit that is submitted in support of a search warrant is presumed valid. Franks v. Delaware, 438 U.S. 154, 171 (1978). When the defendant establishes by a preponderance of the evidence that the affiant made a false statement knowingly and intentionally, or with reckless disregard for the truth, the court must set the false statement aside. Id. at 155-56. If "the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit." Id. at 156. However, "to be entitled to relief, a defendant must show that the misrepresentations or omissions were material, which means that, absent the misrepresentations or omissions, probable cause would have been lacking." United States v. Graham, 476 F. App'x 839, 842 (11th Cir. 2012).

3. Fruit of the Poisonous Tree

Under the long established exclusionary rule, "evidence seized during an unlawful search [can] not constitute proof against the victim of the search." Wong Sun v. United States, 371 U.S. 471, 484 (1963) (citing Weeks v. United States, 232 U.S. 383 (1914)). "The exclusionary prohibition extends as well to the indirect as the direct products of such invasions." Id. at 484-85 (citing Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920)). Moreover, the exclusionary rule applies equally to physical and verbal evidence. Id. at 485. As further explained by the Supreme Court, not "all evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Id. at 487-88 (citation and quotation marks omitted).

FINDINGS OF FACT

I. Testimonial and documentary evidence

1. The following witnesses testified at the June 24, 2019 evidentiary hearing: United States Secret Service ("U.S.S.S.") Special Agent Logan Workman ("Agent Workman"), Denis Grushko and Igor Grushko.

2. The following documents were admitted into evidence: Government's Exhibits 1 through 11; Denis Grushko's Exhibits 1 through 5; and Igor Grushko's Exhibits 1 through 5.

II. Facts

A. Agent Workman's Direct Testimony

The Investigation

*4 3. Agent Workman is a U.S.S.S. Special Agent in the Miami field office, where he has been employed for three and a half years. In that role, Agent Workman investigates financial crimes against the United States. Agent Workman is the case agent for this case.

4. Agent Workman became involved in this case in November of 2017 when investigators from Target approached the U.S.S.S. with complaints of fraud occurring in their stores in the Southern District of Florida.

5. Target investigators informed Agent Workman that multiple individuals were visiting their stores after ordering merchandise online and requesting in-store pickup from customer service. The merchandise was purchased using various victims' personal identifying information, including names, billing addresses and credit card numbers.

6. The individuals would present identification to pick up the merchandise and then return that merchandise to a different Target store in exchange for an MRC. An MRC is like a Target gift card that can only be used at Target stores. The individuals would then use the MRCs to purchase high-end electronics.

7. Target surveillance footage from the store parking lots captured the license plates of the vehicles used by the individuals. A record check revealed that the license plates belonged to vehicles rented from Sixt.

8. Sixt's fraud investigator provided Agent Workman with the rental information associated with the license plates, identifying Igor Grushko with an address on file listed as the 3222 Residence. See Gov't. Ex. 1.

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9. A driver license records check and a TransUnion TLOxp information database ("TLO") check confirmed that the mailing and home address for both Defendants was the 3222 Residence. See Gov't Ex. 2; Gov't Ex. 3.

10. A TLO report listed Vozniuk's last known address as the 3224 Residence. See Gov't Ex. 4.

11. Agent Workman conducted surveillance and observed a black Cadillac Escalade rented by Igor **Grushko** in the driveway of the adjoining 3222 Residence and 3224 Residence.

12. Over approximately six months, Agent Workman periodically checked the 3222 Residence to ensure Defendants had not moved and to see if the same vehicles were there. Agent Workman kept in contact with the Sixt investigator to remain informed regarding the Defendants' current rental cars. Occasionally Agent Workman saw some of the Sixt rental cars in the driveway of the 3222 Residence.

13. Agent Workman was never able to identify any person at the 3222 Residence or the 3224 Residence as either of Defendants.

14. In May 2018, Agent Workman observed a white male step out from the 3222 Residence, but Agent Workman could not identify him. Agent Workman took photographs of the area in front of the 3222 Residence, including of the white male and two vehicles. See Gov't Ex. 11.

15. During his investigation, Agent Workman never saw any other individuals near the cars parked on the driveway of the 3222 Residence.

The Indictment and Arrest Warrants

16. An indictment was filed on November 6, 2018, charging Defendants and Vozniuk with credit card fraud offenses, as noted above. See Indictment [D.E. 3].

*5 17. Agent Workman provided the addresses for the arrest warrants. The arrest warrants for Defendants listed their last known address as the 3222 Residence. See Gov't Ex. 8; Gov't Ex. 9. The arrest warrant for Vozniuk listed his last known address as the 3224 Residence. See Gov't Ex. 10.¹

18. The significance of having a last known address listed on an arrest warrant is to give law enforcement a better chance of locating the person who is to be arrested.

Preparation for the Arrest Operation

19. Prior to the execution of the arrest warrants, Agent Workman prepared an Operation Plan, which is a document that agents prepare before an organized operation to show: the plan; the team members; pictures of the suspects; the suspects' biographical information; pictures of the residence; information on the use of force; and a synopsis of the case. See Operation Plan, Gov't Ex. 5 [D.E. 79-5].

20. Agent Workman obtained the sole photograph of Igor **Grushko** that was included in the Operation Plan from Igor **Grushko's** Florida driver's license. He selected it because he generally uses a driver's license photograph due to the ability to directly see the face and all facial features. The photo shows eye color, nose, chin, ears, and various facial features, which would provide a clear understanding of what Igor **Grushko** looked like. See id. [D.E. 79-5 at 9].

21. The primary objective of the Arrest Operation was to arrest Defendants and Vozniuk and it involved approximately ten agents. Aside from Agent Workman, none of the agents had been involved in the case prior to the Arrest Operation.

22. The Operation Plan contained photographs of the suspects so that the agents unfamiliar with the case could know what the suspects looked like.

23. The Operation Plan listed Defendants' home address as the 3222 Residence and one of the suspect vehicles, confirmed as having been rented from Sixt, as a 2018 Cadillac Escalade, black in color, Florida license plate DZGF82. See Operation Plan, Gov't Ex. 5 [D.E. 79-5].²

The Arrest Operation

24. On November 9, 2018, the day of the Arrest Operation, Agent Workman met with his team behind a Home Depot in Oakland Park at 5:30 a.m. in order to brief them about tactics and the case. Agent Workman passed out a copy of the Operation Plan to each member of the team so that they could each go over the photographs, the biographical information,

the location of the arrest, the potential use of force, and who would be doing what job.³

25. Two members of the team were sent to do pre-surveillance ahead of time to determine if the black Cadillac Escalade was in the driveway at the 3222 Residence in order to get a better picture of whether Defendants were home.

*6 26. The two pre-surveillance agents stated via telephone to Agent Workman that the black Cadillac Escalade was parked in an overflow parking area in front of the 3222 Residence, and other vehicles were occupying the 3222 Residence and 3224 Residence driveways. The agents observed two unidentified individuals out in front of the 3222 Residence who appeared to be smoking cigarettes.

27. The plan was to execute the arrest warrants at 6:00 a.m. because most people are home at that hour of the morning, especially if their car is in the driveway.

28. After the briefing, as 6:00 a.m. approached, the team members got into their respective vehicles, drove and pulled up to the 3222 Residence; and confronted the two unidentified individuals who were out front.

29. The Arrest Operation moved very quickly and fluidly.

30. All the agents bore clear "POLICE" markings on their clothing. As they approached the two individuals, they announced themselves, "Police, police, let me see your hands, police, get on the ground."

31. The two individuals began to laugh and were taken into custody on the ground. They were asked repeatedly who they were, what their names were, and if they were Igor Grushko and Denis Grushko. They continued to laugh and did not answer the questions.

32. When Igor Grushko was taken to the ground, he was placed in handcuffs to secure the scene while he was to be detained. Denis Grushko was also placed in handcuffs.

33. Igor Grushko stated in English that he did not want to talk until he got a lawyer.

34. Agent Workman was approximately seven to eight feet away from Igor Grushko when Igor Grushko was brought to the ground.

35. Igor Grushko's hair was long, unlike in the photographs Agent Workman had previously seen. See Photograph of Igor Grushko on November 9, 2018, Gov't Ex. 6.

36. Next, the agents knocked at the door of the 3222 Residence and announced, "Police, arrest warrants, police, we have an arrest warrant." There was no answer and they knocked again.

37. There was a padlock on the door with a code. The agents asked the two individuals for the code, but the two individuals refused to give the code.

38. The formation of the agents at the time consisted of about five or six agents, one as a shield, one assigned to knock and announce, two with tools to open the door, one supervisor, and one to two agents towards the rear to provide extra security. Agent Workman was in the rear. Any major calls would come from the supervisor, who was also the team leader.

39. The agents at the front of the formation informed Agent Workman that they heard voices and noise inside the house.

40. Agent Workman believed Defendants might still be inside the 3222 Residence because he could not recognize the two male individuals outside to be Defendants at that time and, although they spoke English, they refused to identify themselves. Agent Workman had never been up close to Defendants before and the individuals were not readily recognizable based on the photographs he had seen.

Entry into and Protective Sweep of the 3222 Residence

41. The supervising agent gave the order to breach the door and enter the 3222 Residence. Agents began to do so; however, during the process, an unknown female opened the door. She was moved to the side and agents entered the 3222 Residence to conduct a protective sweep prior to executing the arrest warrants.

42. Agents performed a protective sweep of the first floor, cleared it, then moved to the second floor and did the same.

*7 43. One bedroom did not appear to be in use as a bedroom due to electronics and property laying on the bed. Based on their training and experience, the agents recognized the items to be devices used for access-device-making equipment, such

as skimming devices or false credit cards. None of the items were seized at that time and the room was secured.

44. No one else was found in the house and the 3222 Residence was secured.

45. Agent Workman then obtained a search warrant. See Search and Seizure Warrant, Gov't Ex. 7 (hereafter, "Search Warrant"). Agent Workman prepared the affidavit for the search warrant (hereafter, "Search Warrant Affidavit").

Identification of Igor Grushko

46. While the agents were obtaining the Search Warrant, Defendants informed a Russian-speaking agent, in Russian, that their names were Igor Grushko and Denis Grushko.

B. Agent Workman's Cross-Examination

47. The Sixt cars rented by Defendants were a series of vehicles that Defendants would renew or swap out.

48. The incident when Agent Workman observed a male individual outside of the 3222 Residence was on May 30, 2018. Agent Workman could not identify the male's height or age. One of the two vehicles next to the male matched the make, model and color of the vehicle confirmed by Sixt as having been rented by Defendants.

49. The only agent who had previous knowledge of the case prior to the Arrest Operation was Agent Workman's supervisor; however, the supervisor did not participate in the investigation.

50. The Operation Plan detailed the equipment available to the agents. The law enforcement team that went to the Miami Beach Residence had the same Operation Plan.

51. On November 9, 2018, Agent Workman observed the two unidentified males when he arrived.

52. Agent Workman did not know how many people lived at the 3222 Residence.

53. Aside from a frisk for weapons, there was no reason to search Defendants while they were being detained.

54. The agents began to break into the 3222 Residence approximately three to four minutes after Igor Grushko was taken to the ground.

55. Agent Workman had at least four photographs of Igor Grushko

56. Sixt provided a copy of an Illinois driver's license, issued in May 2016, for Igor Grushko that contained Igor Grushko's photograph. See Igor Grushko Ex. 1.

57. The Target surveillance video showed the parking lot and the inside of the store where merchandise was picked up. Target also took still shots of the suspected individuals coming in to pick up the merchandise. Agent Workman had viewed those screenshots. The video ranged in time from November 2017 through about March 2018 and included numerous video footage showing Igor Grushko.

58. In the Target surveillance video, Igor Grushko had a beard and a close "buzz cut" hair style, and was wearing glasses. On the day of the arrest, Igor Grushko did not have a beard, had hair down over his forehead and touching his ears, and was not wearing glasses. See Gov't Ex. 6.

59. Target prepared a document containing photographs of the still frames from their surveillance depicting Igor Grushko. See Igor Grushko Ex. 3. Agent Workman viewed this document and the Illinois driver's license for Igor Grushko before conducting surveillance on May 30, 2018.

60. The photograph of Igor Grushko that Agent Workman attached to the Operation Plan was taken from a Florida identification card. Agent Workman obtained the photo from the Florida Driver and Vehicle Information Database ("DAVID"). DAVID photographs are obtained by the Department of Motor Vehicles when individuals have their photographs taken for purposes of identification cards or driver licenses. Agent Workman uses DAVID photographs because facial features always stay the same, unless there is plastic surgery.

*8 61. A Florida identification card, marked as issued on January 24, 2008, was found on the scene after the Search Warrant was executed, along with various other false identifications. See Igor Grushko Ex. 5. The Florida identification card had a photograph that looked similar to the photograph of Igor Grushko that Agent Workman included in the Operation Plan.

62. Igor **Grushko** never mentioned having sustained any injuries to Agent Workman or the other agents resulting from his having been taken to the ground, and Agent Workman did not notice any injury.

63. It is Agent Workman's understanding that when Defendants were at the U.S. Marshals, they were both asked the standard question, "Do you have any injuries," and that neither Defendant spoke of any type of injury. Agent Workman did not transport them there.

*C. Denis **Grushko's** Testimony*

64. Denis **Grushko** resided at the 3222 Residence on the day he was arrested.

65. He had lived there approximately five years, maybe a little longer.

66. The door to the 3222 Residence is metallic and had a padlock with numbers for a passcode. Denis **Grushko** locked it every time he walked out of the house.

67. On November 9, 2018, Denis **Grushko** was outside smoking cigarettes with his brother Igor **Grushko** in front of the 3222 Residence. Denis **Grushko** did not recall laughing.

68. When Denis **Grushko** was standing outside, he noticed a white pickup truck pull up and agents start running in his direction, shouting, "Get on the ground." Denis **Grushko** immediately lay on the ground and put his hands behind his head.

69. Igor **Grushko** was to the right of Denis **Grushko** and did the same thing. Denis **Grushko** saw Igor **Grushko** start to lay on the ground, but then Denis **Grushko** faced towards the road, so he could no longer see what was happening with Igor **Grushko**.

70. Denis **Grushko** was laying on his stomach, facing the ground and the street. His brother's body was at about a 110-degree T-angle to him.

71. The next thing Denis **Grushko** remembers is someone jumping on his back and pain in his chest. Then, handcuffs were slammed extremely tight on him and officers were asking for the code to the door. Denis **Grushko** replied that he did not want to incriminate himself and did not want to say anything. Igor **Grushko** replied that he did not remember.

72. Denis **Grushko** felt pain in the area by his heart and he later received treatment for a rib fracture. It took about forty days before it was confirmed that his sixth rib was broken.

73. When he was on the ground, Denis **Grushko** heard officers say that they were going to break the door open if he and his brother did not tell them the code. Defendants remained silent and were dragged to the side. Then, an officer began breaking into the house with a battering ram.

74. Afterwards, officers searched Denis **Grushko** and retrieved a wallet and cell phone from his pockets. Officers also searched Igor **Grushko** and recovered his wallet and cell phone. The officers put Defendants' wallets and cell phones on the curb. Denis **Grushko's** wallet contained his current Illinois driver's license.

75. On the morning of November 9, 2018, Igor **Grushko's** hair was combed back. Afterwards, when Defendants were being walked away after having been on the ground, Igor **Grushko's** hair was hanging down over his forehead.

76. Denis **Grushko** has known his brother, Igor **Grushko**, for his entire life. They lived together at the 3222 Residence for at least two months. Prior to that, Igor **Grushko** lived next door to him. They saw each other pretty much every day.

*9 77. Defendant Igor **Grushko's** Exhibit 5 contains multiple identification cards and Denis **Grushko** believed they all contain photographs of his brother Igor **Grushko**; however, some of the photos were small and grainy and so it was difficult to tell, but they looked like Igor **Grushko** to him. See Igor **Grushko** Ex. 5.

78. Two of the Maryland driver licenses in Defendant Igor **Grushko's** Exhibit 5 bear the names Rubin Malik and Rubin Philkin. *Id.* Denis **Grushko** explained that they looked like, and probably were, fake identifications.

79. Denis **Grushko** was not sure if the two Maryland driver licenses were made by him and Igor **Grushko**, but he and Igor **Grushko** did make false identifications.

80. Denis **Grushko** and Igor **Grushko** lived in the 3222 Residence with their roommate, Margarita.

81. The first floor of the 3222 Residence has a kitchen, living room, dining room and one bedroom. Denis **Grushko** used

to sleep on the couch and sometimes in Margarita's bedroom. Igor **Grushko** slept on the second floor. There was also another bedroom on the second floor that no one slept in.

82. Vozniuk never lived or stayed overnight at the 3222 Residence, but he visited a couple times during the day. Vozniuk used to live directly next door at the 3224 Residence. Igor **Grushko** used to live at the 3224 Residence with Vozniuk.

*D. Igor **Grushko's** Testimony*

83. At approximately 5:00 or 5:30 a.m. on November 9, 2018, Defendants were in the 3222 Residence. They stepped out a few times to smoke cigarettes. No one else was with them.

84. Each time they stepped out for a cigarette, they would stay outside for five minutes, go back inside, and then go out to smoke again. That is when law enforcement arrived. At that time, they were right next to the front door.

85. There were two cars parked in the driveway, an Audi and a blue Toyota Prius. Igor **Grushko** was about one to two yards away from the front door when he was smoking a cigarette with his brother. He never went past the cars. The front door was shut and locked.

86. As soon as the police arrived, they told Defendants to lay on the ground. Defendants complied and immediately both lay on the ground. The police had guns.

87. Right before Igor **Grushko** lay on the ground, he threw his cigarette in front of him and observed it as he lay on the ground.

88. Igor **Grushko** did not think the situation was funny and he did not laugh.

89. Multiple agents spoke to Igor **Grushko**. They asked for the passcode to the door and said that they would break in if they were not told the pass code.

90. No one asked Igor **Grushko** for his name or to identify himself.

91. Igor **Grushko** did know the pass code for the door, but he did not tell the agents. Igor **Grushko** told the agents that he did not remember the passcode for the door because he only knew the pattern of numbers, and not the actual numbers.

92. Igor **Grushko** had a wallet in his pocket, containing his expired Florida identification card and Illinois driver license. He also had a cell phone in his pocket.

93. Igor **Grushko's** Exhibit 5 contains a photo of Igor **Grushko's** expired Florida identification card. It was an authentic identification card and the photo on it was taken the day he received it, on January 24, 2008. It stated his full name. See Igor **Grushko** Ex. 5.

94. Igor **Grushko's** Exhibit 5 contains a photo of Igor **Grushko's** Illinois driver license. It is a valid and authentic driver license and Igor **Grushko** used it to rent the cars. *Id.*

*10 95. Igor **Grushko** has not had any plastic surgery done to his face over the last few years. He has never changed the color of his hair. Sometimes he would cut his hair.

96. Approximately five minutes after the agents arrived, an agent took Denis **Grushko** and Igor **Grushko** across the street to be searched. First he searched Denis **Grushko** and then Igor **Grushko**. The agent took Igor **Grushko's** wallet and cell phone and put them on the curb next to Igor **Grushko**.

97. After the search, agents took Defendants back to the front of the 3222 Residence and had them sit in front of the garage. Defendants' phones and wallets were relocated to the top of the trunk of a car and then to a location near the hose in front of the 3222 Residence.

98. Igor **Grushko** received a bump to the head and it hurt. It happened when someone pushed him after he turned his head to see what was happening after he heard Denis **Grushko** make a sound of pain while they were laying on the ground.

99. When the agents arrived, things happened quickly, and Igor **Grushko** did not really understand what was going on.

100. When the police arrived, Igor **Grushko's** hair was kept out of his eyes with gel. After Igor was arrested and taken to the jail, his hair was down on his forehead. Because he was handcuffed, he could not push his hair out of his eyes.

101. Igor **Grushko** knew Vozniuk for about three years, including in November 2018 and November 2017. At one point, they were roommates at the 3224 Residence.

102. In Igor **Grushko's** Exhibit 5, the photographs are all of Igor **Grushko**. *Id.* The two Maryland identifications bear

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the names Rubin Malik and Rubin Philkin. All the Maryland identifications were fake, and the rest were real. Id.

103. On the top of page 1 of Igor **Grushko's** Exhibit 3, the surveillance photographs are of Igor **Grushko**. See Igor **Grushko** Ex. 3.

104. On the morning of the arrest, when Defendants were outside smoking cigarettes, Margarita was inside the house. She opened the door when agents started breaking in with the ram. Igor **Grushko** was across the street when this happened so he only knows this because Denis **Grushko** told him after speaking with Margarita. However, Igor **Grushko** knew that Margarita was inside the house and that she was sleeping on the second floor.

105. Igor **Grushko** was never asked for his name the morning of the arrest.

III. Credibility assessments

106. The undersigned finds Agent Workman's testimony to be consistent, credible and reliable.

107. The undersigned assigns no relevancy to the testimony regarding Defendants' alleged laughter.

108. The undersigned finds that Igor **Grushko's** claims of injury are not credible. Agent Workman credibly testified that Igor **Grushko** was asked the standard question regarding injuries and that Igor **Grushko** never mentioned any injuries to law enforcement.

109. Defendants argue that Agent Workman's claim that Igor **Grushko** was not able to be identified is not credible. However, Agent Workman credibly testified that Igor **Grushko** was unable to be identified, despite the photographs Agent Workman had previously seen of Igor **Grushko**, due to: Igor **Grushko's** changed appearance at the time of the Arrest Operation; the fact that Agent Workman had never seen Igor **Grushko** in person before; and Igor **Grushko's** refusal to identify himself although he spoke English. Agent Workman's testimony at the evidentiary hearing and the Search Warrant Affidavit are consistent in that Igor **Grushko** remained unidentified at all times prior to entry of the 3222 Residence. Further, there is no inconsistency in Agent Workman's testimony or Search Warrant Affidavit regarding Defendants' refusal to speak with law enforcement. Upon review of the evidentiary hearing testimony and exhibits, the undersigned assigns no credibility to Defendants' claims that

law enforcement agents did not inquire as to their names or identities at the time they were encountered on the morning of November 9, 2018; and finds credible Agent Workman's testimony that Defendants refused to identify themselves.

*11 110. Defendants further argue that, if Igor **Grushko** was not able to be identified by agents, it was because Agent Workman deliberately withheld photographs of Igor **Grushko** from the Operation Plan in order to provide agents with an excuse to enter the 3222 Residence. Agent Workman credibly testified, however, that he followed protocol in using Igor **Grushko's** DAVID photograph in the Operation Plan and that the DAVID photograph provided the best available likeness of Igor **Grushko**. Additionally, there was no way for Agent Workman to know that Defendants would be standing outside of the 3222 Residence at the time the two pre-surveillance agents approached. Therefore, the undersigned finds this argument to be baseless and credits Agent Workman's testimony that Igor **Grushko** was unable to be identified by either himself or his team.

CONCLUSIONS OF LAW

As noted above, Defendants seek to suppress the seized evidence as fruits of an illegal search and seizure, arguing that the search warrant was invalid on the grounds that Defendants had been identified and arrested at the time of law enforcement's entry into the 3222 Residence. See Motion to Suppress [D.E 71]. Thus, law enforcement's observation of any evidence inside the 3222 Residence was unlawful and could not support the probable cause necessary for the search warrant.

Based on the foregoing factual findings and legal authorities, the undersigned concludes as follows.

First. Law enforcement had authority to lawfully enter the 3222 Residence.

After conducting an investigation, Agent Workman obtained reliable information that Defendants resided at the 3222 Residence on November 9, 2018. The 3222 Residence address was supplied by Igor **Grushko** to Sixt in order for him to rent vehicles, and the address matched the current TLO records for both Defendants. Surveillance thereafter revealed that Sixt cars rented by Defendants were observed in the driveway of the 3222 Residence.

Arrest warrants were obtained and, upon the agents' arrival at approximately 6:00 a.m. that morning, a time when people are typically home, a Sixt vehicle rented by Defendants was observed parked near the 3222 Residence. Upon approaching the two male individuals outside the 3222 Residence, law enforcement agents were unable to confirm the name or identity of Igor **Grushko** due to Defendants' refusal to identify themselves in response to the agents' repeated inquiries. After knocking at the front door, agents heard voices and noise inside the 3222 Residence.

Therefore, the agents had a reasonable belief that the 3222 Residence was Defendants' dwelling, and that Igor **Grushko**, who the agents had not been able to identify as one of the two individuals who were outside upon arrival, was inside the 3222 Residence. Thus, the agents had authority to enter the 3222 Residence in order to fully effectuate the arrest warrants. *Payton*, 445 U.S. at 603; *Magluta*, 44 F.3d at 1533; *Bervaldi*, 226 F.3d at 1263.

Second. The facts in the Search Warrant need not be excised.

At the evidentiary hearing, Defendants argued that the Search Warrant Affidavit contains false material statements, thus requiring the excision of the purportedly false statements under *Franks*, thereby rendering the Search Warrant void for lack of probable cause. The challenged portion of the Search Warrant Affidavit states:

On or about November 9, 2018 while executing arrest warrants for Igor **Grushko** and Denis **Grushko** at the Target Premises, which is their residence, USSS Special Agents observed two males standing in the front of the Target Premises. As Special Agents approached the two males, the Special Agents identified one of the two males as Denis **Grushko**. The other male, later identified as Igor **Grushko**, was not immediately identified as he had recently significantly grown out his hair and refused to speak to law enforcement. Accordingly, law enforcement secured Denis **Grushko** and continued to the front door of the Target Premises in an attempt to execute the arrest of Igor **Grushko**.

*12 See Search Warrant Affidavit, ¶ 7, Gov't Ex. 7 [D.E. 79-7 at 13].⁴

Defendants argue that law enforcement must have identified Igor **Grushko** upon observing him outside the 3222 Residence, based on: law enforcement's knowledge that the 3222 Residence was Igor **Grushko's** residence; Igor

Grushko's rental car being observed nearby the 3222 Residence at the time; the many photographs of Igor **Grushko** available to Agent Workman; and the fact that Igor **Grushko** was one of the individuals standing in front of the 3222 Residence.⁵ Defendants contend that they were never asked for their names or to identify themselves. As noted above, the undersigned credits Agent Workman's testimony that Defendants refused to identify themselves and that Igor **Grushko** was unable to be identified by law enforcement prior to their entry into the 3222 Residence on the morning of November 9, 2018. Therefore, the undersigned does not find any of the statements contained in the Search Warrant Affidavit to be false or misleading. Thus, the Search Warrant Affidavit is valid, and no fact excision is required. *Franks*, 438 U.S. at 171.

In possession of valid arrest warrants, and upon confirmation that Igor **Grushko** resided at the 3222 Residence and a reasonable belief that he was home at the time, law enforcement agents had authority to enter and conduct a protective sweep of the 3222 Residence while attempting to locate Igor **Grushko**. *Maryland*, 494 U.S. at 337. As a result, they observed evidence that they recognized, based on their training and experience, as electronics and devices used for access-device-making equipment, either skimming devices or false credit cards. The items were laying on a bed in a bedroom on the second floor of the 3222 Residence. Several false identification cards were also recovered. This evidence, observed in plain view, was later used to establish probable cause for the Search Warrant. *Horton*, 496 U.S. at 136. Absent a Fourth Amendment violation, there is no basis to suppress the fruits of the Search Warrant found inside the 3222 Residence on November 9, 2018. *Wong Sun*, 371 U.S. at 484.

RECOMMENDATION

*13 In accordance with the foregoing, the undersigned respectfully recommends that Defendants' Motion to Suppress [D.E. 71] be DENIED. Pursuant to Local Magistrate Judge Rule 4(b), the parties have **fourteen** days from the date of this Report and Recommendation to file written objections, if any, with the Honorable Rodney Smith. Failure to timely file objections shall bar the parties from attacking on appeal the factual findings contained herein. See *Resolution Tr. Corp. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993). Further, "failure to object in accordance with the provisions of [28 U.S.C.] § 636(b)(1) waives the right

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to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions." See 11th Cir. R. 3-1 (I.O.P. - 3).

All Citations

Not Reported in Fed. Supp., 2019 WL 5017467

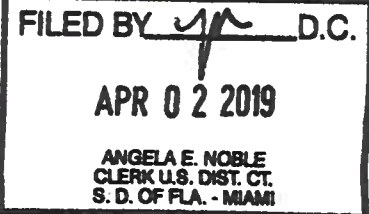
Footnotes

- 1 On the day the arrest warrants were issued, Agent Workman believed that Vozniuk resided at the 3224. Residence; however, he later learned that Vozniuk had moved to Miami Beach.
- 2 The Operation Plan listed Vozniuk's home address as 1611 Meridian Avenue, Apartment 306, Miami Beach, Florida 33139 ("Miami Beach Residence"). Agent Workman had conducted some surveillance at the Miami Beach Residence, but he had never observed Vozniuk there.
- 3 Concurrently with the Arrest Operation at the 3222 Residence, a team of approximately six or seven agents went to the Miami Beach Residence.
- 4 Defendants also challenged Paragraph 8 of the Search Warrant Affidavit, which details law enforcement's entry into the 3222 Residence, protective sweep, and plain view observations of the evidence; however, none of those facts are in dispute.
- 5 Defendants also argue that Denis **Grushko** was identified at the time Defendants were observed in front of and before law enforcement's entry into the 3222 Residence, in contrast to Agent Workman's statement at the evidentiary hearing that both Defendants remained unidentified. For Franks purposes, however, what matters is the statement on the Search Warrant Affidavit. Moreover, the identification of Denis **Grushko** does not impact the propriety of the initial entry given that Igor **Grushko** had not been identified.

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SUPERSEDING INDICTMENT



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-20859-CR-GAYLES/OTAZO-REYES(s)

**18 U.S.C. § 1029(b)(2)
18 U.S.C. § 1029(a)(2)
18 U.S.C. § 1029(a)(3)
18 U.S.C. § 1029(a)(4)
18 U.S.C. § 1028(a)(1)
18 U.S.C. § 1028A(a)(1)
18 U.S.C. § 982(a)(2)(B)
18 U.S.C. § 1029(c)(2)**

UNITED STATES OF AMERICA

vs.

**VADYM VOZNIUK,
IGOR GRUSHKO, and
DENIS GRUSHKO,**

Defendants.

SUPERSEDING INDICTMENT

The Grand Jury charges that:

**COUNT 1
Conspiracy to Commit Access Device Fraud
(18 U.S.C. § 1029(b)(2))**

From on or about July 2, 2017, through on or about March 29, 2018, in Miami-Dade, Broward, and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendants,

**VADYM VOZNIUK,
IGOR GRUSHKO, and
DENIS GRUSHKO,**

did knowingly and willfully combine, conspire, confederate and agree with each other, and with other persons known and unknown to the Grand Jury, to commit violations of Title 18, United

States Code, Section 1029(a), namely, to knowingly, and with intent to defraud, traffic in and use one or more unauthorized access devices, that is, fraudulently obtained gift cards, during any one-year period, and by such conduct did obtain anything of value aggregating \$1,000 or more during that period, said conduct affecting interstate and foreign commerce, in violation of Title 18, United States Code, Section 1029(a)(2).

ACTS IN FURTHERANCE OF THE CONSPIRACY

In furtherance of the conspiracy, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

1. On or about February 22, 2018, an unknown co-conspirator placed a Target.com in-store pick-up order for \$464.23 with a stolen credit card account number ending in -2005, belonging to "P.T."
2. On or about February 22, 2018, **VADYM VOZNIUK** travelled to a Target store located in Pembroke Pines, Florida, to pick up an online order that was purchased with the stolen credit card account number ending in -2005 and totaled \$464.23.
3. On or about February 22, 2018, **VADYM VOZNIUK** presented identification in the name of "M.S." and retrieved the items that were purchased with the stolen credit card account number ending in -2005 and totaled \$464.23.
4. On or about February 23, 2018, **VADYM VOZNIUK** travelled to a Target store located in Hollywood, Florida, and returned \$412.30 worth of items that were purchased with the stolen credit card account number ending in -2005 in exchange for a Target merchandise gift card ending -0586.

5. On or about February 24, 2018, **IGOR GRUSHKO** purchased \$385.19 worth of Target merchandise using the merchandise gift card ending in -0586.

6. On or about March 18, 2018, an unknown co-conspirator placed a Target.com in-store pick-up order for \$446.16 with a stolen credit card account number ending in -1011, belonging to "S.E."

7. On or about March 18, 2018, **VADYM VOZNIUK** travelled to a Target store located in Lake Worth, Florida, to pick up an online order that was purchased with the stolen credit card account number ending in -1011 and totaled \$446.16.

8. On or about March 18, 2018, **VADYM VOZNIUK** presented identification in the name of "A.A." and retrieved the items that were purchased with the stolen credit card account number ending in -1011 and totaled \$446.16.

9. On or about March 22, 2018, **DENIS GRUSHKO** travelled to the Target store located in Lake Worth, Florida, and returned \$427.99 worth of items that were purchased with the stolen credit card account number ending in -1011 in exchange for a Target merchandise return gift card ending -7763.

10. On or about March 22, 2018, **DENIS GRUSHKO** and **IGOR GRUSHKO** purchased \$745.47 worth of Target merchandise using (a) \$427.99 from the merchandise gift card ending in -7763 and (b) \$317.48 from a separate fraudulently obtained merchandise gift card ending in -9814.

All in violation of Title 18, United States Code, Section 1029(b)(2).

COUNT 2
Use of Unauthorized Access Devices
(18 U.S.C. § 1029(a)(2))

From on or about December 3, 2017, and continuing to on or about March 27, 2018, in Miami-Dade, Broward, and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendant,

VADYM VOZNIUK,

did knowingly, and with intent to defraud, traffic in and use one or more unauthorized access devices, that is, fraudulently obtained gift cards, during any one-year period, and by such conduct did obtain anything of value aggregating \$1,000 or more during that period, said conduct affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1029(a)(2) and 2.

COUNT 3
Use of Unauthorized Access Devices
(18 U.S.C. § 1029(a)(2))

From on or about October 10, 2017, and continuing to on or about March 29, 2018, in Miami-Dade, Broward, and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendant,

IGOR GRUSHKO,

did knowingly, and with intent to defraud, traffic in and use one or more unauthorized access devices, that is, fraudulently obtained gift cards, during any one-year period, and by such conduct did obtain anything of value aggregating \$1,000 or more during that period, said conduct affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1029(a)(2) and 2.

COUNT 4
Possession of Fifteen or More Unauthorized Access Devices
(18 U.S.C. § 1029(a)(3))

On or about November 9, 2018, in Broward County, in the Southern District of Florida,
and elsewhere, the defendants,

IGOR GRUSHKO and
DENNIS GRUSHKO,

did knowingly, and with intent to defraud, possess fifteen (15) or more unauthorized access devices, that is, credit card and debit card account numbers issued to other persons, said conduct affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1029(a)(3) and 2.

COUNT 5
Possession of Device-Making Equipment
(18 U.S.C. § 1029(a)(4))

On or about November 9, 2018, in Broward County, in the Southern District of Florida,
and elsewhere, the defendants,

IGOR GRUSHKO and
DENNIS GRUSHKO,

did knowingly, and with intent to defraud, have custody and control of, and possess device-making equipment, that is, one (1) credit card embosser, one (1) magnetic stripe encoder, molds for creating credit card skimming devices, and credit card skimming devices, said conduct affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1029(a)(4) and 2.

COUNT 6
Production of a False Identification Document
(18 U.S.C. § 1028(a)(1))

On or about November 9, 2018, in Broward County, in the Southern District of Florida, and elsewhere, the defendants,

IGOR GRUSHKO and
DENNIS GRUSHKO,

did knowingly, and without lawful authority, produce and cause to be produced false identification documents, that is, counterfeit Maryland drivers licenses, said conduct affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 1028(a)(1) and 2.

COUNTS 7-9
Aggravated Identity Theft
(18 U.S.C. § 1028A(a)(1))

On or about November 9, 2018, in Broward County, in the Southern District of Florida, the defendants,

IGOR GRUSHKO and
DENNIS GRUSHKO,

during and in relation to a felony violation of Title 18, United States Code, Section 1029(a)(3), that is, knowingly, and with intent to defraud, possessing fifteen (15) or more unauthorized access devices, that is, credit card and debit card account numbers issued to other persons, said conduct affecting interstate and foreign commerce, as charged in Court 4 of this Superseding Indictment, did knowingly possess, without lawful authority, the means of identification of another person, as specified in each count below:

MEANS OF IDENTIFICATION	
7	Name and credit card account number ending in 5003, issued to "S.T."
8	Name and credit card account number ending in 3242, issued to "J.F."
9	Name and credit card account number ending in 2022, issued to "M.R."

In violation of Title 18, United States Code, Sections 1028A(a)(1) and 2.

FORFEITURE ALLEGATIONS

1. The allegations of this Superseding Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which one or more of the defendants, **VADYM VOZNIUK, IGOR GRUSHKO, and DENIS GRUSHKO**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1029, as alleged in this Superseding Indictment, the defendants shall forfeit to the United States: a) any personal property used or intended to be used to commit such violation, pursuant to Title 18, United States Code, Section 1029(c)(1)(C); and b) any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of such violation, pursuant Title 18, United States Code, Section 982(a)(2)(B).

3. Upon conviction of a violation of Title 18, United States Code, Section 1028, as alleged in this Superseding Indictment, the defendants shall forfeit to the United States: a) any personal property used or intended to be used to commit such violation, pursuant to Title 18, United States Code, Section 1028(b)(5); and b) any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of such violation, pursuant Title 18, United States Code, Section 982(a)(2)(B).

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All pursuant to Title 18, United States Code, Sections 982(a)(2)(B), 1028(b)(5), 1029(c)(1)(C), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable by Title 18, United States Code, Sections 982(b)(1) and 1029(c)(2).

A TRUE BILL

FOREPERSON

for *E. N. Orshan, SLC (Edward N. Orshan)*
ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

Michael B. Homer
MICHAEL B. HOMER
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: IGOR GRUSHKO

Case No: 18-20859-CR-GAYLES/OTAZO-REYES(s)

Count #: 1

Conspiracy to Commit Access Device Fraud

Title 18, United States Code, Section 1029(b)(2)

***Max. Penalty:** Five (5) Years' Imprisonment

Count #: 3

Use of Unauthorized Access Devices

Title 18, United States Code, Section 1029(a)(2)

***Max. Penalty:** Ten (10) Years' Imprisonment

Count #: 4

Possession of Fifteen or More Unauthorized Access Devices

Title 18, United States Code, Section 1029(a)(3)

***Max. Penalty:** Ten (10) Years' Imprisonment

Count #: 5

Possession of Device-Making Equipment

Title 18, United States Code, Section 1029(a)(4)

***Max. Penalty:** Fifteen (15) Years' Imprisonment

Count #: 6

Production of a False Identification Document

Title 18, United States Code, Section 1028(a)(1)

***Max. Penalty:** Fifteen (15) Years' Imprisonment

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