



Case Law Database



Participation in an organized criminal group

Offences

- Agreement to commit a serious crime (conspiracy)

Keywords

- conspiracy



Drug offences

Offences

- Distribution/ delivery/ dispatch/ transport
- Offering/ offering for sale/ sale/ brokerage

Substances Involved

- heroine
- cocaine
- methamphetamine

Keywords

- Illicit traffic(king)(-offence)



Counterfeiting

Offences

- Counterfeiting of products



Cybercrime

Acts against the Confidentiality, Integrity and Availability of Computer, Data and Systems

- Production/ distribution/ possession of computer misuse tools

United States of America v. Bryan Connor Herrell, No. 1:17-CR-00301-DAD-BAM (E.D. Cal. Sept. 2, 2020)



United States of America



Fact Summary

This case involved Bryan Connor Herrell, an “employee” of the dark net site “AlphaBay” who was involved in moderating thousands of illegal transactions under various monikers, including “Penissmith” and “Botah.” From 2016 through July 2017 AlphaBay was the world’s largest online black market, and shortly before its shut down in 2017 it hosted approximately 368,810 listings for the sale of various illicit goods, approximately 350,000 active buyer accounts, and over 9,000 active vendor accounts.

AlphaBay was created by Alexandre Cazes, who was prosecuted separately before committing suicide while in custody, in or around July 2014. The marketplace was designed to enable users to buy and sell illegal goods, including controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals. Numerous vendors used AlphaBay to distribute controlled substances and illegal goods and services to buyers throughout the world and to launder hundreds of millions of dollars gained from these illegal transactions. At the time of writing, the site is known to have facilitated the distribution in excess of 90kg of heroin, 450kg of cocaine, and 45kg of methamphetamine.

The only way to access AlphaBay was through The Onion Router (“Tor”) network. This network anonymized the Internet Protocol (“IP”) addresses of its underlying servers and allowed vendors and buyers to hide their true identities. Additional measures were also taken to keep identities hidden as AlphaBay required its users to transact in digital currencies, including Bitcoin, Monero, and Ethereum, and did not allow for transactions in official, government-backed currencies. By only accepting digital currencies, AlphaBay and its users were able to bypass the traditional financial systems. AlphaBay was set up like a conventional e-commerce website as a search tool allowed users to choose the type of illegal goods or services they wished to purchase, and users were able to sign up for free by choosing a screen name and

password for their account. Furthermore, users could also search by price ranges, popularity of items, vendors, origin or shipping country, and payment types.

The defendant Herrell and other co-conspirators (both known and unknown to the Grand Jury) were members and associates of AlphaBay. The marketplace operated as criminal enterprise with “employees” serving as security administrators, moderators, public relations specialists, and scam watchers (whose primary duty is to identify and remove fraudulent listings), meaning that leaders, members, and associates of AlphaBay had defined roles in the organization. The defendant in this case held the position of moderator from about May 2016 through July 2017. As moderator, Herrell had access to portions of the AlphaBay platform that were not available to the general public and had the authority to refund payments from buyers on the website, restore a user’s access to the site, engage in staff-only discussions and meetings, and view the amount of digital currency available to other members of the AlphaBay organization. Moderators also held the responsibility of moderating disputes between buyers and vendors on AlphaBay. For his work as a moderator, Herrell was paid four bitcoins per week (bitcoin was worth about USD 2,000 per coin in May 2016, and about USD 2,600 in July 2017). Through moderating disputes, the defendant Herrell had full visibility and awareness of the criminal activities occurring on AlphaBay and therefore held a role in directly facilitating these criminal activities. In addition, Herrell also held the position of scam watcher from around August 2015 to December 2015, where he monitored and quashed phishing attempts and other scams being carried out on AlphaBay. Herrell was also paid in bitcoin for this work.

In 2017, Bryan Connor Herrell was indicted on the felony crime of Conspiracy to Engage in Racketeer Influenced Corrupt Organization, 18 U.S.C. § 1962(d), which carries a maximum penalty of 20 years imprisonment, USD 250,000 criminal fine, and up to 3 years supervised release. Additionally, upon conviction of this offence, Herrell also was subject to a forfeiture of property pursuant to 18 U.S.C. §§ 1963(a)(1) - (a)(3). Herrell entered into a plea agreement and was sentenced to 11 years in prison in September 2020. The following assets were forfeited: one cryptocurrency wallet containing approximately one Bitcoin, an assortment of counterfeit “Magic: The Gathering” and sports collectible cards, approximately USD 745.00 in U.S. currency, 139 gold coins (one ounce each), 8 silver dollar coins (one ounce each), one USD 1,000 bill encased in hard plastic, and one German August Schwer Cuckoo clock.



Commentary and Significant Features

This case is significant due to the size of AlphaBay, which the defendant Bryan Connor Herrell was an “employee” of. When AlphaBay was shut down and Herrell was indicted, it was the largest criminal marketplace on the Internet and had been operating for several years. When AlphaBay was seized, there were over 250,000 listings for illegal drugs and toxic chemicals, and over 100,000 listings for stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms and fraudulent services (for comparison: the Silk Road, which was thought to be the largest dark net marketplace back in 2014, had approximately 14,000

listings at the time of its seizure by law enforcement in November 2014). In addition to the large assortment of illicit goods and services available for purchase on the site, there have also been severe consequences from the purchase of these illicit goods. The investigation into AlphaBay revealed that numerous vendors sold fentanyl and heroin on the marketplace and multiple overdose deaths across the U.S. have been attributed to purchases from this site. At the time of writing, AlphaBay remains the largest dark net marketplace that has ever been seized by authorities.

While the case does not expressly refer to the United Nations Conventional against Transnational Organized Crime, it does possess numerous elements covered by the convention, in particular in relation to the inherently transnational nature of cybercrime and the coordinated international effort of law enforcement authorities that lead to the successful prosecution of numerous associates of AlphaBay. This case serves as a prime example of how organized crime will present itself in the future and how to effectively combat it.

Sentence Date:

2020-09-02

Author:

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Cross-Cutting Issues

Liability

... for

- completed offence

... based on

- criminal intention

... as involves

- principal offender(s)

Offending

Details

- involved an organized criminal group (Article 2(a) CTOC)
- occurred across one (or more) international borders (transnationally)

Involved Countries



Thailand



United States of America

Investigation Procedure

Involved Agencies

- Federal Bureau of Investigation (United States of America)
- Drug Enforcement Administration (United States of America)
- Department of Justice (United States of America)
- International Revenue Service (United States of America)
- Royal Thai Police
- Dutch National Police

- Lithuanian Criminal Police Bureau
- Royal Canadian Mounted Police
- United Kingdom’s National Crime Agency
- Europol
- French National Police
- Philadelphia United States Attorney’s Office

Confiscation and Seizure

Seized Property

The authorities confiscated one cryptocurrency wallet containing approximately one Bitcoin, an assortment of counterfeit “Magic: The Gathering” and sports collectible cards, approximately USD 745.00, 139 gold coins (one ounce each), 8 silver dollar coins (one ounce each), one USD 1,000 bill encased in hard plastic, and one German August Schwer Cuckoo clock.

Legal Basis

18 U.S.C. §§ 1963(a)(1) - (a)(3)

Special investigative techniques

- Special investigative techniques
- Undercover operation(s)/ Assumed identities/ Infiltration

Comments

The investigation and international cooperation measures of this case are closely related to a strategy developed by, in alia, the FBI, DEA, the Dutch Police and Europol to take down the dark net markets AlphaBay and Hansa. In July 2017 the Royal Thai Police with assistance from the FBI and DEA executed an arrest warrant for Alexandre Cazes, the founder of AlphaBay, at his residence in Bangkok, Thailand. At the time of his arrest, law enforcement discovered Cazes’s laptop open and in an unencrypted state. With the evidence collected from the data on the computer, U.S. authorities continued their investigation into additional administrators, members and associates of AlphaBay.

International Cooperation

Involved Countries

-  Canada
-  France
-  Lithuania
-  Netherlands (Kingdom of the)
-  Thailand
-  United Kingdom of Great Britain and Northern Ireland
-  United States of America

Measures

- International cooperation for confiscation/asset recovery

- International law enforcement cooperation (including INTERPOL)
- Joint Investigation

Electronic Evidence

- Electronic Evidence/Digital Evidence



Procedural Information

Legal System:

Common Law

Latest Court Ruling:

Court of 1st Instance

Type of Proceeding:

Criminal

Accused were tried:

separately (parallel trials)

Proceeding #1:

Stage:

first trial

Official Case Reference:

United States of America v. Bryan Connor Herrell, No. 1:17-CR-00301-DAD-BAM (E.D. Cal. Sept. 2, 2020)

Court

Court Title

United States District Court for the Eastern District of California

- Criminal

Location

City/Town:

Sacramento

Province:

California

Description

The defendant Bryan Connor Herrell entered into a plea agreement in which he pleaded guilty to conspiracy to engage in a racketeer influenced corruption organization on 27 January 2020. The defendant was sentenced to a term of imprisonment of 11 years on 2 September 2020. The Court filed a final order of forfeiture on 11 September 2020 that lead to the confiscation of the proceeds of crime mentioned in the confiscation section.

Decision Date:

02 September 2020



Defendants / Respondents in the first instance



Defendant: Bryan Connor Herrell

Gender: Male

Nationality: American

Age: 26



Charges / Claims / Decisions



Defendant: Bryan Connor Herrell

Legislation / Statute / Code:

18 U.S.C. § 1962(d)

Charge details:

Conspiracy to engage in a racketeer influenced corrupt organization

Verdict: Guilty

Term of Imprisonment:

11 years



Court

United States District Court for the Eastern District of California



Sources / Citations

United States of America v. Bryan Connor Herrell, No. 1:17-CR-00301-DAD-BAM, Indictment (E.D. Cal. Dec. 14, 2017)

United States of America v. Bryan Connor Herrell, No. 1:17-CR-00301-DAD-BAM, Plea Agreement (E.D. Cal. Jan. 27, 2020)

United States of America v. Bryan Connor Herrell, No. 1:17-CR-00301-DAD-BAM, Judgment (E.D. Cal. Sept. 2, 2020)

United States of America v. Bryan Connor Herrell, No. 1:17-CR-00301-DAD-BAM, Final Order of Forfeiture (E.D. Cal. Sept. 11, 2020)

[U.S. Attorney's Office, Eastern District of California, "AlphaBay, the Largest Online 'Dark Market,' Shut Down - 'Dark Net' Site Was Major Source of Fentanyl and Heroin, Linked to Overdose Deaths, and Used By Hundreds of Thousands of People to Buy and Sell Illegal Goods and Services Anonymously over the Internet," 20 July 2017.](#)

[U.S. Attorney's Office, Eastern District of California, "Colorado Man, Operating Under The Nicknames "Penissmith" And "Botah" Indicted On Racketeering Charges Related To Darknet Marketplace AlphaBay," 20 June 2019.](#)

[U.S. Attorney's Office, Eastern District of California, "Colorado Man Pleads Guilty to Racketeering Charges Related to Darknet Marketplace AlphaBay," 28 January 2020.](#)

[U.S. Attorney's Office, Eastern District of California, "Colorado Man Sentenced to 11 Years in Prison for Moderating Disputes on Darknet Marketplace AlphaBay," 1 September 2020.](#)



Attachments

[United States of America v. Bryan Connor Herrell No. 1-17-CR-00301-DAD-BAM Indictment E.D. Cal. Dec. 14 2017.pdf](#)

[United States of America v. Bryan Connor Herrell No. 1-17-CR-00301-DAD-BAM Plea Agreement E.D. Cal. Jan. 27 2020.pdf](#)

[United States of America v. Bryan Connor Herrell No. 1-17-CR-00301-DAD-BAM Judgment E.D. Cal. Sept. 2 2020.pdf](#)

[United States of America v. Bryan Connor Herrell No. 1-17-CR-00301-DAD-BAM Final Order of Forfeiture E.D. Cal. Sept. 11 2020.pdf](#)

United Nations Office on Drugs and Crime

