



SHARING ELECTRONIC RESOURCES
AND LAWS ON CRIME



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Case Law Database



Money laundering

Offences

- Conversion/transfer of proceeds of crime

Keywords

- Virtual currencies
- Anti-money laundering

United-States of America v. Robert M. Faiella, a/k/a "BTCKing" and Charlie Shrem



[United States of America](#)



Fact Summary

Robert M. Faiella, a/k/a BTCKing, an underground Bitcoin exchanger, and Charlie Shrem, the Chief Executive Officer and Compliance Officer of a Bitcoin exchange company, schemed to sell over USD\$1 million in bitcoins to users of Silk Road, a darkweb marketplace that enabled its users to buy and sell illicit drugs.

From December 2011 to October 2013, Robert M. Faiella ran an underground Bitcoin exchange on this website, where a wide variety of illicit drugs were bought and sold in bitcoins by the site's users. He sold bitcoins, under the username "BTCKing", to users who were seeking to buy drugs.. He operated via a company based in New York and named the "Company". The Company was designed to enable customers to exchange cash for bitcoins without providing any personal identifying information, and it charged a fee for its service. Faiella then sold the bitcoins exchanged through the Company to Silk Road users at a markup.

Charlie Shrem was the CEO and Compliance Officer, and between August 2011 until approximately July 2013, was responsible for ensuring the Company's compliance with anti-money laundering legislation. . He allowed Robert Faiella to use the Company's services to buy bitcoins, personally processed Faiella's orders and gave him discounts on his high-volume transactions. Despite the registration of the Company as a money services business, he did not file any suspicious activity reports to the Treasury Department and allegedly assisted Faiella to circumvent the Company's AML restrictions.

Several pieces of evidence gathered by the investigators showed that he himself purchased drugs on the Silkroad marketplace and was aware that his services contributed to Faiella's underground bitcoin exchange for Silk Road users. Using this scheme, Charlie Shrem and Robert Faiella exchanged over USD\$1 million in cash for bitcoins for the benefit of Silk Road users.



Commentary and Significant Features

The present case is directly linked to the undercover investigation of US law enforcement agencies on Silk Road market, one of the first large-scale darkmarket platforms that focused primarily on drugs, with almost 1 million registered users in 2013. This undercover investigation resulted in the shutdown of the website on July 2013, the seizure of bitcoins held on the platform and the arrest of its funder (see U.S v. Ulbricht, 31 F.Supp. 3d 540, S.D.N.Y. 2014).

Involving several of the Bitcoin's pioneers, like Charlie Shrem, this case is of interest because of the absence of precedent concerning the definition of virtual currencies and its implications in terms of anti-money laundering obligations. The memorandum order rejecting Robert Faiella's motion to dismiss discusses the application of 18 U.S Code Section 1956 and Section 1960 (defining the offence of laundering of monetary instruments and the prohibition of unlicensed money transmitting businesses) to virtual currencies. Robert Faeilla moved to dismiss the charge of operating an unlicensed money transmitting business on three grounds:

- Bitcoin does not qualify as 'money' under Section 1960
- Operating a Bitcoin exchange does not qualify as "transmitting money" under Section 1960
- The defendant is not a "money transmitter" under Section 1960

To reject the first and main argument of the defendant, the Court adopted a broad and ordinary parlance definition of money and considered that Bitcoin "clearly qualifies as money" since it can easily be purchased in exchange for ordinary currency, acts as a common denominator and is used to conduct financial transactions. In the absence of precedents, District Judge Rakoff decided to follow the method of the original intent to interpret Section 1960. He underlined that Section 1960 was passed as an anti-money laundering Statute to prevent any movement of funds in connection with drug dealing.

The second argument was rejected, with Judge Rakoff finding that Faeilla's scheme was by essence based on transfers to a third party, since customers did not have complete control over their funds anymore unlike Silk Road administrators. Judge Rakoff dismissed the last argument by referring to FinCEn guidance, which specifically clarified that virtual currency exchangers constitute money transmitters.

The defendant raised a novel construction of the Statute to operate like an ex post facto law in violation of the Due Process Clause and called on the rule of lenity. The Court considered that there was no irreconcilable ambiguity and that the argument was undermined by the defendant's behavior showing he knowingly violated the law.

Sentence Date:

2015-01-20



Cross-Cutting Issues

Liability

... for

- completed offence

Investigation Procedure

Confiscation and Seizure

Conviction Basis:

Conviction based

Comments

Both defendants accepted to forfeit USD \$950,000 to the government as part of their plea deals.



Procedural Information

Legal System:

Common Law

Latest Court Ruling:

Court of 1st Instance

Type of Proceeding:

Criminal

Accused were tried:

separately (parallel trials)

A US Attorney initiated the case on 24th January 2014 with a Criminal Complaint against Robert M. Faeilla and Charlie Shrem, charging them with conspiracy of money laundering and operating an unlicensed money transmitting business. Charlie Shrem was arrested on 26 January 2014 in New York, and Robert M. Faeilla was arrested on 27 January 2014 at his residence in Cape Coral, Florida.

On 10th April 2014, the Grand Jury indicted the defendants on 4 Counts:

1) and 2) Operating an unlicensed Money Transmitting Business;

3) Money Laundering Conspiracy;

4) Willful failure to file Suspicious Activity Report.

Robert M. Faiella was charged with counts 1 and 3 and Charlie Shrem with counts 2, 3 and 4 and forfeiture allegations were taken against both defendants.

Robert M. Faeilla then submitted a Motion to Dismiss on Count 1, rejected by the District Court via a Memorandum Order of 19 August 2014 (attached document).

Charlie Shrem pled guilty under Count 2 and a waiver of Indictment was adopted on 4th of September 2014. Robert M. Faiella also pled guilty a few months later. Both defendants obtained the same plea deals and were sentenced to 2 years imprisonment with 3 years supervised release and a forfeiture of USD\$ 950 000 each. They were sentenced on 12 December 2014 and 20 January 2015 respectively.

Proceeding #1:

Stage:

first trial

Official Case Reference:

14-cr-243

Court

- Criminal

Sentences

Sentence

Term of Imprisonment:

2 years

24 months of imprisonment, 3 years of supervised release upon the end of imprisonment



Court

United States District Court for the Southern District of New York



Attachments

[UnitedStatesvFaiella.pdf](#)

[gov.uscourts.nysd.425686.71.0.pdf](#)

United Nations Office on Drugs and Crime

