

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. F14-2935

Plaintiff,

JUDGE FLEUR LOBREE

v.

PASCAL REID,

Defendant.

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MEMORANDUM OF LAW OF *AMICUS CURIAE* THE BITCOIN FOUNDATION

COMES NOW, the Bitcoin Foundation (the “Foundation”), by and through undersigned counsel and pursuant to the inherent authority of this Court (and in keeping with the parameters of Florida Rule of Appellate Procedure 9.370) to file this Amicus Brief in connection with Defendant Pascal Reid’s (“REID’s”) Sworn Motion to Dismiss Count Three of the Information of unlawfully engaging in an unregistered money transmitter business without being exempt from registration in violation of Florida Statutes § 560.125(1) filed on May 14, 2014, which charges REID with being an unauthorized money transmitter under Florida law.¹

A. Interest Of *Amicus Curiae* The Bitcoin Foundation

The Foundation is a member-supported, non-profit organization dedicated to three goals in furtherance of the still-evolving, revolutionary technology of Bitcoin: (1) standardizing Bitcoin; (2) protecting Bitcoin; and (3) promoting Bitcoin. Founded in 2012, the Foundation represents more than 2,000 members (both individuals and entities), including most of the leading players in the fast emerging Bitcoin economy.²

¹ No counsel for any party authored this brief in whole or in part; no party or counsel made a monetary contribution intended to fund its preparation or submission.

² REID is not a member of the Foundation.

The Foundation's promotion of Bitcoin is especially relevant in this instance because "[i]n the context of public misunderstandings, misinterpretations and misrepresentations, Bitcoin needs to be clearer about its purpose and technology." (<https://bitcoinfoundation.org/about/>). Regulators and prosecuting agencies, throughout the country, including here, are applying to Bitcoin a set of laws designed by legislatures to apply to traditional "fiat" currency, and in doing so, in certain instances ignore the fundamental differences between them. Here, the State, operating under what appears to be a fundamental misunderstanding of Bitcoin, has unfortunately misinterpreted Florida law concerning "money service business" by charging an individual (i.e., REID) with being an unauthorized money transmitter under Florida law. Proper interpretation is critical to the Foundation and its members. Accordingly, the Foundation respectfully submits this Amicus Brief in connection with REID's motion to dismiss.

B. Bitcoin Background

1. What Is Bitcoin And Where Is It Used?

Bitcoin is a decentralized store of value and open-ledger payment network that operates securely, efficiently, and at low cost without the need for any third-party intermediaries.³ The Bitcoin protocol allows individuals and service providers, among others, access to a global financial system that will see rapid innovation.

Of greatest importance to the present case are these three things: (1) Bitcoin is a decentralized system; (2) Bitcoin may be traded on multiple exchanges; and (3) Bitcoin is widely used and exchanged peer-to-peer, including in local, in-person transactions. *See, e.g.*, <http://www.localbitcoins.com>; *see also* <http://www.bitcointalk.org/index.php?board=86.0> (describing worldwide locations for "Satoshi Square," regular, in-person meetings across the world

³ *See* Testimony of Patrick Murck, General Counsel, the Bitcoin Foundation, United States Senate Homeland Security and Governmental Affairs Committee, (November 18, 2013), *available at* <https://bitcoinfoundation.org/blog/wp-content/uploads/2013/11/Bitcoin-Foundation-Written-Testimony-for-Senate-HSGAC-2013-11-18.pdf>; *see also* Reuben Grinberg, *Bitcoin: An Innovative Alternative Digital Currency*, 4 HASTINGS SCI. & TECH. L.J. 160 (2011), *available at* <http://hstlj.org/wp-content/uploads/2011/12/8-Grinberg-159-208.pdf>.

where Bitcoin community members gather to conduct Bitcoin transactions.”)

2. The U.S. Government And Various State Governments Have Issued Some Guidance Regarding Bitcoin, Much Of Which Is Conflicting

Bitcoin is still very young. Only in 2013 did the federal government, and more recently a small group of state governments, issue regulatory and enforcement guidance specific to Bitcoin. Although Florida has not issued specific guidance, other existing guidance is instructive and relevant for the issue now before the Court.

Of note, in March 2013, the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) issued its “Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies.” See http://fincen.gov/statutes_regs/guidance/html/FIN-2013-G001.html. Among other things, the FinCEN guidance provided that retail use of bitcoin is *not* money transmission. *Id.* Even more recently in April 2014, adopting similar principles, the Texas Department of Banking issued its own guidance memorandum (the “Texas Guidance”). See <http://www.dob.texas.gov/public/uploads/files/Laws-Regulations/New-Actions/sm1037.pdf>. The Texas Guidance, like the FinCEN Guidance, also established that the “[e]xchange of cryptocurrency for sovereign currency between two parties is not money transmission,” and instead is “essentially a sale of goods between two parties.” *Id.* at 3.

In choosing to leave in-person peer-to-peer Bitcoin transactions outside the ambit of money transmission laws, FinCEN and Texas inherently recognized, and rightfully so, that these transactions have none of the risks associated with traditional money transmission and which regulations exist to attenuate. The exchange of cash for a bitcoin or bitcoins is instantaneous, requires no third party or institution, and involves no period of time in which any party must hold money or bitcoin while awaiting instructions. These transactions are much more like a garage sale purchase, to which money transmission laws would plainly not apply, than they are like a Western Union transaction, to which such laws were intended to apply.

C. Florida’s “Money Services Business” Statutory Scheme Is Inapplicable To Individuals Transacting In Bitcoin

By charging an individual with being an unauthorized money transmitter under Florida law, the State is applying Florida statutes regulating “money service businesses” to individuals conducting peer-to-peer sale of bitcoins.⁴ Not only is this wrong, but it represents a minority view. Further, bringing such a charge against an individual like REID is an unfortunate example of law enforcement applying statutes to new technology that the statutes drafters could not have contemplated nor would they have intended. And in these types of situations, courts have not hesitated to denounce such action as unwise and unfair, and justifiably so. *Cf. United States v. Thompson*, 281 F.3d 1088, 1099 (10th Cir. 2002) (Seymour, J., dissenting) (“It is not our job to broadly construe [a statute] to reflect new technological situations.”); *People v. Gilbert*, 414 Mich. 191, 204-05, 324 N.W.2d 834, 840 (1982) (“Where, as here, the enactment of the statute preceded any possible legislative consideration of the public policy issues, the proper course of action is to await legislative judgment, not to engage in an uncertain attempt to anticipate it.”).

A closer look at Florida’s statutory scheme requiring the registration of “money service businesses” only highlights the reasons money-service related charges like the one in count three of the information should be dismissed if brought. Count three charges a violation of Florida Statutes Section 560.125(1), which provides that “a person may not engage in the business of a money services business . . . unless the person is licensed or exempted from licensure” Section 560 specifically defines a “money services business” as “any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.” § 560.103(22), Fla. Stat. The State has alleged REID is a “money transmitter,” defined as “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do

⁴ The Foundation’s interest in this case is not specific to REID (with whom it had no prior involvement), or to the specific facts of this case.

business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.” § 560.103(23), Fla. Stat.

First, and as described in REID’s motion to dismiss, an individual like REID cannot be convicted under Section 560.125(1) because a “money transmitter” under Florida law is limited solely to “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state,” which by definition excludes an individual. Although any “person” can be liable under 560.125(1), and the definition of “person” includes an individual, § 560.103(31), Fla. Stat., a “money services business” can be one of four things: “a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.” An “individual” could be liable under the statute *only if* they acted as either a “foreign currency exchanger” or “check casher,” both of which refer generally to a “person” engaging in certain activities. § 560.103(17), (6), Fla. Stat. In stark contrast, however, ***both “payment instrument seller” and “money transmitter” are narrowly drawn to include only “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state.”*** § 560.103(23), (30), Fla. Stat. (emphasis added). There is no allegation in this case (nor does it appear there could be) that REID is a corporate entity of the sort described in the definition of “money transmitter.” An individual like REID therefore should not, as a matter of law (based both on the plain language of the statute and *expresio unius est exclusio alterius*), be subject to the registration requirements that individual is accused of violating. *See, e.g., St. Petersburg Bank & Trust Co. v. Hamm*, 414 So. 2d 1071, 1073 (Fla. 1982) (“The plain meaning of the statutory language is the first consideration.”); *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996) (“Under the principle of statutory construction, *expresio unius est exclusio alterius*, the mention of one thing implies the exclusion of another.”) (citation omitted).

Second, and assuming for the sake of argument, and in contravention of the plain language of the statute, that an individual like REID could be considered a “money transmitter,” that individual still would not fall under the ambit of the statute because he did not receive “**currency, monetary value, or payment instruments for the purpose of transmitting the same.**”

§ 560.103(23), Fla. Stat. (emphasis added). “Currency” is defined as “the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance.”

§ 560.103(11), Fla. Stat. Bitcoin most certainly is not “the coin and paper money of the United States.” Moreover, pursuant to Florida law, Bitcoin is also neither “monetary value” nor a “payment instrument” because neither definition under Florida law is precise enough to hold anyone criminally liable (see the rule of lenity discussion below).⁵ Accordingly, an individual like REID cannot be a “money transmitter,” and therefore cannot violate Section 560.125(1). *See Leisure Resorts, Inc. v. Frank J. Rooney, Inc.*, 654 So. 2d 911, 914 (Fla. 1995) (“When the legislature has used a term, as it has here, in one section of the statute but omits it in another section of the same statute, we will not imply it where it has been excluded.”).

D. The Rule of Lenity Precludes Conviction

It may be that Florida will adopt statutes regulating Bitcoin -- whether or not to do so is the prerogative of Florida. But until that time, it is unjust to take an ambiguous criminal statute, such as Section 560.125(1), and force its application when that application is uncertain at best. Under the present circumstances, the rule of lenity should bar the conviction of any individual like REID charged with being an unauthorized money transmitter under Section 560.125(1). *See, e.g.*, § 775.021(1), Fla. Stat. (“The provisions of this code and offenses defined by other statutes shall be

⁵ “Monetary value” is defined as “a medium of exchange, whether or not redeemable in currency.” § 560.103(21), Fla. Stat. “Payment instrument” is defined as “a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable.” § 560.103(29), Fla. Stat.

strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.”); *Clines v. State*, 912 So. 2d 550, 560 (Fla. 2005) (“Because [the statute] generates differing reasonable constructions, we endorse the construction that favors the defendant”); *State v. Byars*, 823 So.2d 740, 742 (Fla. 2002) (“Any ambiguity or situations in which statutory language is susceptible to differing constructions must be resolved in favor of the person charged with an offense.”).

E. Peer-to-Peer Bitcoin Transactions are Inherently Local, Thus The Price On An International Exchange Is Not The Price In A Local Market

Count Three also appears to rests on the faulty premise that the bitcoins at issue here were at a price above “market value.” (Aff. of Detective Ricardo Arias In Support of Arrest at 8.) As with other commercial transactions carried out locally but in which international trade also exists, peer-to-peer, in-person Bitcoin transactions have their own markets -- local ones -- in which prices bear only passing resemblance to those posted on international Bitcoin exchanges. *Cf.* China 18 April 1991 China International Economic and Trade Arbitration Commission, CIETAC-Shenzhen Arbitration, available online at <<http://cisgw3.law.pace.edu/cases/910418c1.html>> (International trade arbitration in which tribunal rejected steel prices published in a trade journal as a basis for damages; the tribunal ruled that no dependable formula for adjusting the price from a foreign market was available, and . . . a local price could and should be used.)⁶ Local, peer-to-peer Bitcoin transactions will often, properly, come at a premium price. Especially now, where few, U.S.-based Bitcoin exchanges exist and where few convenient ways exist to send funds to *any* commercial exchanges, local transactions should come at a premium price.

⁶ In other contexts, like antitrust, the Supreme Court and Congress have often realized that local, national and international prices often vary *widely* for a raft of legitimate and illegitimate reasons. *See, e.g., Utah Pie Co. v. Cont'l Baking Co.*, 386 U.S. 685 (1967) (applying Robinson Patman Act to improper local price cuts).

F. Conclusion

For all of the above reasons, the Foundation respectfully requests this Court grant Defendant's Motion to Dismiss Count Three of the Information, and grant such other and further relief as is just in proper.

Respectfully submitted,

GRAYROBINSON, P.A.
Attorneys for Bitcoin Foundation
1221 Brickell Avenue
Suite 1600
Miami, Florida 33131
Telephone: (305) 416-6880
Facsimile: (305) 416-6880

By: s/Brian H. Bieber
BRIAN H. BIEBER
Florida Bar #8140

Bitcoin Foundation
700 Thirteenth Street, N.W.
Washington, D.C. 20005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record, and have sent a copy of the foregoing via e-mail to counsel of record in the related action.

s/Brian H. Bieber
BRIAN H. BIEBER