

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

AFFIDAVIT

v.

Case No.: 15-CR-227-A

RICHARD PETIX,
Defendant.

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

STEPHEN M. LEONARDO, being duly sworn, deposes and says:

1. I am an Attorney admitted to practice in the Western District of New York and, am the Attorney for the Defendant herein. As such, I am fully familiar with the facts and circumstances of the charges pending against the Defendant in this court, namely, an Indictment alleging a violation of Title 18 USC section 1960.

2. That to date you affiant is familiar with the facts and circumstances of this matter by virtue of my review of the Indictment, pleadings and papers filed to date together with my receipt and review of the items furnished in conformity with the Government's voluntary discovery process.

3. That the relief requested herein is not intended to be duplicitous, relates to the Indictment filed against the above caption Defendant, and is timely and in conformity with the existing order issued by the Court.

**A. DISMISSAL OF AN INDICTMENT IS PROPER WHEN THE ERRORS IN
THE GRAND JURY PROCEEDINGS PREJUDICED THE DEFENDANT. SEE, *BANK
OF NOVA SCOTIA V. UNITED STATES*, 487 U.S. 250, 254 (1988); *UNITED STATES V.
TORRES*, 901 F.2D 205.**

4. Under the Federal Rules, an indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged" and must include the

"statute, rule, regulation, or other provision of law that the defendant is alleged to have violated." Fed. R. Crim. P. 7(c)(1).

5. The Fifth Amendment imposes two constitutional requirements for an indictment: "first, it must contain the elements of the offense charged and fairly inform a defendant of the charge against which he must defend, and second, it must enable him to plead an acquittal or conviction in bar of future prosecutions for the same offense." United States v. Bastian, 770 F.3d 212, 217 (2d Cir. 2014).

6. Title 18 USC section 1960, relating prohibiting unlicensed money transmitting businesses, provides that:

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term “unlicensed money transmit-ting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and— as is relevant here:

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier;

7. Section §5330 of Title 31 - Registration of money transmitting businesses provides:

(a) Registration With Secretary of the Treasury Required. -

(1) In general.- Any person who owns or controls a money transmitting business shall register the business (whether or not the business is licensed as a money transmitting business in any State) with the Secretary of the Treasury.

(d) Definitions.- For purposes of this section, the following definitions shall apply:

(1) Money transmitting business.- The term "money transmitting business" means any business other than the United States Postal Service which-

(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, and other similar instruments or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(B) is required to file reports under section 5313; and

(C) is not a depository institution (as defined in section 5313(g)).

(2) Money transmitting service.- The term "money transmitting service" includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

8. In the present case the Government has procured an Indictment by furnishing proof to the Grand Jury that the Defendant bought and sold the electronic currency known as a Bitcoin for his own personal benefit.

9. Accordingly, what the Defendant did was the functional equivalent of selling any other chattel – e.g. a silver dollar, collectable currency, a diamond, gold jewelry, etc.

10. There is no suggestion that the Defendant “transmitted”, or “transferred” the money he procured from the sale of his Bitcoins on behalf of the public.

11. The Government, in order to have obtained the instant Indictment therefore had to have improperly characterized the Defendant’s conduct or the applicable law.

12. Accordingly, the Second Count of the Indictment alleging a violation of of Title 18 USC section 1960 should be dismissed.

B. RESERVATION OF RIGHT TO BRING FUTURE APPLICATIONS

13. Your affiant requests an order preserving Defendant’s rights to bring such other and future relief as may be just, appropriate and reasonable as consistent with the premises herein. The Court has the authority to grant such Order based upon its inherent jurisdiction in all matters before it and fairness in the administration of justice (Rules 12 and 2).

WHEREFORE, your affiant requests an order granting the relief sought herein together with such other and further relief as is just, reasonable and equitable under the circumstances extant.

/s/Stephen M. Leonardo, Esq.
STEPHEN M. LEONARDO, ESQ.

Sworn to before me this
29th day of July, 2016.

/s/ Joseph R. Sullivan
NOTARY PUBLIC