

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

STATE OF FLORIDA

FELONY DIVISION

Plaintiff,

CASE NO. F14-2923

v.

MICHEL A. ESPINOZA,

JUDGE TERESA POOLER

Defendant

MEMORANDUM OF LAW

QUESTIONS PRESENTED

- I. Due to Florida's lack of defined regulatory treatment of virtual currency, would applying the Texas Banking Department interpretation on the matter be appropriate in deciding whether Bitcoin transactions are money transmission?
- II. Under Florida Law, can virtual currency be included within the given statutory definition of financial transaction and monetary instrument under the money laundering statute?

BRIEF ANSWERS

- I. Yes. In the absence of Florida regulation, a court could find Texas' interpretation of money transmission and virtual currency appropriate here, as well as the additional federal and state interpretations which follow similar reasoning, stating Bitcoin transactions cannot be considered money transmission.
- II. No. A court would likely decide it is bound to the statutory definition of terms within the money laundering statute, none of which can be applied to virtual currency.

STATEMENT OF FACTS

The Defendant, Mr. Michel Espinoza, is charged with one count of Unauthorized Money Transmission and two counts of Money Laundering. These charges stem from multiple transactions in which Mr. Espinoza sold Bitcoin to Detective Arias while he was posing undercover as a common buyer. Contact was first made by the undercover detective to Mr. Espinoza on December 4th, 2013, expressing his interest in acquiring Bitcoin. Detective Arias found Mr. Espinoza through the Local Bitcoin website (<http://localbitcoins.com>), a typical and legal means of exchanging Bitcoin with individuals in close proximity. On December 5th, 2013, Mr. Espinoza sold Detective Arias \$500 worth of Bitcoin, profiting \$83.67 from the transaction. On January 10th, 2014, Detective Arias purchased an additional \$1,000 worth of Bitcoin from Mr. Espinoza while Mr. Espinoza made a profit of \$167.56 on the exchange. Another \$500 transaction occurred on January 30, 2014 with Detective Arias as the buyer and Mr. Espinoza making a profit of \$65.74. The series of transactions concluded on February 6th, 2014 when Detective Arias attempted to purchase \$30,000 worth of Bitcoin from Mr. Espinoza after insinuating that the bitcoins were to be later used for acquiring stolen credit cards. The Bitcoin, however, was never exchanged for the currency and Mr. Espinoza was then arrested and charged with the crimes mentioned.

Bitcoin is a popular form of virtual currency that only exists on the Internet and is generated and controlled through software on a decentralized, peer-to-peer network. Bitcoins are obtained by solving mathematic equations in the software's algorithm which produce bitcoins, or they can be bought on secondary markets. Bitcoin is not a tangible item, nor is it issued or backed by any government, bank, or company. The price of bitcoins is set by its market and constantly fluctuates, however, it is not illegal to buy or sell them. Although some online

marketplaces accept bitcoins as payment, it is not a widely accepted form of payment. Bitcoins, while having a market price attached to them, are only worth what an individual is willing to pay. Possessing one does not entitle the owner to anything, including the right to redeem for United States currency, nor does it create any duties or obligations in one who sells or transfers it.

This Memorandum will discuss the merits of applying the Texas Department of Banking regulatory treatment of virtual currencies, and if a court can include virtual currency within the statutory definitions of financial transaction and monetary instruments.

DISCUSSION

Without the presence of controlling state law, a court could consider the Texas Department of Banking's position on virtual currency applicable, as other state and federal interpretations have in similar capacities, in concluding virtual currency transactions are not money transmission. A court will most likely find that virtual currency is not included in Florida's money laundering statute and therefore must follow the statutory defined terms. For a court to find a defendant guilty of unlicensed money transmission in Florida, the defendant must have transmitted currency, monetary value, or payment instruments without proper licensing. Fla. Stat. § 560.125(5)(A). Under Florida Law, a defendant is guilty of money laundering when the defendant's illicit conduct involves a financial transaction including the movement of monetary instruments. Fla. Stat. § 896.101. This Memorandum will not discuss money service business classification regarding money transmission or the knowing element of money laundering. Rather, this Memorandum will discuss whether virtual currency transactions fall under the money transmission statute once applying the Texas Banking Department's interpretation, and determine whether a court can include virtual currency into the definition of

monetary instruments. A court is likely to find virtual currency is not considered money under the Texas interpretation and the exchange of which is not considered money transmission.

Additionally, a court is likely to find virtual currency does not fall within the statutory definition and that it is bound to follow the given definition. Therefore, a court will likely find Mr.

Espinoza did not participate in unlawful money transmission or money laundering during his bitcoin transactions with Detective Arias.

- I. Due to Florida's lack of defined regulatory treatment of virtual currency, would applying the Texas Banking Department interpretation on the matter be appropriate in deciding whether Bitcoin transactions are money transmission?

A court would most likely find Mr. Espinoza not guilty of unlicensed money transmission after adopting the virtual currency analysis outlined by the Texas Department of Banking because virtual currency, like Bitcoin, would not be considered money. For a court to find a defendant guilty of unlicensed money transmission in Florida, the defendant must have transmitted currency, monetary value, or payment instruments without proper licensing. Fla. Stat. § 560.125(5)(A). The Texas Banking Department's policy regarding virtual currency, in part, states virtual currency cannot be considered money or monetary value because it is not currency nor does it create any type of claim, and therefore does not apply to its Money Services Act which regulates money transmission. *See Regulatory Treatment of Virtual Currency Under the Texas Money Services Act*, Supervisory Memorandum 1037, Tex. Dep't of Banking (April 3, 2014) *available at* <http://www.dob.texas.gov/public/uploads/files/consumer-information/sm1037.pdf>. In June of 2014, Kansas adopted the Texas policy regarding virtual currency's relationship to money transmission. Kansas Office of the State Bank Commissioner, *Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act Guidance Document MT 2014-01* (June 6, 2014), *available at*

http://www.osbckansas.org/mt/guidance/mt2014_01_virtual_currency.pdf. For purposes of federal tax laws, the Internal Revenue Service (IRS) treats virtual currency as property, as opposed to money. *See* Internal Revenue Service, Notice 2014-21, *available at* <http://www.irs.gov/pub/irs-drop/n-14-21.pdf>. (last accessed June 9, 2016). Additionally, in December 2014, New York’s Department of Taxation and Finance concluded that using virtual currency to pay for goods and services was a barter transaction not subject to sales tax because virtual currency was determined to be intangible property. *See* Michael R. Gordon et al., *Bitcoin to Blockchain: How Laws and Regulations are Conforming to and Impacting the Use of Virtual Currency*, N.Y. City Bar (2016). According to Black’s Law Dictionary, the term “barter” is defined as “[t]he exchange of one commodity or service for another without the use of money.” Black’s Law Dictionary (10th ed. 2014).

In Mr. Espinoza’s case, Florida lacks any clear existing law ruling on virtual currency as it relates to money transmission. As such, to determine whether Mr. Espinoza’s bitcoin for dollars exchange was money transmission, looking to policy that exists elsewhere is prudent. Using the Texas policy, the series of transactions between Mr. Espinoza and Detective Arias was merely a sale of goods between two parties. This reasoning is derived from virtual currency’s distinction from sovereign currency. The Texas Banking Department notes, specifically, that because virtual currency creates no claim or obligation, its sole means of ever becoming currency is finding a willing buyer. The dollar is recognized as legal tender in the United States, requiring the government and Federal Reserve officials to accept it as payment of taxes, fees, and loan payments. Bitcoins are released into circulation as a result of software users performing tasks within the software, and there is no obligation on anyone’s part to accept bitcoins in exchange for goods, services, taxes, fees, or other payments. Therefore, there is no guarantee that

a form of virtual currency, such as Bitcoin, can be converted to sovereign currency. Based on Bitcoin's lack of intrinsic value, the exchange of bitcoins for currency is no different from a buyer purchasing any commodity. Through this interpretation, Mr. Espinoza could have been selling any commodity with a strong secondary market to Detective Arias. The reasoning behind Texas' interpretation is reinforced, by not only Kansas adopting the same guidelines, but the IRS treating these virtual currencies as property. Thus, if bitcoins are property, then Mr. Espinoza merely profited by selling goods. In the state of New York, if one were to purchase a good by using bitcoins, the transaction in fact would not be viewed as a purchase at all. New York's "barter" interpretation follows the same logic as Texas; virtual currency is not currency which holds intrinsic value, but rather a commodity that has value based on the market. Therefore, virtual currency, such as bitcoins, cannot be deemed money used to buy goods and services, but rather an item used to trade for other items or services. Applying Texas' treatment of virtual currency to Mr. Espinoza's case is appropriate, not only because of the reasoning behind the interpretation, but also because other state and federal entities have adopted the same reasoning in its policies.

Under the Texas Department of Banking guidelines, and those similar to it, a court will likely decide Mr. Espinoza selling bitcoins is no different than any common sale of goods and cannot be considered money transmission.

II. Under Florida Law, can virtual currency be included within the given statutory definition of financial transaction and monetary instrument under the money laundering statute?

A court will likely find virtual currency cannot be included in the statutory definition included in the money laundering statute after determining the clear and unambiguous language used must be followed by the courts. Under Florida Law, a defendant is guilty of money

laundering when the defendant's illicit conduct involves a financial transaction including the movement of monetary instruments. Fla. Stat. § 896.101. A financial transaction is one involving the movement of monetary instruments, transfer of real property, or a financial institution that affects commerce. Id. Monetary instruments are coin or currency of a country, traveler's checks, personal checks, bank checks, money orders, investment securities, or negotiable instruments that pass title through delivery. Id. Courts use defined meaning of specific terms within a statute unless it is unclear or ambiguous. Arthur Young & Co. v. Mariner Corp., 630 So.2d 1199, 1203 (Fla. 4th DCA 1994). See also Kasiscke v. State, 991 So.2d 803, 807 (Fla. 2008) (when determining legislative intent, courts first look to the statute's plain language, and when this language is clear and unambiguous, courts will not look behind this language to ascertain intent). A statutory definition of a word is controlling and will be followed by the courts. Ervin v. Capital Weekly Post, Inc., 97 So.2d 464, 469 (Fla. 1958). See also City National Bank of Miami v. Save Brickell Avenue, Inc., 428 So.2d 763 (Fla. 3d DCA 1983). The courts lack the authority to add or take away from what the legislature has done. Florida Dairy Farmers Federation v. Borden Co., 155 So.2d 699, 702 (Fla. 1st DCA 1963). A financial transaction occurs when the money itself has been collected. Rodriguez v. State, 36 So.3d 177, 178 (Fla. 2d DCA 2010).

In Mr. Espinoza's case, the virtual currency used in his transactions will be excluded from the money laundering statute because it does not fit within the given statutory definition. Since money laundering must involve a financial transaction, virtual currency must apply to one of the following: monetary instruments, real property, or financial institution. It is acknowledged that bitcoin is intangible property and therefore cannot be real property. Additionally, it is established that bitcoin is not issued or backed by any government or bank, therefore excluding it from financial institutions. According to the expert testimony given by Dr. Charles Evans,

bitcoins cannot be considered coin or currency of any country, traveler's checks, personal checks, bank checks, money orders, investment securities, or negotiable instruments that pass title through delivery. It cannot be ignored or overlooked that not only do bitcoins fail to fit into the definitions of financial transaction and monetary instruments, but they are not analogous to the defined terms either. The terms used to define monetary instruments create no ambiguity. The items stated in the statute's definition are physical manifestations of currency, demonstrating its intent to extend its terms to physical instruments and not virtual currencies. Case law in Florida has established courts' duty to follow statutory definitions, such as the one provided for monetary instruments within the money laundering statute. As such, a court would be abusing its discretion in failing to follow the statutory definition, or take it upon itself to add something new to an existing statute. Because forms of virtual currency cannot be included within the given statutory definition, courts cannot apply the money laundering statute to Mr. Espinoza's bitcoin transactions.

A court will likely find that, since virtual currency cannot be included in the statutory definitions given in the money laundering statute, Mr. Espinoza's bitcoin transactions did not constitute a financial transaction.

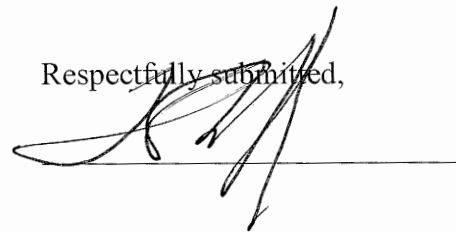
The financial transaction element of money laundering is present when the money itself has been collected. Id. at 178. In Rodriguez, the defendant moved for judgment of acquittal following a money laundering conviction. Id. The court held the defendant had not committed money laundering, reversing the conviction. Id. at 179. The court reasoned that while there was an attempt to collect money from the defendant, no evidence was presented to show an exchange of the money. Id. at 178.

In the present case, in the event that a bitcoin exchange was deemed a financial transaction, the unsuccessful attempt to collect Mr. Espinoza's bitcoins in exchange for \$30,000 fails to meet the financial transaction requirement. Similar to Rodriguez, where the exchange was never completed, the transaction in question here was never completed. Because the court in Rodriguez decided the unsuccessful attempt to collect money was insufficient for a money laundering conviction, the court here should decide the Detective's unsuccessful attempt to collect bitcoins is equally insufficient. Since the illicit activity was only mentioned by Detective Arias prior to the last transaction, it is the lone occurrence when money laundering could have potentially occurred. However, without completing the financial transaction, no money laundering could have taken place.

CONCLUSION

For the foregoing reasons, Mr. Espinoza's conduct did not amount to unlicensed money transmission or money laundering.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping, stylized strokes, positioned above a horizontal line.

(Intentionally left blank)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed and e-served to ASA Thomas Haggerty at thomashaggerty@miamisao.com on this 14nd day of June, 2016.

CORONA LAW FIRM, P.A.

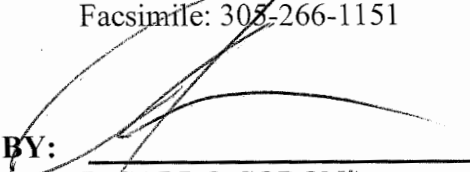
3899 NW 7th Street, 2nd Floor

Miami, Florida 33126

Telephone: 305-266-1150

Facsimile: 305-266-1151

BY:



RICARDO CORONA

Florida Bar No. 111333

BY:



RENE PALOMINO

Florida Bar No.: 381292