

Bitcoin Again Held to Be “Funds” for Federal Money Transmitting Purposes

Murgio decision reflects a growing judicial consensus around the application of money transmitting laws to Bitcoin exchangers.

On September 19, 2016, U.S. District Judge Alison J. Nathan of the Southern District of New York denied defendant Anthony R. Murgio’s motion to dismiss charges brought against him for, among other things, operating a Bitcoin exchange in violation of federal and state money transmitting laws. The decision adds to a growing body of federal precedent upholding the application of money transmitting laws to Bitcoin exchange businesses.

Analysis

The indictment against Murgio specifically alleges that the Bitcoin exchange he allegedly ran — Coin.mx — was an “unlicensed money transmitting business” in violation of 18 U.S.C. § 1960 (Section 1960). Section 1960 defines “money transmitting” to include “transferring funds on behalf of the public by any and all means.” In moving to dismiss the indictment, Murgio argued that (i) Bitcoin does not qualify as “funds”; (ii) exchanging Bitcoin does not involve “transferring” customers’ funds to other persons or places; and (iii) operating a Bitcoin exchange in the state of Florida, where Coin.mx operated, does not require a license. Judge Nathan rejected each of Murgio’s arguments.

First, the court found that Bitcoin does constitute “funds” within the plain meaning of that term. Rejecting Murgio’s contention that “funds” refers only to “currency,” Judge Nathan found that the term instead encompasses any “pecuniary resources” that can be used as a “medium of exchange,” and that Bitcoin meets that description. In reaching this conclusion, Judge Nathan followed a consistent line of cases from the Southern District of New York — including *U.S. v. Ross Ulbricht*, *U.S. v. Liberty Reserve* and *U.S. v. Robert Faiella and Charlie Shrem* — all of which reached a similar holding.

Second, Judge Nathan refused to dismiss the indictment based on Murgio’s contention that Coin.mx acted merely as a seller of Bitcoin and not as a “transmitter” of funds. The indictment itself, the court held, need only to track the language of the statute in this regard — which it does, by alleging that Coin.mx engaged in “money transmitting.” The indictment is not required, the court explained, to lay out the government’s theory of *how* Coin.mx engaged in money transmitting. That can await trial. Judge Nathan noted that the government had represented in its briefs that the evidence at trial would show that Coin.mx did more than merely sell Bitcoin to “customers in two-party transactions.” If at trial the government can show that Coin.mx not only sold customers Bitcoin for currency but also transferred their Bitcoin for them to third parties, then the government may be able to sidestep the defendant’s argument that merely selling Bitcoin to another party is not tantamount to money transmitting. Otherwise, however, there may be occasion for the court to revisit the question. In essence, Judge Nathan bracketed this issue for now.

Third, as for Murgio's argument that Coin.mx did not require a license to operate, Murgio cited a recent trial court decision in a Florida case — *Florida v. Espinoza* — holding that Florida's licensing requirement for money transmitters does not apply to Bitcoin exchangers. After carefully considering the analysis in *Espinoza*, Judge Nathan found it unpersuasive. Judge Nathan concluded that the Florida Supreme Court, if faced with the question, would hold that Florida's money transmitting statute does indeed apply to Bitcoin exchange businesses. In support of this conclusion, Judge Nathan noted that the *Espinoza* court did not sufficiently analyze or explain why a Bitcoin exchanger would not qualify as a seller of "payment instruments" — one of the types of businesses to which Florida's licensing requirement applies — given that the term is defined to include any type of "monetary value." In addition, Judge Nathan noted that there are key factual differences between Murgio's case and *Espinoza's*, which cast doubt on the applicability of the *Espinoza* court's holding.

Conclusion

The *Murgio* decision reflects a growing judicial consensus around the application of state and federal money transmitting laws to Bitcoin exchangers. The decision, however, does leave one issue open — whether merely exchanging Bitcoins for fiat currency involves the "transfer" of funds within the meaning of Section 1960. Depending on the government's evidence, the issue may or may not prove significant at trial. Trial is set to begin on October 31, 2016.

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