

Florida Court: Bitcoin Isn't "Money", and Selling It Isn't "Transmission"

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A Florida criminal court has exonerated a defendant charged with violating state money transmission and money laundering laws.

In *Florida v. Espinoza*, the State of Florida charged Michell Abner Espinoza with one count of unlawfully engaging as a money services business and two counts of money laundering. As part of their investigation into Bitcoin sales in the state, two undercover agents used the popular web service, Local Bitcoins, to arrange a purchase of bitcoins from Espinoza. The agents met the Defendant three more times and completed similar transactions. At the final meeting, where the agents sought to exchange \$30,000 for Bitcoin, the Defendant was arrested and charged with unlawfully operating a money services business (specifically, money transmission) and money laundering.

Not Transmitting Money

Florida statutes define "money transmitters" as entities that receive currency or monetary value for the purposes of transmitting the same by any means. The Court held that the direct sale of bitcoins to a purchaser is not money transmission, finding that a money "transmitter," by definition, must be a middleman in a financial transaction. For example, when a remittance service receives money from Person A and transmits it to Person B, the service is acting as a money transmitter. Here, though, Espinoza sold bitcoins he owned. The Court found that this was more akin to a day trader in the stock market than a remittance provider. The Court reasoned that by buying Bitcoin below market price and selling it above market price, the Defendant was essentially trading on his own account, not "transmitting" money.

Not Selling Payment Instruments

The State also charged the Defendant with operating as an unlicensed "payment instrument seller," which is an entity that sells a "check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable." However, the Court found that the Defendant was not a "payment instrument seller" because Bitcoin, and virtual currencies generally, did not fall under the statutory definition of "payment instrument."

Not Money Laundering

Finally, the State charged the Defendant with the violation of Florida's money laundering statutes. Florida law "makes it illegal for an individual to conduct or attempt to conduct a *financial transaction* involving

property or proceeds” with the intent to (1) carry on an unlawful activity, (2) disguise the proceeds, or (3) avoid reporting requirements. A financial transaction is a transaction involving a *monetary instrument* in any way which affects commerce. In turn, a monetary instrument is “coin or currency of the United States or any other country” including checks, money orders and investment securities. In dismissing the money laundering charge, the Court found with little additional analysis that Bitcoin is not a monetary instrument within the statutory definition, and thus cannot be laundered.

Not Money at All

Supporting the Court’s reasoning in dismissing each of the charges is its refusal to accept Bitcoin as “money.” In so doing, the Court gave a short explanation of Bitcoin’s origins, noting its lack of centralized control and monetary policy. The Court also noted that the value of a bitcoin “fluctuates wildly,” ultimately concluding that it is “certainly not tangible wealth and cannot be hidden under a mattress like cash and gold bars.” Against this backdrop, the Court held that “Bitcoin has a long way to go before it is the equivalent of money” and that “attempting to fit the sale of Bitcoin into a statutory scheme regulating money services businesses is like fitting a square peg in a round hole.”

Regulatory Discord and New Opportunities

Florida’s law enforcement has taken the position that the sale of bitcoins is money transmission, but at least one court has refused to support that position. In fact, the discord is broader: The Florida court’s holding contradicts the position held by the federal government’s Financial Crimes Enforcement Network (FinCEN). In fact, FinCEN has taken the position that, in most cases, the direct purchase and sale of Bitcoin qualifies as money transmission under the Bank Secrecy Act. Bitcoin regulation in the United States remains an uneven landscape not only among the states, but between the states and federal agencies.

The State of Florida has already filed notice of its appeal from the Court’s decision, which will be reviewed *de novo* and without deference to the trial court’s reasoning.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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