

Attorney Appeals Judge's Decision To Throw Out Laundering Charges

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ABINGDON, Va. – A U.S. attorney is appealing a federal district court judge's decision to vacate a dentist's convictions for money laundering, setting up a legal battle over a federal statute that was recently interpreted by the U.S. Supreme Court.

A notice of appeal has been filed in the U.S. Court of Appeals for the Fourth Circuit. The appeal from Acting U.S. Attorney Julia C. Dudley indicates the government is pushing back against an ambiguous Supreme Court decision that in some money laundering cases holds prosecutors to a higher burden of proof.

A jury in March convicted Lee County, Va., dentist Roy Shelburne on seven counts of money laundering, but Judge James P. Jones set aside the convictions following the high court's June 2 decision. Shelburne was sentenced earlier this month to two years in prison and fined for racketeering, health care fraud and structuring a financial transaction.

But the legal landscape for money laundering shifted in the wake of *United States v. Santos*, which determined that "proceeds" from an illegal gambling ring did not mean its gross receipts, but should be more strictly limited to its profits. The court's key concern in interpreting the term is the potential for abuse by prosecutors who could charge a defendant for both an illegal transaction and paying for the "essential operating expenses" of the transaction – tantamount to double jeopardy.

In Shelburne's case, Jones ruled that the dentist's payment for "building and equipment rent" was not properly construed as coming from illegal proceeds under the statute. In response to the government's contention that Shelburne's paying himself a salary met the stricter standard of illegal profits, Jones wrote that "the evidence did not show that these funds were plowed back into the unlawful activity or even into the dental practice generally."

The U.S. attorneys prosecuting Shelburne would not comment Monday. Dennis Jones, Shelburne's defense attorney, did not return phone calls seeking comment.

In a brief supporting the jury's convictions, the government argued that the Supreme Court's interpretation of proceeds should be limited to illegal gambling and not applied more broadly.

"The profits rule applies only where the transaction is so essential to the commission of the underlying crime" that the two merge and do not become a separate offense. It would not, the attorneys argued, "include transactions such as those charged against Shelburne, which are intended to promote the continuation of a crime in the future."

"Santos was a sea change in the law – at least it could be construed that way," said Anthony Giorno, the lead U.S. prosecutor, in a phone interview following the judge's decision earlier this month.

Before the Supreme Court's ruling, Giorno said, "the law was very strongly in favor of the government."

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