

# Federal Judge Drops 7 Convictions Against Lee County Dentist

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ABINGDON, Va. – A federal judge on Tuesday overturned all seven money laundering convictions against a Pennington Gap, Va., dentist, which could set a precedent for how the government prosecutes such cases.

In his order, James P. Jones, chief judge for the Western District of Virginia, upheld three convictions of Roy Silas Shelburne for racketeering, structuring a financial transaction and defrauding Medicaid. Jones' reversal of the jury's verdict on the money laundering convictions comes on the heels of a decision last month by the U.S. Supreme Court interpreting the statute, which set a higher burden for prosecutors alleging the offense.

A jury's convictions are evaluated in the light most favorable to the government, and Jones' decision to vacate them underscored a substantial shift in the legal grounding of the case.

"To say that I'm pleased with Judge Jones' opinion in this matter would be an understatement," said Dennis Jones, Shelburne's attorney, who previously described the jury's verdict as the "greatest miscarriage of justice" he had seen in his legal career.

The judge's order, he said Tuesday, "is significantly in keeping with what my understanding of the law was. He's right on."

His client, he added, is considering whether to appeal the remaining convictions.

Tony Giorno, the U.S. assistant attorney who prosecuted the case, said he and his team are studying their options and may appeal the decision. He described the U.S. Supreme Court ruling on the money laundering statute as a "sea change" in the law, saying "we knew we would have problems with that."

A federal jury in March convicted Shelburne of performing shoddy and medically unnecessary procedures on his Medicaid patients, and defrauding the state agency and private health insurers. He faced a sentence of up to 120 years and a \$1.25 million fine.

But between the jury's verdict and Shelburne's sentencing, the U.S. Supreme Court on June 2 handed down a decision in *United States v. Santos* that set a new – although ambiguous – standard for prosecutors seeking money laundering convictions.

In the split decision, the high court determined that illicit "proceeds" – as defined in the statute – does not exclusively mean "gross receipts" of an illegal transaction, and that a stricter meaning of profits from such a transaction would be appropriate in some cases. That ruling effectively raised the bar for prosecutors to demonstrate that Shelburne used illicit funds to further an illegal operation.

In a hearing last month, Jones hinted that the Supreme Court's decision "may be significant" in sentencing Shelburne, and he cited the case in vacating five counts of money laundering.

No evidence was presented at the dentist's trial that he paid his business expenses from his profits, Jones wrote. "I find that Dr. Shelburne's payments for building and equipment rent and dental supplies were not from proceeds as that term is properly construed in the money laundering statute."

As to the two remaining money laundering convictions, 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."

Giorno, the assistant U.S. attorney, noted that the law prior to the Santos decision "was very strongly in favor of the government."

"We have to decide, in-house or at the Department of Justice, if we're going to live with that interpretation in future cases."

Shelburne's remaining convictions, he pointed out, "are very significant."

The nine-day jury trial featured highly complex expert testimony regarding dental procedures and insurance billings, and Jones acknowledged that "a verdict in Dr. Shelburne's favor certainly would have been plausible and equally supportable."

Shelburne's dental license remains active despite his felony convictions, which trigger revocation under Virginia law. State health officials have said they do not consider a conviction to be final until a judge sentences a defendant.

Shelburne is scheduled to be sentenced on July 10.

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