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Rulings Shrink Money Laundering Statutes

Merely hiding cash not enough to warrant conviction

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The federal money laundering statutes have long been a powerful weapon in the prosecution's arsenal. In addition to severe penalties and sweeping forfeiture provisions, the statutes criminalize conduct involving 250 predicate offenses, thus providing a potent federal tool to investigate and prosecute a vast array of criminal conduct.

However, in two decisions issued on June 2, *Cuellar v. United States* and *United States v. Santos*, the U.S. Supreme Court carefully parsed the language and meaning of these statutes, and in the process narrowed their reach.

In *Cuellar*, the issue was whether a charge of transportation money laundering required the government to prove more than the fact that the defendant hid money during transportation. In *Cuellar*, the defendant attempted to transport drug proceeds across the Texas-Mexico border. As the defendant headed toward the border, a law enforcement officer observed him driving erratically. Once stopped, the defendant gave contradictory responses that heightened the officer's suspicions.

When the officer inquired about a bulge in the defendant's pocket, the defendant produced a wad of cash that smelled of marijuana. While waiting for a narcotics-detecting dog to arrive on the scene, the defendant consented to a search of his car. After giving consent, the defendant made the sign of the cross, making the officers



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even more suspicious that contraband was secreted in the car.

A search disclosed drill marks covered with mud and other indications of a hidden compartment in the floorboard area of the car. The hidden compartment was located and, once opened, authorities found \$81,000 in cash wrapped in duct-taped bundles. The defendant's car also had goat hair sprinkled about the interior compartment, presumably to throw off drug sniffing dogs.

The defendant was indicted for money laundering in violation of 18 U.S.C. §1956(a)(2)(B)(i), which makes it a crime to



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“attempt to transport . . . funds from a place in the United States to . . . a place outside the United States . . . knowing that the . . . funds involved in the transportation . . . represent the proceeds of some form of unlawful activity and knowing that such transportation . . . is designed in whole or in part . . . to conceal or disguise the nature, . . . the source, the ownership . . . of the proceeds of specified unlawful activity.”

‘Legitimate Wealth’

After a jury trial, the defendant was convicted and sentenced to 78 months' imprisonment. On appeal, the Fifth Circuit held that the money laundering statute requires both that the transportation of the funds be designed to conceal the illicit character of the money and “create the appearance of legitimate wealth.” The Fifth Circuit, sitting *en banc*, reversed the panel decision and rein-

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stated the conviction. The *en banc* court concluded that the defendant's transportation of the funds was designed, at a minimum, to conceal the nature, ownership and source of the funds and that the evidence introduced at trial was sufficient to sustain a conviction under the money laundering statute.

The Supreme Court reversed. While it rejected the argument that the government was required to prove that the defendant's actions were designed to create the appearance of legitimate wealth (i.e., that the defendant engaged in "classic money laundering"), the court agreed that the government had to prove that defendant knew that taking the funds to Mexico was "designed," at least in part, to conceal the "nature," "source," "location," "ownership," or "control" of the funds. "Merely hiding funds during transportation is not sufficient to violate the statute even if substantial efforts have been expended to conceal the money," the court held. The government must establish that the secreting of the funds is a part of a larger "design" to disguise the source or nature of the funds.

On this point, the court observed: "There is a difference between concealing something to transport it, and transporting something to conceal it . . . that is, how one moves the money is distinct from why one moves the money." The court concluded that the evidence presented by the government at trial failed to establish that the defendant acted with the requisite "design"

to conceal or disguise the source of the funds and reversed the conviction.

Proceeds Vs. Profits

In *United States v. Santos*, the issue was how to define the word "proceeds," which is ubiquitous in the money laundering statutes. In *Santos*, the defendants were convicted of running an illegal gambling business, conspiracy to launder money, and substantive money laundering offenses. After losing a direct appeal to the Seventh Circuit, the defendants filed a petition for a writ of *habeas corpus*. In granting the petition, the district court relied on a Seventh Circuit decision issued following the defendant's conviction and direct appellate review.

In that decision, *United States v. Scialabba*, 282 F.3d 475 (2002), the court held that to prove money laundering, the government must establish that "profits" from the underlying criminal activity — as opposed to criminal receipts — were used to further promote or conceal that activity. The court found that the government introduced evidence at trial that proved only that the defendants used gross receipts, and therefore vacated the money laundering convictions. The government appealed, and after the Seventh Circuit affirmed, the Supreme Court granted *certiorari* to resolve the question whether the federal money laundering statute's proscription against engaging in financial transactions using the "proceeds" of specified unlawful activity

applies to "gross receipts" as the government argued, or only "profits," as the Seventh Circuit held. Because the term "proceeds" is undefined in the money-laundering statute, the defendants argued that the rule of lenity required the more restrictive interpretation of the term as "profits."

In a plurality opinion, the Supreme Court agreed with the petitioners, holding that the term "proceeds" is undefined and, given the term's ordinary meaning, "there is no more reason to think that 'proceeds' means 'receipts' than there is to think that 'proceeds' means 'profits.'"

The court concluded that the rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subject to them, and that the government failed to introduce evidence that the lottery transactions that formed the foundation of the prosecution involved criminal profits, and therefore the convictions required reversal.

Although these two decisions involved prosecutions where the predicate offenses were narcotics and gambling offenses, the court's interpretation of the money laundering statutes, and its discussion of the government's burden of proof at trial, will have a much wider impact. Indeed, the court's opinions in *Cuellar* and *Santos* may provide the springboard for further efforts to narrow the reach of the money laundering statutes when such prosecutions are premised on one of the other 250 qualifying predicate offenses. ■