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Judge acquits Tupelo man on child porn charge

by Patsy R. Brumfield/NEMS Daily Journal

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ABERDEEN – Federal prosecutors will appeal a judge’s decision to overturn a Tupelo man’s conviction on a child pornography charge.

On Sept. 12, a U.S. district court jury convicted James William Smith, 27, of possession of child pornography.

After the conviction, Smith’s attorney, Gene Barton of Okolona, asked the court for a new trial or to acquit him.

After about six weeks’ consideration, Judge Sharion Aycock overturned the verdict and acquitted him, which a judge may do if he or she deems the evidence insufficient.

In her 12-page memorandum explaining her decision, Aycock said a new trial is not wanted because acquittal “is proper.”

While Aycock denied defense objections on evidentiary rulings and jury issues, she said the government failed to present evidence that Smith knew the images were on the computer.

She also wrote that evidence showed Smith and another person with access to the computer were not at work when the government said they were, and thus had the ability “to possess the offending material” on two specified dates.

“To the extent the government introduced these records to prove that Smith had knowledge and access to the images,” Aycock wrote, “the proof is just as likely” that the other person did, as well.

Trial testimony also revealed that Smith often left the computer logged in under his own username.

The government failed to prove beyond a reasonable doubt that Smith knowingly possessed the illegal materials found on his computer, Aycock noted, adding it is just as likely that the other person downloaded the child pornography onto the computer, as Smith did.

Monday, U.S. Attorney Felicia C. Adams and Paul Roberts, the government’s prosecutor in the case, notified the court they will appeal to the 5th Circuit.

Smith was indicted in August 2011 and faced up to 10 years in prison and a \$250,000 fine upon conviction.

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