UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7386
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT CALVIN SCOTT, JR., a/k/a Sonny Scott, ROBERT CALVIN SCOTT, III, a/k/a Scotty Scott, and DONNA W. SCOTT,

Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Mississippi
(CR-CRE91-91-S-D-(1))

(February 8, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

The appellants, "Sonny" Scott, Jr., "Scotty" Scott, III and Donna Scott were convicted of modifying VideoCipher II decryption devices so that the owners of television-receiver-only (TVRO) satellite antenna systems could receive unscrambled pay-TV signals without subscribing to cable television. On appeal, they

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

complain that the indictment under which they were charged did not allege an offense, that the jury was improperly instructed based on this error, and that the trial court erroneously permitted a government witness to appeal to the jurors' pecuniary interest. Finding no merit in these challenges, we affirm.

The Scotts first contend that 47 U.S.C. § 605(e)(4), under which they were charged, does not apply to TVRO systems. Therefore, they contend, the district court improperly denied their motion to dismiss and their subsequent motions for acquittal and a new trial.

47 U.S.C. § 605(e)(4) provides that

> [a]ny person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a) of this section, shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both.

The statue also provides that "satellite cable programming" "means video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers . . ." 47 U.S.C. § 605(d)(1). According to the Scotts, § 605(e)(4) "is aimed at the receipt of the cable operator's (the cable companies) signals, and therefore, the alleged activity of the defendants was not covered by the statute charged because appellants facilitated decryption of satellite programming for the personal use of backyard satellite

dish owners," no retransmissions were involved, which, they contend, is an essential feature of a § 605(e)(4) violation.

To interpret these provisions, both parties rely on caselaw and legislative history. In our view, these sources only fortify a conclusion dictated by the language of the statute itself. From the language of the statute, it is simply not true that the definition of satellite cable programming outlaws only video piracy by or on behalf of unauthorized cable companies. The way in which "satellite cable programming" is referred to in the statute is descriptive of the type of programming rather than the medium over which the decrypted signal flows. Section 605(d)(1) defines satellite cable programming as video programming primarily intended for retransmission to cable subscribers, thus acknowledging that such programming can also be used in other ways. Further, appellants' use of the VideoCipher II devices caused the "unauthorized decryption of satellite cable programming," as prohibited by § 605(e)(4). Finally, appellants' conduct could also be described by § 605(e)(4) as "other activity prohibited by subsection (a) of this section," in that it involved the receipt of satellite cable programming by persons "not being entitled thereto." 47 U.S.C. § 605(a). Legislative history specifically refers to controlling the use of the VideoCipher II as a major object of the 1988 amendment that became § 605(e)(4). Appellants' argument to the contrary is meritless.

Because appellants' construction of the law is incorrect, their challenge to the court's jury instruction must also fail.

They objected only to the court's explanation that the statute also reaches unauthorized receipt of satellite programming by TVRO systems.

The Scotts' final contention is that the court erroneously permitted a government witness to testify concerning the effect upon programmers such as ESPN or HBO of the theft of television signals, and he allegedly appealed to the pecuniary interest of the jurors. This court has held that "a trial court's ruling on the admissibility of prejudicial evidence is reversed rarely and only upon a clear showing of prejudicial abuse of discretion. See, e.g., United States v. Smith, 930 F.2d 1081, 1087 (5th Cir. 1991). The purpose of Shelton's testimony was to provide the jury with background information about the cable and satellite industry and to explain why the industry had undertaken to scramble premium channel transmissions. While such testimony may not have been relevant to the Scotts' guilt or innocence, it was not prejudicial to the degree that its admission was an abuse of discretion.

In the course of making this argument, the Scotts also object to the prosecutor's use of the phrases "theft of cable services" and "satellite piracy." Those terms do not inaccurately characterize the type of activity §§ 605(e)(4) was designed to prevent.

For these reasons, the judgments of conviction are AFFIRMED.