

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, THIRD DIVISION

City of Chicago v. Ross, 54 Ill. App. 3d 127

369 N.E.2d 298 (1977) · No. Nos. 62769, 62781-62787 · Decided October 26, 1977

SUMMARY

The Appellate Court of Illinois affirmed the conviction of Bertram Ross for operating a motion picture projector without a license, holding that the meter reading was sufficient because the equipment was designed for 35 amperes and was not exempt as non-professional. The court reversed the convictions of the other defendants because no evidence was presented against them absent a valid stipulation. The court declined to consider the city's authority to license projectionists because that issue was not raised at trial.

CASE DETAILS

COURT	Appellate Court of Illinois, First District, Third Division
WRITING FOR THE COURT	Jiganti; McNamara; McGillicuddy
JURISDICTION	Illinois
DECIDED	October 26, 1977
DOCKET	Nos. 62769, 62781-62787
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from convictions after a bench trial for operating motion picture projectors without licenses.
PRECEDENTIAL VALUE	Published
PARTIES	Bertram Ross, Michael Brown, Michael L. Desider, Augustine Vasquez, William Anderson, Mark Ducar v. City of Chicago

TOPICS

- municipal law
- criminal procedure
- statutory interpretation
- evidence
- ordinances

PRACTICE AREAS

- Criminal Law
- Municipal Law
- Evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to sustain Ross's conviction despite the lack of meter accuracy testing.
2. Whether the ordinance exempts the type of projector used by Ross.
3. Whether the City had authority to license motion picture projectionists (raised for the first time on appeal).
4. Whether the trial court properly applied evidence against the other defendants via stipulation.

HOLDINGS

1. There was no stipulation to apply the evidence against Ross to the other defendants; therefore, there was no evidence against them, and their convictions must be reversed.
2. The accuracy of the meter is irrelevant; the essential factor is the amount of electricity with which the projector is designed to operate. The projector was 35 ampere equipment, so the violation was established.
3. The 35 ampere equipment is not of the non-professional type ordinarily used in the home; therefore, it is not exempt.
4. The issue is waived because it was not raised in the trial court.

KEY QUOTATIONS

"It shall be unlawful for any person to operate a professional motion picture projecting machine or device for any public or private gathering without first having obtained a license as a motion picture projecting machine operator, provided that sections 155-8 to 155-27 inclusive shall not apply to the operation of any motion picture projecting machine or device of a miniature non-professional type when the film used is not more than 16 millimeters in width which film is regularly supplied only as slow burning (cellulose acetate or equivalent) film." (at *300)

"It shall be unlawful for any person to operate a professional or any type of projection equipment using 15 amperes or more current for any public or private gathering without first having obtained a license as a motion picture projecting machine operator, provided that sections 155-8 to 155-27 inclusive shall not apply to the operation of any motion picture projecting machine or device of a miniature non-professional or non-professional type." (at *300)

"It has frequently been held that the theory upon which a case is tried in the lower court cannot be changed on review, and that an issue not presented to or considered by the trial court cannot be raised for the first time on review." (at *302)

FACTUAL BACKGROUND

City inspectors went to the Newberry Theatre and found Bertram Ross operating a 16mm motion picture projector with a meter reading 35 amperes. Ross did not have a license. The other defendants were charged similarly, but no evidence was presented against them except through an alleged stipulation that evidence against Ross would apply to all. The court found no stipulation. The ordinance requires a license for operating

professional projection equipment or equipment using 15 or more amperes, with exemptions for miniature non-professional and non-professional types.

PROCEDURAL HISTORY

The defendants were charged with violating the Municipal Code of Chicago. After a trial without a jury, each was fined \$200 plus costs. They appealed, arguing insufficiency of evidence, exemption under the ordinance, and lack of authority to license.

DISPOSITION

other

REMAND INSTRUCTIONS

The convictions of defendants Brown, Desider, Vasquez, Anderson and Ducar are reversed and remanded.

CASES CITED

- People v. Abdallah, 82 Ill. App. 2d 312, 226 N.E.2d 408 (1967)
- Kravis v. Smith Marine, Inc., 60 Ill. 2d 141, 324 N.E.2d 417 (1975)
- People ex rel. Wilcox v. Equity Funding Life Insurance Co., 61 Ill. 2d 303, 335 N.E.2d 448 (1975)