

R. v. Jarvis, 2019 SCC 10 – voyeurism – expectation of privacy

Facts:

In June 2011, the principal of an Ontario high school found out that a teacher at the school, Ryan Jarvis, was secretly recording female students with a hidden camera in a pen. The next day, two separate times, the principal saw Jarvis standing near a female student while holding a pen, which emitted a red light at the top. The principal seized the pen and gave it to the police. It was discovered that the pen was able to record video and audio files, which could then be downloaded onto a computer and watched.

The pen contained 35 video files. Most of the videos focused on female students, ranging in age from 14 to 18 years old. Many were recorded from angles that emphasized the students' chests. Jarvis was charged with voyeurism under section 162(1)(c) of the *Criminal Code*. Because Jarvis admitted that he made the recordings secretly, the Crown only had to prove two things to convict him: 1) that the students had a reasonable expectation of privacy at school, and 2) that the recordings were made for a sexual purpose.

The trial judge found there was a reasonable expectation of privacy, but was not convinced beyond a reasonable doubt that the videos were made for a sexual purpose. He acquitted Jarvis, and the Crown appealed.

The Court of Appeal found that the trial judge was wrong, and that the only reasonable conclusion was that the recordings were made for a sexual purpose. However, they were not convinced that the students had a reasonable expectation of privacy when the videos were taken. At the time the videos were taken, the students were doing normal school activities, in view of other students and teachers, and where they knew they were being recorded by security cameras. The justices therefore upheld the acquittal. The Crown appealed to the Supreme Court.

The Decision:

The Court found that the students did have a reasonable expectation of privacy at school.

When deciding whether a person has a reasonable expectation of privacy, a court should consider the whole context. It may help the court to consider the following factors:

1. The location of the observation;
2. How the person was observed (e.g., by recording or in person);
3. The person's awareness or consent to the observation;
4. How the person was observed (e.g., if technology was used, what kind, and whether it stores the images);
5. The content of the observation (e.g., what the person was doing when they were observed, whether any intimate body parts were observed);

Discussion Questions:

1) How far do you think the expectation of privacy should go in a high school?

Relevant Law:

The Criminal Code of Canada, section 162(1).

Resources:

You can read the entire case at:

<https://www.canlii.org/en/ca/scc/doc/2019/2019scc10/2019scc10.html>

You can find the *Criminal Code* at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

6. Any rules or regulations that governed the observation;
7. The relationship between the observer and the person being observed;
8. The purpose for the observation; and
9. The personal characteristics of the person who was observed (e.g., age).

Not all of these will apply to every case. In other cases there may be additional things to consider.

Your expectation of privacy will always be highest in a truly private space (for example, a bathroom stall or a bedroom). This does not mean that you have no expectation of privacy at all when in a public space. There may be in situations where you expect certain types of observation, but not others. For example, in a change room you would expect to be seen partially or fully undressed by other people in the change room, but you would not expect to be recorded. The expectation of privacy is lower at a school than it is inside your home. But, it is still reasonable for a student to expect a certain level of privacy while at school.

Schools are not entirely public places, since usually only certain people (students, teachers, and staff) are allowed inside. Students should have expected to be recorded by the clearly visible security cameras. But, it does not follow that they should also have expected to be recorded in other ways, like cameras hidden in pens. The angle and proximity of the recordings meant Jarvis was able to observe the students' faces and chests from a much closer angle than he would have been able to either in person or by looking at security footage.

It was also relevant to the Court that the students recorded on video were young persons, with greater privacy rights than adults. Jarvis was in a position of trust regarding the students. He breached that trust by taking the videos. Also, there was a school board policy in place at the time that expressly prohibited teachers from making these types of recordings.

The Court had no problem deciding that the students had a reasonable expectation that they would not be secretly recorded while at school. Jarvis was convicted of voyeurism.

Relevant Law:

The Criminal Code of Canada:

Voyeurism

162 (1) Every one commits an offence who, surreptitiously, observes — including by mechanical or electronic means — or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy, if

- (a) the person is in a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts, or to be engaged in explicit sexual activity;
- (b) the person is nude, is exposing his or her genital organs or anal region or her breasts, or is engaged in explicit sexual activity, and

the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or
(c) the observation or recording is done for a sexual purpose.