**R. v. Jarvis**

**Summary and Outcome**

The Supreme Court of Canada convicted a teacher for voyeurism for secretly recording his students in common areas of a school. This offense is committed when a person secretly observes or makes a visual recording of another person with a sexual purpose. The Court concluded that the teacher acted contrary to the reasonable expectations of privacy when he recorded the students’ breasts, faces and upper bodies with a pen camera while they engaged in school activities. The Court argued that people can have a reasonable expectation of privacy in public spaces, such as school grounds, because this right depends on a variety of contextual factors besides from a person’s location. The Supreme Court also determined that privacy isn’t suppressed *per se* in places where people can be recorded or observed by others.

**Facts**

Mr. Ryan Jarvis was an English teacher at a high school in London, Ontario. In June 2011, the principal of the school was informed that Mr. Jarvis was using a pen camera to record female students while they were engaging in school-related activities in common areas of the school. Most of the videos focused on the breasts, upper bodies and faces of the students [para. 2].

Mr. Jarvis was charged with voyeurism under s. 162(1)(c) of the *Criminal Code*. This offense is committed when a person secretly observes or makes a visual recording of someone else “in circumstances that give rise to a reasonable expectation of privacy” and when the observation or recording is done for a sexual purpose. Three questions had to be answered at trial: (i) whether the accused made a secret recording; (ii) whether the students recorded had a reasonable expectation of privacy; and (iii) whether Mr. Jarvis made the recordings for a sexual purpose.

According to Mr. Jarvis, the circumstances relevant to conclude whether a reasonable expectation of privacy exists should be determined by analyzing the physical features of the space where a person is located [para. 26]. He argued that the students had been recorded at common areas of the school, therefore they knew they could be observed by others so they couldn’t have a reasonable expectation of privacy.

The trial judge argued that the students had a reasonable expectation of privacy while at school. However, Mr. Jarvis was acquitted because the judge wasn´t convinced beyond a reasonable doubt that he had made the recordings for a sexual purpose. The Court of Appeal for Ontario differed with the trial judge’s conclusions. The majority held that the trial judge failed to conclude that the recordings were made for a sexual purpose. However, they upheld Mr. Jarvis’ acquittal because the students had been recorded in common areas of the school, where they would expect to be recorded by the school’s security cameras, thus the students didn’t have a reasonable expectation of privacy.

Canada’s Supreme Court granted the Crown’s appeal.

**Decision Overview**

Chief Justice Wagner delivered a decision on behalf of six members of the bench. Justice Rowe delivered concurring reasons on behalf of three members of the bench.

The main issue before the Court was whether the recorded students had a reasonable expectation of privacy in common areas of the school. If the Court agreed to this point, all the elements of the offence would be satisfied, which would result in a conviction against Mr. Jarvis.

The Court began its analysis by defining the meaning of the expression “circumstances that give rise to a reasonable expectation of privacy”. The Court introduced a non-exhaustive list of contextual considerations that could be used by a court to determine whether a person is in circumstances that give rise to a reasonable expectation of privacy. The ruling states that “privacy” isn´t an all-or-nothing concept because it depends on a variety of factors, such as “a person’s location; the form of the alleged invasion of privacy, that is, whether it involves observation or recording; the nature of the observation or recording; the activity in which a person is engaged; and the part of the person’s body that is the focus of the recording” [para. 41]. According to the Court, a contextual analysis of privacy is consistent with Parliament´s choice to express the offense by reference to the “circumstances” that give rise to reasonable expectations. This lends further support to the view that the expectation of privacy isn’t restricted to traditionally private spaces and isn’t determined solely by a person’s location [para. 44].

The Court further states that location is still relevant when studying privacy issues. Traditional private settings such as a person’s home or bathroom maintain the highest expectations of privacy. However, “a person does not lose all expectations of privacy, as that concept is ordinarily understood, simply because she is in a place where she knows she can be observed by others or from which she cannot exclude others” [para. 41].

The majority of the Court decided to study broader legal contexts in order to interpret the statutory provision of the reasonable expectation of privacy. To do so, they drew support from s. 8 of the *Charter* that protects individuals from unreasonable search and seizure. One of the principles established by the *Charter’s* jurisprudence is that the concept of privacy does not only include territorial interests, but also personal and informational privacy interests [para. 64]. Courts should be attentive to the ways in which different privacy interests could be affected, even in those cases in which territorial privacy isn’t at risk. For example, the development of new recording technologies poses a threat for individuals who come to fear that they are being recorded by cameras in situations when it was previously impossible. This doesn’t mean that people have to give up their right to privacy simply because there is a higher risk for it to be violated.

The Court concluded that the students recorded by Mr. Jarvis reasonably expected not to be recorded by the teacher’s camera at school. Studying the entire context leads to such conclusion by taking into account “the location where the videos were recorded; the fact that the impugned conduct consisted of recording rather than mere observation; the manner in which the videos were recorded; the content of the videos, particularly their focus on intimate parts of the students’ bodies; the existence a school board policy prohibiting such recording” [para. 72], among other considerations. Therefore, the students clearly had a reasonable expectation of privacy.

Justices Rowe, Côté and Brown, disagreed with the majority in regards to the usage of s. 8 *Charter* jurisprudence to interpret the *Criminal Code.* These concurring reasons argue that the conceptual framework used to define *Charter* rights should be separate from that used to interpret the *Criminal Code* offenses. Instead of resorting to s. 8 jurisprudence, the reasonable expectation of privacy should be interpreted in regards to sexual integrity and autonomy [para. 93]. The main argument used to sustain this view is that the *Criminal Code* is a statute, whereas the *Charter* is a constitutional document. Using s. 8 jurisprudence to interpret a criminal offense would be to “apply a meaning intended to substantiate a breach of an individual’s fundamental rights by a state actor to the inverse context of subjecting a citizen to criminal sanction quite possibly depriving them of their liberty” [para. 95].

The Supreme Court concluded that there is no doubt that Mr. Jarvis acted contrary to the reasonable expectations of privacy when recording those videos. Therefore, the ruling concludes that it is established beyond reasonable doubt that Mr. Jarvis recorded students that had a reasonable expectation of privacy, as such, all the elements of the offense were satisfied. The Supreme Court allowed the appeal, entered a conviction and forwarded the matter for sentencing.

**Decision Direction**

The Supreme Court’s ruling in this case has a mixed outcome. Although it introduces contextual approaches to study violations of privacy instead of binary arguments grounded on the distinction of public and private spaces, the ruling enables the analysis of a criminal offense through non-exhaustive contextual factors, which could lead to extremely broad interpretations of reasonable expectations of privacy, validating the criminal judicialization of legitimate expressions.

**Global Perspective**

National standards, law or jurisprudence

* Criminal Code, s. 162(1)(3)
* Canadian Charter of Rights and Freedoms, s. 8