



Case in Brief: ***R. v. Downes***

Judgment of March 10, 2023 | On appeal from the Court of Appeal for British Columbia  
Neutral citation: 2023 SCC 6

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**The Supreme Court restores a hockey coach’s convictions of voyeurism.**

Randy William Downes of British Columbia was found guilty in 2019 of voyeurism. He had secretly taken 38 photos of two boys aged between 12 and 14 in their underwear in hockey dressing rooms in Coquitlam and Surrey. Mr. Downes was the boys’ hockey coach. He also ran a sports photography business from his home. Upon his return from a brief trip to the United States, officials with the Canada Border Services Agency searched Mr. Downes’ electronic devices and found thousands of photos of children engaged in sporting activities. Some of the children were in locker rooms. Although none of the photos involved nudity or child pornography, the CBSA alerted the RCMP because of a concern that Mr. Downes might have child pornography on his home computer. A month later, while searching Mr. Downes’ home and devices, the RCMP found the photos of the two boys taken on Mr. Downes’ iPhone without their knowledge. He was charged with two counts of voyeurism.

Under section 162(1)(a) of the *Criminal Code*, a person is guilty of voyeurism when they secretly observe or visually record a person who is in circumstances in which they could reasonably expect privacy. This may arise in a place where it can reasonably be expected that people may be nude.

The trial judge determined that Mr. Downes had secretly taken photos of the two boys in the hockey dressing rooms and convicted him of voyeurism. Mr. Downes appealed to British Columbia’s Court of Appeal.

A majority of the Court of Appeal allowed the appeal, set aside the convictions, and ordered a new trial. The majority said the trial judge should have considered whether nudity was reasonably expected “at the time” Mr. Downes took the photos. In their view, the offence of voyeurism applied to perpetrators who expect to observe or record nudity or sexual activity.

The Supreme Court has allowed the appeal and restored Mr. Downes’ convictions.

**The prosecution did not need to prove that nudity could reasonably be expected in the dressing rooms at the time the photos were taken.**

Writing for a unanimous Court, Justice Mahmud Jamal said that section 162(1)(a) of the *Criminal Code* has no implicit temporal component. This means that the Crown did not have to prove that a person could reasonably be expected to be nude in the dressing rooms at the specific time when the photos were taken. As Justice Jamal explained, it suffices if the person is in a place where a person may “reasonably be expected to be in such a state [of undress], such as a changing room, toilet, shower stall, or bedroom”. As a result, he determined the trial judge had appropriately convicted Mr. Downes of voyeurism.

Justice Jamal arrived at this conclusion by interpreting section 162(1)(a) according to the text of the provision and the purpose for which it was enacted. With respect to the provision itself, he stated that if Parliament had intended to include a temporal component to the offence, it could have done so expressly. Moreover, he determined the purpose of the offence was to protect the privacy and sexual integrity of individuals. This purpose was best achieved by interpreting section 162(1)(a) as a location-based offence.

The fact that Mr. Downes secretly took photos of the two boys in hockey dressing rooms, a place where individuals are often in a state of undress, was sufficient to find him guilty of voyeurism.

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**Breakdown of the decision: *Unanimous*:** Justice Mahmud [Jamal](#) allowed the appeal, set aside the judgment of the Court of Appeal, and restored Mr. Downes’ convictions (Justices [Karakatsanis](#), [Rowe](#), [Martin](#), [Kasirer](#) and [O’Bonsawin](#) agreed).

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