

PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES

R. v. M. (M.R.) - Supreme Court of Canada (1998)

FACTS

Mr. Cadue, a high school vice-principal in Nova Scotia, was told by several students that M.R.M., a 13-year-old student, was selling drugs on school property and would be carrying them at an upcoming school dance. (Due to his age, M.R.M.'s full name could not be made public.)

Mr. Cadue believed the information from the students was reliable because they knew M.R.M. well and one of them had given Mr. Cadue reliable information in the past.

When Mr. Cadue saw M.R.M. at the school dance, he called the RCMP to ask an officer to come to the school. He then called M.R.M. to his office, where he asked him if he had drugs and said he was going to search him.

Soon after, a plain-clothes RCMP officer arrived. He came into Mr. Cadue's office and identified himself but did not say anything while Mr. Cadue talked to M.R.M.

After asking M.R.M. to turn out his pockets and pull up his pant legs, Mr. Cadue noticed a bulge in M.R.M.'s sock and found a cellophane bag. He handed the bag to the officer, who identified the contents as marijuana.

The officer told M.R.M. he was under arrest for drug possession and read him his rights, including the right to consult a lawyer and contact a parent or adult. M.R.M. unsuccessfully tried to reach his mother, then said he didn't want to contact anyone else.

At his trial for drug possession, M.R.M. argued that the evidence (the bag of marijuana) couldn't be used against him because it had been obtained during an unreasonable search and seizure, contrary to Section 8 of the Canadian Charter.

M.R.M. also argued that his right to retain counsel (a lawyer) on arrest or detention under Section 10 (b) of the Canadian Charter had been violated.

QUESTIONS

1. Was the search by the vice-principal “unreasonable”?
2. Was M.R.M. detained when he was in the principal’s office but before he was arrested?
3. If he was detained, had his right to consult a lawyer upon “detention” been violated?

EXPLANATIONS

Searches – A search done by a person in authority in a school environment usually must be done in a sensitive, minimally intrusive manner. The more serious the suspected rule-breaking, the more intrusive the search can be.

Detention – A person is considered to be “detained” when a police officer or other agent of the state deprives that person of his or her liberty by significant physical or psychological restraint. For example, if a police officer speaks to someone in the street and a reasonable person would think he or she is not free to leave, that might be considered to be “detention” due to psychological restraint. It would be important to consider factors such as what the police officer said (e.g., did the officer give orders), the tone of the officer’s words, whether other people were around, the length of the encounter, etc. If there is no detention, the right to consult a lawyer under Section 10 (b) does not apply.



PREPARATION FOR PLEADINGS

Lawyers for M.R.M. (appellant)

The lawyers for M.R.M. must show that the search was unreasonable and that his right to a lawyer was violated.

The Search

To show that the search was unreasonable, M.R.M.'s lawyers must demonstrate the following:

- M.R.M. had a reasonable expectation of privacy.

This is important. For example, people going through a border crossing normally do not have much of an expectation of privacy because they know they might be searched. On the other hand, a person in a bathroom has a high expectation of privacy.

When thinking about the expectation of privacy, ask yourself whether it can be limited in some circumstances. For example, do students have a reasonable expectation of privacy at school?

- The search of M.R.M. was unreasonable.

The police must generally get authorization from a judge before carrying out a search. Ask yourself these questions:

- ⇒ Should school principals be required to get this kind of authorization before searching a student? If not, why not?
- ⇒ Should there be limits on searches of students by school principals? Should we require that principals have very good reasons to search?
- ⇒ How should the search be carried out in order to be considered "reasonable"? To answer this question, see the earlier section on searches.

Detention and the Right to a Lawyer

To show that M.R.M.'s right to a lawyer was violated, his lawyers must first show that he was "detained". See the earlier explanations about detention.

Don't forget to anticipate the arguments of the other side!



Lawyers for the Government (respondent)

The lawyers for the government must show the following:

The Search

- M.R.M could not have had an expectation of privacy at school. Ask yourself this question: why don't students have an expectation of privacy at school?
- The search was reasonable. Refer to the earlier explanation about searches.

Detention

- M.R.M. was not detained because he was not subject to any physical constraint. Since he was not detained, he did not have a right to consult a lawyer. Ask yourself this question: when a student obeys a school principal, is the student under physical constraint? If not, why not?

