

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

NELSON BRUNO NAPOLI

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REASONS FOR JUDGEMENT

BEFORE THE HONOURABLE JUSTICE A. DI ZIO  
on September 10, 2007, at 1000 Finch Avenue, TORONTO, Ontario

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APPEARANCES

C. BOYD

Counsel for the Crown

C. ROTH

Counsel for N. Napoli

\* \* \* \* \*

1.  
Reasons for Judgment  
- Di Zio, J.

R E A S O N S   F O R   J U D G M E N T

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DIZIO, J. (ORALLY):

Good morning. The Napoli matter. I've prepared some very, very brief reasons. I've reviewed all the evidence so don't look at the brevity of my reasons to suggest that I didn't review the evidence because, as I always do, I did in this case, but this is going to be very brief. And I'm just going to read my notes.

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The issue of identity was raised in this trial. Who was the person the witnesses were referring to. Unquestionably the person was Mr. Napoli. By the time of his arrest, Mr. Napoli had become a well known person in the neighbourhood and easily recognized. He was picked out of a police line-  
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without any problem.

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Although the police line-ups could have been done better, that is, by not numbering Mr. Napoli's photograph with the same number and by ensuring that the witnesses did not have a chance, or a possibility of meeting and perhaps talking about it, there was nevertheless no evidence that there had been, in fact, any improprieties by the witnesses. Mr. Napoli was properly identified.  
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2.  
Reasons for Judgment  
- Di Zio, J.

5 After hearing from the witnesses, it is not  
difficult to reach the conclusion that Mr. Napoli  
is an unusual person -- one who would make teenage,  
high school students in the area of Keele and  
Wilson, feel uncomfortable. He would just act in a  
weird way towards these girls. He would look at  
them, maybe ogle at them, walk close to them in  
10 restaurants when he didn't have to. He looked  
under tables at their legs in restaurants. He  
flashed his finger at one of them at one point. If  
he had been a teenager, the girls might not have  
had any concerns. But he is 40 or 41 or 47 years  
old, and the girls were teenagers.

15 Although I heard no direct evidence on this point,  
I can infer from his actions that there must  
clearly be something antisocial in his personality  
and perhaps some mental health issues.

20 Mr. Napoli's behaviour gave rise to complaints and  
police involvement which led to an announcement by  
the principals of the two neighbourhood high  
schools, to watch out for Mr. Napoli and to call  
25 the police if anybody saw him. I did not receive  
the texts of these announcements.

30 Other than what I'll soon say about his specific  
charges I'm dealing with, there is no evidence of  
other wrong doing by Mr. Napoli. I'm referring to  
threatening or assaults or violence, and no one who  
testified described him as dangerous.

3.  
Reasons for Judgment  
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Now let me very briefly deal with the four charges. Count number four is a criminal harassment count, dated May 9, 2007. This refers to a matter that happened before the police became involved in this matter. It includes an approach by Mr. Napoli to Ms. Minott asking if she wanted to buy some of his pills. This was in December of 2006. Then on May the 9<sup>th</sup>, 2007, in a public library, he told Ms. Minott, who was listening to music and dancing, to "keep on dancing" and then he kept looking at her. She told him to move on, or move away, and stop staring at her, and he asked her if she wanted to fight and to go outside and fight. When she went outside, he followed her and put up his fists in a punching motion. According to her, he was in her face and she moved back. Her male friends came and chased Mr. Napoli across the street. Mr. Napoli was heard telling a truck driver to call 911 and the police arrived shortly afterwards. Ms. Minott and friends returned to school and Mr. Napoli apparently left the area.

Ms. Minott did not complain to the library staff and did not report the incident to the principal and did not call the police. Mr. Napoli had the police called when he was being chased by Ms. Minott's friends.

4.  
Reasons for Judgment  
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I have difficulty understanding how his conduct would fit into the requirements of Section 264(1) or 264(2).

Counts one, two and three relate to incidents after the police had become involved and the principal at the two schools has made announcements. Count number three takes place at a bus stop where Mr. Napoli's kicking something around. The bus shelter is full of people including Ms. Turner, who testified here. He apparently made eye contact with her and said "Wait 'til I catch you." There's no evidence that anyone was alarmed by this comment except Ms. Turner. She did not call the police but recognized that he was the man described in the principal's announcement. When she and Mr. Napoli boarded the bus, she told the bus driver about Mr. Napoli but the bus driver did nothing about it. She then walked off the bus and called the police.

Again, how does this incident at the bus stop fit into the requirements of Section 264(1)? For example, where is the evidence to show "knowing that another person is harassed"? That's a requirement. How is this comment and making eye contact, threatening conduct within Section 264(2)(d)?

Counts two and one happened at Pizza Pizza. Ms. Williams and friends were having lunch and Mr.

5.  
Reasons for Judgment  
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Napoli is acting strange in the restaurant. Walking back and forth and looking at them and under the table at them. Other than that, nothing happened until one of Ms. Williams' friends says that "he's the rapist", identifying him as the person mentioned in the principal's announcement. This accusation appears to have gotten Mr. Napoli excited. He started making motions at his table and touching a book which looked like a bible. The motions could have been possibly a prayer ritual. Then Ms. Williams and her girlfriends went outside and Ms. Williams tried to recruit the help of a man to escort her and her friends back to school, but the man refused to do that. Ms. Williams was pointing her fingers at Mr. Napoli indicating to the man that Mr. Napoli was the rapist.

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Now Mr. Napoli was inside the restaurant when this was going on. Mr. Napoli apparently made hand motions with his fingers pointing towards his temple and which Ms. Williams interpreted as a gun motion. She interpreted it as a threat to kill her. In court Ms. Williams made a clear gun motion with her hand and her fingers including a cocking action with her thumb. On the video she gave to the police shortly after the incident, the motion is not as clear, but Ms. Williams interpreted it as a gun motion, nevertheless.

Ms. Williams reported this to her principal minutes after it happened and the police were then called.

6.  
Reasons for Judgment  
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I did not hear from Ms. Williams' other friends who were with her at Pizza Pizza, so I don't know their views on what happened.

Looking at the context in which all this happened, Mr. Napoli's actions may have indeed been a reaction to Ms. Williams' baseless accusations that he was a rapist. His actions were also the reaction of a person who perhaps has some personality problems as already alluded to. I have a reasonable doubt that he was threatening anyone, and again I don't see how his conduct inside Pizza Pizza satisfied Sections 264(1) and (2). His unusual behaviour certainly made the teenage girls feel uneasy, but this is not a torment that Section 264 is meant to address. And I'm therefore dismissing all the charges.

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7.  
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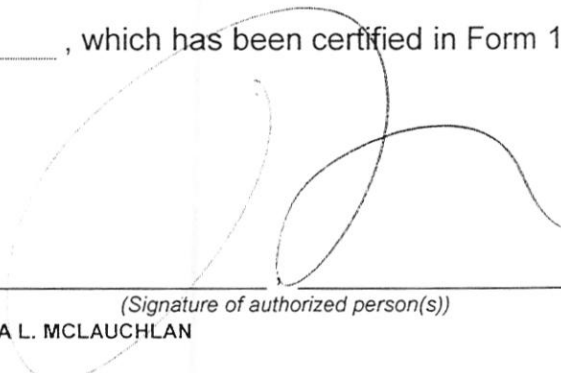
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DONELLA L. MCLAUCHLAN