

R. v. Pringle J.
R. v. Napoli: Oral reasons for Judgement

Mr. Napoli is charged with committing a sexual assault on Shineta Irving on March 19, 2007. Shineta was 9 at the time. At the time of the incident, she was with her 12 year old sister Tesheka at the Dollar Store at the Keele and Sheppard plaza.

Tesheka and Shineta had both seen Mr. Napoli before. Tesheka said she thought that he had followed her because he would come into a store where she was, and then she would see him again in a different store. One time when she was with her aunt in a store, he asked her questions about where she got her jacket and she told him he didn't need to know. Her aunt then spoke to him and asked him why he kept on asking the child about her jacket. Their mother had told Tesheka and Shineta not to talk to Mr. Napoli, who apparently was often at the plaza.

From the evidence placed before me, it appears that the encounter in the Dollar Store began with Mr. Napoli asking the girls if they remembered him, or if they wanted a drink. He also offered Tesheka 25 cents, and she said something to him along the lines of, "I don't take money or drinks from child molesters". Tesheka said Mr. Napoli was swearing at her and her sister, and she admitted that she swore back at him. She agreed that she was rude back to him and called him a bitch, and asked him if he was on drugs, and he showed her a bottle of pills. The store owner, Ms. Ahmed testified that she told the girls to leave the guy alone and go home. She said that Tesheka then asked to use the phone and called her brother. Mr. Napoli went outside, and the girls followed. Ms. Ahmed's view was blocked by a cooler, and she didn't see any altercation by the door, nor hear anything unusual.

The girls gave somewhat confusing accounts of what occurred at the door. Tesheka said that Mr. Napoli was pushing Shineta with his hand, and was trying to push her out the door. Later Tesheka explained that she was also pulling Shineta's hand at the same time, but Shineta wanted to go back in the store. Then Mr. Napoli started to touch Shineta's leg, so Tesheka said she kicked him.

Shineta said that Mr. Napoli was trying to push *both* of them when they were opening the door, and when Mr. Napoli pushed her, he touched her leg. Although both girls described the touch to Shineta's leg as a deliberate touch to her outer thigh, Tesheka said it was a rubbing motion, and Shineta said it was a single touch. On either account it appears to have been but a second or two.

There were further inconsistencies in the girls' evidence, including who called their brother, when they called him, and how the call was placed.

I do not fault the young witnesses for the discrepancies in their accounts. I accept that they were both genuinely concerned and upset by the incident. However, the inconsistencies lead to a concern about the reliability of what actually happened. Looking at all the evidence, and considering that there had been some form of an argument just moments before, the girls' own evidence leaves me uncertain if the pushing

was simply an effort on Mr. Napoli's part to get past them and leave the store. Although Ms. Ahmed said Mr. Napoli left first, she didn't see what happened at the door. Similarly, it is unclear when Mr. Napoli's father arrived in relation to the incident at the door, and I find his evidence sheds little light on what took place. As a result, there is real uncertainty about what exactly took place as they all left the store.

Moreover, taking into account the girls' alarm right from the outset that Mr. Napoli might be a child molester, I'm not convinced that the touching of Shineta's leg was deliberate. I believe it's possible that the girls' fears led them to interpret the encounter in the worst way and to misconstrue any physical contact as deliberate and malevolent.

In my view, the Crown has not proven that there was a deliberate touching to Shineta's leg, much less a sexual one, beyond a reasonable doubt. Further, while pushing someone to get out the door may be rude and in some circumstances may amount to an assault, I do not find that is proven to be the case here. The Crown's proof falls short of demonstrating that Mr. Napoli committed a criminal act.

At the same time, there is no doubt that there was an unpleasant encounter, as Ms. Ahmed also indicated that there was an argument between Mr. Napoli and the girls. I accept the girls' evidence that Mr. Napoli started the conversation, and although the girls may have contributed to the argument by being rude, I believe that they were genuinely concerned by Mr. Napoli's attention to them. Tesheka said that she was afraid, and she also noted that Shineta began to cry a little during the encounter at the door. The girls felt they needed to call their brother for help.

Especially in the context of young girls, unwanted attention and contact from male strangers is a legitimate concern. Here, where Mr. Napoli had already spoken to Tesheka in a situation where she and her aunt made it clear she didn't want to talk to him, his further contact and offer to buy the young girls a drink or give them money was completely inappropriate and wrong. In my view, there were reasonable grounds for Tesheka and Shineta's fear that Mr. Napoli would harm them in all the circumstances. Accordingly, I find this is an appropriate case for a common law peace bond with a no contact condition, despite the finding of not guilty on the criminal charge.

September 10, 2007