

CITATION: R. v. Smaggus, 2011 ONCA 629

DATE: 20111006

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COURT OF APPEAL FOR ONTARIO

Goudge, Armstrong and Rouleau JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Candace A. Smaggus

Appellant

Howard L. Krongold, for the appellant

Niall Gilks, for the respondent

Heard: October 3, 2011

On appeal from the conviction entered on April 29, 2010 by Justice Richard Lajoie of the Ontario Court of Justice.

APPEAL BOOK ENDORSEMENT

[1] In our view the trial judge erred in failing to distinguish the relative probative value of the three occasions on which the officer identified the appellant. The third was clearly of far less probative value. Also, despite the Crown's admission, the trial judge

erred in failing to treat as evidence before him Constable Fortin's description of perpetrator being 5'7" which is relevant to the issue of identification. Finally it would have been preferable had the trial judge cautioned himself about the generic weaknesses of eye witness identification evidence in general. Although we cannot say the verdict is unreasonable, these errors require a new trial.

[2] Appeal allowed and a new trial ordered.