Case Name:
R. v. Harry

Between
Damien Ravenal Harry aka Roger Norris Harry,
Appellant, and
Her Majesty the Queen, Respondent

[2009] O.J. No. 845

2009 ONCA 197

Docket: C46617

Ontario Court of Appeal
Toronto, Ontario

M.J. Moldaver, J.L. MacFarland and
G.J. Epstein JJ.A.

Heard: March 2, 2009.
Judgment: March 2, 2009.
Released: March 3, 2009.

(1 para.)

Appeal From:

On appeal from conviction entered by Justice Hugh K. Atwood of the Ontario Court of Justice dated January 9, 2007.

Counsel:

Raj Napal for the appellant.

Catrina D. Braid for the respondent.

APPEAL BOOK ENDORSEMENT

The following judgment was delivered by

1 THE COURT:-- Through no fault on the part of the learned trial judge, the appellant was deprived of his right to make full answer and defence to the charge of unlawfully entering Canada after being the subject of a removal order. Unfortunately, the trial judge was of the view that the Crown could rely on issue estoppel to prevent the appellant from showing (or attempting to show), that he was a Canadian citizen and therefore not subject to a deportation order. The recent decision of the Supreme Court of Canada in *R. v. Mahalingam* [2008] S.C.J. No. 64 (S.C.C.), decided after this case, makes it clear that the Crown cannot rely on issue estoppel. Accordingly, the appeal is allowed, the conviction is quashed and a new trial is ordered.