

CRIMINAL LAW MOCK TRIAL: R. v. WAI



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For each OJEN criminal mock trial, there are three packages:

- » OJEN Criminal Law Mock Trial **Scenario**
- » OJEN Criminal Law Mock Trial **Role Preparation Package**
- » OJEN Criminal Law Mock Trial **Justice Sector Volunteer Package**

Youth need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

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R. v. WAI

Youth charged with possession, trafficking and proceeds of crime

CHARGES:

- » Trafficking marijuana
- » Trafficking ecstasy
- » Possession for the purpose of trafficking marijuana
- » Possession for the purpose of trafficking ecstasy
- » Possession of proceeds of crime

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LIST OF PARTICIPANTS

1. **Jesse Wai** (the accused)
2. **Casey Ibrahim** (Jesse’s friend and defence witness)
3. **Officer Cheyenne Gomez** (arresting officer and crown witness)
4. **Riwi Mahuta** (crown witness)
5. **Defence lawyers** (4)
6. **Crown Lawyers** (4)
7. **Judge**
8. **Court Services Officer** (keeps order in the court) (*optional*)
9. **Court Clerk** (assists the judge) (*optional*)
10. **Jury Members** (10) (*optional*)
11. **The Press** (2, report on the trial) (*optional*)
12. **Court Artists** (2, sketch what happens at trial) (*optional*)

WHY ARE CRIMINAL CASES ALWAYS CALLED R. v. SOMEONE?

In Canada, criminal charges are made in the name of the Queen, because she is the official head of our country. The Queen is also known as Regina (the Latin word for Queen), which when shortened to R. explains why criminal charges are called *R. v. [Accused’s person’s name]*.

Criminal proceedings involving accuseds (or witnesses) under 18 years of age are usually referred to by the initials of the young person rather than their full name (e.g., *R. v. S.M.*).



July 20, 2***

POLICE BUST YOUTH DRUG RING IN PARK STING

NEWSPAPER REPORT

BY RENE BROOKLAND
ANYWHERE DAILY NEWS

ANYWHERE - Police have arrested a number of young people they say are members of a drug ring operating in the north east of the city.

Police Sgt. John Ponerello reported that the arrests took place at Melrose Park on Friday night. Seized at the scene were quantities of ecstasy and marijuana, and an amount of cash.

Police began surveillance in Melrose Park

recently, as a response to the local community's concerns over increasing drug sales in public spaces in their neighbourhood.

Police say that a plain clothes officer witnessed three of the arrested youth, two aged 16 and one aged 17, arriving at the park at approximately 10:00 P.M., accompanied by the 8 year old brother of one of the youth.

At around 10:15 the group was approached by two 17 years olds

and the drug purchase took place. All five youth were arrested. Police had to care for the 8 year old until his grandmother could be located.

The two 17 year old alleged buyers have been charged with drug possession, while the other three youth are facing charges of drug possession for the purpose of trafficking.

Under the provisions of the Youth Criminal Justice Act none of the youth can be named.



THE INFORMATION

YOUTH JUSTICE COURT, CANADA
 PROVINCE OF ONTARIO

REGION: ANYWHERE

IN THE NAME OF HER MAJESTY THE QUEEN

THIS IS THE INFORMATION OF: Officer Cheyenne Gomez of ANYWHERE,
 Police Constable, hereinafter called the informant

The informant says that he/she believes on reasonable grounds that:

THE CHARGE

JESSE WAI, a young person within the meaning of the *Youth Criminal Justice Act* on or about the 17th day of July in the year of 20** in the City of ANYWHERE, did traffic in a substance included in Schedule II to wit: cannabis marijuana contrary to section 5(1) of the *Controlled Drugs & Substances Act*.

JESSE WAI, a young person within the meaning of the *Youth Criminal Justice Act* on or about the 17th day of July in the year of 20** in the City of ANYWHERE, did traffic in a substance included in Schedule III to wit: ecstasy contrary to section 5(1) of the *Controlled Drugs & Substances Act*.

JESSE WAI, a young person within the meaning of the *Youth Criminal Justice Act* on or about the 17th day of July in the year of 20** in the City of ANYWHERE, did possess a substance included in Schedule II to wit: cannabis marijuana for the purpose of trafficking contrary to section 5(2) of the *Controlled Drugs & Substances Act*.

JESSE WAI, a young person within the meaning of the *Youth Criminal Justice Act* on or about the 17th day of July in the year of 20** in the City of ANYWHERE, did possess a substance included in Schedule III to wit: ecstasy contrary to section 5(2) of the *Controlled Drugs & Substances Act*.

JESSE WAI, a young person within the meaning of the *Youth Criminal Justice Act* did unlawfully, on or about the 17th day of July in the year of 20** in the City of ANYWHERE, possess property or proceeds of property, to wit: sixty dollars (\$60.00) in Canadian currency knowing that all or part of the property or proceeds was obtained or derived, directly or indirectly, as a result of the commission in Canada of an offence punishable by indictment, contrary to s. 354(1)(a) of the *Criminal Code*, thereby committing an offence contrary to s. 355(a) of the *Criminal Code*.

DATED this _____ day of _____, at _____

Signed _____

JUSTICE OF THE PEACE



THE LAW

THE CONTROLLED DRUGS & SUBSTANCES ACT (1996)

POSSESSION OF SUBSTANCE

4. (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III. (See below for the schedules.)

PUNISHMENT

(4) Subject to subsection (5), every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule II

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years less a day; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

(5) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule II in an amount that does not exceed the amount set out for that substance in Schedule VIII is guilty of an offence punishable on summary conviction and liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(6) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule III

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

RELEVANT LAW

TRAFFICKING IN SUBSTANCE

5. (1) No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.

POSSESSION FOR PURPOSE OF TRAFFICKING

(2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III or IV.

PUNISHMENT

(3) Every person who contravenes subsection (1) or (2)

(a) subject to subsection (4), where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

(b) where the subject-matter of the offence is a substance included in Schedule III,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

(c) where the subject-matter of the offence is a substance included in Schedule IV,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.



INTERPRETATION

2. (1) In this Act, “traffic” means, in respect of a substance included in any of Schedules I to IV,

(a) to sell, administer, give, transfer, transport, send or deliver the substance, to sell an authorization to obtain the substance, or

(b) to offer to do anything mentioned in paragraph (a) or (b), otherwise than under the authority of the regulations.

SCHEDULE II

1. Cannabis, its preparations, derivatives and similar synthetic preparations, including (2) Cannabis (marihuana)

SCHEDULE III

1. Amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues including:

(9) N-methyl-3, 4-methylenedioxyamphetamine (N, a-dimethyl-1, 3-benzodioxole-5-ethanamine)

SCHEDULE VIII (SECTIONS 4 & 60)

SUBSTANCE	AMOUNT
1. Cannabis resin	1 g
2. Cannabis (marihuana)	30 g

RELEVANT LAW

CRIMINAL CODE OF CANADA

PART IX: OFFENCES AGAINST RIGHTS OF PROPERTY

Possession of property obtained by crime

Having in Possession

354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment.



AGREED STATEMENT OF FACTS

For the purposes of this mock trial, the following are agreed facts or assumptions:

- That all statements given by witnesses are admissible.
- That there are no *Charter* arguments to raise.
- That the map (Fig 1.) accurately depicts Melrose Park and the positions of the parties on July 17, 2***.
- That the photo of the ecstasy pills (Fig 2.) is an accurate photo of the ecstasy pills found in the backpack.
- That the photo of the marijuana (Fig 3.) is an accurate photo of the marijuana found in the backpack.
- That the ecstasy and marijuana in question are in fact ecstasy and marijuana.
- That there is no relevant fingerprint evidence.

AGREED FACTS



JESSE WAI, ACCUSED

Your background:

- You are 16 years old, and about to start grade 11
- You have no previous criminal record.

Your version of what happened:

- You live with your grandmother and younger brother Jamir.
- On the evening of Friday, July 17, 20**, you were at home with Jamir. Your grandmother was at work, expected home at 11:00.
- At about 9:40 your friend Red called. S/he was going to Melrose Park, by your building, to hang out with Casey, another friend. You agreed to go, taking Jamir because you couldn't leave him alone.
- The four of you met up at the park at about 10:00. Jamir had a soccer ball with him and started kicking it around near a table by the basketball court, where the rest of you sat down. You were sitting next to Red and Casey was on the other side.
- Casey spent some time showing you both a new iPod. Then Red pulled a baggie of weed from his/her bag and rolled a joint and started smoking it, passing it to Casey, who took a drag, and also to you. You took a drag, though you don't really like to smoke.
- A bit later, you asked Red for some gum. S/he tossed you the bag, saying "it's in there, help yourself". You looked into the bag, noticing a plastic bag with some orange pills with a Flintstone picture on them. You didn't know what they were. You got the gum, gave some to the others too, and handed the bag back.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.



JESSE WAI, ACCUSED

- At around 10:30 two young guys approached the table. For some reason, when they got close Red handed the bag to you, which you put on your lap. You didn't know these two, but they seemed to know Red and Casey, and started chatting to them. You didn't really join in because you didn't know them.
- After they chatted for a while, the conversation changed. One of the guys asked Red "do you have anything?" Red said yes. They started negotiating and then agreed on prices and amounts, and it dawned on you that you were watching a drug deal unfold. You instinctively handed Red's bag back.
- From the backpack Red took out a small bag of pot and the bag of orange pills, counted out 3 pills, putting the rest back in the bag, and handing everything else over to the guys, first making them pass over some cash and putting that into the bag too. Red then handed the bag back to you.
- The guys left, and as soon as they were out of earshot, you told Red you couldn't believe s/he had involved you in something you wanted no part in. You pointed out that Jamir had seen what happened too, so you felt like he was involved too. You passed the bag back. Red told you to relax.
- Just then, what turned out to be a police officer, through he was dressed like a homeless guy, approached, showed you his police badge, and said you were all under arrest for dealing drugs.
- You didn't say anything to the police when you were arrested. However, Jamir looked at the officer and said, "but Jesse didn't do nothing wrong".
- You were all taken to the police station, including Jamir, and the two guys who had bought the drugs. The police said you were being charged with five things, including trafficking ecstasy.
- You called your grandmother, and eventually she arrived, and you and Jamir were both released into her custody.
- You understand that Red has pleaded guilty to the charges, but has moved to another city and you have lost touch. The police dropped the charges against Casey.

WITNESS
INFORMATION



JESSE WAI, ACCUSED

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What kind of student are you?

How close are you to Red and Casey?

Have you ever gotten into trouble before?

How do you feel about being charged?

Do you do ever do drugs?

Did you know Red was a drug dealer?

How do you feel about what happened at the park?

What was your grandmother's reaction?

How did you act when you were arrested? Did you cooperate with the police?

Are you scared about what might happen if you are convicted?

WITNESS
INFORMATION



CASEY IBRAHIM, JESSE'S FRIEND & DEFENCE WITNESS

Your background:

- You are 16 years old, and in grade 11
- Last year you were charged with theft under \$5,000, for stealing a bike, but the charges against you were dropped after you did a diversion program.

Your version of what happened:

- On Friday July 17 20**, at about 10:00 you met up with your friends Red and Jesse at Melrose Park, not far from where you live. Jesse turned up with his/her younger brother Jamir as well.
- Jamir started playing soccer, but the rest of you sat at a picnic table chatting and looking at your new iPod.
- After a while Red pulled some pot out of his/her bag and rolled a joint. You and Red smoked the joint, which wasn't very strong. Jesse had one drag.
- At around 10:30 two guys you had met before with Red's older brother came up. You didn't remember their names. Jesse didn't know them at all. They started chatting with you and Red.
- After 10 or so minutes one of the guys asked Red if he/she had anything. You figured they meant drugs because Red had told you that sometimes s/he sold pot. Red said yes and they started working out a price. You then realized that Red was also offering to sell them some ecstasy, which you had never seen before, and it surprised you that Red was selling it.

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WITNESS
INFORMATION



CASEY IBRAHIM, JESSE'S FRIEND & DEFENCE WITNESS

- They agreed on a price and Jesse, who for some reason was holding Red's bag again, handed it over to Red. Red got money from the guys then handed them a bag of pot and three orange pills. The guys left.
- As soon as they were gone, Jesse got really angry at Red, saying that s/he didn't ever want to be involved, especially with Jamir there. and that Red had dragged everyone, included Jamir, into a drug deal. Red just told Jesse to relax.
- Just then what turned out to be a plainclothes police officer approached and arrested everyone except Jamir for dealing. The guys that bought the drugs were arrested too. You were taken to the police station and charged with offences including trafficking ecstasy.
- You were surprised that Jesse was charged because s/he doesn't use drugs, and you don't think s/he had anything to do with this deal.
- You understand that Red pled guilty to all of the charges, but Jesse pled not guilty. The police dropped the charges against you after your lawyer received the disclosure material.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What kind of student are you?

Have you ever gotten into trouble before?

How do you feel about giving evidence at the trial?

How do you feel about what happened at the park?

Did you cooperate with the police?

Why are you giving evidence for Jesse?

How well can you remember everything?

WITNESS
INFORMATION



OFFICER CHEYENNE GOMEZ, ARRESTING OFFICER & CROWN WITNESS

Your background:

- You are 43 years-old
- You have been working as a police officer for 17 years.

Your version of what happened:

- On Friday, July 17 20**, you started your shift at noon.
- You were assigned to do plainclothes surveillance at Melrose Park, in the north east of the city. You were informed that the park and other public spaces in the area were under surveillance as there had been numerous reports of drug dealers using the area.
- Melrose Park is approximately the size of two sports fields, with a number of trees, picnic tables, a basketball court, and a climber for young children. It has a path running through it that is well lit. There are also streetlights along the east side of the park (Rimu Road).
- You arrived at the park at approximately 8:00. It was almost empty. You settled into a spot under a tree, beside the basketball court, where you had good view over the whole park. You were wearing rough clothes, dressed to look like a homeless person sleeping in the park.
- A number of people came and went from the park during the next two hours. None paid any attention to you.

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OFFICER CHEYENNE GOMEZ, ARRESTING OFFICER & CROWN WITNESS

- At approximately 10:00 PM, three teenagers and an approximately 8-year-old child arrived at the park. The 8-year-old started to play soccer with a ball he had brought with him, the others sat down at a picnic table on the other side of the basketball court, approximately 30 metres away from you. You had a good view of all three youth at the table.
- The three teenagers there sat at the table, chatting and looking at an object. After 10 or so minutes, one of the youth opened a blue backpack, pulled out a bag of marijuana and proceeded to roll a marijuana cigarette. The three youth then smoked the cigarette. The bag of marijuana was returned to the blue backpack.
- At approximately 10:30 PM two other youth approached the table and were greeted by the first three. As these two youth approached, the youth at the table with the backpack, now know as RED WILLIS, passed the backpack to the youth now known as JESSE WAI. All five youth sat down and began talking.
- After approximately 15 minutes the accused, JESSE WAI passed RED WILLIS the bag and RED WILLIS took from it a ziploc bag of marijuana and a small bag of pills. The two newcomers passed over an amount of cash, and RED WILLIS passed them a number of pills, and the ziploc bag. The bag was then returned to JESSE WAI and the newcomers left.
- You then radioed to your partner, who was stationed in an unmarked police car on the far side of Rimu Road, who arrested both of the buyers.
- You then approached the picnic table and arrested the three youth for trafficking.
- All five youth were searched. In the blue backpack you found seven one-gram bags of marijuana, a small plastic bag containing 22 orange pills bearing the image of Fred Flintstone that were analyzed and established to be ecstasy, and a plastic bag containing \$60 in cash.
- The two buyers were found in possession of three pills that were identical in appearance to the 22 orange pills that were seized from the backpack, and one one-gram bag of marijuana.

WITNESS
INFORMATION



OFFICER CHEYENNE GOMEZ, ARRESTING OFFICER & CROWN WITNESS

- All five youth were transported to the police station, where they were formally charged. The 8-year-old was also taken to the station until his caregiver could be found.
- JESSE WAI was charged with trafficking marijuana, trafficking ecstasy, possession of proceeds of crime, possession for the purpose of trafficking marijuana, and possession for the purpose of trafficking ecstasy. WAI has had no previous police involvement. WAI declined to give a statement and asked to use the telephone.
- At approximately midnight the grandmother of JESSE and JAMIR WAI arrived at the station and both were released into her custody.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What reason did you have for arresting Jesse?

Was Jesse cooperative?

Is drug dealing a problem in this neighbourhood?

WITNESS
INFORMATION



RIWI MAHUTA, CROWN WITNESS

Your background:

- You are 17 years old
- You attend school, and are in grade 12
- You have no previous convictions, but as a result of this incident you acknowledged your guilt to possession of both marijuana and ecstasy and the charges were dropped after you completed an 8-week diversion and drug awareness program.

Your version of what happened:

- On Friday July 17 20**, you and your friend John Farry were getting ready to go out to a party at a friend's house. You decided to buy some pot and maybe some ecstasy before you went. You smoked pot regularly, and had recently tried ecstasy and wanted to try it again.
- At about 9:30 you called you friend Reggie Willis, and asked if he had anything. He said his younger brother/sister Red might, and s/he was heading down to Melrose Park with some friends.
- You and John got ready for the party and then headed down to Melrose Park. The park seemed empty except for Red and her friends who were sitting at a table close to the basketball court. There was also a younger kid with them, playing with a soccer ball.
- You approached the table. There was Red, Casey someone who you had met once or twice before, and someone else who you didn't know. You and John sat down and started talking to Casey and Red.

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RIWI MAHUTA, CROWN WITNESS

- After a while you asked Red if she had anything. Red knew you meant drugs because the answer was “yes, pot and pills”. You talked about the price, and then agreed to buy three pills of ecstasy and a dime bag of pot.
- You handed Red the money and without Red saying anything the person you didn’t know handed Red a blue backpack that they had been holding.
- Red gave you your drugs and you and John got up and left.
- When you reached the edge of the park and walked left onto Rimu Road, you were arrested by a police officer, and taken to the police station. You and John were charged with possessing pot and ecstasy.
- Your charges were dropped after you completed an 8 weeks diversion and drug awareness program.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What kind of student are you?

How do you feel about giving evidence at the trial?

How well can you remember everything?

-
-
-
-
-
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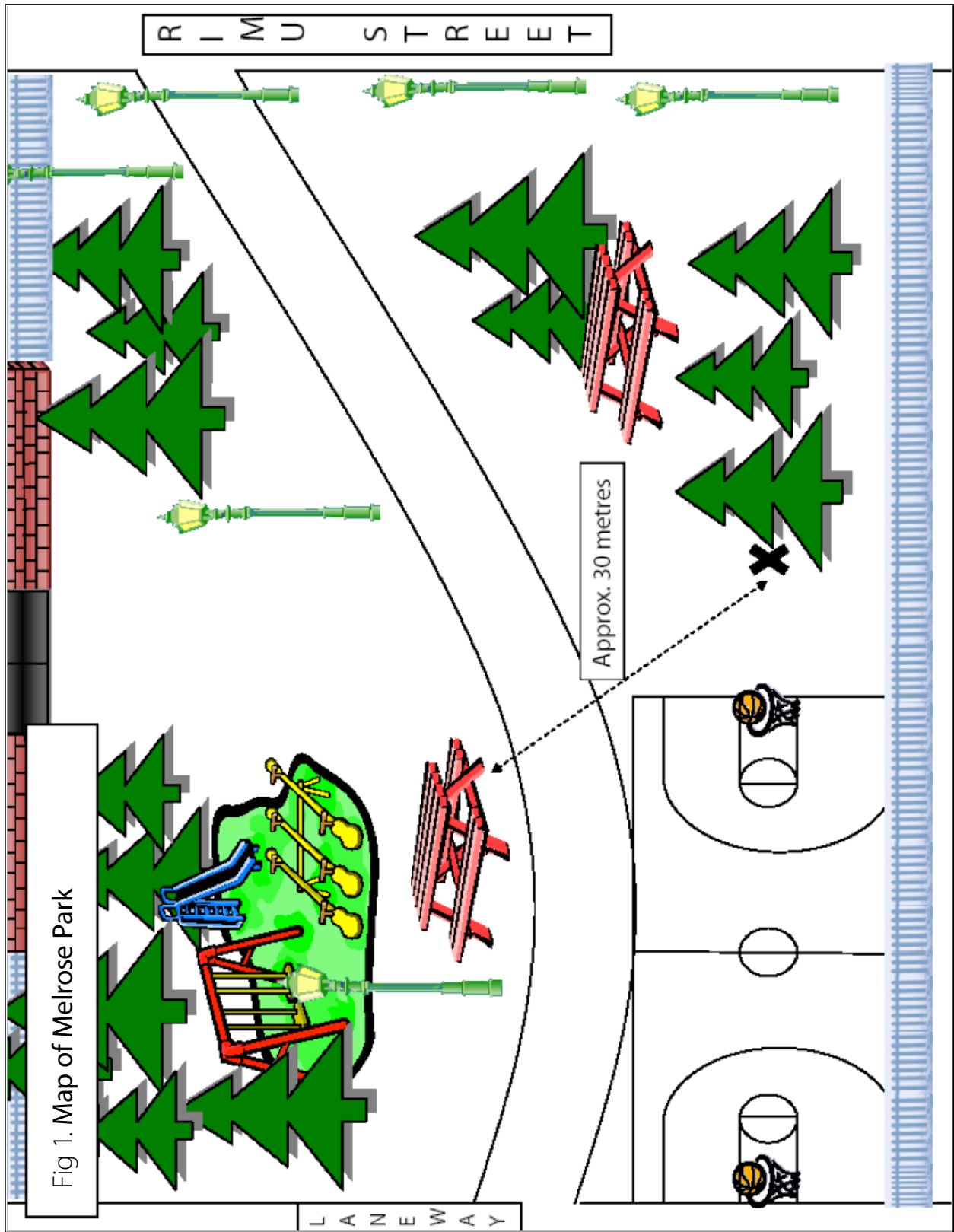


Fig 1. Map of Melrose Park

EXHIBITS

Fig 2. Photograph of Ecstasy Found in the Backpack



Fig 3. Photograph of Marijuana Found in the Backpack

