**MOCK TRIAL #1**

Her Majesty the Queen v. Don Von Chovi and the accused is

charged with the indictable offence of **second degree murder**.

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**Crown Witness #1**

**Constable Rose** will testify that he/she knew the Deceased. In fact, two weeks earlier, he/she had to break up a fight between the Deceased and a dissatisfied customer. No charges were laid. Following the incident, Constable Rose interviewed dozens of potential witnesses. Unfortunately, given the speed with which the incident occurred and the hectic scene only **Nicky Jagger** had any information. **Fran Goodheart** was questioned by Constable Rose but indicated that she did not see exactly what happened. Constable Rose will also testify that Fran was extremely upset at the time.

Constable Rose arrested Nicky that evening for possession of two

Marijuana cigarettes. Those charges were dropped on the understanding that Nicky would be available to testify at Von Chovi's trial. Constable Rose has drawn a diagram (Exhibit 1) for the court which shows the layout of where the parties were located at the concert.

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**NICKY JAGGER CROWN WITNESS #2**

Nicky Jagger is 23 years old and is an avid Pistolz 'N Daisyz fan. In fact, Nicky has been to 53 of their concerts in his/her life and has attended concerts in 25 cities across North America. Nicky will testify that he/she saw the Accused push **Sean Penney** over the rail during the course of a belligerent and hostile exchange of words apparently initiated by the

Accused. Nicky does not recall what those words were but thinks it had something to do with a large amount of money. Nicky is certain that both the Accused and Sean Penney were angry and were yelling at each other. Nicky will testify that at the rock concert he/she consumed some alcohol and

marijuana and used these substances frequently in the past. Nicky does not recall how much marijuana or alcohol he/she consumed but will testify under cross-examination that he/she was feeling "quite happy and relaxed".

Nicky will testify that when the band announced that the concert was over, the crowd began to surge behind him/her. He/She immediately turned around to face the crowd in aneffort to protect himself/herself. Nicky turned around again to face the Accused and Sean at the sound of their hostile exchange of voices. He/she will testify that, at that time, the crowd was surging forward, that he/she did not see Sean throw a punch at the Accused, and that the Accused definitely pushed Sean over the railing, using both hands.

Nicky Jagger was not asked to submit to a breathalyser but does not remember how he/she returned home that night. Nicky knew Sean and would describe him as an acquaintance as opposed to a "friend".

Nicky had bought tickets from Sean in the past and found the Deceased

to be courteous, polite and had access to the best last minute seats in the house.

Nicky will admit under cross-examination that he/she was arrested for possession of a small quantity of marijuana (two joints). He/She will state that those charges were dropped on the understanding that Nicky would testify at trial.

Crown Witness #3 (ad lib)

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**DON VON CHOVI (THE ACCUSED) DEFENCE WITNESS #1**

Don Von Chovi is 23 years old and in his last year of a music degree. He has

recently sold the rights to his first song entitled "Love Your Neighbour"

for $600 which represents the extent of his wealth. August 8, 2016 was to be a special occasion for the Accused, Don Von Chovi and his fiancée,

**Fran Goodheart**. The couple had just announced their engagement

which they planned to celebrate by attending the Pistolz 'N Daisyz concert at the FlyDome in Toronto. This was to be an extra special evening as they had met two years earlier at a similar concert in Buffalo. Unfortunately, tickets for the concert had sold out so quickly that they had been unable to purchase tickets in advance. As a result, they decided to take their chances and buy a

pair of tickets from a scalper, outside the FlyDome, on the night of the concert. The Accused will testify that he bought a pair of front row, balcony tickets from the Deceased for $450.00 ($225.00 each) and that each ticket's face value was $35.00. The Accused will further testify that this was an extremely expensive price to pay for the tickets and that the money had been set aside for their honeymoon expenses. Instead, the couple agreed that the event was so special to them that they would spend the money on the

concert tickets and, as a result, the couple would not have enough money to afford an engagement ring. Don attempted to negotiate a much more reasonable price for the tickets with the scalper, but the Deceased immediately became belligerent and hostile towards the couple, and intimidated them into purchasing the tickets at the higher price.

The couple took the tickets and went to their seats which were impressively

located directly in front of the stage on an overhanging balcony. The

Deceased entered the concert shortly after it began and sat immediately beside the Accused. The Accused had no idea that the Deceased was going to be sitting in these seats and was concerned for his safety and for the safety of his fiancée as a result of the earlier extremely unpleasant episode but decided to say nothing at the time.

The Accused will testify that after two songs, the lead singer for the band

announced that his voice was failing and that the concert would be cancelled. In fact, he also announced that the group would be breaking up and would never play again. At this point the audience became loud and unruly and began to surge forward as they chanted obscenities at the stage.

The Accused will testify that upon hearing that news he immediately turned to the Deceased and requested a refund. The Deceased refused and in a more hostile manner than he had exhibited earlier, told the Accused to "...collect the $70 from the ticket agency...and if you don't like that, you know what you can do." The Accused admits to responding "If you don't

give me my money back, I'm gonna call the cops," and stood up to face the Deceased who was already standing. Von Chovi will then testify that the Deceased threw a punch in the direction of Von Chovi's head, but the Accused ducked and the force of the punch and the surging of the crowd forward resulted in the Deceased losing his balance and falling over the rail to his death on the stage below. The Accused was later questioned

by Constable A. Rose who charged the Accused with second degree murder.

The Accused recalls the concert in Buffalo but does not recall beating anyone up. He will admit having an argument. The Accused will admit telling Constable Rose that the Deceased "got what was coming to him". At the time, he was still angry about the hostile exchange of words and the

punch thrown at his head.

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**FRAN GOODHEART DEFENCE WITNESS #2**

Fran is in her final year of college studying child care. She is scheduled to start work at a prominent day care facility in three weeks. Fran will testify that the attendance at the rock concert was a replacement for

their honeymoon. It was to be a very romantic evening which they had both been anticipating and they had gone out for a romantic dinner prior to the start of the concert. Fran will admit that the couple had shared a bottle of cheap red wine at dinner and that Don Von Chovi, in fact, had consumed most of it, and in his excited state had hardly touched his food. Fran will testify that the couple had intended to spend a maximum of $250.00 on

the tickets and that the remaining $200.00 was going to be used to pay the costs of a hotel suite on their wedding night. This was all the money they had saved and they could not even afford an engagement ring. Fran

recalls that during the negotiations with the scalper, the couple had decided to pay the increased price, as they had originally met at a Pistolz 'N Daisyz concert two years earlier and they could not think of anything more

romantic than celebrating their engagement on the anniversary of their meeting. Fran will also testify that following the negotiations, on the way to the seats and after the commencement of the concert, the Accused was extremely upset at paying such an exorbitant price for the tickets and had stated that "I'd really like to get my hands on that scalper if we ever see him again." Fran will testify that when the concert was cancelled she recalls her

fiancé asking the Deceased politely for the return of their money, however,

Fran was then distracted by the surging crowd behind her. She heard her fiancé and the Deceased screaming at each other but could not hear what was being said. She then turned around and saw out of the corner of her eye her fiancé duck a punch being thrown by the Deceased and then observed the Deceased tumble over the rail to his death. She will testify that her fiancé did not touch the Deceased. On direct examination, Fran will state that her fiancé was too loving and caring to ever hurt anyone let alone kill them. On cross-examination, however, Fran will admit that Don becomes very nervous in large crowds. In fact, at the concert in Buffalo where they met Don had

got into a fist fight with someone who had pushed him and punches were thrown but nobody was injured. Fran will testify that immediately after

the incident, she was questioned by Constable Rose. Unfortunately, given her emotional state at the time she cannot remember exactly what she said.

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IV. THE INDICTMENT

THE ONTARIO COURT OF JUSTICE (GENERAL DIVISION)

CANADA

PROVINCE OF

ONTARIO

File Number

JUDICIAL DISTRICT OF

327053798

HER MAJESTY THE QUEEN

against

DON VON CHOVI

INDICTMENT

DON VON CHOVI stands charged:

That, in this city and country, in this province, on or about the 15th day of August, 2016, Don Von Chovi did unlawfully commit murder in the second degree on the person of Sean Penney contrary to the provisions of s.235(1) of the Criminal Code of Canada.

DATED this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2017, in this city and province.

Every one who commits first degree or second degree murder is guilty of

an indicatable offence and shall be sentenced for life.

The following are the only legal issues that need to be resolved:

If the Crown can prove beyond a reasonable doubt that Don Von Chovi pushed Sean Penney over the railing with the intention of causing death or bodily harm which could result in death, then Von Chovi is guilty of second degree murder.

If it can be proven that Von Chovi was provoked into pushing Sean Penney in the heat of passion and that resulted in the death of Sean Penney then Von Chovi is guilty of manslaughter.

*Mock Trial Info:*

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

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 (3) 6. Crown Lawyers (3) 7. Judge 8. Court Services Officer/Clerk 9. Jury Members

What the public know:

News article: “Police Bust Youth Drug Ring in Park Sting” by Renee Brookland (*Anywhere Daily News)* Ottawa- 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 Poncherello 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. P

THIS IS THE INFORMATION OF: Officer Cheyenne Gomez of OTTAWA, Police Constable, hereinafter called the informant The informant says that he/she believes on reasonable grounds that: 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 2017 in the City of Ottawa, did traffic in a substance included in Schedule II to wit: cannabis marijuana contrary to section 5(1) of the Controlled Drugs & Substances Act; did traffic in a substance included in Schedule III to wit: ecstasy contrary to section 5(1) of the Controlled Drugs & Substances Act.; 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.; did possess a substance included in Schedule III to wit: ecstasy contrary to section 5(2) of the Controlled Drugs & Substances Act.; did unlawfully, 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.

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 admissable.

• That there are no Charter arguments to raise.

• That the map accurately depicts Melrose Park and the positions of the parties on July 17

• That the photo of the ecstasy pills is an accurate photo of the ecstasy pills found in the backpack.

• That the photo of the marijuana 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.

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, 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. • 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. 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?

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, 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. 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. 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.

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, 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. • 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 onegram 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. • 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.

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, 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. 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.

For more info, see: http://ojen.ca/wp-content/uploads/OJEN\_mock\_trial\_WAI.pdf