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Jackson College of Graduate Studies

EYEWITNESS AGE AND CONFIDENCE DETERMINING OUTCOMES FOR JUROR
DECISION-MAKING IN ROBBERY CASES

A THESIS

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MASTER OF SCIENCE IN FORENSIC PSYCHOLOGY

By

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Eyewitness Age and Confidence Determining Outcomes For Juror Decision-Making in Robbery.

Cases

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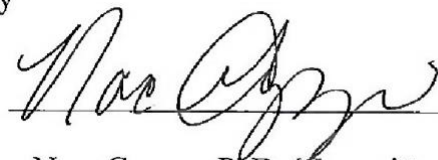
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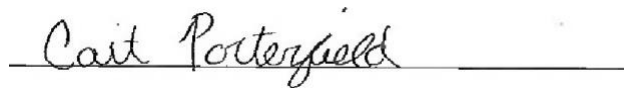
By

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Abstract

Eyewitness performance has been shown to have a wide variety of inaccuracies. Jurors often view eyewitness testimony as an accurate recollection due to the tendency to rely on automatic decision-making processes. Jurors' perceptions of the age and confidence of eyewitnesses may be moderated by jurors' heuristics or stereotypes. Proper judicial instructions may become critical to mitigate these influences on verdict decisions by engaging effortful thinking. This study aimed to examine the impact judicial instructions have on reducing the reliance on eyewitness characteristics for verdict decision-making. It was hypothesized that simple instructions would reduce the reliance on age and confidence to determine guilty verdicts. Fifty-eight participants were randomly assigned to a simple instruction ($n = 29$) or standard instruction ($n = 29$) condition. Participants were presented with four cases of highly confident and less confident child and older adult eyewitnesses. Results from a $2 \times 2 \times 2$ mixed analysis of variance (ANOVA) indicated there was a significant main effect of confidence $F(1,56) = 11.28, p = .001$ for both the standard instruction condition $F(1,56) = 68.17, p < .001$ and simple instruction condition $F(1,56) = 12.30, p < .001$. Jurors' reliance on confidence heuristics was demonstrated in the standard instructions while the simple instruction mitigated the reliance on confidence. This finding implies that simple instructions engage effortful thinking which allows for the reduction of the confidence heuristic. Future research should focus on replicating the findings with a larger sample size to determine if simple instructions aid in reducing age biases.

Keywords: jury instructions, child eyewitnesses, older adult eyewitnesses, confidence heuristics, age stereotypes, verdict decision-making.

Eyewitness Age and Confidence Determining Outcomes for Juror Decision-Making in Robbery Cases

The purpose of eyewitness testimony is to provide a trustworthy recollection of events regarding criminal or civil cases. To accomplish this, a witness must be able to remember the details of the target event and report those details in a coherent manner (Sutherland, Gross, & Hayne, 1996). When an eyewitness is testifying on the stand, their testimony and perspectives can be compelling to a jury. Eyewitnesses have played a valuable role in convictions and acquittals, with law enforcement and the courts using their identifications as direct testimonial evidence to establish facts in a criminal investigation or prosecution. However, eyewitness performance can be subjected to a variety of inaccuracies (Cutler et al., 1988; Smith et al., 2000; Brewer & Burke, 2002). With such inaccuracies, it brings to question the validity of eyewitness testimony and how much jurors should rely on that evidence in their verdict decisions.

Errors in eyewitness memory have been a major contributing factor among wrongful convictions of prison exonerees (Wise et al., 2014). In fact, studies have found that erroneous convictions based on eyewitness testimony occurred in at least 75% of DNA exoneration cases (Innocence Project, 2023). Errors in eyewitness recollections may be due to both external and internal factors. External factors focus on interrogation techniques, photo lineup presentation, and feedback received on their memory reports (Frenda et al., 2011; Loftus, 2005). Internal factors, such as failures in perception and memory encoding or internal state at the time of the event can further play a role in eyewitness errors (Ceci & Bruck, 1995; Albright, 2017). Regardless of these factors, juries consequently evaluate the credibility of eyewitness testimony and assess memory accuracy without adequate guidance, such as expert testimony on the limitations of eyewitness reliability or cautionary instructions from judges. Eyewitnesses will

continue to be asked to give testimony thus, it is important to take into consideration the way jurors make verdict decisions to better buffer the possible faultiness of eyewitness factors. In particular, the goal of this thesis is to investigate how juror decision-making is affected by eyewitness' age and confidence and to explore strategies for reducing reliance on potentially biased cognitive heuristics, thereby promoting decisions that prioritize evidence over the characteristics of eyewitnesses.

Jurors' Decision-Making

In our daily lives, people face a spectrum of decisions, ranging from significant life choices, like buying a home or choosing a career path, to more trivial ones, such as what to wear or what to eat for dinner. The way we approach these decisions can vary greatly based on their perceived importance. When it comes to major decisions, people often engage in a thorough thought process, weighing the pros and cons, considering long-term consequences, and seeking advice from others (Kahneman, 2011). This reflective approach is generally seen to ensure that we make the most informed and beneficial choice possible (Kahneman, 2011). On the other hand, smaller decisions usually do not invoke the same level of scrutiny and tend to rely on heuristics, or mental shortcuts (Kahneman, 2011). This reliance on heuristics can be beneficial, as it saves time and cognitive resources (Kahneman, 2011). Kahneman and Frederick (2002) coined the terms System 1 and System 2 to describe these distinct types of information processing. The intuitive processes belonging to System 1 are automatic, speedy, and do not require working memory to make decisions. The reflective processes belonging to System 2 are analytical, controlled, effortful, and require working memory to make decisions.

Typically, decisions are made with System 1. However, if more resources are necessary to make a decision, System 1 can be endorsed, modified, or overridden by System 2 (Kahneman

& Frederick, 2002). Jurors are thought to follow the same decision-making process in court cases as in their everyday lives. However, their reliance on System 1 or System 2 depends on the information they are presented with. At trial, both the prosecution and the defense set forth arguments in favor of their side. Due to this complexity, it would be beneficial for jurors to use controlled thinking to make verdict decisions. This would alleviate the reliance on heuristics and result in slow, methodical evaluations in decision-making. However, this may not be the case in every trial. Ambiguous information presented to jurors may lead to other factors playing a role in decision-making. Therefore, it is important to reduce the complexity of information presented to jurors to reduce juror's reliance on heuristic cues and be able to engage in effortful processing (Baguley et al., 2017).

Juror's views on how a trial should be, how evidence should be presented, or how witnesses should act can ultimately change their perspective on the trial and impact their verdict. This is due to jurors often seeking out information that is consistent with their verdict preference and scrutinizing and rejecting information that is inconsistent with that preference (Bornstein & Greene, 2011; Carlson & Russo, 2001). Initial verdict preferences can come from statements made from either the prosecution or defense, early trial evidence, pre-trial publicity, legal attitudes of the jurors, and their preexisting cognitive schemas, or mental representations, about the law (Bornstein & Green, 2011). Jurors' preexisting cognitive schemas about the law sometimes conflict with the legal rules relevant to a particular case. This can cause an automatic reliance on heuristics that can lead to erroneous judgments and difficulty compartmentalizing their knowledge of the case (Bornstein & Green, 2011).

Jurors sometimes rely on cognitive heuristics when evaluating evidence and making complicated judgments about guilt or innocence. This becomes salient in cases with moderate

evidentiary strength (Bornstein & Green, 2011). Jurors actively evaluate conflicting claims and construct a narrative framework, which provides them with a plausible interpretation of the evidence (Bornstein & Green, 2011). Therefore, when evidence does not favor either side, jurors may not be able to make decisions based on fact and may have to rely on biases, mental shortcuts, or intuitions to weigh one side more favorably than the other. Further, individuals sometimes lack important information, fail to notice information, or retain only small amounts of information when making decisions (Milkman et al., 2009). This can help explain how moderate to little evidence presented during a trial, may lead jurors to rely on heuristics to make a decision. Of note, this reliance on automatic thinking is not always a mistake. As automatic thinking may allow for an ideal decision-making process by improving efficiency without sacrificing quality. However, the reliance on exclusively automatic thinking may increase the likelihood of errors, which is not ideal in judicial settings (Milkman et al., 2009).

Perceptions of Eyewitnesses

Case characteristics, jurors' characteristics, and defendant characteristics are associated with inferences made about a case and ultimately with judgments of guilt (Devine & Caughlin, 2014). In situations where eyewitness testimony is the only evidence presented in a case, jurors' perception of the eyewitness regarding their attributes, such as race, gender, age, or attractiveness may more heavily influence their decision-making processes (Devine et al., 2001). Biases, stereotypes, and other social judgments can influence jurors' perceptions of the credibility of eyewitnesses. Other factors such as the confidence portrayed by an eyewitness, how witnesses portray their testimony, and the perceived cognitive ability of the witness can play a further role in jurors relying on heuristics and biases to come to a decision.

Instead of carefully deliberating decisions based on known facts, these social judgments may cause the decision-makers to use mental shortcuts to make inferences (Kahneman & Tversky, 1979). In conditions where ambiguous information is given, it increases the likelihood that heuristics and biases will influence social judgments (Kahneman, 2011). While biases and heuristics allow for quick and efficient decision-making, they also have serious shortcomings in maximizing effective reasoning (Butterfield & Bitter, 2019; Kahneman, 2011).

Credibility and Confidence Effects on Juror Decision-Making

Research has shown that adults use the confidence of an individual to judge their credibility (Brewer & Burke, 2002; Penrod & Cutler, 1995; Tenney et al., 2011). If a person exhibits confidence when giving information, it can have a positive impact on others' perception of them and their information becomes credible (Tenney et al., 2011). Research has shown that people can evaluate confidence, and put value to it, and that confidence can be either lost or gained by the interactions the evaluating individual has with others (Pescetelli et al., 2016).

Eyewitness confidence on the stand has been found to be a key factor in jurors' decision-making due to jurors heavily weighing this type of evidence as more accurate and credible (Saurland et al., 2012; Vredeveltdt & Sauer, 2015; Wheatcroft et al., 2015). Brewer and Burke (2002) found witnesses who stated phrases such as 'I am *absolutely* sure' compared to 'I am *reasonably* sure', significantly affected how the credibility of the witness was judged by mock jurors. Thus, the change from absolutely (high confidence) to reasonably (low confidence) impacted jurors' decision-making. This study, as well as others, have found that confidence expressed by witnesses is a common variable that significantly increases belief in the defendant's culpability (Cutler et al., 1988; Tenney et al., 2011). Given how compelling confidence seems to be in establishing credibility, researchers suggest that this can cause a confidence heuristic

(Tenney et al., 2011). Thus, more confident testimony given by eyewitnesses causes jurors to automatically establish their testimony as credible without deeper processing.

However, it is important to note that this confidence heuristic can also have downsides. Research has found that confidence does not equal accuracy (Brewer & Burke, 2002; Bradfield & Wells, 2000; Cutler et al., 1999). However, mock jurors often prioritize eyewitness confidence even when presented with other information, as they often exclude other variables that are indicative of accuracy (Cutler et al., 1988; Slane & Dodson, 2022). Thus, if an eyewitness displays high confidence there is a higher likelihood that their testimony will be viewed by jurors as an accurate recollection of events even if they are recalling erroneous information. Making the confidence heuristic salient during testimony procedures, leading to the overreliance on confidence to establish credibility. This perception may change depending on the characteristics of the witness on the stand. Certain witnesses may elicit a lower reliance on the confidence heuristic, such as child witnesses and older adult witnesses. Different norms and biases may impact the perception jurors have of child eyewitnesses and adult eyewitnesses. These norms and biases may serve as anchors for judging the credibility of these witnesses (Luus et al., 1995).

Children and Older Adults as Eyewitnesses

When children are eyewitnesses, they tend to be perceived negatively by jurors. When children are found to be competent to testify, their overall credibility can become an issue, as adults have a harder time evaluating their statements (Connolly et al., 2010; Pantell, 2017). This may be due to the perceived limitations of a child's cognitive and socioemotional development (Block et al., 2012). The evaluation of credibility involves two constructs, perceived cognitive ability and perceived honesty (Connolly et al., 2010). Younger children are more likely to be seen as innately honest, incapable of deception, and having an innate innocence. Because lying is

cognitively complex, many adults may perceive that the younger a child is, the more likely the child will be innately honest and unable to fabricate events (Connolly et al., 2010; Fawcett & Winstanley, 2019). It would be expected that these common perceptions of honesty and the inability of deception would lead child witnesses to be evaluated as more credible. However, the age of a child seems to negatively impact how their credibility is perceived by jurors. Studies have shown mock jurors attribute different credibility ratings and thus different guilty ratings depending on the age of a child eyewitness (Duggan et al., 1989; Fawcett & Winstanley, 2019; Nightingale, 1993; O'Connor et al., 2019). It seems that age heuristics play a role in judging the credibility of children as age-related stereotypes may cause adults to perceive children of different age ranges as more credible than others. Other factors such as circumstances of the case on trial, juror's stereotypes of children, and the delivery of testimony seem to mediate perceptions of credibility (Eaton et al., 2001; Ross et al. 1994). While there may still be discrepancies in credibility between the child age groups, when compared to adult witnesses, children are not seen as more credible than adults in the courtroom (Fawcett & Winstanley, 2019; Golding et al., 1999). This further demonstrates how age heuristics impact mock juror decision-making as they perceive adults as ultimately more credible than children. However, it is important to note that the age of an adult also plays a role in age heuristics.

When older adults testify as eyewitnesses, jurors tend to have more mixed perceptions. Studies have found that older adults (over 70 years old) and children (around 6 years old) seem to be rated the same in memory accuracy, suggestibility, honesty, and weight given to their testimony (Neal et al., 2012; Ross et al., 1990). In particular, mock jurors seem to have perceptions that children and older adults are capable of honesty but less likely to give accurate testimony. These studies show how mock jurors tend to place more trust in the testimony of

younger adults rather than children or older adults, as evoking age heuristics tends to elicit different responses among mock jurors (Erber & Prager, 1999; Kwong-See et al., 2001; Ross et al., 1990). Nunez et al. (1999) asked mock jurors to read trial summaries with different descriptions of a 66-year-old, believability did not differ between descriptions. However, the number of guilty verdicts given to the defendant did, as there were fewer guilty verdicts given to victims described as being senior citizens. This study showed how evoking different age stereotypes caused mock jurors to attribute different guilty verdicts even though the case on trial was the same. The stereotype that older adults are poor eyewitnesses may cause jurors to view the testimony of older adults as poorer in quality or having inaccuracies. Age stereotypes may bias juror's judgments and impact their perception of the believability of the testimony of child or older adult eyewitness, even if they are remembering equal amounts of information with the same accuracy as other age groups (Kwong-See et al., 2001). The type of instruction presented to juries could possibly play a role in decreasing age heuristics. By having accurate instructions regarding witnesses, it could allow jurors to focus on the facts of the case not on the perceptions of eyewitnesses.

Judicial Instructions

Typically, trying to overcome the conflation of accuracy and confidence an eyewitness may portray is to provide explicit instructions to jurors about how they should rely on the evidence presented in the case and not their own personal thoughts (i.e., irrelevant evidence). While the language in the instructions varies from state to state, during a trial, jurors are given instructions highlighting the relevant law that should be considered and give warnings of irrelevant information, such as the personal attributes of the individual testifying (Lieberman, 2009). In the United States, the *Telfair* instructions are the most used jury instructions for

evaluating eyewitness accuracy (Wise et al., 2014). Standardized instructions, like the *Telfair* instructions, can be complex and include legal concepts and procedural rules that may not be readily understandable to jurors. As studies have shown the *Telfair* instructions fail to sensitize jurors to eyewitness testimony (Bornstein & Hamm, 2012; Cutler et al., 1990; Greene, 1988; Ramirez et al., 1996; Wise et al., 2014).

Instructions work to focus awareness of relevant evidence (i.e., evidence relevant to the case) and reduce jargon to improve comprehension (Jones & Penrod, 2018; Garrett et al., 2023; Lockamyier et al., 2023). Highlighting important aspects to bring to the jury, such as not relying on the confidence of the witness, are provided by *Henderson* instructions (New Jersey v. Henderson, 2011). These simplified instructions have been found to sensitize jurors to evidence strength rather than eyewitness identification (Jones & Penrod, 2018). Simple instructions provide jurors with a step-by-step discussion of what they should focus on during eyewitness testimony. This leads to reduced mock jurors' perceptions of suspect guilt and reliance on eyewitness confidence and aids in mock jurors in differentiating between better or worse eyewitness evidence (Lockamyier et al., 2023). Further, simplified instructions use simpler language, and less usage of legal terminology, which may improve juror comprehension by reducing the cognitive load. Baguley and colleagues (2017) found that reducing the conceptual complexity of juror instructions was associated with mock jurors' increased application of the instructions. Thus, reducing the complexity of the language is argued to afford more effortful thinking of the evidence presented rather than automatic reliance on irrelevant evidence. By reducing cognitive load, simple instructions engage working memory for better comprehension of bringing awareness to the type of factors to pay attention to. The opposite happens with

standard instructions as their complexity makes it hard to engage working memory which allows for more of a reliance on automatic thinking.

Current Study

As stated previously, juror perceptions may be impacted by a confidence heuristic. For example, the words a witness uses, or their demeanor may influence a juror's perception of the witnesses' credibility based on preexisting stereotypes held by the juror. The confidence heuristic seems to play an important role in testimonies, regardless of whether the witness is a child or an adult. Confident witnesses who are consistent in their testimony will likely be perceived as highly credible (Brewer & Burke 2002; Saurland et al., 2012; Wheatcroft et al., 2015). As stated previously, intuitive judgments are part of automatic processes. Automatic thinking rapidly contextualizes problems with prior knowledge and beliefs to come to a decision, effectively biasing the decision (Evans, 2006; Klaczynski & Lavalley, 2005). Age stereotypes for eyewitnesses may result in automatic thinking and bias the jury's perception of the credibility of a witness. Specifically, jurors tend to perceive that children are more honest as they decrease in age and that adults have better cognitive abilities than children. Studies have looked at these processes individually but not many have examined all the variables at once.

The purpose of this study is to examine how juror decision-making (i.e., guilt verdict) is influenced by heuristics surrounding dispositional characteristics of eyewitnesses (i.e., age and confidence) and how interventions, such as simplifying instructions, reduce reliance on those heuristics. Judicial instructions regarding how to evaluate eyewitness testimony should focus on highlighting key principles in decision-making processes and reduce the likelihood of jurors relying on irrelevant information. Proper instructions may become critical for ensuring that jurors have more than their stereotypes to guide their assessment of the credibility of a witness.

It is hypothesized that judicial instructions will impact verdict decision-making when presented with testimony of a child (6-year-old) and an older adult (75-year-old) confident and not confident witnesses. Specifically, when given Simple Instructions that encourage elaborative, deliberative decision-making, there will be a reduction in the use of automatic heuristics (confidence and age). Thus, the level of guilt attributed to the defendant will decrease when jurors rely less on automated decision-making. With the standard instruction, jurors will rely on their automated heuristics, and the level of guilt attributed to the defendant will increase with confident witnesses and decrease with not confident witnesses.

It is predicted that there will be main effects of instruction type (higher percentage of guilt for simple instructions than standard instructions), age (higher percentage of guilt for older adults vs. children), and confidence (higher percentage of guilt for highly confident vs. less confident eyewitnesses). A two-way interaction, *Instruction* $\times$ *Age* is predicted, the overall main effect of age (higher percentage of guilt for 75-year-olds compared to 6-year-olds) will be demonstrated in the standard instruction condition. However, age effects will be reduced in the simple instruction condition. Thus, age effects will be minimized due to overriding automated processes associated with age. Moreover, a two-way interaction is predicted with *Age* $\times$ *Confidence*. The overall main effect of confidence (higher percentage of guilt for high confidence than low confidence) will be demonstrated in the older adult witness conditions, but a reduced confidence effect for the child witness. Further, a two-way interaction is predicted for *Instruction* $\times$ *Confidence*. For this interaction, the overall main effect of confidence will be demonstrated in the standard instruction group. Lastly, a three-way interaction is predicted between *Instruction* $\times$ *Age* $\times$ *Confidence*. The standard instruction is predicted to influence the *Age* $\times$ *Confidence* interaction. The simple instruction is predicted to reduce the *Age* $\times$

Confidence interaction. Thus, indicating that simple instructions that encourage analytical thinking can aid in reducing age- and confidence- effects.

Method

Participants

Participants were recruited from the general psychology pool from the University of Central Oklahoma for partial course credit and through a university email blast. Demographic information was collected to determine participant characteristics (e.g., age, gender, and race) and jury experience (see Appendix A). A total of 121 individuals participated in the study. A total of 58 participants failed to complete the study and a total of 5 participants either completed the study too quickly (under 30 minutes) or too slowly (over 120 minutes). After eliminating participants, a total of 58 participants, ages 18 through 37 ($M = 22.00$, $SD = 4.62$), were used for the analysis. Of those 58 participants, 62.1% identified as female and 32.8% as male. The majority of participants identified as White/Caucasian (74.1%). Most participants at the time of the survey had not been summoned for jury duty (86.1%), asked to testify (93.1%), nor had given a verdict before (96.6%).

Materials

Crime scenarios were created based on the age of the eyewitness (children and older adults) and witness confidence (highly confident and less confident). Four scenarios of transcribed testimony regarding a sole witness to an aggravated robbery were created. Appendix D is the highly confident older adult scenario, and Appendix E is the highly confident child scenario. Appendix F is the less confident older adult scenario, and Appendix G is the less confident child scenario. In the scenarios, the victim of the robbery did not see their assailant, but the eyewitness saw the perpetrator and was able to provide descriptive information about the

perpetrator. Highly confident witnesses were described as able to identify the defendant out of a photo lineup while the less confident witnesses had difficulty identifying the defendant out of a photo lineup.

Two sets of instructions were modified for this study. The simple instructions (see Appendix C) were brief and warned about irrelevant information (i.e., confidence, accuracy, feedback), and the standard instruction (see Appendix B) was longer and stated information to consider (i.e., eyewitness identification). The simple instruction was taken from Lockamy et al. (2023), while the standard instruction was taken from the Oklahoma Court of Appeals Eyewitness Identification Instructions (Oklahoma Court of Criminal Appeals, 1984). These instructions were recorded and administered in an audio format. After each scenario, participants were asked to rate, on a 7-point Likert-type scale, the confidence of the eyewitness (1 = *not confident at all* to 7 = *extremely confident*) and the guilt of the defendant (1 = *not guilty* to 7 = *extremely guilty*).

A $2 \times 2 \times 2$ mixed factorial design was utilized for this study. Instruction type (standard or simple) was used as the between-subjects variable. The within-subjects variables were the age of the eyewitness (child and older adult) and confidence of the eyewitness (highly confident witness and less confident witness). The dependent variable was the guilt rating ascribed to the defendant.

Procedure

Participants completed the task via Qualtrics, a web-based survey tool. After consenting to participate in the study participants were informed of their task of being mock jurors in a case involving aggravated robbery in Oklahoma. They were randomly assigned to either the simple instruction condition ($n = 29$) or the standard instruction condition ($n = 29$). Participants were

then asked to listen to recordings of the instructions based on their assigned group, they were not able to move forward to the scenarios until they had completely listened to the instructions. Afterward they were directed to read the four case scenarios, one by one, in a randomized order. After reading each scenario participants were asked to rate the confidence of the witness and rate the guilt of the defendant. Finally, the participants were thanked for their time and awarded credit for participation.

Results

Guilt Rating

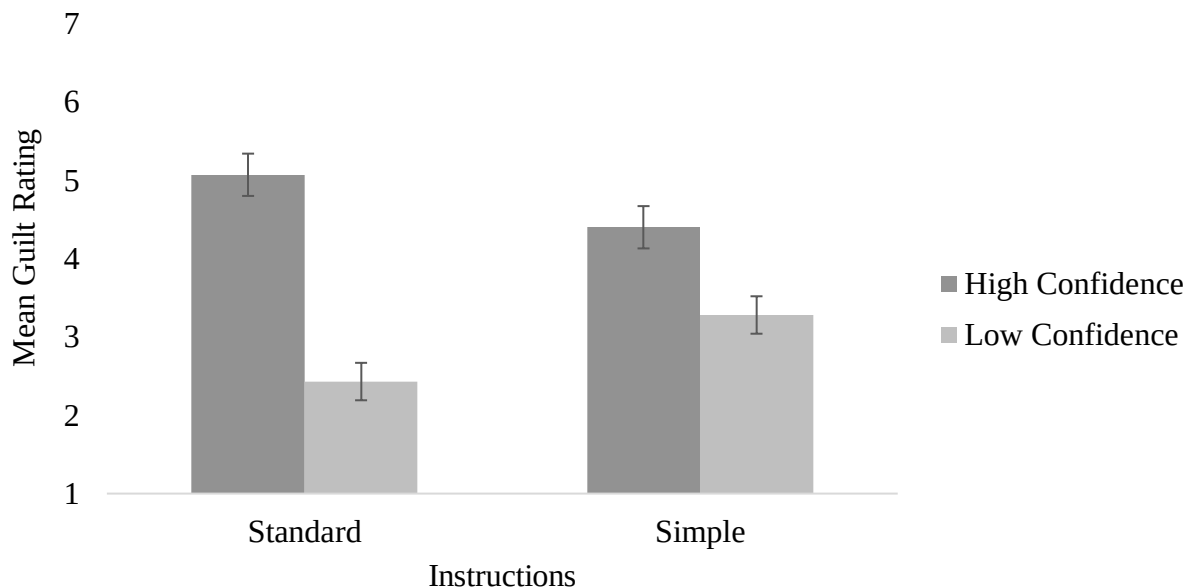
Mean guilt ratings were submitted to a $2 \times 2 \times 2$ mixed analysis of variance (ANOVA) with instructions (standard or simple) as the between-subjects variable and age (child and older adult) and confidence (highly confident witness and less confident witness) as the within-subjects variables. The main effect of instruction was not significant, $F(1, 56) = .09, p = .76$, with no difference between standard instruction ($M = 3.75, SD = 1.51$) or simple instruction ($M = 3.84, SD = 1.51$). An age main effect was marginally significant, $F(1, 56) = 3.27, p = .08$, partial $\eta^2 = .06$, with older adults eyewitnesses demonstrating marginally higher guilt ratings attributed to the defendant ($M = 3.96, SD = 1.33$) compared to child eyewitnesses ($M = 3.63, SD = 1.21$). A main effect of confidence was significant, $F(1, 56) = 69.20, p < .001$, partial $\eta^2 = .55$, with higher guilt ratings for highly confident eyewitnesses ($M = 4.73, SD = 1.45$) than less confident eyewitnesses ($M = 2.85, SD = 1.29$).

An Instruction $\times$ Confidence interaction was significant, $F(1, 56) = 11.28, p = .001$, partial $\eta^2 = .17$. A follow-up analysis investigated confidence effects for the different instruction conditions. Confidence effects (higher guilt ratings for highly confident eyewitnesses versus less confident eyewitnesses) were significant in the standard instruction condition, $F(1, 56) = 68.17$,

$p < .001$, partial $\eta^2 = .55$. In the simple instruction condition, confidence effects were also demonstrated, $F(1, 56) = 12.30$, $p < .001$, partial $\eta^2 = .18$. Figure 1 demonstrates the interaction, with a stronger confidence effect for the standard instruction condition compared to the simple instruction condition.

Figure 1

Instructions $\times$ Confidence of Eyewitness Interaction on Guilt Rating



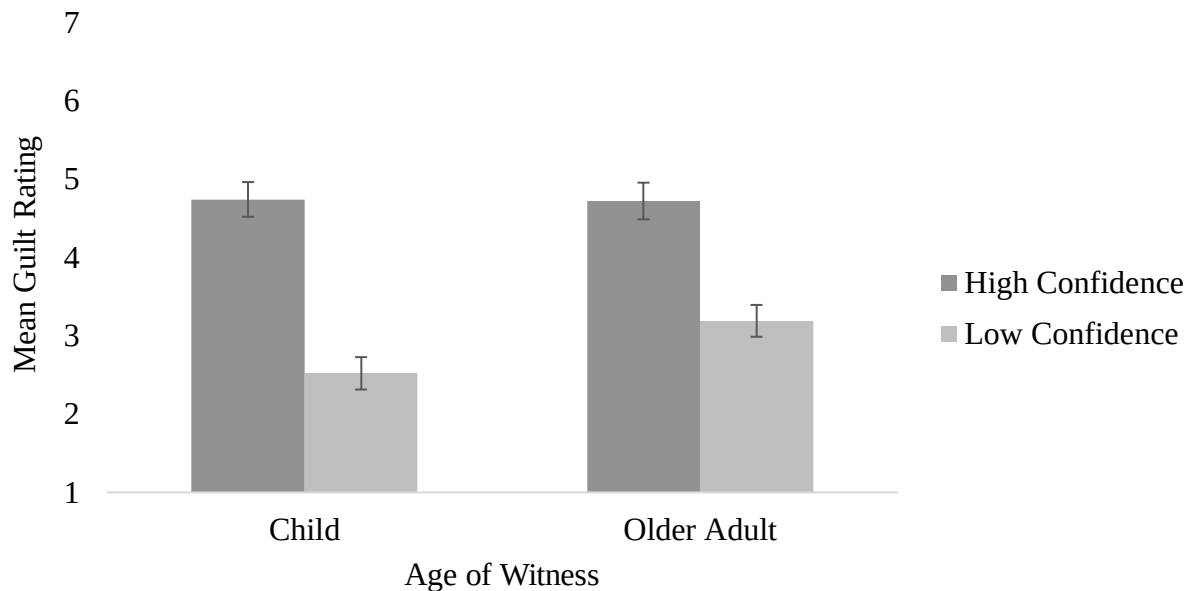
Note. High Confidence = identified the defendant out of a photo line-up. Low Confidence = had difficulty identifying the defendant out of a photo line-up. Error bars represent the standard error of the mean.

An Age $\times$ Confidence interaction was significant, $F(1, 56) = 6.90$, $p = .04$, partial $\eta^2 = .08$. Follow-up analyses demonstrated confidence effects (higher guilty ratings for highly confident eyewitnesses versus less confident eyewitnesses) for both children eyewitnesses $F(1, 56) = 59.40$, $p < .001$, partial $\eta^2 = .52$ and older adult eyewitnesses $F(1, 56) = 33.60$,

$p < .001$, partial $\eta^2 = .38$. While both age groups demonstrated confidence effects, the effects were stronger in child eyewitnesses than older adult eyewitnesses (see Figure 2).

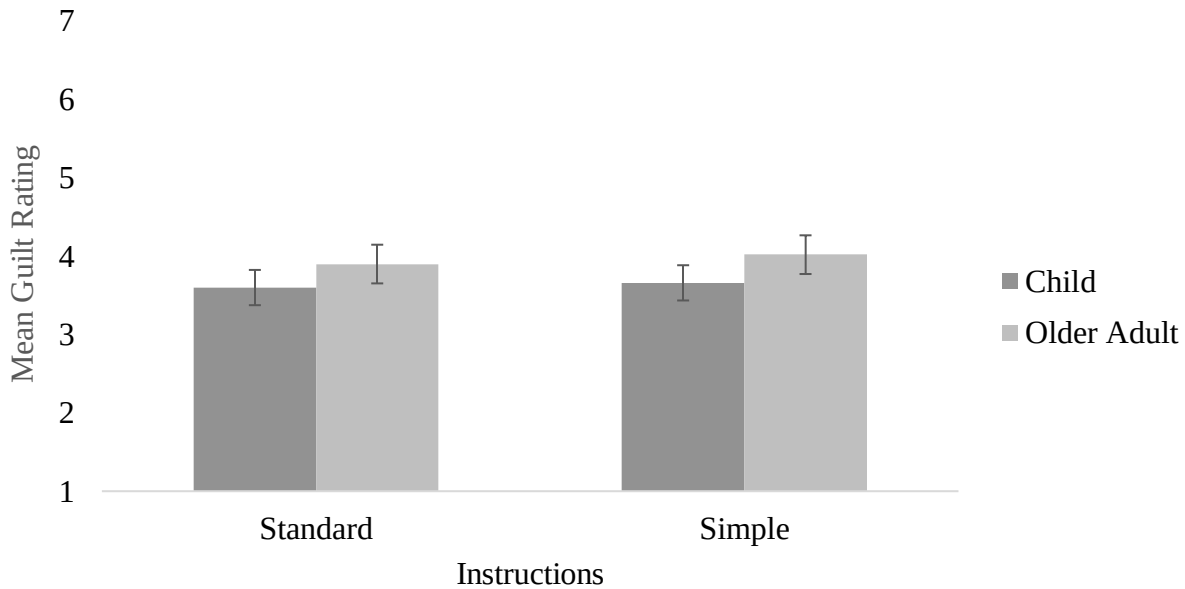
Figure 2

Age of Eyewitness $\times$ Confidence of Eyewitness Interaction on Guilt Rating



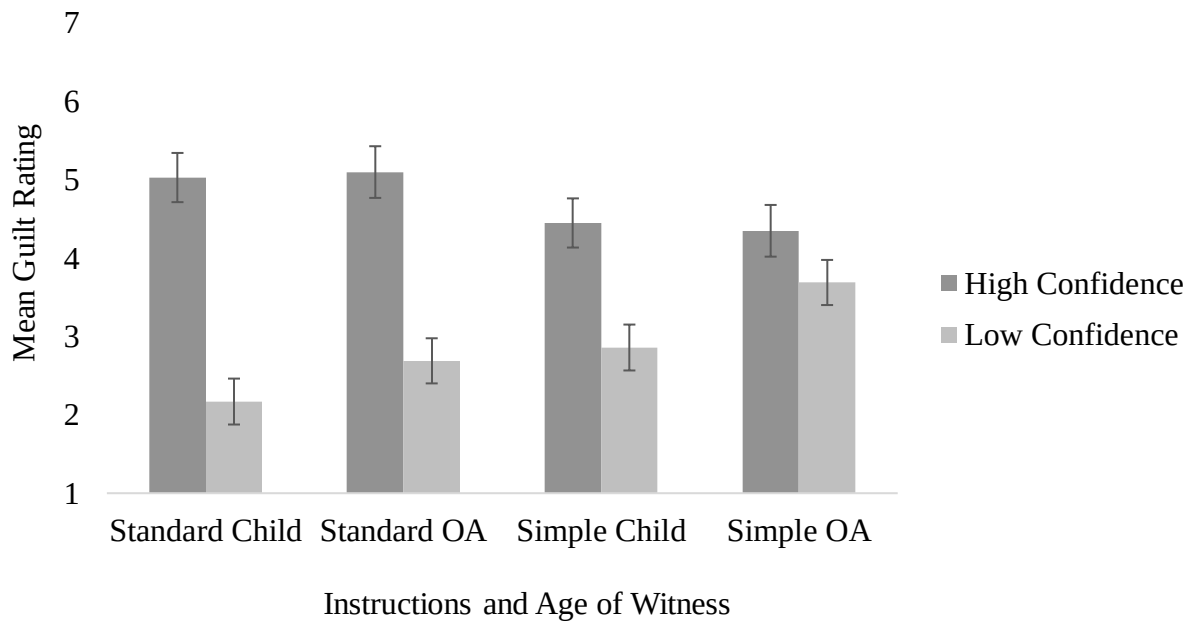
Note. Child = eyewitnesses who stated their age as 6-years-old. Older Adult = eyewitnesses who stated their age as 75-years-old. High Confidence = identified the defendant out of a photo line-up. Low Confidence = had difficulty identifying the defendant out of a photo line-up. Error bars represent the standard error of the mean.

An Instruction $\times$ Age interaction was not significant, $F(1, 56) = .04$, $p = .85$. Age effects (higher guilt ratings attributed to the defendant based on older adult eyewitnesses compared to the child eyewitnesses) were not seen for the standard instruction condition nor the simple instruction condition. Follow-up analyses demonstrated no age effects for the standard instruction condition, $F(1, 56) = 1.31$, $p = .26$, nor for the simple instruction condition, $F(1, 56) = 2.00$, $p = .16$ (see Figure 3).

Figure 3*Instructions × Age of Eyewitness Interaction on Guilt Rating*

Note. Error bars represent the standard error of the mean.

The three-way interaction of Instruction × Age × Confidence was not significant, $F(1, 56) = .57, p = .45$. Follow-up analyses examined confidence effects for instruction condition and age of the eyewitness. For the standard instruction condition, confidence effects were demonstrated for both child eyewitnesses $F(1, 56) = 49.18, p < .001$, partial $\eta^2 = .47$, and for older adult eyewitnesses $F(1, 56) = 41.58, p < .001$, partial $\eta^2 = .43$. For the simple instruction condition, confidence effects were demonstrated for child eyewitnesses, $F(1, 56) = 15.11, p < .001$, partial $\eta^2 = .21$, but confidence effects were only marginally significant for older adult eyewitnesses, $F(1, 56) = 3.06, p = .09$, partial $\eta^2 = .05$ (see Figure 4).

Figure 4*Instructions × Age of Witness × Confidence of Eyewitness Interaction on Guilt Rating*

Note. OA = Older Adult. Error bars represent the standard error of the mean.

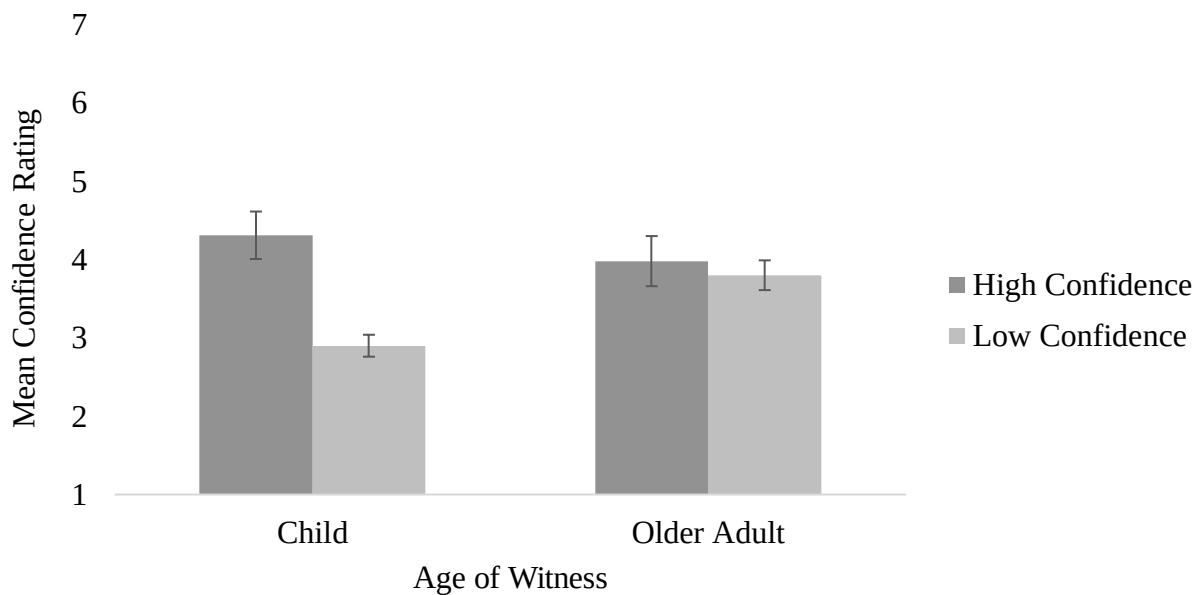
Confidence Rating

As a manipulation check, each participant rated the confidence of the eyewitness to ensure the confidence manipulation was powerful enough for participants to explicitly notice. Mean confidence ratings were submitted to a $2 \times 2 \times 2$ mixed ANOVA with instructions (standard or simple) as the between-subjects variable and age (child and older adult) and confidence (highly confident eyewitnesses and less confident eyewitnesses) as the within-subjects variables. A main effect of confidence was statistically significant, $F(1, 56) = 8.88$, $p = .004$, partial $\eta^2 = .14$. Mean confidence ratings were higher for eyewitnesses with high confidence ($M = 4.15$, $SD = 1.76$) than those with less confidence ($M = 3.35$, $SD = .98$). No other main effects were demonstrated, all p 's $> .19$.

An Age $\times$ Confidence interaction was significant, $F(1, 56) = 6.18, p = .02$, partial $\eta^2 = .10$. For older adult eyewitnesses, there did not appear to be a difference in the confidence ratings. Mean confidence ratings were similar for the older adult eyewitness described as being highly confident ($M = 3.98, SD = 2.44$) and the older eyewitnesses described as being less confident ($M = 3.79, SD = 1.41$). For children eyewitnesses, there was a difference in the confidence ratings. Highly confident child eyewitness was rated as more confident ($M = 4.31, SD = 2.31$) than the child eyewitness that was described as being less confident ($M = 2.90, SD = 1.07$). Figure 5 illustrates this interaction. No other two-way or three-way interactions were significant, all p 's $> .45$.

Figure 5

Confidence of Eyewitness $\times$ Age of Eyewitness Interaction on Confidence Rating



Note. Error bars represent the standard error of the mean.

Discussion

The reliance of biases or heuristics in jury decision-making has been found in various studies (Devine et al., 2001; Butterfield & Bitter, 2019). In particular, the reliance of these automatic processes is more apparent in cases where there is little to no evidence (Bornstein & Green, 2011). In these cases, jurors' perception of eyewitness characteristics can ultimately determine guilty verdicts (Devine & Caughlin, 2014). Studies have shown how social judgments, such as age and confidence perceptions can influence the credibility of an eyewitness (Devine et al., 2001; Higgins et al., 2007; Wheatcroft et al., 2015). Judicial instructions regarding eyewitness testimony tend to warn about this irrelevant information (Lieberman, 2009). However, judicial instructions are often complex, and comprehension remains low among jurors (Elwork et al., 1982; Kramer & Koenig, 1990). This study aimed to simplify judicial instructions to mitigate the effects confidence and age effects have on verdict decision-making.

Juror Instructions and Confidence of Witness on Decisions about Guilt

It was predicted that simple instructions would reduce the reliance on automated processes to encourage effortful processing of information. There was a reduction in the effect confidence had with simple instructions compared to standard instructions. Confidence effects reduced guilt ratings for high confidence and increased guilt ratings with low confidence when simple instructions were provided, with no reduction was seen with the standard instructions. This was expected, due to standard instructions being more complex, therefore, increasing the cognitive load and an increase in relying on heuristics. Additionally, the standard instructions do not bring awareness to possible influences of irrelevant information. With the simple instructions, there are specific parts that discuss how confidence should not conflate with accuracy (see Appendix C). When examining confidence ratings, they do align with participants

being aware of who was confident and who was less confident. Thus, participants could clearly identify what was confident and what was not confident. The conscious awareness brought by the simple instructions could have also assisted in the reduction of reliance on automated heuristics.

The findings of this study align with previous research that has found how strong confidence heuristics seem to influence juror decision-making (Brewer & Burke, 2002; Cutler et al., 1988; Vredeveltdt & Sauer, 2015). The reduction of this confidence heuristic in the simple instructions conditions demonstrates how simple instructions reduce automatic activation of heuristics by bringing awareness to irrelevant evidence (i.e., confidence) and affording engagement in effortful thinking allows for the reduction of the confidence heuristic, by being able to reduce cognitive load. Participants seem to have interpreted the confidence rating of each eyewitness accordingly. Similar other studies have found that individuals tend to recognize confidence and put value to it (Pescetelli et al. 2016; Tenney et al., 2011), in the case of this study attribute higher ratings of guilt to the defendant. The simplified instruction used for this study was brief and highlighted confidence. This could help explain the finding of the reduction of confidence effects in this condition. This finding demonstrates how simplified instructions can aid jurors in reducing the reliance on characteristics of eyewitnesses.

Age and Confidence of Eyewitness on Guilt Decisions

A main effect of age was marginally significant. Participants did seem to show greater guilt ratings to the scenarios with older adult eyewitnesses compared to the children eyewitnesses. This finding replicates what has been found in previous literature. People tend to trust older adults more than children. Thus, they are more likely to think that older adults are more accurate and thus more credible testimony compared to child eyewitnesses. This finding is

further demonstrated by the significant interaction between the confidence and age of the eyewitness. As expected, highly confident older adult and child eyewitnesses were found to attribute higher guilt ratings to the defendant. Of note, the less confident child eyewitness had lower guilt ratings. While both age groups demonstrated confidence effects, the effects seem to be stronger for child eyewitnesses than older adult eyewitnesses. Additionally, the confidence ratings also demonstrate this same interaction with the same effect. While there were confidence effects for both age groups, the effects were stronger for children. One argument could be that participants were relying on their heuristics about age. Thus, they thought that older adults were more confident overall. These findings are consistent with previous literature that finds adults to be more credible than children (Fawcett & Winstanley, 2019; Golding et al., 1999). Additionally, adults tend to view children with higher scrutiny (Nikonova & Ogloff, 2005). Thus, explain how a child demonstrating less confidence would be perceived as unreliable and not accurate with their testimony by jurors.

Limitations and Future Directions

This study did not find strong age effects. However, due to the marginal age effect demonstrated that participants may have activated this heuristic. The study shows that age does seem to influence juror decision-making, but it is not as strong as confidence effects. There could be two reasons for this finding. First, it could be that age is not as strong of an influence on jurors as confidence is. Alternatively, it could be that the instructions did not highlight how heuristics about age can influence juror decision-making. Thus, future studies should explore age effects with a larger sample size to determine if simplified instructions can aid the reduction of this reliance. It could be that the sample was not large enough to see smaller effects. Alternatively, bringing awareness to the potential influences of age might increase the effect. Therefore, future

studies should also highlight other potential influences irrelevant evidence may have on decision-making.

It is difficult to fully know if participants completely read all of the testimony or comprehended the instructions and scenarios. Typically, reading checks, such as brief memory tests, could be used to check for comprehension. With this study being within-subjects, it was difficult to complete these comprehension checks. While time on tasks provided some evidence that participants were reading, this does not ensure that participants read and comprehended the instructions and scenarios. Exploring this study as a between-subjects design could include a reading comprehension task. Further, this design would help ensure that the information could be identical across each scenario and be able to control age and confidence more clearly in each scenario. Additionally, knowing this information can be helpful when examining if jurors comprehend the instructions and the scenarios. Comprehension is critical for understanding how instructions influence decision-making, examining comprehension with instructions and scenarios (i.e., evidence) could provide a clearer picture of how courts should proceed.

Moreover, this study was conducted with a college sample. College students may have different decision-making influences compared to the general population. Research has clearly demonstrated how irrelevant evidence influences juror decision-making. Different groups of people may weigh certain types of irrelevant evidence more than other groups. Thus, examining a more diverse sample (e.g., political affiliations, gender, etc.) might provide greater insight into the differential influence heuristics have on decision-making. This could also benefit the criminal justice system, as they would be able to focus on what aspects of the eyewitness that jurors rely on to decide verdicts.

Conclusions

Simplifying judicial instructions plays a crucial role in mitigating the influence of biases, such as the confidence portrayed by an eyewitness, on juror decision-making. By presenting information in a clear and accessible manner, jurors are better equipped to evaluate evidence based on its merits rather than preconceived notions or stereotypes. This approach not only enhances the fairness of the judicial process but also fosters a more informed and impartial jury. As we strive for a justice system that prioritizes equity and accuracy, it is essential to continue advocating for reforms that promote clarity in judicial instructions, ultimately leading to more just outcomes in the courtroom.

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Appendix A**Demographic Questions:**

1. What is your age (in years)?
 - a. _____
2. Are you registered to vote in the United States?
 - a. Yes
 - b. No
 - c. Prefer not to answer
3. Are you a United States Citizen?
 - a. Yes
 - b. No
4. What is your gender?
 - a. _____
5. What is your race?
 - a. _____
6. Have you ever been asked to testify in a trial in the United States?
 - a. Yes
 - b. No
7. Have you ever been summoned for jury duty in the United States?
 - a. Yes
 - b. No

8. Have you ever been chosen to be on a jury of a criminal or civil case in the United States before?
- a. Yes
 - b. No
9. Have you ever given a verdict as part of a jury in the United States before?
- a. Yes
 - b. No

Pre-Instructions:

You have been chosen to serve as a juror on 4 different cases of first-degree robbery. Read the case descriptions carefully. Robbery in the State of Oklahoma involves the use of fear or force to take someone else's property from his or her person. First-degree robbery occurs when serious bodily injury is inflicted or threatened against a victim. This charge is a felony and can result in a minimum 10-year prison sentence.

You will now be given instructions on how to proceed.

Appendix B

Jury Instructions: Standard Oklahoma Instructions (Taken from Oklahoma Court of Criminal Appeals)

OUJI-CR 9-19

EVIDENCE - EYEWITNESS IDENTIFICATIONS

The State must prove the identity of the defendant as the person who committed the crime charged beyond a reasonable doubt.

Eyewitness identifications are to be scrutinized with extreme care. Testimony as to identity is a statement of a belief by a witness. The possibility of human error or mistake and the probable likeness or similarity of objects and persons are circumstances that you must consider in weighing identification testimony. You should carefully consider the factors that bear upon the weight that you give to the identification testimony, such as:

- (1) whether the witness had an adequate opportunity to observe the subject clearly;**
- (2) whether the witness is positive in the identification**
- (3) whether the witness's identification is weakened by a prior failure to identify the subject**
- (4) whether the witness's testimony remained positive and unqualified after cross-examination; and**
- (5) whether the witness' prior description/identification of the person/thing was accurate.**

In deciding whether the witness had an adequate opportunity to observe the subject of the identification, you should consider the capability of the witness, the length of time of observation, the distance between the witness and the subject, lighting conditions, whether the witness was under stress, whether the witness had seen or known the subject before, and any other circumstance supported by the evidence.

In deciding how much weight to give to identification testimony, you should consider whether the identification was based on the witness's own recollection and the circumstances of the identification. These circumstances may include, but are not limited to, whether the identification was made by selecting the subject from a group of similar persons or the subject alone, the length of time between when the witness observed the subject and the identification, and whether anything during that time may have affected the identification. You should also consider whether the witness described the subject before the identification, and if so, how specific the description was.

Appendix C

Judicial Instructions: Simplified Juror Instructions (Modified from Lockamy et al., 2023)

OUJI-FK 9-19

EVIDENCE - EYEWITNESS IDENTIFICATIONS

For the following four cases, the court instruct you: Eyewitness identification evidence must be scrutinized carefully. Research has shown that there are risks of making mistaken identifications. Human memory is not foolproof. Research has revealed that human memory is not like a video recording that a witness need only replay to remember what happened. Memory is far more complex. To decide whether the identification testimony is sufficiently reliable evidence to conclude that this defendant is the person who committed the offense charged, you should consider the following factors:

1. Confidence and Accuracy:

The witness may have made a confidence statement. Although some research has found that highly confident witnesses based on an immediate confidence judgment are more likely to make accurate identifications, eyewitness confidence is not a perfect indicator of accuracy. Ask yourself: How much weight should I give the confidence statement?

2. Feedback:

Feedback occurs when others signal to eyewitnesses that they correctly identified the suspect. That confirmation may reduce doubt or produce a false sense of confidence in a witness at the time of a trial. It is for you to determine whether or not a witness's confidence at the time of trial in this case (if provided) was affected by feedback or whether their confidence at the time of trial (if provided) instead reflects the witnesses' accurate assessment of their identification. Ask yourself: Could someone have done anything to inflate the eyewitness' confidence? Does this strengthen or weaken the usefulness of the eyewitness' confidence statement?

Appendix D

Case 1 – Older Adult Highly Confident

Case: SC-731SB4 State of Oklahoma V. Jacob Roberts

Victim: Samuel Johnson Crime: First-Degree Robbery Victim Injuries: facial cuts and dislocated shoulder

Witness: Stephen Anderson

Description of Event: Mr. Stephen Anderson (Witness) was in a hurry to get home on the night of May 3rd, 2022. He had just left the activity center where he had been playing cards. He stayed too long at the center and had to hurry and pick up his medication before the pharmacy closed. The pharmacy was around the corner from the activity center. Mr. Anderson was walking to the pharmacy when he witnessed a man push the victim (Mr. Samuel Johnson) to the ground and steal the victim's wallet from his back pocket. Mr. Anderson was the only witness and immediately called the police. According to police, the victim, Mr. Samuel Johnson, was not able to identify his assailant. However, Mr. Anderson was able to pick out the assailant from a photo lineup. He identified Jacob Roberts as the assailant. The police arrested Jacob Taylor Roberts who is currently on trial for first-degree robbery. Mr. Roberts denies committing the crime. He states he was at home the day and time the event took place. No alibi was confirmed. No security video was able to be recovered. Only Mr. Anderson and the victim were witnesses to the crime.

Mr. Anderson is called to testify as a witness for the State. Here is his testimony.

Prosecution: Mr. Anderson, good morning, can you state your name and date of birth?

Mr. Anderson: Yes. My name is Stephen Anderson. My date of birth is August 1st, 1947.

Prosecution: So that would make you 75 years old?

Mr. Anderson: Correct.

Prosecution: Is it safe to say that you are retired?

Mr. Anderson: Yes, I have been retired for almost 10 years now.

Prosecution: What do you occupy your time with now that you are retired?

Mr. Anderson: Well mostly, I like to spend time with my grandchildren. But also, I spend a lot of time at the activity center. There are always different events happening that me and my other retired friends enjoy attending.

Prosecution: Were you at the activity center the night of May 3rd, 2022 at 7:30?

Mr. Anderson: Yes. I was playing cards that night.

Prosecution: What time did you leave the center?

Mr. Anderson: I left shortly after 7:30.

Prosecution: What made you leave at that time?

Mr. Anderson: Well, I needed to go pick up my prescription from the pharmacy.

Prosecution: Did you drive to the pharmacy?

Mr. Anderson: No, I walked. Figured I could exercise my legs for a bit.

Prosecution: Is it a far walk from the activity center?

Mr. Anderson: No. For me, it takes about 10 minutes. It's around the corner from the activity center.

Prosecution: Can you describe what you witnessed the night of May 3rd, 2022, walking to the pharmacy?

Mr. Anderson: I was walking to the pharmacy to pick up one of my prescriptions. I noticed across the street, a man walking. He didn't seem like he was paying much attention, rather he was on his phone and walking. Didn't think much of it, everyone is always on their phone these days. I remember being in a hurry because I knew the pharmacy would close soon. All of a

sudden, I saw a younger fellow running behind the man with the phone and he pushed the man down.

Prosecution: Was the man on the phone, who got pushed, Mr. Johnson?

Mr. Anderson: Correct.

Prosecution: Please continue.

Mr. Anderson: Well, I saw the defendant reach into Mr. Johnson's back pocket and remove his wallet. It happened so quickly. It was a hard push too.

Prosecution: To clarify you saw the defendant Jacob Roberts?

Mr. Anderson: Yes, him. *points to defendant*

Prosecution: Your honor, may the record reflect the witness has identified the defendant.

Court: Reflected.

Prosecution: Please continue Mr. Anderson. What happened next?

Mr. Anderson: I started to get my cellphone from my front pocket to call the police. But when Mr. Johnson did not get up, I crossed the street to try to help him. I remember asking him over and over again "Sir, are you okay?" I think he was in shock because he did not say anything. Then, he finally said, "My shoulder I can't move". It was at that point that I dialed 911 on my cellphone.

Prosecution: What direction did the assailant run after taking the wallet?

Mr. Anderson: He was heading north. He did not run back from where he came from, he just took off and kept running.

Prosecution: You were asked to come into the police station on May 5th, 2022 to positively identified the assailant, correct?

Mr. Anderson: Yes. I identified the defendant. *points to the defendant*

Prosecution: No further questions you honor.

Defense: Mr. Anderson, you mentioned you were in a hurry the night of May 3rd, 2022. You were walking over to the pharmacy to get your prescription and didn't think much of the victim walking staring at his phone, correct?

Mr. Anderson: Yes.

Defense: You didn't think much of the victim because you were focused on getting to the pharmacy. How were you able to identify Mr. Roberts as the assailant, if you were not focused on the victim?

Mr. Anderson: It was still light out. I could see clearly that Mr. Johnson was pushed, and his wallet stolen.

Defense: You mentioned that it all happened so quick. Is it possible, that it was not the defendant Mr. Jacob Roberts who pushed Mr. Johnson?

Mr. Anderson: No. I was able to see Mr. Roberts push Mr. Johnson down and take his wallet.

Defense: But is there a possibility you made a mistake since you were in a hurry and you witnessed it happening so quickly?

Mr. Anderson: I do not believe I made a mistake identifying Mr. Roberts. Not at the police station. Not now.

Defense: No further questions your honor.

Appendix E

Case 2 – Child Highly Confident

Case: SC-6214SB5 State of Oklahoma V. Erick Lawson

Victim: Jack Taylor

Crime: First-Degree Robbery

Victim Injuries: sprained wrist and dark bruising up and down his right arm

Witness: Adam Smith

Description of Event: Mr. Adam Smith was playing basketball at his local neighborhood park, located near his home. Adam noticed the victim (Mr. Jack Taylor) running through the park. Mr. Taylor was a neighbor of Adam, and Adam seen running at the park many times before. Adam witnessed a bearded man stop Mr. Taylor. A confrontation occurred between them. Adam saw this happening and quickly ran over to his bike and hurried home. He told his mother what had happened. His mother called law enforcement. The police arrived at the scene. The victim was asked questions regarding his assailant but stated he was not able to get a glimpse of his face well due to the assailant wearing an oversized hood. After searching around the neighborhood, the police found a man with the same descriptions as the assailant, Mr. Erick Lawson, a couple of blocks from the park. He was brought in the station for questioning. Mr. Lawson was not found with any of Mr. Taylor's belongings and claims he was just walking around the neighborhood and was nowhere near the park at the time of the crime. Adam was asked to come to the police station to identify who the bearded man was the assailant. Adam was able to pick out the bearded man from a photo lineup. Adam identified Mr. Lawson as the victim's assailant. Mr. Taylor's belongings were not able to be found. Mr. Lawson is currently on trial for first-degree robbery.

Adam is called to testify as a witness for the State. Here is his testimony.

Prosecution: Adam, thank you for taking time from school and being here with us. I am going to ask you some questions about the afternoon of June 13th, 2022. The day you talked to the police.

Do you remember that day?

Adam: Yes.

Prosecution: It was the beginning of summer vacation correct?

Adam: Yes, I remember because I had my birthday party.

Prosecution: You had your birthday party that day?

Adam: No. I believe it was that weekend. I am 6 now. I got a new basketball that's why I was at the park that day.

Prosecution: You received a basketball as a present?

Adam: Yes. One of my friends got it for me for my 6th birthday.

Prosecution: So that night you were playing with your basketball at the park? By yourself or with your friends?

Adam: It was just me.

Prosecution: Do you play at that park often?

Adam: Yes. On Mondays, me and my friends play basketball. I was the first one to show up that day. I had my basketball bag and my water bottle and my bike.

Prosecution: The day the police came to the park, it was a Monday, and you were waiting for your friends to show up correct?

Adam: Yes.

Prosecution: While waiting for your friends, did you see anyone else in the park?

Adam: First I saw Jack.

Prosecution: Jack Taylor is the person you saw that day in the park?

Adam: Yes. Jack is my neighbor. I see him at the park all the time, running.

Prosecution: Did you see anyone else at the park.

Adam: Not at first. But then I saw a tall man with a beard walking towards Jack.

Prosecution: What was the tall man with a beard wearing?

Adam: He was wearing jeans and a dark navy hoodie. He was wearing his hood, but I was able to see his face.

Prosecution: Is the man who was wearing the dark navy hoodie in this room?

Adam: Yes, he is right there. *points to defendant*

Prosecution: Your honor let the record reflect the witness has identified the defendant.

Court: Reflected

Prosecution: What happened after the man, Mr. Lawson, walked up to Jack?

Adam: I am not sure how it started. I was practicing my dribbling and I remember hearing some yelling coming from them. The guy in the hoodie was way bigger than Jack. So, I was able to see him over Jack's head.

Prosecution: What did you see after you heard the yelling?

Adam: I saw the man in the hoodie holding on to Jack. He wouldn't let go of his arm. The man in the hoodie had Jack's headphones and was pulling on his phone. Jack kept screaming "Hey hey!"

Prosecution: What did you do next?

Adam: When I heard the yelling, I got scared. I thought Jack needed help. I got on my bike and went home. My mom always says if you see bullying happening, I have to go tell an adult. I think that he was trying to beat Jack up. *points to defendant*

Prosecution: What happened when you got home?

Adam: I told my mom that Jack was getting beat up at the park. She called the cops, and we ran over to the park. The bearded man was gone but Jack was sitting on one of the benches. The other neighbors were coming out of their houses and coming up to Jack. The police came and they asked me a bunch of questions. I told them what I saw.

Prosecution: Did you go back home after speaking with the police?

Adam: Yes. Me and my mom went back home because the police told us to. A couple hours later they came back and took me to the police station.

Prosecution: What happened at the police station?

Adam: The police asked me to look at photos and I pointed to the bearded man who yelled at Jack.

Prosecution: No further questions your honor.

Defense: Adam, did you see who stole Jack's phone and headphones?

Adam: Yes, the man with the beard in the hoodie.

Defense: Did you see this happening?

Adam: Yes, I saw the man in the hoodie pull on Jack's phone.

Defense: But did you see him taking it?

Adam: I saw the man pull on Jack's phone. He already had Jack's headphones on his other hand. I got scared so I went home to tell my mom.

Defense: Adam is it correct to say that you did not see the man in the hoodie run off with the phone or headphones, but you did see him pull on it?

Adam: Yes. He already had Jack's headphones. He was pulling on the phone.

Defense: Is it possible that the man in the hoodie only pulled on the items but did not take them?

Adam: I don't think so. He had the headphones. It looked like he was taking the phone too.

Defense: No further questions your honor.

Appendix F

Case 3 – Older Adult Less Confident

Case: SC-9211SB6 State of Oklahoma V. Zachary Fields

Victim: John Harold

Crime: First-Degree Robbery

Victim Injuries: bruising on his neck

Witness: Gregory Parks

Description of Event: Mr. Gregory Parks was walking out of his local activity center. He walks around the track in the afternoon before heading home to watch the evening news and feed his cat. On the night of Oct 20th, 2022, he was walking to his vehicle in the parking lot, when he witnessed a man knock on the window of another car. Mr. John Harold was in that vehicle and rolled down his window. The man knocking on the window was wearing a black mask and proceeded to grab the victim, Mr. Harold, by his neck. When the assailant let go of the Mr. Harold's neck, Mr. Harold came out of the car. The assailant quickly ransacked Mr. Harold's car and took his phone, wallet, and some loose change. The assailant ran to a silver car in the parking lot, took off his mask, got in, and drove off. Mr. Parks witnessing this, called the police and gave his statement. Days later Mr. Parks was asked to come in to identify the assailant from a photo lineup. Mr. Parks had some difficulty picking out the assailant but identified Mr. Zachary Fields. Mr. Fields is currently on trial on charges of first-degree robbery.

Mr. Parks is called to testify as a witness for the State. Here is his testimony.

Prosecution: Good morning Mr. Parks. Please tell the court what you witnessed on a Thursday evening on October 20th, 2022.

Mr. Parks: Yes sir. I had finished my daily walk and was heading home to feed Robbie. That's my cat. I usually try to find a parking spot that is close to the entry door. That Thursday night, I

finished my walking laps around the track. I was walking back to my vehicle when I witnessed the choking.

Prosecution: When you were walking back to your vehicle what did you see?

Mr. Parks: Well, I heard some tapping and some mumbling. Not sure what was said, but I did see the man, in a black mask, outside the car trying to get Mr. Harold to roll down his window. Mr. Harold rolled his window down.

Prosecution: Please continue.

Mr. Parks: Well, you see I was reaching for my car keys in my pocket to unlock my car. I happened to see the defendant reaching for the inside of Mr. Harold's vehicle. All of a sudden, his hands were on his neck. I was shocked that this was happening in broad daylight. I thought this man, Mr. Harold, might be getting robbed. The defendant had a mask on.

Prosecution: You saw the defendant's hands on Mr. Harold's neck?

Mr. Parks: Yes.

Prosecution: What happened next?

Mr. Parks: I saw Mr. Harold get out of his vehicle. The robber went into his car, rummaging through it. He then ran away into another vehicle. But as he was running, he took off his mask. I caught a quick glance of him, the defendant.

Prosecution: What color was the vehicle he left in?

Mr. Parks: I can't recall. It was a small vehicle.

Prosecution: You told the police it was a silver car, is that correct?

Mr. Parks: Maybe. It was a while back. If I said that it was a silver car then it was.

Prosecution: You don't recall?

Mr. Parks: Like I mentioned it was a while back.

Prosecution: Is the man who attacked Mr. Harold and took off in the small car here?

Mr. Parks: Yes. He is sitting in front of us. Zachary Fields. *points to the defendant*

Prosecution: Your honor let the record reflect that the witness identified the defendant.

Court: Reflected.

Prosecution: The police asked you to come in on October 25, 2022 to look at a photo lineup, correct?

Mr. Parks: Yes.

Prosecution: Were you able to identify Mr. Fields in the photo lineup?

Mr. Parks: Yes sir.

Prosecution: No further questions your honor.

Defense: Good morning Mr. Parks. Thank you for testifying today. You just stated that on October 25, 2022, five days after the event that you witnessed, you identified the defendant from a photo lineup, correct?

Mr. Parks: Yes.

Defense: The police report states you had some difficulty with that, is that correct?

Mr. Parks: I can't remember. It might be possible I did.

Defense: How are you sure that the man you saw choke Mr. Harold, is the man you identified from the photos?

Mr. Parks: I picked from the options the police gave me. Mr. Fields matched the description of the man I saw taking off the mask.

Defense: Is it possible that you might have mistaken Mr. Fields as the assailant?

Mr. Parks: My choice was him.

Defense: Is it possible that in the five days between witnessing the crime and identifying the assailant you forgot and mistakenly chose Mr. Fields?

Mr. Parks: It did happen a while back. But that's who I picked. Like I said, I caught a glimpse of the man taking off in that other car.

Defense: But it's possible that you might have mistaken?

Mr. Parks: Yes sir, but I think I saw him, Mr. Fields.

Defense: You also state that you don't remember the vehicle the assailant fled in correct?

Mr. Parks: Just that it was a smaller car.

Defense: What color?

Mr. Parks: I don't recall but I said silver when I spoke to the police.

Defense: No further questions your honor.

Appendix G

Case 4 – Child Less Confident

Case: SC-4231SB7 State of Oklahoma V. Travis Miller

Victim: Sterling Mathers Crime: First-Degree Robbery Victim Injuries: Bruised ribs,

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Witness: Dylan O’Conner

Description of Event: Dylan O’Conner had just finished checking out library books on the afternoon of March 15, 2022. His mother told him it was okay to start heading towards the door as she was finishing checking out books with Dylan’s sister. From the door, Dylan could see into the parking lot and saw a man walk up to victim and push him down towards the floor. The assailant grabbed the victim’s shoulder bag. The victim, not wanting to let go of the bag, held it tightly with both hands. The assailant proceeded to kick the victim in the stomach/rib area until the victim let the bag go. The assailant fled the scene on foot, running. Dylan proceeded to go up to his mom and the librarian, he told them a man was getting kicked outside. The library staff went outside to aid the victim and called the police. When the police arrived, they realized that the cameras outside the library weren’t working. The victim, Mr. Mathers, did not recall many details of his assailant. However, Dylan described the assailant to police. Mr. Travis Miller was found walking a couple blocks away from the library, fitting the description of the assailant. He was not found Mr. Mathers’s shoulder bag in his possession. Mr. Miller was taken into the station and questioned. He denies being at the library when the crime took place. Dylan had some difficulty picking him out of the photo lineup. Mr. Miller is currently on trial for robbery in the first degree.

Dylan is called to testify as a witness for the State. Here is his testimony.

Prosecution: Dylan, do you remember being at the library on March 15, 2022

Dylan: I think so

Prosecution: Who were you at the library with?

Dylan: My mom and my sister.

Prosecution: Did you check out any books?

Dylan: Yes. I am six and in the first grade but I am reading above my grade level.

Prosecution: You were excited to be at the library?

Dylan: Yes. I checked out my books first.

Prosecution: You finished checking out your books and then what happened?

Dylan: My sister was checking out hers. My mom told me it was okay to start walking to the door. We were going to stop by McDonald's on our way home.

Prosecution: You were ready to get to McDonald's, so you started walking towards the door?

Dylan: Yes.

Prosecution: The door in the library is clear so you were able to see into the parking lot, correct?

Dylan: Yes, I saw a tall skinny man go behind the man with the bag and push him down.

Prosecution: What happened next?

Dylan: The skinny man started kicking him

Prosecution: Kicking the victim Mr. Mathers?

Dylan: Yes

Prosecution: The skinny man that was kicking Mr. Mathers, what else did he do?

Dylan: He kept pulling on Mr. Mathers's bag and kicked him until he let go.

Prosecution: Mr. Mathers let go of the bag?

Dylan: Yes. The skinny man stopped kicking and ran away.

Prosecution: Is the skinny man here with us?

Dylan: I think so. I think he is that guy sitting at that table.

Prosecution: Travis Miller?

Dylan: I think so.

Prosecution: Your honor let the record reflect the witness has identified the defendant.

Court: Reflected

Prosecution: What happened next?

Dylan: I ran over to my mom to tell her.

Prosecution: What did your mom do?

Dylan: She and the librarian walked outside and saw Mr. Mathers on the ground and called the police officers.

Prosecution: It is my understanding that the police asked you some questions about what you saw. What did you tell the police?

Dylan: I told them a skinny man in a brown shirt kicked Mr. Mathers.

Prosecution: No further questions your honor.

Defense: Dylan you just stated that you told police that a skinny man in a brown shirt kicked Mr. Mathers correct?

Dylan: Yes.

Defense: Are you sure it was a brown shirt?

Dylan: I don't know. It could have been black.

Defense: You did tell police the man was wearing a black shirt. Did you remember wrong?

Dylan: I don't know. Maybe it was black.

Defense: Okay. Is the person you picked out from photos at the police station here today?

Dylan: I dunno. Yes.

Defense: You don't know?

Dylan: It was a long time ago. But I think it was him.

Defense: No further questions your honor.

Appendix H

Jury Instructions for Verdict (Taken from Oklahoma Court of Criminal Appeals)

OUJI-CR 10-13

RETURN OF VERDICT -- BASIC INSTRUCTION

If you find beyond a reasonable doubt that the defendant committed the crime of **First-Degree Robbery** you shall return a verdict of guilty by marking the Verdict Form **[for the crime of (First-Degree Robbery)]** appropriately.

If you have a reasonable doubt of the defendant's guilt of the charge of **First-Degree Robbery**, or you find that the State has failed to prove each element of **First-Degree Robbery** beyond a reasonable doubt, you shall return a verdict of not guilty by marking the Verdict Form **[for the crime of (First-Degree Robbery)]** appropriately.

1. Based on the testimony so far, how guilty do you think Mr. _____ is of first-degree robbery?
 - a. You read testimony from an eyewitness; how confident do you rate the witness while testifying?