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Effects of joint trials on the proportion of guilty verdicts assigned to defendants

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**EFFECTS OF JOINT TRIALS ON THE PROPORTION
OF GUILTY VERDICTS ASSIGNED TO DEFENDANTS**

by

Stacy Lyn Gall

A thesis submitted in partial fulfillment of the
requirement for the award of
Master of Psychology (Forensic)
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USE OF THESIS

The Use of Thesis statement is not included in this version of the thesis.

ABSTRACT

When two or more people are alleged to have committed a crime together they are automatically tried together in a joint trial. Defendants can apply to have a joint trial severed into separate trials, but they are rarely granted. However, joint trials might be biasing against defendants in that they might have a greater likelihood of obtaining a guilty verdict than if they had separate trials. A review of the literature indicated that authors have several hypotheses why joint trials might be biasing, though there is no conclusive evidence that this is the case. This study used a mock juror paradigm to investigate whether joint trials are biasing toward defendants. Results indicated that there was not a significant difference in the proportion of guilty/not-guilty verdicts across one, two, and three-defendant trial conditions when all defendants involved were charged with the same offence (assault). It was concluded that having multiple defendants in a trial was not, on its own, biasing against the first or second defendants. However, having a co-defendant with a more serious charge (grievous bodily harm) led to a significant increase in the proportion of guilty verdicts assigned to the defendant in two out of three scenarios. It was concluded that it is possible that being paired with a co-defendant who has a more serious charge is biasing, but future research needs to assess this factor more thoroughly to make firmer conclusions. Therefore, it might be important for judges to consider differences in charge seriousness when deciding whether to grant separate trials to defendants who apply for them. It is suggested that there was little information for participants in this study to remember and organise, compared to the amount of information presented in real trials. Further, damaging inadmissible evidence against defendants was not included in this study. Future research should investigate the effects of length and complexity, and inadmissible evidence to assess for any biases against joint trial defendants.

DECLARATION

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any higher institution of higher education; and to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Stacy L Gall



Date

24.4.2000

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CHAPTER 1

INTRODUCTION

Jurors in criminal court trials are required to remember enormous amounts of information and are without access to the transcripts in deliberation (Kaplan & Schersching, 1981). Some courts have allowed jurors to take notes during the course of a trial, but notetaking is rarely allowed or encouraged in courts (Bourgeois, Horowitz, & FosterLee, 1993). Keeping all the facts straight may be a difficult task for jurors and there may be some confusion even when there is only one defendant. If there is more than one defendant in a trial it can make the task even more difficult. A trial with more than one defendant is referred to as a “joint trial” (Kidston, 1953). This thesis was designed to assess for any bias against defendants in joint trials, defined in this study as an increase in the proportion of guilty verdicts in joint trial versus separate trial conditions.

The legal issues pertaining to joint trials will be addressed in Chapter 2 by discussing the relevant legislation in Western Australia, some commonly cited reasons for and against joint trials, and two legal cases. Chapter 3 provides a review of the psychological literature and gives direction for the present research. The literature review begins by addressing findings in impression formation research. Impressions are thought to be an appropriate area to start with because of the connection between jurors’ impressions of defendants and their resulting verdicts (Tanford & Penrod, 1984; Vrij, 1997). Further in the literature review, the ability of jurors to disregard inadmissible evidence is analysed because of the increased likelihood of such evidence being presented in joint trials (Weinberg, 1984) compared to single defendant trials, and because such evidence appears to influence jurors’

decisions regarding the guilt or innocence of defendants (e.g., Rind, Jaeger, & Strogmetz, 1995; Sue, Smith, & Caldwell, 1973). Next, research findings indicating a bias in cases where one defendant is charged with multiple offences are outlined in the literature review to provide a rationale for joint trial research. Finally, the literature review concludes with a discussion of the only study the present author has found on joint trial research (Clayton, 1989), to provide a more solid rationale for the present study.

Chapter 4 specifies the design and hypotheses of the present study. The Pilot Study and Main Study's method and results are described in Chapters 5 and 6, respectively. Finally, Chapter 7 provides a discussion of this study's findings, its limitations, and some suggestions for future research.

CHAPTER 2

LEGAL BACKGROUND

If two or more people are accused of committing a crime together, they are generally tried together in the same trial by the same jury. For example, section 586(7) of the Western Australian Criminal Code (hereinafter referred to as the “Criminal Code”) states that, “Any number of persons charged with committing different or separate offences may be charged in the same indictment and tried together if the offences arise substantially out of the same or closely related facts,” (p. 295).

Any of the accused persons may apply for a separate trial at any stage of a joint trial, and the resulting decision is at the judge’s discretion (Kidston, 1953). Separate trials may be applied for as set out in Section 624 of the Criminal Code:

When 2 or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused persons, or any of them, shall be had separately from the trial of the other or others of them, and for that purpose may, if a jury has been sworn discharge the jury from giving a verdict as to any of the accused persons. (p.320).

A review of the case law indicates that in the following four circumstances severance of trials should be considered, though it is not automatically justified. Firstly, when one or more defendants is likely to have highly prejudicial inadmissible evidence heard against him/her in court as the result of a co-defendant (e.g., *R v. Demirok*, 1976). Secondly, when there is little duplication of evidence across the

defendants' cases (e.g., *R v. Darby*, 1982). Thirdly, when the jury would likely be incapable of considering the case against each defendant separately (e.g., *Domican and another*, 1989). Fourthly, when a joint trial is expected to be excessively complex and/or lengthy (e.g., *R v. Novac and others*, 1976). However, judges appear reluctant to separate joint trials, as can be seen in the comments of Starke, Crockett, and Fullagar JJ., “..undoubtedly it is only in exceptional cases that accused persons....will be permitted to stand trial separately,” (in *R. v. Ditroia and another*, 1981, p.247).

Reasons for joint trials

There seem to be four main reasons for judges' reluctance to grant separate trials. First, joint trials are often thought to be more cost efficient than separate trials for each defendant; there is only one jury, one courtroom, and one judge required (Just, 1988). Since at least some evidence is the same for the co-defendants, separate trials are thought to take more time and more money (e.g., *R. v. Demirok*, 1976). Second, joint trials save the same witnesses from coming into court to testify more than once (Finlay, 1991; *R. v. Demirok*, 1976). Third, the jury in a joint trial is said to get more of the whole story, or a clearer picture of what allegedly occurred in joint trials because in separate trials only the evidence relevant and admissible to the accused person at trial is presented (Finlay, 1991). Finally, it is suggested that verdicts in joint trials are more consistent across defendants because they are being judged by the same jury, and therefore it is deemed fairer to defendants that their co-defendants are judged similarly (*R. v. Demirok*, 1976). While there are clearly some advantages of joint trials, the literature suggests that there are also several disadvantages, which are discussed next.

Reasons for separate trials

In legal commentaries (e.g., Just, 1988), two main reasons are often suggested for severing joint trials: longer trial times and confusion of jurors in joint trials. Both factors can potentially lead to limiting jurors' abilities to distinguish between defendants' evidence and give independent verdicts. These two factors will be addressed in turn.

Joint trials tend to be longer than separate trials because evidence for more than one defendant is presented (Judge, 1990). Longer trials often result in more inconvenience for jurors and more information to remember. The more information people have to remember (Watkins & Watkins, 1975) and the longer the delay between encoding and retrieval (Shepard, 1967), the less likely they will be able to recall the information correctly. Further, as mentioned before, because the jury is not given the transcripts of trial proceedings (Kaplan & Schersching, 1981) and because few jurors take notes about the evidence given (Bourgeois et al., 1993), they are not given an optimal chance of remembering details accurately. Therefore, the sheer length of joint trials appears to make it difficult for jurors to fulfill their roles optimally.

In joint trials, jurors' roles involve considering each defendant's case separately to give independent verdicts (Kidston, 1953). However, jurors' confusion of the evidence may act as a bias that renders them incapable of correctly distinguishing between defendants' cases and therefore incapable of giving independent verdicts (Kidson, 1953). An example of where biases might come into play in joint trials is when the defendants blame each other for committing the alleged offence. This situation is common in joint trials (Weinberg, 1984). In such cases, the jury might think that *one* defendant is definitely guilty, and they may use relative

judgments to determine which one is guilty, rather than using the absolute independent judgments that they are instructed to use (Kidson, 1953). It might become a matter of who they believe *looks* more honest/less criminal than the other defendant, or which defendant seems less credible than the other and so on. However, each defendant should be judged according to the evidence against him or her alone, and should not be compared to co-defendants in determining their guilt or innocence (Kidston, 1953). Instructing jurors to give independent verdicts does not necessarily mean they end up doing so (Finlay, 1991).

Another potentially biasing factor cited in case law as reason for separating joint trials is inadmissible evidence (e.g., *R v. Demirok*, 1976). Inadmissible evidence is that which has been presented in court that the judge has ruled that the jury must not consider in reaching their verdicts (Pickel, 1995). It is possible that evidence admissible in respect of one or more defendants is not admissible in respect of one or more of the other defendants. The judge might rule that the evidence is inadmissible for particular defendants or for all defendants. A common scenario is where one defendant has made an admission also implicating his co-defendant (Just, 1988). In such cases, that admission is only admissible for the defendant who made the admission and not for the co-defendant who was implicated in the admission. Therefore, in such cases the jury is instructed by the judge to *disregard* that particular evidence for the co-defendant and only consider the evidence in the case of the defendant who made the admission.

It is argued by some researchers (e.g., Rind et al., 1995; Sue et al., 1973) that jurors are either not able to disregard such evidence, or that they choose not to disregard it. Indeed, there have been several legal cases where separate trials were deemed necessary by the trial judge because of the likelihood of overwhelming

prejudicial inadmissible evidence against one or more of the defendants (e.g., *Domican and another*, 1989). There have also been several cases where the appellate court has ruled that there was a miscarriage of justice because a joint trial was not separated (e.g., *R. v. Gibb and another*, 1983; *R. v. Demirok*, 1976).

Legal cases

Domican and another, 1989

The leading case in Australia regarding joint versus separate trials is *Domican and another* (1989). Domican and Thurgar were jointly charged with conspiring to murder a prison officer and Thurgar was also charged with attempted murder. The evidence against Thurgar “consisted of oral confessions and his possession of a pistol and photographs of the intended victim,” (p. 24). The evidence against Domican included “statements he made to other prisoners and to a prison officer indicating a desire to kill, and of an arrangement with T[hurgar] to carry out that killing,” (p.24).

Subsequent to an attempt to carry out the murder, Thurgar was apprehended. He made statements to police that Domican was involved in the plan (conspiracy) to murder the prison officer. This evidence would be admissible against Thurgar but not against Domican, though it clearly implicates the latter. Both accused made applications for separate trials. The Crown opposed the application. Hunt J stated, “the presence in the trial of Thurgar’s statement will inevitably have an effect upon the jury’s consideration of that particular issue, no matter what directions may be given to them to ignore that statement,” (p. 27).

Separate trials were granted to the two accused based on the following issues stated by Hunt J:

- 1) The evidence against each accused was significantly different and almost entirely separate. Further, T[hurgar]'s statements directly implicating D[omican] wereinadmissible against D[omican].
- 2) It would be difficult for a jury in a joint conspiracy trial to understand they could possibly convict T[hurgar] but acquit D[omican] on evidence only admissible against each separately. An accused's statement implicating, yet inadmissible against, the other, would inevitably have an effect on the jury no matter what directions were given. The real issue was whether such prejudice was avoidable without injury to the administration of justice.
- 3) The case against Domican was considerably weaker.
- 4) On experience, a joint trial often took longer than two separate trials and involved no saving of time.
- 5) Had T[hurgar]'s been the only application it would not have been granted on the basis put forward. (p. 24)

The basis of Hunt J's decision to sever the trial appears to have been that it would be too prejudicial to Domican for a joint trial to continue with Thurgar as a co-defendant. A review of the case law indicates that the level of expected prejudice in a joint trial must be substantial to warrant severing the trials; showing that *some* prejudice exists is generally not enough for the trial judge to sever a joint trial (e.g., *R. v. Grondkowski and another*, 1946). It appears from the Law Reform Commission of Victoria (1985) that cost is weighed up against prejudice and justice when they reported that, "joint trials, despite the prejudicial effect on the co-accused, are generally necessary for reasons of expedience and cost," (p. 67).

R v. Novac and others, 1976

Some joint trials take weeks or months to complete and therefore appear to make the whole process more complicated. An example is *R v Novac and others* (1976). The trial involved four defendants and 19 counts. The trial took 47 working days and the last four full days consisted of the judge summing up the case. Bridge L.J. of the Court of Appeal stated that such trials should be severed because of the “immense burden on both judge and jury,” (p. 118). There was a large amount of inadmissible evidence against the defendants that was heard by the jury. Bridge L.J. also indicated that too much was expected of jurors in this case when he stated, “it is by no means cynical to doubt whether the average juror can be expected to take it all in and apply all the directions given....in jury trial brevity and simplicity are the hand-maidens of justice, length and complexity its enemies,” (p. 119).

In some cases joint trials are viewed as biasing towards defendants and are separated, often based on an assumption that juries are not capable of keeping the evidence separate because of the added complexity in many joint trials (e.g., *R v. Novac and others, 1977; Domican and another, 1989*). If joint trials are indeed biasing, the factors involved may include trial complexity. Another possible factor that needs investigation is that of prejudice against joint trial defendants.

A review of the psychological literature, starting with impression formation, will now provide a basis for the suggestion that jurors might be more biased negatively against defendants in joint trials than those in separate trials.

CHAPTER 3

LITERATURE REVIEW

Impression Formation

Research has shown that jurors' negative impressions of defendants contribute to a higher rating of defendants' guilt (Tanford & Penrod, 1984). If it can be established that jurors form more negative impressions of defendants in joint versus single defendant trials, it would imply that joint trial defendants might be more likely to receive guilty verdicts. Such an effect would constitute a bias (as defined in Chapter 1) against joint trial defendants.

One factor well-researched in impression formation involves the effects of first impressions. First impressions often form quickly, with little information and tend to have disproportionate weight in resulting impressions (Asch, 1946; Kelley, 1950). One such study on this "primacy effect" is that of Anderson and Barrios (1961). They found that information presented first often formed a larger proportion of the resulting impression, compared to the weight of information presented later. People were found to subsequently select information that was consistent with their initial impression. Further, Fiske (1980) found evidence for a "negativity bias", that is the tendency for negative information to have a disproportionately heavy weight in forming impressions. Therefore, according to the impression formation research presented above, if negative information is presented first, a negative impression is likely to ensue despite subsequent positive information (Asch, 1946; Kelley, 1950; Anderson & Barrios, 1961; Fiske, 1980).

The connection of impression formation research to possible joint trial biases involves the order in which information (not only evidence) is presented to jurors.

Before any evidence is presented to jurors in a trial, the defendants are in view. The jurors might, at that early stage with little information, begin to form an impression of the defendants (Vrij, 1997). *If* this impression is negative, it might be difficult for jurors to form a positive impression even in light of subsequent positive information (i.e. pro-acquittal evidence) (Fiske, 1980). A lasting negative impression might eventually lead to a higher likelihood of a guilty verdict (Tanford & Penrod, 1984). The question that remains is whether the presence of multiple defendants in a trial initiates a negative impression. There are several possible reasons why negative impressions might be formed of defendants in joint trials.

One reason involves the mere idea of multiple defendants. Multiple defendant trials may imply to jurors that at least one defendant is guilty and they must only discover which one. The vital procedural legal rule “innocent until proven guilty” (Wells & Weston, 1977) may be shifted in joint trials to “which one(s) is guilty?”

Another reason why joint trials might lead jurors to form more negative impressions of the defendants compared to single defendant trials is the association of one defendant with another. If jurors have a negative impression of one defendant, they might form a similar negative impression of the co-defendant merely because he/she is associated with the first defendant. In other words, the co-defendant might be viewed as guilty by association.

To explain this notion of guilty by association, social categorisation theory is useful (Levine & Campbell, 1972). It suggests that people process information in such a way that other people are assigned to either the in-group (part of “us”) or part of an out-group (part of “them”). If jurors see the defendants as different from themselves, as part of an outgroup, then it may have adverse consequences for the defendants as a group. People assigned to outgroups are typically viewed as homogenous (e.g., “they

all look the same” in terms of racial out-groups) (Judd & Park, 1988). The implications of such outgroup categorisations for joint trials may be that even if just one defendant is thought to be guilty, jurors may assume that the other defendants are also guilty, since they form part of the same peer group. In other words, it may take just one guilty verdict for one defendant to classify the *group* of defendants as a “criminal outgroup”. As such, defendants might be found guilty by mere association (Popovski & Rudnick, 1990).

In summary of the research in impression formation, it clearly indicates that people may form impressions quickly and with little information (Asch, 1946; Kelley, 1950). Further, people are not likely to change such impressions over time, especially negative ones (Fiske, 1980; Kelley, 1950; Anderson & Barrios, 1961). Therefore, if appearing in court with co-defendants is biasing then such defendants appear to be subjected to an unfair trial because jurors are apt to retain their negative impressions of the defendants despite evidence that contradicts the negative impression formed. Subsequent inconsistent information (i.e. in deliberation) might not be capable of reversing such negative impressions because of the strong weight negative impressions generally have. One way that joint trials might be biasing is simply having a co-defendant. Such a situation may increase jurors’ belief that the guilty person is present but they just need to figure out which one. The other suggested reason why joint trials might be biasing is through the negative impression of a co-defendant.

There remains a further possibility why joint trials might be biasing against defendants. A defendant in a joint trial might be more likely to have negative information presented about him/her than he/she would have in a separate trial. This issue involves inadmissible evidence.

Disregarding inadmissible evidence

As mentioned previously, judges instruct and expect jurors to ignore any information deemed inadmissible by him or her (Kidston, 1953). Jurors are not told that such information is false, but rather just to disregard it *as if* they never heard it in the first place. There appears to be a higher likelihood of inadmissible evidence in joint trials than in single defendant trials (Weinberg, 1984). Research discussed below indicates that mock jurors typically do not disregard inadmissible evidence (Rind et al., 1995; Sue et al., 1973). As such, joint trials might be more biasing against defendants in part because of the increase in inadmissible evidence presented to jurors.

Rind and colleagues (1995) presented mock juror subjects with damaging inadmissible evidence (confession via an illegal wiretap). They found that the inadmissible evidence played a role in participants' decision-making, despite instructions to disregard the information. Specifically, more guilty verdicts were assigned to the defendant when the inadmissible evidence was presented than when it was not presented. However, when the seriousness of the offence was increased, the participants did not use the inadmissible evidence. Perhaps subjects were more apt to follow the rules when the stakes were higher (i.e. the defendant may get a severe penalty). Seriousness of crime therefore appears to play a role in whether mock jurors disregard inadmissible evidence. Strength of evidence also appears to play a role, as described in the next study.

Sue, Smith and Caldwell (1973) presented mock jurors with either weak or strong evidence against a defendant. Participants heard either: a) additional damaging evidence ruled admissible, b) additional damaging evidence ruled inadmissible and c) no additional evidence (control group). Overall, mock jurors in the inadmissible

evidence condition convicted significantly more than those in the control group who never heard the additional damaging evidence. However, there was an effect of evidence strength. In the strong evidence condition, participants did not use the inadmissible evidence presented to them. Thus, mock jurors seem not to need the extra evidence to find the defendant guilty when the evidence is already strong against the defendant, but used the extra evidence when the evidence is weak. Overall, mock jurors tend to use inadmissible evidence even when instructed not so, and this generally leads to an increase in guilty verdicts.

After having considered research in impression formation and disregarding inadmissible evidence, the next step appears to be to examine the effects of multiple defendants in a trial in order to assess for a bias against such defendants.

Unfortunately, there is negligible research on the effects of joint trials. However, a situation that is similar in some ways to joint trials, and an area which has been researched, is that of joinder of offences.

Joinder of offences research

The situation where a defendant is charged with more than one offence in a single trial is referred to as "joinder of offences" (Bordens & Horowitz, 1985). For example, the defendant may be charged with one count of theft, one count of assault, and one count of resisting arrest, all in the one trial. The Criminal Code permits the joinder of offences in certain circumstances. Section 585 states:

Provided that when several distinct indictable offences form or are part of a series of offences of the same or a similar character or when several distinct indictable offences are alleged to be constituted by the same acts or omissions, or by a series of acts done or omitted to be done in the prosecution of a single purpose, charges of such distinct offences may be joined in the same

indictment against the same person. (p. 294).

As in the case of joint (multiple defendant) trials, defendants in joinder (of offences) trials can apply to have their counts heard separately in separate trials. Section 585 of the Criminal Code sets out this possibility “if...it appears to the court that the accused person is likely to be prejudiced by such joinder,” (p.294). However, separate trials for multiple offences are rarely granted, for much the same reasons that joint trials are rarely separated: cost and time efficiency, consistent verdicts across counts, convenience of witnesses and so on (Weinberg, 1982).

In trials involving a joinder of offences, juries are instructed to distinguish between evidence for each charge and give independent verdicts for each of the charges in the indictment (Bordens & Horowitz, 1983). Therefore, any evidence against the defendant for one count cannot (or should not) be used by the jury in considering the evidence and verdict for another count. However, mock jurors in joinder trial studies typically assign more guilty verdicts in joinder of offences trials than when the identical charges are severed into separate trials (e.g., Bordens & Horowitz, 1983; Greene & Loftus, 1985; Horowitz, Bordens, & Feldman, 1980). These findings indicate that cases involving multiple offences are biasing toward defendants. It is possible that such jurors do not (or cannot) completely distinguish evidence for each count separately, or alternatively that they have a biased impression of defendants charged with multiple offences that leads them to assign more guilty verdicts to defendants in joined trials. Another finding, labelled the “joinder effect” was that the first offence presented resulted in more guilty verdicts compared with later offences (Bordens & Horowitz, 1983; Horowitz, Bordens, & Feldman, 1980). The researchers suggested that this finding might be due to the mock jurors’ need to find the defendant guilty of at least one charge, and that if the defendant was found

guilty on the first charge then there was not as much pressure to find him guilty on subsequent charges.

A review of the literature has clearly indicated that cases with joinder of offences appear to be biasing toward defendants (Bordens & Horowitz, 1983; Greene & Loftus, 1985; Horowitz, Bordens, & Feldman, 1980). However, the case of joint (multiple defendant) trials has yet to show any conclusive patterns (Clayton, 1989).

Joint trial research

Unlike the research available on the effects of joinder of offences, research on the effects of joint trials is negligible. An unpublished honours thesis is the only study that the present author found on the effects of joint trials (Clayton, 1989). Clayton did a series of experiments with two defendants in joint trial conditions and the same two defendants (same scenario) but in separate trials. In all experimental trials participants read prepared trial transcripts. One experimental trial had three conditions: joint, separate trial for first defendant, and separate trial for second defendant. The scenario involved two independent drivers who were charged with the death of a third person. The results indicated that the first defendant received significantly more guilty verdicts in the joint trial compared to his separate trial. The second defendant did not receive a differing number of guilty verdicts in separate versus joint trial conditions. Clayton found that acquittals for both defendants were extremely uncommon, as were convictions for both defendants. A common pattern was therefore finding only one defendant guilty, suggesting that the mock jurors might have used relative culpability judgments, for example “which one is *more* guilty?”

Another experimental trial in Clayton’s (1989) research involved two people who allegedly committed a burglary together. The three conditions were joint, separate for first defendant, and separate for second defendant. This experiment also

included the situation referred to earlier as “joinder of offences” in that one of the defendants was charged with two offences. Results showed that for both defendants, the joint trial resulted in significantly more guilty verdicts than for their respective separate trials. Therefore, a bias against these joint trial defendants was evident.

The last experimental trial in Clayton’s (1989) study involved a change to the scenario with an increase in seriousness of offence (murder) for the second defendant. The results of this experiment contrasted with those of the earlier experimental trials in that they did not show an increase in the proportion of guilty verdicts in the joint trial condition for either defendant compared to their separate trials. It is possible that because the second defendant was charged with murder it made the first defendant (charged with theft) appear less guilty. To explain the results for the second defendant (no increase in guilty verdicts in joint trial), it is possible that his case was so different from his co-defendant’s case because of the immense difference in seriousness of offence that it was *as if* he had a separate trial. It appears possible that such a large difference in offence seriousness (murder vs. theft) makes the evidence for each defendant’s case more easily distinguishable than if they were charged with more similar offences.

To summarise Clayton’s (1989) research, the first two sets of experiments resulted in increased proportions of guilty verdicts assigned to at least one defendant of the joint trials compared to their respective separate trials. However, in the last experiment, the offences differed largely between the two defendants and there was no such biasing effect of joint trials found.

As previously mentioned, Clayton’s research is the only experiment the present author could find involving the effects of joint trials. Since the various components of psychological research (e.g., impression formation, disregarding

inadmissible evidence, joinder of offences) point to the possibility that joint trials are biasing against defendants, it is necessary to continue on from Clayton's study to examine the effects of joint trials to reach a more solid conclusion on the implications of joint trials. The present study was designed to make the effects of joint trials clearer.

CHAPTER 4

THE PRESENT STUDY

Purpose

Prior research in the areas of impression formation, disregarding inadmissible evidence, joinder of offences, and joint trials has highlighted the need for an exploratory study into the possible biases of joint trials. “Bias” against defendants in this study is defined as an increase in the proportion of guilty verdicts.

The main purpose of this study was to examine the effects (if any) that joint trials have on the proportion of guilty verdicts assigned to defendants, compared to their severed trials. This bias may result from confusion of information, from negative judgments about multiple defendants or from another source. Since the information that the participants in this study received about the trials was quite short in length, confusion of information factors will probably be minimal in this study. If an effect is shown against multiple defendants in this study, it is more likely to be a result of negative judgments that jurors might hold about defendants in joint trials.

The second purpose of this study was to identify any biases against defendants depending on the charge their co-defendant (equally serious or more serious). There are three possible patterns that might emerge from the data. Firstly, being paired with a co-defendant with a more serious charge might result in an *increase* in guilty verdicts. Such a result would suggest that jurors might have believed that the defendant’s propensity to commit crime increased as a result of his pairing with a co-defendant charged with a more serious offence. Secondly, being paired with a co-defendant with a more serious charge might lead to a *decreased* number of guilty verdicts. This result would imply that jurors contrasted the two defendants and the

defendant with the less serious charge appeared less criminally-inclined, or to have a reduced propensity to commit crime. Lastly, being paired with a defendant with a more serious charge might not lead to any change in the number of guilty verdicts. It might be that the seriousness of the charge(s) against one's co-defendant is not relevant in assessing the first defendant's culpability.

The third and final aim of this study was to assess the confidence ratings of participants who assign not-guilty verdicts. It is suggested that even if joint trial conditions are not biasing in terms of increased proportion of guilty verdicts, jurors might display less confidence in defendants' innocence as a result of the joint trial.

General Design

Participants listened to an audiotape of a hypothetical criminal trial summary involving one of the following four conditions:

1. One Defendant (Defendant A)
2. Two Defendants (Defendant A and Defendant B)
3. Three Defendants (Defendant A, Defendant B, and Defendant C)
4. Two Defendants (Defendant A and Defendant D)

Defendants A, B, and C are all charged with the same offence (assault) and the seriousness of their alleged offences was thought by the author to be equal. Defendant D is charged with a more serious offence (grievous bodily harm) than Defendants A, B, and C. (Therefore, in terms of crime seriousness, $A=B=C<D$). To ensure that participants interpreted offence seriousness as intended ($A=B=C<D$), a pilot study was carried out. It was decided arbitrarily that the accepted criterion would be at least 15 out of 20 participants rating the seriousness of offences as $A=B=C<D$. Participants in the pilot study read the joint trial summary involving all four defendants (A, B, C, and D) and then gave Likert-type ratings on a scale of one to seven indicating the

seriousness of each defendant's charge. The main study proceeded without any alterations to scenarios because the seriousness of charges was judged as planned ($A=B=C<D$) by 18 out of 20 participants.

There were two independent variables in the main study: 1) number of defendants in the trial (one, two, or three). 2) The seriousness of the charge against Defendant A's co-defendant(s), either equal (Defendant B) or more serious (Defendant D). Mock juror participants gave guilty/not-guilty verdicts (dependent variable #1), and the effect of joint trials were analysed in terms of the effects on Defendant A only. The other data collected from participants was a rating of their confidence in the they assigned to defendants (dependent variable #2).

There are several design features that require explanation. First, as mentioned, participants listened to an audiotope of a trial summary, rather than a trial transcript. Trial transcripts are better in that they give more details and give a first hand account of the proceedings, however, they are also longer than summaries and would therefore take more of participants' time to complete. Further, audiotapes have the advantage of presenting the information in the same form as most testimony, that is, in an audio format.

Other design features of this study were decided upon to make the situation of the mock juror participants more realistic and to control for certain variables. Firstly, participants listened to an audiotope of the criminal trial summary. An audiotope was chosen over a videotape to prevent the physical appearances of the defendants affecting jurors' impressions of defendants. Physical appearances have been found to influence mock jurors' impressions of defendants (e.g., Vrij, 1997). Although each defendant would have the same physical appearance in each condition they were presented in (i.e., Defendant A would have the same appearance across the 4

conditions), the interaction with a co-defendant's appearance could have an effect on the verdicts given for Defendant A. For example, the mock jurors might have found Defendant C to look "more guilty" than Defendant A on such subjective measures as build, cleanliness, posture and so on . While physical appearance can affect jury decision-making and therefore is a relevant issue to examine in further studies, it was controlled for in this exploratory study to maximize the validity of conclusions with respect to number of defendants and seriousness of offence. Secondly, an audiotape was also the preferred option over a written summary to be able to control the exposure time to the stimulus, to ensure that the speed of delivery was equal for all participants, and to prevent participants from re-reading parts of the summaries. Thirdly, dichotomous guilty/not-guilty verdicts were chosen over a Likert-type continuous rating scale with guilty and not-guilty at opposite ends of the scales. The advantage of Likert-type scales is that they enable the use of tests with more strength (i.e. more likely to find significant differences if there are differences). However, jurors in real trials must give a dichotomous guilty/not-guilty verdict, and this mode of response was chosen as it is deemed important to retain as many factors as possible to enhance the similarity between real trials and this jury-simulation trial situation. Fourthly, although group deliberation in reaching verdicts did not occur in this study, the testing was carried out in groups of five to 12 participants to enhance as much as possible the group situation of a real court trial.

Participants were treated in accordance with the "Ethical Principles of Psychologists and Code of Conduct" (American Psychological Association, 1992), and the study was approved by the Ethics Committee of the School of Psychology.

Hypotheses

- 1) More guilty verdicts will be assigned to a defendant in a criminal trial if that defendant is joined by one or more co-defendants.
- 2) Jurors will be less confident when they assign a not-guilty verdict to a defendant in a criminal trial if that defendant is joined by one or more co-defendants.
- 3) The number of guilty verdicts assigned to a defendant will be different depending on whether he has a separate trial or is paired with a co-defendant with a more serious charge.
- 4) The number of guilty verdicts assigned to a defendant will be different depending on whether he is paired with a co-defendant with a more serious charge or an equally serious charge.

CHAPTER 5

PILOT STUDY

METHOD

Participants

Undergraduate students of various disciplines from Edith Cowan University participated. Participants were primarily recruited from a list of students who voluntarily agreed to be placed on a list of potential participants for study. Several of the participants from the list who volunteered for this study also invited acquaintances from disciplines other than psychology and non-student acquaintances and they also participated. Each participant received a raffle ticket to win a \$50 prize. These raffle tickets were arranged by the School of Psychology as an incentive to participate in research.

There were 20 participants in the pilot study. Within this sample were eleven male participants (55%). Participants' ages ranged from 18 to 29 years with a mean age of 22.1 years. There was only one condition in the pilot study and therefore all participants performed the same activity.

Materials

An Information Sheet was used to explain to the participants what the study's aims were and what they would be expected to do if they decided to participate (See Appendix A for the Pilot Study Information Sheet). The Informed Consent Form was used to ensure that all participants were participating voluntarily and knew their rights as participants (See Appendix B). There was also space on this sheet for participants to record their age and gender, however names were not recorded.

For the pilot study, a five-page (2810 words) summary of a hypothetical criminal trial with four defendants was used. The transcript scenario will be briefly outlined here, and the complete transcript can be viewed in Appendix C. The general scenario consisted of an alleged nonsexual assault against a man in the downtown Perth area. The charges were introduced and relevant Criminal Code sections were listed. Next, the prosecution examined each of their witnesses with the defence cross-examining each witness. The defence then examined each of their witnesses with the prosecution cross-examining each of those witnesses. The prosecution then gave their summation followed by the defence's summation. Lastly, the judge gave instructions outlining the "beyond a reasonable doubt" criterion and the need to give independent verdicts assigned to each defendant.

The last item used in the pilot study was a sheet for participants to rate their judgements of the seriousness (on a scale of one to seven) of each of the four defendants' charges (See Appendix D).

Procedure

The acceptable criterion to proceed with the main study without alterations to the transcripts was arbitrarily set as at least 15 out of 20 participants responding in the expected manner ($A=B=C<D$). Participants in the pilot study took part individually. They were first asked to read the Information Sheet. If they still chose to participate in the study they were given the Consent Form to view. They were also asked to record their age and gender on this form and then the experimenter collected the consent forms. They were then given the five-page trial summary and were asked to read it only once. After participants finished reading the trial summary they were given the response sheet, where they recorded their ratings of the seriousness of the four defendants' charges. The response sheets were collected by the experimenter. The

participants were then debriefed about the study and were thanked for their participation.

RESULTS

Results were that 18 out of the 20 participants rated the seriousness of the defendants' charges in the expected manner ($A=B=C<D$) and therefore it was decided to continue with the main study without altering the transcripts.

CHAPTER 6

MAIN STUDY

METHOD

Participants

One hundred participants took part in the main study. They were recruited in the identical manner as in the Pilot Study. Their ages ranged from 18 to 54 years with a mean age of 27.6 years. Female participants made up 64% of the sample. Participants were assigned to each of the four conditions according to the session time they attended. There were 25 participants in each of the four conditions.

Materials

An Information Sheet was provided to potential participants to inform them of the study details (See Appendix E). A Consent Form identical to that used in the Pilot Study was also used (Appendix B).

An audiotope detailing the summarised accounts of a hypothetical criminal trial was used. The tape consisted of four different trial scenarios that made up the four conditions of this study. The four scenarios were prepared by breaking down the trial summary from the pilot study. The first trial condition was 931 words in length and consisted of one defendant (A) (Appendix F). The second trial condition was 1525 words in length and consisted of two defendants with the same charge (A and B) (Appendix G). The third trial condition was 2043 words in length and consisted of three defendants with the same charge (A, B, and C) (Appendix H). The fourth trial condition was 1752 words in length and consisted of 2 defendants (A and D) with one defendant (D) having a more serious charge than the other defendant (A) (Appendix

I). The general scenario of the audiotape was the same as for the pilot study. The voice for each of the four scenarios was that of the same male reader.

A response sheet was used, detailing participants' verdict for each defendant in their condition (guilty or not-guilty) and a rating of the participants' confidence in their verdicts, on a scale of one to seven (Appendices J, K, L, M, for Conditions 1, 2, 3, 4 response sheets, respectively).

A room in the language laboratory of Edith Cowan University was used to run the study. There were approximately 20 desks in the room. Each desk had a set of headphones hooked up to it. There was a main desk at the front of the room that the experimenter used. The audiotape played by the experimenter at the front desk was heard by each participant simultaneously through their respective headphones.

Procedure

Participants in the main study took part in groups of five to 12 participants. The groups had been arranged by the experimenter by telephone prior to the study. Participants chose one of the 17 time slots over a period of two weeks that best suited them and they were booked in for that time slot. Each time slot was assigned one of the four conditions of the study and the experimenter assigned the conditions such that each condition would end up having an equal number of participants. There was an average of six participants per time slot.

Participants were seated at a desk with headphones attached to it. They were then asked to read the Information Sheet. If they still chose to participate in the study they were given the consent form to view. They were also asked to record their age and gender on this form and then the experimenter collected the consent forms.

Instructions on an audiotape were played to the participants as follows: “you are about to hear about a criminal trial here in Perth. Please imagine that you are one of the jurors in that trial.”

The experimenter then played one of four audiotape versions that had been assigned to the particular time slot. After the tape segment finished, participants filled out the response sheet. The response sheets were collected by the experimenter. The experimenter then debriefed the participants, answered any questions from the participants, and thanked them for their time and effort.

Statistical Analyses

Data collected from each participant in each of the four conditions (A, AB, ABC, and AD) included a guilty/not-guilty verdict and a rating of confidence in the verdict given for each defendant. To test the effect of the number of defendants (independent variable #1) on the proportion of guilty/not-guilty verdicts (dependent variable #1), a 3x2 Chi-square analysis was completed. Confidence ratings (dependent variable #2) for the number of defendants in three conditions were analysed using an ANOVA.

To test the effect of the seriousness of the charge of one’s co-defendant (independent variable #2) on the proportion of guilty/not-guilty verdicts (dependent variable #1), two 2x2 Chi-square analyses were used. Confidence ratings (dependent variable #2) of the verdicts in the two conditions were analysed using a t-test.

RESULTS

Data collected were verdicts assigned to each defendant in the trial condition (guilty or not guilty) and a confidence rating of the verdict (on a scale of one to seven). Table 1 illustrates the number of guilty and not-guilty verdicts in all four conditions for each defendant involved.

Table 1

Number of Guilty and Not-guilty Verdicts as a Function of Condition and Defendant

Condition	Verdict	Defendant			
		A	B	C	D
1 (A)	Guilty	6(24%)	X	X	X
	Not guilty	19(76%)	X	X	X
2 (AB)	Guilty	10(40%)	11(44%)	X	X
	Not guilty	15(60%)	14(56%)	X	X
3 (ABC)	Guilty	5(20%)	7(28%)	6(24%)	X
	Not guilty	20(80%)	18(72%)	19(76%)	X
4 (AD)	Guilty	13(52%)	X	X	15(60%)
	Not guilty	12(48%)	X	X	10(40%)

Note. Percentages indicate the proportion of guilty/not guilty verdicts for each condition for each defendant.

Both guilty and not-guilty verdicts were analysed when the chi-square analyses were done. When comparing average confidence ratings in guilty and not-guilty verdicts, inferential statistics were also employed. The number of cases in each cell was high enough to allow that, as all guilty verdicts were pooled across the four conditions, as were all not-guilty verdicts. All other inferential comparisons only used not-guilty verdicts, as the numbers were too low in most cells with guilty verdicts.

Effect of number of defendants on verdicts assigned

Effect on first defendant (A)

Verdicts assigned to Defendant A in Conditions 1, 2, and 3 (A, AB, ABC) were analysed using a Chi-square test. Number of defendants in the trial (one, two, or

three) was not found to affect the proportion of guilty verdicts the first defendant (A) received, $\chi^2(2, N = 75) = 2.778, p = .249$. For the same groups, analysis of confidence ratings for not-guilty verdicts assigned to Defendant A showed significantly higher confidence in Condition 3 (ABC) ($M = 4.45, SD = 1.47$) than in both Condition 1 (A) ($M = 3.47, SD = 1.17$), $t(37) = -2.287, p = .028$ and Condition 2 (AB) ($M = 3.13, SD = 1.77$), $t(33) = 2.406, p = .022$. This finding does not support the earlier finding that number of defendants did not have an effect. There was no significant difference between Conditions 1 (A) and 2 (AB), $t(32) = .674, p = .505$, which does support the finding that number of defendants does not have an effect.

Effect on second defendant (B)

A post-hoc analysis revealed a similar finding with respect to the second defendant (B), where the proportion of guilty verdicts assigned to Defendant B did not differ significantly between the 2-defendant condition (AB) and the 3-defendant condition (ABC), $\chi^2(1, N=50) = 1.389, p = .239$. Confidence ratings for the same conditions (AB and ABC) revealed significantly higher confidence in not-guilty verdicts assigned to Defendant B in Condition 3 (ABC) ($M = 4.72, SD = 1.67$) than in Condition 2 (AB) ($M = 2.93, SD = 1.9$), $t(33) = 3.021, p = .005$. This latter pattern is similar to the pattern found for Defendant A, in that the number of defendants did not affect the number of not-guilty verdicts, and that Condition 3 (ABC) resulted in the highest confidence ratings for not-guilty verdicts compared to Conditions 1 (A) and 2 (AB), as reported above. Therefore, neither the first defendant (A) nor the second defendant (B) appeared to be disadvantaged by being presented in a joint trial with co-defendants with equal charges.

Effect of order on culpability

Further post-hoc analyses indicated that in the 2-defendant condition (AB), Defendants A and B were assessed as being equally culpable in terms of guilty/not-guilty verdicts assigned to each of the defendants, $\chi^2(1, N = 50) = .0821, p > .05$. Confidence ratings in the not-guilty verdicts assigned to Defendants A and B in Condition 2 (AB) were also similar, $t(27) = .301, p = .766$, which is consistent with the results for the number of not-guilty verdicts. Likewise in the 3-defendant condition (ABC), the three defendants were assessed as being equally culpable, $\chi^2(2, N = 75) = .4386, p > .05$, and the confidence ratings were not significantly different among the 3 defendants' not-guilty verdicts, $F(2, 54) = .251, p = .779$. These confidence results are consistent with the verdict results that order of defendants did not have an effect on their culpability. Since Defendants A, B and C were judged as being equally culpable, the rest of the results are limited to responses regarding Defendant A only.

Confidence ratings between guilty/not-guilty verdicts

Table 2 shows the confidence ratings of guilty and not-guilty verdicts assigned to each condition. In general, confidence ratings were significantly higher for guilty verdicts ($M = 4.94, SD = 1.35$) than for not-guilty verdicts ($M = 3.77, SD = 1.49$), irregardless of condition, $t(98) = -3.84, p < .01$. This result was expected since participants were instructed to only render guilty verdicts when they were sure beyond a reasonable doubt that the defendant was guilty.

Table 2

Mean Confidence Ratings of Guilty and Not-guilty Verdicts by Condition and Defendant

Condition	Verdict	Defendant			
		A	B	C	D
1 (A)	Guilty	4.17(1.47)	X	X	X
	Not guilty	3.47(1.17)	X	X	X
2 (AB)	Guilty	5.1(1.29)	5.18(1.72)	X	X
	Not guilty	3.13(1.77)	2.93(1.9)	X	X
3 (ABC)	Guilty	5(1)	5.2(.76)	4.67(1.37)	X
	Not guilty	4.45(1.47)	4.72(1.67)	4.79(1.62)	X
4 (AD)	Guilty	5.15(1.46)	X	X	5.27(1.16)
	Not guilty	3.92(1.24)	X	X	4.1(.99)

Notes. Standard deviations are in parentheses. Confidence scale of 1 to 7, where 1= not very confident and 7=very confident.

Effect of seriousness of co-defendant's charge

A comparison was made of verdicts assigned to Defendant A between Condition 1 (A) and Condition 4 (AD) using a Chi-square test, to assess the impact of having a co-defendant with a more serious charge than himself. There was a significant difference, $\chi^2(1, N = 50) = 4.16, p = .041$ indicating that compared to the single defendant condition (A), the 2-defendant trial condition with Defendant A paired with Defendant D (who has a more serious charge) led to a significant increase in the proportion of guilty verdicts assigned to Defendant A.

To further assess the impact of seriousness of charge, another comparison was made of verdicts assigned to Defendant A between Condition 2 (AB) and Condition 4 (AD) using a Chi-square test. The proportion of guilty verdicts did not differ

significantly between the two conditions, $\chi^2(1, N = 50) = .725, p = .395$. Therefore, having a co-defendant with a more serious charge did not affect the proportion of guilty verdicts compared to having a co-defendant with an equally serious charge.

A post-hoc comparison of verdicts assigned to Defendant A between Condition 3 (ABC) and Condition 4 (AD) revealed a significantly higher proportion of guilty verdicts in Condition 4 (AD) than in Condition 3 (ABC), $\chi^2(1, N = 50) = 5.556, p = .018$. This result is consistent with the comparison between Conditions 1 (A) and 4 (AD) that indicated that having a co-defendant with a more serious charge was a disadvantage. However, both of those comparisons are inconsistent with the comparisons between Conditions 2 (AB) and 4 (AD) that indicated that there was no significant disadvantage.

Since the comparison between Conditions 2 (AB) and 4 (AD) was not consistent with the other two comparisons, confidence ratings for not-guilty verdicts for Defendant A were analysed for Conditions 2 (AB) and 4 (AD). This comparison was performed to assess whether the mock jurors were less confident in their not-guilty verdicts for Defendant A in Condition 4 (AD) than in Condition 2 (AB). Such a result would indicate that although the verdict results did not show an effect of seriousness, the confidence ratings did show an effect. Further, it would show additional support for the suggestion that seriousness of charge plays a role in juror decision making. A t-test was used for this analysis. Participants who gave not-guilty verdicts in Condition 2 (AB) did not rate themselves as having significantly different confidence levels ($M = 3.13, SD = 1.77$) from those in Condition 4 (AD) who gave not-guilty verdicts ($M = 3.92, SD = 1.24$), $t(25) = -1.30, p = .21$. Therefore, these results were not consistent with the findings from the comparison of verdicts in Conditions 1 and 4 and Conditions 3 and 4. Overall, the comparison of verdicts in

Conditions 1 and 4 and Conditions 3 and 4 indicate that being paired with a co-defendant with a more serious charge is a disadvantage, whereas the comparisons for number of defendants and confidence ratings between Conditions 2 and 4 indicate that there is no significant disadvantage.

CHAPTER 7

GENERAL DISCUSSION

Effect of order on culpability

Although most of the evidence tendered against Defendants A, B, and C was different, the type of evidence presented against each defendant was similar. For example in all three instances there was eyewitness testimony and circumstantial evidence. Analyses assessing culpability of defendants based on order revealed that the order in which defendants were presented in the case did not appear to affect their culpability. That is, Defendants A and B were assessed as being equally culpable in Condition 2 (AB), and further, Defendants A, B and C were assessed as being equally culpable in Condition 3 (ABC). These results suggest that for a trial with two or three defendants, the order in which they are presented in the trial does not appear to advantage or disadvantage one or other of the defendants. These results might be limited to the present scenario, where the type of evidence was similar for all three defendants.

Effect of number of defendants

The first hypothesis, that defendants in joint trials would obtain more guilty verdicts than defendants in single defendant trials, was not supported. In this study, Defendant A was no more likely to obtain a guilty verdict when he was in a joint trial with one or two other defendants with the same charge as himself, than when he was at trial on his own. Likewise, Defendant B was no more likely to obtain a guilty verdict when he was in a joint trial with two other defendants than when he was in a trial with just one other defendant. Therefore, increasing the number of defendants in

the trials did not appear to disadvantage either the first or second defendants in this study. These findings are in contrast to research on the effects of joinder of offences (e.g., Horowitz, Bordens, & Feldman, 1980; Bordens & Horowitz, 1983; Green & Loftus, 1985) and on joint trial research (Clayton, 1989). Further research should assess these differences to provide an explanation of the inconsistent findings.

With regard to the confidence ratings for not-guilty verdicts, the second hypothesis that those in the joint trial conditions would have less confidence than those in the single defendant condition was not supported. Therefore adding a co-defendant to Defendant A's trial did not lead jurors to express less confidence in their not-guilty verdicts. In fact, the results indicated a pattern in the opposite direction than was hypothesised.

Participants in the three-defendant condition were significantly more confident in their not-guilty verdicts for Defendant A than were participants in either the single defendant or the 2-defendant conditions. This pattern is similar to that of the number of not-guilty verdicts for those three conditions. For instance, Condition 3 (ABC) had the highest number of not-guilty verdicts, and confidence in not-guilty ratings was highest in Condition 3 as well. For Condition 1 (A), confidence ratings for not-guilty verdicts and the number of not-guilty verdicts were both in between those for Condition 3 (ABC) and for Condition 2 (AB). Condition 2 (AB) had the lowest number of not-guilty verdicts and the lowest confidence levels for not-guilty verdicts across Conditions 1, 2 and 3. Such similar patterns for verdicts and confidence ratings might suggest some overall logical pattern. However, after examining several different possible explanations, the author has concluded that indeed there is not a logical pattern in the above findings. First, if adding Defendant B was the critical factor in the differences among Conditions 1, 2 and 3, then adding Defendant B to

Condition 1 (A) to make Condition 2 (AB) should yield a difference in the same direction as that of Condition 3 (ABC). Seeing that Condition 2 and Condition 3 differ from Condition 1 in opposite directions, then it is concluded that Defendant B is probably not the critical factor. If on the other hand, adding Defendant C is the critical factor in the differences, then Condition 1 should have received a number of not-guilty verdicts more similar to Condition 2 than Condition 3. However, this is not the case as in Condition 1 not-guilty verdicts are closer in number to Condition 3 than Condition 2. Seriousness of charge and culpability are also equal in all three conditions. Apart from the specific defendants presented in the conditions, one might consider the number of defendants as a potential critical factor in the pattern. However, there is not a logical pattern, as the 1-defendant condition is in between the 2- and 3-defendant conditions in terms of number of not-guilty verdicts and confidence ratings of not-guilty verdicts. If there was a logical pattern, the author would expect a pattern such as Condition 1, 2, 3 or Conditions 3, 2, 1 in terms of ranking the number of not-guilty verdicts or confidence ratings. Therefore, although a similar result pattern exists across Conditions 1, 2 and 3 for both number of not-guilty verdicts and confidence ratings of not-guilty verdicts, it is suggested that there is not a logical explanation for this pattern, shown by rejecting the potential critical factors for a logical explanation. Further research in this area will hopefully provide a clearer conclusion.

Possible explanations for the lack of effect of number of defendants

There are four main possible explanations for the finding that increasing the number of defendants in the trial did not increase the proportion of guilty verdicts or affect the confidence ratings of the jurors' not-guilty verdicts. The first possibility is

that joint trials where all defendants are charged with the same offence are no more biasing (in terms of increased likelihood of guilty verdicts) than single defendant trials. Considering that separate trials are rarely granted to defendants, this explanation should be pleasing to those involved in refusing separate trials (judges), defendants in joint trials, and people in the wider community who hope for justice in the legal system.

The second possibility explaining a lack of bias against joint trial defendants in this study is that there might be a bias but it might have been controlled by the jurors. For example, the mock jurors in this study might have compensated for their bias against multiple defendants and as a result might have been more cautious in examining the evidence against each defendant. Therefore, there may be a bias in jurors' minds but they may be able to adjust their decisions accordingly.

The third reason why jurors might not have assigned more guilty verdicts to joint trial defendants is that all the evidence might have been too confusing or too overwhelming for the jurors. They may consequently decide not to convict rather than make an inaccurate decision that could have immense negative consequences for the defendant(s).

The fourth main possible explanation why biases in joint trial conditions were not found in this study, and one that deserves more thought and study, is that the present study was not conducive to a bias that may actually exist against joint trial defendants. Three factors that were absent from this study but might be biasing against joint trial defendants are: appearance of defendants in court, a lengthy trial, and damaging inadmissible evidence against one or more of the defendants in the joint trial conditions. These three factors will be discussed in turn.

Firstly, with respect to appearance in court, it is possible that jurors do not form a bias against defendants in joint trials unless they actually see them in court. Perhaps it is the appearance of more than one defendant together in the dock that creates the impression that “someone up there is guilty.” Without defendants’ appearance together, the jurors’ bias might be absent.

Secondly, with respect to trial length, the factors of information overload and confusion of evidence arise. Some studies on the joinder of offences (e.g., Horowitz, Bordens, & Feldman, 1980; Bordens & Horowitz, 1983; Green & Loftus, 1985) suggest that the increased number of guilty verdicts in such cases was due to the confusion of evidence in the trials, stemming from having too much information to remember and to organise effectively. Likewise, it is possible that the complexity and length of real joint trials is biasing against defendants. It may well be that the present study did not find any bias against joint trial defendants because there was not enough information to confuse the jurors; perhaps it is the overload of confusing information in many real joint trials that may lead jurors to give more guilty verdicts. Since the to-be remembered information in this study was minimal in comparison to the amount of information in a real trial, this study was not able to test such effects of trial length or complexity on the proportion of guilty verdicts in joint trials. Future research should assess these factors.

Thirdly, inadmissible evidence was not included in this study but may in fact lead to biases against joint trial defendants. Inadmissible evidence is more likely in joint trials (Weinberg, 1984) and jurors in research do not typically disregard inadmissible evidence (Rind et al., 1995; Sue et al., 1973). Therefore, joint trials might be biasing against defendants because of the increase in likelihood of biasing inadmissible evidence being used against them.

Effect of seriousness of co-defendant's charge

With respect to seriousness of charges, Defendant A received a significantly higher proportion of guilty verdicts when he was paired with Defendant D (AD), who had a more serious charge, than when he was in a separate trial of his own (A), thereby supporting the third hypothesis. However, the proportion of guilty verdicts assigned to defendant A did not differ significantly whether he was paired with Defendant B (equal charge) or Defendant D (more serious charge). As such, the fourth hypothesis of this study was not supported. The post-hoc analysis showing that Defendant A received a significantly higher proportion of guilty verdicts in Condition 4 (AD) than in Condition 3 (ABC) is consistent with the suggestion that being paired with a co-defendant with a more serious charge is disadvantageous. Therefore, two of the three comparisons (A & AD and ABC & AD) indicate that having a co-defendant with a more serious charge is a disadvantage. However, since the proportion of guilty verdicts assigned to Defendant A and confidence ratings in the not-guilty verdicts assigned to Defendant A in Conditions 2 (AB) and 4 (AD) were not significantly different, one must be cautious in making a conclusion that being paired with a co-defendant with a more serious charge is disadvantageous. Future research should assess the issue of seriousness more fully to be able to make firmer conclusions.

Limitations of the Present Study

There are four limitations to this study that are common to some other mock juror studies. Firstly, participants in this study are not representative of what a real jury would likely consist of. University students served as mock juror participants and therefore the results might not be generalisable to what the constitution of a real jury

might be. University student verdicts might be different from those of “real jurors”. While some research has indicated that there is a difference between verdicts by university students and verdicts by “real jurors” (e.g., Simon & Mahan, 1971), other research shows little or no difference in the two populations’ verdicts (e.g., Bray, Struckman-Johnson, Osborne, Mcfarlane, & Scott, 1978). Due to a lack of a consensus on this issue, one should be cautious in generalising the results of the present study to real juror situations. Secondly, there was no group deliberation in this study; mock jurors made independent verdicts. Thirdly, the length of the trial summary in the present study involved much less information than what a real trial would include; jurors would typically have much more complicated matters to remember and organise. This limitation is partly due to trial summaries being used rather than transcripts of the trial. Therefore, had transcripts been used there would have been more information. Fourthly, the mock jurors in the present study were aware that their decisions did not have any real consequences, and therefore their decisions cannot be assumed to be equal to what they would be if they were actually deciding the defendants’ futures.

Directions for Future Research

Three factors (already discussed) that were absent in this study but could be investigated in future research are trial length and complexity, inadmissible evidence, and appearance of the defendants together in court. Further, mock jury studies could aim to include juror deliberations to increase external validity. Another factor to explore is the offence(s) with which the defendants are charged. This study examined the effect on a defendant of having a co-defendant charged with an *equally serious* charge or with a *more serious* charge. It did not examine the effect on a defendant of

having a co-defendant with a *less* serious charge and this could be addressed in future research. Further, the offences that the defendants in this study were charged with were assault and assault occasioning grievous bodily harm. Other offences and other combinations of offences (e.g., larger difference in seriousness levels, for example murder and theft) could be examined. Further, future research could examine scenarios with more than three defendants and the effect on all defendants in the trial.

Conclusions

In cases where all defendants are charged with the same offence, the results of this study indicate that it is not biasing against such defendants to join their trials. That is, they are not more likely to receive guilty verdicts in their joint trial compared to their separate trials. However, this finding might only hold for cases where there is little information for the jury to remember, as was the case in this study. Future research should therefore investigate the implications of trial length and complexity, inadmissible evidence, and the appearance of defendants in court with co-defendants.

It appears there might be a bias against defendants, however, in cases where they are joined at trial with a co-defendant who is charged with a more serious charge. Two of the three scenarios in this study indicated such a bias, whereas the third scenario was not consistent with such a bias. A firm conclusion regarding this bias cannot therefore be made, though the balance of findings suggest that when judges consider applications for trial severance, they should include a consideration of the differences in offence severity between defendants as it is possible that a bias may ensue if the trials remain joined.

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APPENDICES

APPENDIX A

PILOT STUDY INFORMATION SHEET

This study is designed to investigate how potential jurors judge the seriousness of a defendant's charge in court. It is the first part of a thesis project conducted by Stacy Gall, Masters Student in Forensic Psychology at Edith Cowan University, under the supervision of Dr. Alfred Allan. This study conforms to guidelines produced by the Edith Cowan University Committee for the Conduct of Ethical Research. Any information participants provide will be held in strict confidence by the researcher, and nobody else besides herself and her supervisor will have access to such information. At no time will names be reported along with responses. The information gathered will be used in a thesis and may be used in a scientific publication, however, participants will not be identifiable.

Participating in this study entails reading a transcript of a hypothetical criminal trial about an alleged assault and then rating the seriousness of the charges against defendants. Total participation time is approximately 30 minutes. You may refuse to participate or you may withdraw at any stage without penalty or prejudice for doing so. As the trial describes a (nonsexual) assault, if you think that you may feel discomfort at hearing about such an incident, you are advised not to participate in this study. If you choose to participate at this time, you will be asked to view a consent form and indicate your gender and age. The consent form will be kept separate from your answers; the answer sheet will not contain any identifying information. If you have any questions, please ask the experimenter.

Any questions or comments concerning this project can be directed to Stacy Gall on (08) [REDACTED], or alternatively, to Dr. Alfred Allan on (08) [REDACTED]. You may keep this Information Sheet.

APPENDIX B

INFORMED CONSENT FORM FOR PILOT AND MAIN STUDY

I confirm that

- I have read the Information Sheet that was given to me;
- I was given an opportunity to ask questions;
- All my questions were satisfactorily answered;
- I understand this information;
- No pressure is being put on me to participate;
- I realise I may withdraw from this study at any time without penalty; and
- I voluntarily proceed with this study.

By proceeding with this study, consent is assumed to have been given. This is to avoid asking people to sign a consent form showing their names.

Participant's age:

Participant's gender: F M (please circle one)

APPENDIX C

PILOT STUDY TRANSCRIPT

ALL FOUR DEFENDANTS (A, B, C, D)

Mr. Steven Adams is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Adams pleads not guilty.

Mr. George Bartlett is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Bartlett pleads not guilty.

Mr. Sean Cole is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Cole pleads not guilty.

Mr. Greg Sutton is charged with grievous bodily harm under s.297 of the WA Criminal Code Compilation Act 1913. Mr. Sutton pleads not guilty.

Mr. Jones, the main prosecution witness, testified that as he was walking down Murray Street Mall at dusk on the 14th of June 1998, he was physically assaulted by four men from behind. Because he was attacked from behind and had his shirt pulled over his head, Mr. Jones stated that he could not identify the assailants but knew that they were four men. He testified that he sustained a number of injuries, including lacerations to his face and arms, multiple bruises to the face and chest area, three cracked ribs and internal bleeding. He also testified that he sustained a concussion as a result of one of the defendants smashing his head against the ground several times. He was hospitalised for four days after the alleged assault.

The prosecutor, Mr. Peterson, put forth evidence that placed the four defendants: Adams, Bartlett, Cole, and Sutton at the scene of the alleged crime. The prosecution witness, Mrs. Wesley, testified that she saw the event and that the four defendants were the perpetrators. She also testified that she saw Defendants Adams, Bartlett, and Cole punch the alleged victim and saw the Defendant Sutton smash the alleged victim's head on the ground several times. In cross-examination, Mr. Everett questioned the credibility of an elderly witness who was not wearing her glasses at the event she reported. Further, it was pointed out by Mr. Everett that because it was dusk at the time of the alleged event, it would have been difficult for any witness to make an accurate identification. Despite this, Mrs. Wesley testified that she was certain that the men she saw were the four defendants.

The prosecutor, Mr. Peterson, put forth evidence that placed the defendant Adams' car near the scene of the alleged crime. The prosecution witness, Ms Williams, testified that she saw a car the same colour and model as the defendant Adams', parked along Barrack Street near the scene of the alleged crime on the day in question

as she walked from her job at Baskin Robbins ice cream parlour toward the train station on Wellington street. In cross-examination by Mr. Davies, who appeared for Defendant Adams, it was put forth that although his car was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement in the alleged crime.

The next witness for the prosecution was Mr. Quartermaine, a waiter at the Tea Merchant Café in the Murray Street Mall. Mr. Quartermaine testified that he remembered serving tea and muffins to the Defendant Bartlett in the late afternoon of the day in question. In the cross-examination of Mr. Quartermaine, Mr. Everett made it clear that although he was sighted near the alleged crime scene, this did not necessarily demonstrate the Defendant Bartlett's involvement in the alleged crime.

The prosecutor, Mr. Peterson, put forth evidence that placed the Defendant Cole near the scene of the alleged crime. The prosecution witness, Mr. Wallace, a passerby who responded to a police request for public information, testified that he saw the Defendant Cole near the alleged crime scene on the date in question. In cross-examination by Mr. Forsythe, who appeared for Defendant Cole, it was put forward that although the Defendant Cole was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement in the alleged crime.

The prosecutor, Mr. Peterson, put forth evidence that placed the Defendant Sutton near the scene of the alleged crime. The prosecution witness, Mr. Jenkins owns a music store in the Murray Street mall and testified that the security surveillance video in his store showed the Defendant Sutton browsing in his store on the date in question. In cross-examination by Mr. Tanner who appeared for Defendant Sutton, it was put forward that although the Defendant Sutton was sighted near the alleged crime scene via the store video, this did not necessarily demonstrate his involvement in the alleged crime.

The next witness called forth by Mr. Peterson for the prosecution was Sergeant Sherman from the Forensics Division of Perth Police Headquarters. Sergeant Sherman testified that a muddy shoe print matching the defendant Adams' Adidas shoe was found at the scene of the alleged crime. The defence lawyer, Mr. Davies, raised the point that Adidas shoes are common and therefore the footprints are not necessarily those of the Defendant Adams. Upon questioning, Sergeant Sherman agreed that this is possible.

Mr. Peterson called forth Mr. Bingham, an acquaintance of Defendant Bartlett, as his next prosecution witness. Mr. Bingham testified that the pair of sunglasses found at the alleged crime scene was similar to a pair he had seen the Defendant Bartlett wearing two months previous to the alleged event. Mr. Everett, in cross-examination of this witness, uncovered that Mr. Bingham was not certain that the pair of sunglasses he had seen the Defendant Bartlett wear two months previous to the alleged event, were identical to the ones found at the crime scene.

The next witness called forth by Mr. Peterson for the prosecution was Constable Sutherland. He testified that a broken keyring containing the same logo as that of the Defendant Cole's car was found at the scene of the alleged crime. The defence lawyer, Mr. Forsythe raised the point that this brand of car was fairly common and therefore the keyring did not necessarily belong to the Defendant Cole. Upon questioning, Constable Sutherland agreed that this was possible.

The next witness called forth by Mr. Peterson for the prosecution was Ms Johnson. She testified that the broken 9 ct. gold necklace found at the scene of the alleged crime was identical to the one she gave to the defendant Sutton 4 years previous to the alleged crime. The defence lawyer, Mr. Tanner raised the point that the necklace was a very common style that many people wear and therefore the necklace found at the scene of the alleged crime did not necessarily belong to the Defendant Sutton. Ms Johnson agreed that it was a possibility.

Mr. Peterson called forth Senior Constable Smithson as his next prosecution witness. Senior Constable Smithson testified that upon Defendant Adams' arrest one day after the alleged event, Defendant Adams had a deep purple bruise on his right cheekbone which appeared to him to be recently inflicted. Mr. Davies, in cross-examination of this witness, proposed to Senior Constable Smithson that the bruise may have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

Senior Constable Smithson also testified that when the Defendant Bartlett was arrested one day after the alleged event his right hand was bandaged and he was vague about how he obtained this injury. Mr. Everett, in cross-examination of this witness, proposed to Senior Constable Smithson that the injury to the Defendant Bartlett's hand might have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

Senior Constable Smithson further testified that upon the Defendant Cole's arrest one day after the alleged event, Defendant Cole was walking with a slight limp. Mr. Forsythe, in cross examination of this witness, proposed to Senior Constable Smithson that this limp might not be the result of the alleged assault. Senior Constable Smithson agreed that this was possible.

Senior Constable Smithson further testified that upon the Defendant Sutton's arrest one day after the alleged event, Defendant Sutton's gums were bleeding and one of his teeth was Chipped. Mr. Tanner, in cross examination, proposed to Senior Constable Smithson that the Chipped tooth and bleeding gums may not be the result of the alleged assault. Senior Constable Smithson agreed that this was possible.

In Defendant Adams' defence, Mr. Davies called Defendant Adams' partner, Ms Simone Waters. She testified that on the date in question, Defendant Adams was with her. She reported that they parked the car along Barrack Street in the city that morning at approximately 10am, and then walked to the Swan River foreshore to have a picnic. She further testified that they returned to the car at approximately 6.30 pm on the date in question, and then went home. In addition, Ms Waters testified that she

was responsible for the Defendant Adams' bruise the day before the alleged event when she was intoxicated and became quite aggressive. In cross-examination, Mr. Peterson, elicited from Ms Waters that she had been drinking whiskey quite heavily from noon on the date in question. Upon further questioning it emerged that Ms Waters was a chronic alcoholic, who drank at least one bottle of whiskey daily. The defence objected to this line of questioning, however, the judge overruled this, stating that the evidence was relevant to evaluate the credibility of the witness. Mr. Peterson suggested that Ms Waters' capacity to give evidence was questionable, as she was intoxicated not only on the date in question, but the surrounding days also. Mr. Peterson then proposed that there was the possibility that Defendant Adams may have left her for a short time and met up with the other three alleged assailants while she lay intoxicated in the park. Although she stated that she could not remember the exact events of the date in question, Ms Waters was sure that Defendant Adams was with her at all times.

In the Defendant Bartlett's defence, Mr. Everett called the Defendant Bartlett's father, Mr. Frank Bartlett. He testified that on the date in question, the defendant Bartlett arrived home at approximately 2:00 on the afternoon in question and to his knowledge did not leave the house until the following morning. Mr. Frank Bartlett further testified that his son had told him that the injury to his hand was the result of his involvement in rugby. In cross-examination by the prosecutor Mr. Peterson, it emerged that on the day in question, Mr. Frank Bartlett was bedridden with glandular fever and could not be certain that the Defendant Bartlett did not leave the house later on that afternoon while he had been sleeping. Despite this, Mr. Frank Bartlett was certain that he would have heard the Defendant Bartlett leave the house. Further, Mr. Frank Bartlett could not verify that his son had actually received the injury to his hand by playing rugby as he was not himself present at the game.

In Defendant Cole's defence, Mr. Forsythe called the Defendant Cole's employer, Mr. Edwards to testify. He testified that on the date in question, Defendant Cole was working at his clothing shop on Hay Street although he himself was not present that day. He reported that the Defendant Cole commenced work at approximately 9:00 am and finished at 7:00pm as it was a late-night shopping day. In addition, he testified that when he next saw the Defendant Cole, he had a limp which he attributed to a bicycle accident. In Mr. Peterson's cross-examination of Mr. Edwards, it became apparent that Mr. Edwards could not guarantee that the Defendant Cole had not left the shop at any point on the day in question. Furthermore, he also could not verify Defendant Cole's involvement in a bicycle accident as he had only been told this by Defendant Cole.

In Defendant Sutton's defence, Mr. Tanner called the Defendant Sutton's grandmother, Mrs. Roberts to testify. She testified that on the day in question, the Defendant Sutton arrived at her house at approximately 10:00 in the morning to help her look after her grandson, aged one and a half, for the majority of the day. At about 4pm Mrs. Roberts testified that she realised the infant would soon be ready to take a nap so she told the Defendant Sutton to put the infant in his crib when he falls asleep, and then she went off for a nap herself. She testified that when she woke up at 7:00pm the Defendant Sutton was still there. By that time his gums were bleeding and one of his teeth was Chipped. Upon questioning him about the tooth, Mrs. Roberts testified

that the Defendant Sutton told her that he was lying on the floor watching tv when the infant crawled over to him with a glass in his hand and dropped it on his face, consequently breaking his tooth off and causing his gums to bleed. In cross examination by the prosecutor Mr. Peterson, it was put to Mrs. Roberts that because she had been sleeping for part of the day in question, it was possible that the Defendant Sutton had actually left her house and committed the alleged crime. Further, because she had not actually seen the infant drop the glass on the Defendant Sutton's face, she could not be certain that this had actually caused the injury. Mrs. Roberts accepted that this was a possibility but was still sure that the Defendant Sutton had not actually left the house until later that evening and had sustained the injury from the infant as he was an active little boy.

In summarising the prosecution's case against the Defendant Adams, Mr. Peterson stated that the sighting of Defendant Adams at the scene and his car near the scene of the alleged crime as well as his facial bruising and the footprint matching his brand of shoe, implied his involvement in the alleged event. He further stated that the alibi provided by Ms Waters was questionable, due to possible impairments stemming from her alcohol problem.

In summarising the prosecution's case against the Defendant Bartlett, Mr. Peterson stated that the sighting of the Defendant Bartlett near the scene and at the scene of the alleged event on the day in question, the injury to his hand, and sunglasses similar to those previously worn by the Defendant Bartlett found at the scene of the alleged crime implied his involvement in the alleged event. He further stated that the alibi provided by Mr. Frank Bartlett was questionable as he had a serious illness which resulted in his being bedridden and asleep much of the day.

In summarising the prosecution's case against the Defendant Cole, Mr. Peterson stated that the sighting of the Defendant Cole near and at the scene of the alleged event on the day in question, as well as the broken keyring and his limp, implied his involvement in the alleged crime. He further stated that the alibi provided by Mr. Edwards was questionable due to the fact that he was actually not working that day and the Defendant Cole was the only worker at the shop.

In summarising the prosecution's case against the Defendant Sutton, Peterson stated that the sighting of the Defendant Sutton near the scene and at the scene of the alleged crime on the day in question, the injury to his tooth and gums, and a necklace similar to that previously worn by the Defendant Sutton found at the scene of the alleged crime implied his involvement in the alleged event. He further stated that the alibi provided by Mrs. Roberts was questionable as she had been sleeping for part of the day.

In summarising the case for the defence of the Defendant Adams, Mr. Davies put forth that the evidence by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Adams had any involvement in the alleged offence.

In summarising the case for the defence of the Defendant Bartlett, Mr. Everett put forth that the evidence presented by the elderly Mrs. Wesley was questionable and the

other items of evidence did not necessarily prove that the Defendant Bartlett had any involvement in the alleged offence.

In summarising the case for the defence of the Defendant Cole, Mr. Forsythe put forth that the testimony of the elderly Mrs. Wesley was questionable and that the remaining items of the evidence did not prove the Defendant Cole's involvement in the alleged offence.

In summarising the case for the defence of the Defendant Sutton, Mr. Tanner put forth that the evidence presented by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Sutton had any involvement in the alleged offence.

The judge then explained to the jury that they must consider the case of each Defendant separately and that they are to reach independent verdicts for each of the four defendants. The judge further instructed that they must only find a defendant guilty if the evidence proves beyond a reasonable doubt that he was involved in its commission.

APPENDIX D

PILOT STUDY RESPONSE SHEET

Please rate how serious you find the charge against each of the defendants by circling the appropriate number on the scale.

Steven Adams, on the charge of assault:

Not very serious 1 2 3 4 5 6 7 Very serious

George Bartlett, on the charge of assault:

Not very serious 1 2 3 4 5 6 7 Very serious

Sean Cole, on the charge of assault:

Not very serious 1 2 3 4 5 6 7 Very serious

Greg Sutton, on the charge of grievous bodily harm:

Not very serious 1 2 3 4 5 6 7 Very serious

APPENDIX E

MAIN STUDY INFORMATION SHEET

This study is designed to investigate jurors' decision-making processes. This study is being conducted by Stacy Gall, Masters student in Forensic Psychology at Edith Cowan University, under the supervision of Dr. Alfred Allan. This study conforms to guidelines produced by the Edith Cowan University Committee for the Conduct of Ethical Research. Any information participants provide will be held in strict confidence by the researcher, and nobody else besides herself and her supervisor will have access to such information. At no time will names be reported along with responses. The information gathered will be used in a thesis and may be used in a scientific publication, however, participants will not be identifiable.

Participating in this study entails listening to an audiotape of a hypothetical criminal trial about an alleged assault and then giving a verdict of either "guilty" or "not-guilty". Total participation time is approximately 25 minutes. You may refuse to participate or you may withdraw at any stage without penalty or prejudice for doing so. As the trial describes a (nonsexual) assault, if you think that you may feel discomfort at hearing about such an incident, you are advised not to participate in this study. If you choose to participate at this time, you will be asked to view the consent form. The answer sheet will not contain any identifying information. If you have any questions, please ask the experimenter.

Any questions or comments concerning this project can be directed to Stacy Gall on (08) [REDACTED] or alternatively, to Dr. Alfred Allan on (08) [REDACTED]. You may keep this Information Sheet.

APPENDIX F

AUDIOTAPE TRANSCRIPT FOR CONDITION 1 OF MAIN STUDY
DEFENDANT A ONLY

Mr. Steven Adams is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Adams pleads not guilty.

Mr. Jones, the main prosecution witness and victim in the alleged crime, testified that as he was walking down Murray Street Mall at dusk on the 14th of June 1998, he was physically assaulted from behind. Because he was attacked from behind and was extremely distressed, Mr. Jones stated that he could not identify the assailants but knew that they were four men. He testified that he sustained a number of injuries from three of the four men, including lacerations to his face and arms, and multiple bruises to the face and chest area.

The prosecutor, Mr. Peterson, put forth evidence that placed the defendant Adams at the scene of the alleged crime. The prosecution witness, Mrs. Wesley, testified that she saw the event and that the defendant was one of the perpetrators. She also testified that she saw Defendant Adams punch the alleged victim. In cross-examination, Mr. Everett questioned the credibility of an elderly witness who was not wearing her glasses at the event she reported. Further, it was pointed out by Mr. Everett that because it was dusk at the time of the alleged event, it would have been difficult for any witness to make an accurate identification. Despite this, Mrs. Wesley testified that she was certain that the men she saw included the defendant.

The prosecutor, Mr. Peterson, put forth evidence that placed the defendant Adams' car near the scene of the alleged crime. The prosecution witness, Ms Williams, testified that she saw a car the same colour and model as the defendant Adams', parked along Barrack Street near the scene of the alleged crime on the day in question as she walked from her job at Baskin Robbins ice cream parlour toward the train station on Wellington street. In cross-examination by Mr. Davies, who appeared for Defendant Adams, it was put forth that although his car was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement in the alleged crime.

The next witness called forth by Mr. Peterson for the prosecution was Sergeant Sherman from the Forensics Division of Perth Police Headquarters. Sergeant Sherman testified that a muddy shoe print matching the defendant Adams' Adidas shoe was found at the scene of the alleged crime. The defence lawyer, Mr. Davies, raised the point that Adidas shoes are common and therefore the footprints are not necessarily those of the Defendant Adams. Upon questioning, Sergeant Sherman agreed that this is possible.

Mr. Peterson called forth Senior Constable Smithson as his next prosecution witness. Senior Constable Smithson testified that upon Defendant Adams' arrest one day after

the alleged event, Defendant Adams had a deep purple bruise on his right cheekbone which appeared to him to be recently inflicted. Mr. Davies, in cross-examination of this witness, proposed to Senior Constable Smithson that the bruise may have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

In Defendant Adams' defence, Mr. Davies called Defendant Adams' partner, Ms Simone Waters. She testified that on the date in question, Defendant Adams was with her. She reported that they parked the car along Barrack Street in the city that morning at approximately 10am, and then walked to the Swan River foreshore to have a picnic. She further testified that they returned to the car at approximately 6.30 pm on the date in question, and then went home. In addition, Ms Waters testified that she was responsible for the Defendant Adams' bruise the day before the alleged event when she was intoxicated and became quite aggressive. In cross-examination, Mr. Peterson, elicited from Ms Waters that she had been drinking whiskey quite heavily from noon on the date in question. Upon further questioning it emerged that Ms Waters was a chronic alcoholic, who drank at least one bottle of whiskey daily. The defence objected to this line of questioning, however, the judge overruled this, stating that the evidence was relevant to evaluate the credibility of the witness. Mr. Peterson suggested that Ms Waters' capacity to give evidence was questionable, as she was intoxicated not only on the date in question, but the surrounding days also. Mr. Peterson then proposed that there was the possibility that Defendant Adams may have left her for a short time and met up with the other three alleged assailants while she lay intoxicated in the park. Although she stated that she could not remember the exact events of the date in question, Ms Waters was sure that Defendant Adams was with her at all times.

In summarising the prosecution's case against the Defendant Adams, Mr. Peterson stated that the sighting of Defendant Adams at the scene and his car near the scene of the alleged crime as well as his facial bruising and the footprint matching his brand of shoe, implied his involvement in the alleged event. He further stated that the alibi provided by Ms Waters was questionable, due to possible impairments stemming from her alcohol problem.

In summarising the case for the defence of the Defendant Adams, Mr. Davies put forth that the evidence by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Adams had any involvement in the alleged offence.

The judge then explained to the jury that they must consider the case of the Defendant and that they must only find the defendant guilty if the evidence proves beyond a reasonable doubt.

APPENDIX G

AUDIOTAPE TRANSCRIPT FOR CONDITION 2 OF MAIN STUDY
DEFENDANTS A AND B

Mr. Steven Adams is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Adams pleads not guilty.

Mr. George Bartlett is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Bartlett pleads not guilty.

Mr. Jones, the main prosecution witness and victim in the alleged crime, testified that as he was walking down Murray Street Mall at dusk on the 14th of June 1998, he was physically assaulted from behind. Because he was attacked from behind and was extremely distressed, Mr. Jones stated that he could not identify the assailants but knew that they were four men. He testified that he sustained a number of injuries from three of the four men, including lacerations to his face and arms, and multiple bruises to the face and chest area.

The prosecutor, Mr. Peterson, put forth evidence that placed the two defendants Adams and Bartlett at the scene of the alleged crime. The prosecution witness, Mrs. Wesley, testified that she saw the event and that the two defendants were the perpetrators. She also testified that she saw Defendants Adams and Bartlett punch the alleged victim. In cross-examination, Mr. Everett questioned the credibility of an elderly witness who was not wearing her glasses at the event she reported. Further, it was pointed out by Mr. Everett that because it was dusk at the time of the alleged event, it would have been difficult for any witness to make an accurate identification. Despite this, Mrs. Wesley testified that she was certain that two of the men she saw were the two defendants.

The prosecutor, Mr. Peterson, put forth evidence that placed the defendant Adams' car near the scene of the alleged crime. The prosecution witness, Ms Williams, testified that she saw a car the same colour and model as the defendant Adams', parked along Barrack Street near the scene of the alleged crime on the day in question as she walked from her job at Baskin Robbins ice cream parlour toward the train station on Wellington street. In cross-examination by Mr. Davies, who appeared for Defendant Adams, it was put forth that although his car was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement in the alleged crime.

The next witness for the prosecution was Mr. Quartermaine, a waiter at the Tea Merchant Café in the Murray Street Mall. Mr. Quartermaine testified that he remembered serving tea and muffins to the Defendant Bartlett in the late afternoon of the day in question. In the cross-examination of Mr. Quartermaine, Mr. Everett made it clear that although he was sighted near the alleged crime scene, this did not necessarily demonstrate the Defendant Bartlett's involvement in the alleged crime.

The next witness called forth by Mr. Peterson for the prosecution was Sergeant Sherman from the Forensics Division of Perth Police Headquarters. Sergeant Sherman testified that a muddy shoe print matching the defendant Adams' Adidas shoe was found at the scene of the alleged crime. The defence lawyer, Mr. Davies, raised the point that Adidas shoes are common and therefore the footprints are not necessarily those of the Defendant Adams. Upon questioning, Sergeant Sherman agreed that this is possible.

Mr. Peterson called forth Mr. Bingham, an acquaintance of Defendant Bartlett, as his next prosecution witness. Mr. Bingham testified that the pair of sunglasses found at the alleged crime scene was similar to a pair he had seen the Defendant Bartlett wearing two months previous to the alleged event. Mr. Everett, in cross-examination of this witness, uncovered that Mr. Bingham was not certain that the pair of sunglasses he had seen the Defendant Bartlett wear two months previous to the alleged event, were identical to the ones found at the crime scene.

Mr. Peterson called forth Senior Constable Smithson as his next prosecution witness. Senior Constable Smithson testified that upon Defendant Adams' arrest one day after the alleged event, Defendant Adams had a deep purple bruise on his right cheekbone which appeared to him to be recently inflicted. Mr. Davies, in cross-examination of this witness, proposed to Senior Constable Smithson that the bruise may have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

Senior Constable Smithson also testified that when the Defendant Bartlett was arrested one day after the alleged event his right hand was bandaged and he was vague about how he obtained this injury. Mr. Everett, in cross-examination of this witness, proposed to Senior Constable Smithson that the injury to the Defendant Bartlett's hand might have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

In Defendant Adams' defence, Mr. Davies called Defendant Adams' partner, Ms Simone Waters. She testified that on the date in question, Defendant Adams was with her. She reported that they parked the car along Barrack Street in the city that morning at approximately 10am, and then walked to the Swan River foreshore to have a picnic. She further testified that they returned to the car at approximately 6.30 pm on the date in question, and then went home. In addition, Ms Waters testified that she was responsible for the Defendant Adams' bruise the day before the alleged event when she was intoxicated and became quite aggressive. In cross-examination, Mr. Peterson, elicited from Ms Waters that she had been drinking whiskey quite heavily from noon on the date in question. Upon further questioning it emerged that Ms Waters was a chronic alcoholic, who drank at least one bottle of whiskey daily. The defence objected to this line of questioning, however, the judge overruled this, stating that the evidence was relevant to evaluate the credibility of the witness. Mr. Peterson suggested that Ms Waters' capacity to give evidence was questionable, as she was intoxicated not only on the date in question, but the surrounding days also. Mr. Peterson then proposed that there was the possibility that Defendant Adams may have left her for a short time and met up with the other three alleged assailants while she

lay intoxicated in the park. Although she stated that she could not remember the exact events of the date in question, Ms Waters was sure that Defendant Adams was with her at all times.

In the Defendant Bartlett's defence, Mr. Everett called the Defendant Bartlett's father, Mr. Frank Bartlett. He testified that on the date in question, the defendant Bartlett arrived home at approximately 2:00 on the afternoon in question and to his knowledge did not leave the house until the following morning. Mr. Frank Bartlett further testified that his son had told him that the injury to his hand was the result of his involvement in rugby. In cross-examination by the prosecutor Mr. Peterson, it emerged that on the day in question, Mr. Frank Bartlett was bedridden with glandular fever and could not be certain that the Defendant Bartlett did not leave the house later on that afternoon while he had been sleeping. Despite this, Mr. Frank Bartlett was certain that he would have heard the Defendant Bartlett leave the house. Further, Mr. Frank Bartlett could not verify that his son had actually received the injury to his hand by playing rugby as he was not himself present at the game.

In summarising the prosecution's case against the Defendant Adams, Mr. Peterson stated that the sighting of Defendant Adams at the scene and his car near the scene of the alleged crime as well as his facial bruising and the footprint matching his brand of shoe, implied his involvement in the alleged event. He further stated that the alibi provided by Ms Waters was questionable, due to possible impairments stemming from her alcohol problem.

In summarising the prosecution's case against the Defendant Bartlett, Mr. Peterson stated that the sighting of the Defendant Bartlett near the scene and at the scene of the alleged event on the day in question, the injury to his hand, and sunglasses similar to those previously worn by the Defendant Bartlett found at the scene of the alleged crime implied his involvement in the alleged event. He further stated that the alibi provided by Mr. Frank Bartlett was questionable as he had a serious illness which resulted in his being bedridden and asleep much of the day.

In summarising the case for the defence of the Defendant Adams, Mr. Davies put forth that the evidence by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Adams had any involvement in the alleged offence.

In summarising the case for the defence of the Defendant Bartlett, Mr. Everett put forth that the evidence presented by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Bartlett had any involvement in the alleged offence.

The judge then explained to the jury that they must consider the case of each Defendant separately and that they are to reach independent verdicts for each of the two defendants. The judge further instructed that they must only find a defendant guilty if the evidence proves beyond a reasonable doubt.

APPENDIX H

AUDIOTAPE TRANSCRIPT FOR CONDITION 3 OF MAIN STUDY
DEFENDANTS A, B, C

Mr. Steven Adams is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Adams pleads not guilty.

Mr. George Bartlett is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Bartlett pleads not guilty.

Mr. Sean Cole is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Cole pleads not guilty.

Mr. Jones, the main prosecution witness and victim in the alleged crime, testified that as he was walking down Murray Street Mall at dusk on the 14th of June 1998, he was physically assaulted from behind. Because he was attacked from behind and was extremely distressed, Mr. Jones stated that he could not identify the assailants but knew that they were four men. He testified that he sustained a number of injuries from three of the four men, including lacerations to his face and arms, and multiple bruises to the face and chest area.

The prosecutor, Mr. Peterson, put forth evidence that placed the three defendants: Adams, Bartlett, and Cole at the scene of the alleged crime. The prosecution witness, Mrs. Wesley, testified that she saw the event and that the three defendants were the perpetrators. She also testified that she saw Defendants Adams, Bartlett, and Cole punch the alleged victim. In cross-examination, Mr. Everett questioned the credibility of an elderly witness who was not wearing her glasses at the event she reported. Further, it was pointed out by Mr. Everett that because it was dusk at the time of the alleged event, it would have been difficult for any witness to make an accurate identification. Despite this, Mrs. Wesley testified that she was certain that the men she saw were the three defendants.

The prosecutor, Mr. Peterson, put forth evidence that placed the defendant Adams' car near the scene of the alleged crime. The prosecution witness, Ms Williams, testified that she saw a car the same colour and model as the defendant Adams', parked along Barrack Street near the scene of the alleged crime on the day in question as she walked from her job at Baskin Robbins ice cream parlour toward the train station on Wellington street. In cross-examination by Mr. Davies, who appeared for Defendant Adams, it was put forth that although his car was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement in the alleged crime.

The next witness for the prosecution was Mr. Quartermaine, a waiter at the Tea Merchant Café in the Murray Street Mall. Mr. Quartermaine testified that he remembered serving tea and muffins to the Defendant Bartlett in the late afternoon of

the day in question. In the cross-examination of Mr. Quartermaine, Mr. Everett made it clear that although he was sighted near the alleged crime scene, this did not necessarily demonstrate the Defendant Bartlett's involvement in the alleged crime.

The prosecutor, Mr. Peterson, put forth evidence that placed the Defendant Cole near the scene of the alleged crime. The prosecution witness, Mr. Wallace, a passerby who responded to a police request for public information, testified that he saw the Defendant Cole near the alleged crime scene on the date in question. In cross-examination by Mr. Forsythe, who appeared for Defendant Cole, it was put forward that although the Defendant Cole was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement in the alleged crime.

The next witness called forth by Mr. Peterson for the prosecution was Sergeant Sherman from the Forensics Division of Perth Police Headquarters. Sergeant Sherman testified that a muddy shoe print matching the defendant Adams' Adidas shoe was found at the scene of the alleged crime. The defence lawyer, Mr. Davies, raised the point that Adidas shoes are common and therefore the footprints are not necessarily those of the Defendant Adams. Upon questioning, Sergeant Sherman agreed that this is possible.

Mr. Peterson called forth Mr. Bingham, an acquaintance of Defendant Bartlett, as his next prosecution witness. Mr. Bingham testified that the pair of sunglasses found at the alleged crime scene was similar to a pair he had seen the Defendant Bartlett wearing two months previous to the alleged event. Mr. Everett, in cross-examination of this witness, uncovered that Mr. Bingham was not certain that the pair of sunglasses he had seen the Defendant Bartlett wear two months previous to the alleged event, were identical to the ones found at the crime scene.

The next witness called forth by Mr. Peterson for the prosecution was Constable Sutherland. He testified that a broken keyring containing the same logo as that of the Defendant Cole's car was found at the scene of the alleged crime. The defence lawyer, Mr. Forsythe raised the point that this brand of car was fairly common and therefore the keyring did not necessarily belong to the Defendant Cole. Upon questioning, Constable Sutherland agreed that this was possible.

Mr. Peterson called forth Senior Constable Smithson as his next prosecution witness. Senior Constable Smithson testified that upon Defendant Adams' arrest one day after the alleged event, Defendant Adams had a deep purple bruise on his right cheekbone which appeared to him to be recently inflicted. Mr. Davies, in cross-examination of this witness, proposed to Senior Constable Smithson that the bruise may have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

Senior Constable Smithson also testified that when the Defendant Bartlett was arrested one day after the alleged event his right hand was bandaged and he was vague about how he obtained this injury. Mr. Everett, in cross-examination of this witness, proposed to Senior Constable Smithson that the injury to the Defendant

Bartlett's hand might have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

Senior Constable Smithson further testified that upon the Defendant Cole's arrest one day after the alleged event, Defendant Cole was walking with a slight limp. Mr. Forsythe, in cross examination of this witness, proposed to Senior Constable Smithson that this limp might not be the result of the alleged assault. Senior Constable Smithson agreed that this was possible.

In Defendant Adams' defence, Mr. Davies called Defendant Adams' partner, Ms Simone Waters. She testified that on the date in question, Defendant Adams was with her. She reported that they parked the car along Barrack Street in the city that morning at approximately 10am, and then walked to the Swan River foreshore to have a picnic. She further testified that they returned to the car at approximately 6.30 pm on the date in question, and then went home. In addition, Ms Waters testified that she was responsible for the Defendant Adams' bruise the day before the alleged event when she was intoxicated and became quite aggressive. In cross-examination, Mr. Peterson, elicited from Ms Waters that she had been drinking whiskey quite heavily from noon on the date in question. Upon further questioning it emerged that Ms Waters was a chronic alcoholic, who drank at least one bottle of whiskey daily. The defence objected to this line of questioning, however, the judge overruled this, stating that the evidence was relevant to evaluate the credibility of the witness. Mr. Peterson suggested that Ms Waters' capacity to give evidence was questionable, as she was intoxicated not only on the date in question, but the surrounding days also. Mr. Peterson then proposed that there was the possibility that Defendant Adams may have left her for a short time and met up with the other three alleged assailants while she lay intoxicated in the park. Although she stated that she could not remember the exact events of the date in question, Ms Waters was sure that Defendant Adams was with her at all times.

In the Defendant Bartlett's defence, Mr. Everett called the Defendant Bartlett's father, Mr. Frank Bartlett. He testified that on the date in question, the defendant Bartlett arrived home at approximately 2:00 on the afternoon in question and to his knowledge did not leave the house until the following morning. Mr. Frank Bartlett further testified that his son had told him that the injury to his hand was the result of his involvement in rugby. In cross-examination by the prosecutor Mr. Peterson, it emerged that on the day in question, Mr. Frank Bartlett was bedridden with glandular fever and could not be certain that the Defendant Bartlett did not leave the house later on that afternoon while he had been sleeping. Despite this, Mr. Frank Bartlett was certain that he would have heard the Defendant Bartlett leave the house. Further, Mr. Frank Bartlett could not verify that his son had actually received the injury to his hand by playing rugby as he was not himself present at the game.

In Defendant Cole's defence, Mr. Forsythe called the Defendant Cole's employer, Mr. Edwards to testify. He testified that on the date in question, Defendant Cole was working at his clothing shop on Hay Street although he himself was not present that day. He reported that the Defendant Cole commenced work at approximately 9:00 am and finished at 7:00pm as it was a late-night shopping day. In addition, he testified that when he next saw the Defendant Cole, he had a limp which he attributed to a

bicycle accident. In Mr. Peterson's cross-examination of Mr. Edwards, it became apparent that Mr. Edwards could not guarantee that the Defendant Cole had not left the shop at any point on the day in question. Furthermore, he also could not verify Defendant Cole's involvement in a bicycle accident as he had only been told this by Defendant Cole.

In summarising the prosecution's case against the Defendant Adams, Mr. Peterson stated that the sighting of Defendant Adams at the scene and his car near the scene of the alleged crime as well as his facial bruising and the footprint matching his brand of shoe, implied his involvement in the alleged event. He further stated that the alibi provided by Ms Waters was questionable, due to possible impairments stemming from her alcohol problem.

In summarising the prosecution's case against the Defendant Bartlett, Mr. Peterson stated that the sighting of the Defendant Bartlett near the scene and at the scene of the alleged event on the day in question, the injury to his hand, and sunglasses similar to those previously worn by the Defendant Bartlett found at the scene of the alleged crime implied his involvement in the alleged event. He further stated that the alibi provided by Mr. Frank Bartlett was questionable as he had a serious illness which resulted in his being bedridden and asleep much of the day.

In summarising the prosecution's case against the Defendant Cole, Mr. Peterson stated that the sighting of the Defendant Cole near and at the scene of the alleged event on the day in question, as well as the broken keyring and his limp, implied his involvement in the alleged crime. He further stated that the alibi provided by Mr. Edwards was questionable due to the fact that he was actually not working that day and the Defendant Cole was the only worker at the shop.

In summarising the case for the defence of the Defendant Adams, Mr. Davies put forth that the evidence by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Adams had any involvement in the alleged offence.

In summarising the case for the defence of the Defendant Bartlett, Mr. Everett put forth that the evidence presented by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Bartlett had any involvement in the alleged offence.

In summarising the case for the defence of the Defendant Cole, Mr. Forsythe put forth that the testimony of the elderly Mrs. Wesley was questionable and that the remaining items of the evidence did not prove the Defendant Cole's involvement in the alleged offence.

The judge then explained to the jury that they must consider the case of each Defendant separately and that they are to reach independent verdicts for each of the three defendants. The judge further instructed that they must only find a defendant guilty if the evidence proves beyond a reasonable doubt.

APPENDIX I

AUDIOTAPE TRANSCRIPT FOR CONDITION 4 OF MAIN STUDY
DEFENDANTS A AND D

Mr. Steven Adams is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. Mr. Adams pleads not guilty.

Mr. Greg Sutton is charged with grievous bodily harm under s.297 of the WA Criminal Code Compilation Act 1913. Mr. Sutton pleads not guilty.

Mr. Jones, the main prosecution witness and victim in the alleged crime, testified that as he was walking down Murray Street Mall at dusk on the 14th of June 1998, he was physically assaulted by four men from behind. Because he was attacked from behind and was extremely distressed, Mr. Jones stated that he could not identify the assailants but knew that they were four men. He testified that he sustained a number of injuries from three of the four men, allegedly including Defendant Adams, including lacerations to his face and arms, and multiple bruises to the face and chest area. He also testified that from the fourth man, allegedly Defendant Sutton, he sustained severe injuries including three cracked ribs, internal bleeding, and a concussion as a result of the fourth defendant smashing his head against the ground and jumping on his torso numerous times. He was hospitalised for four days after the alleged assault.

The prosecutor, Mr. Peterson, put forth evidence that placed the two defendants Adams and Sutton at the scene of the alleged crime. The prosecution witness, Mrs. Wesley, testified that she saw the event and that the two defendants were two of the perpetrators. She also testified that she saw Defendant Adams punch the alleged victim and saw the Defendant Sutton smash the alleged victim's head on the ground and jump on his body several times. In cross-examination, Mr. Everett questioned the credibility of an elderly witness who was not wearing her glasses at the event she reported. Further, it was pointed out by Mr. Everett that because it was dusk at the time of the alleged event, it would have been difficult for any witness to make an accurate identification. Despite this, Mrs. Wesley testified that she was certain that the men she saw were the two defendants.

The prosecutor, Mr. Peterson, put forth evidence that placed the defendant Adams' car near the scene of the alleged crime. The prosecution witness, Ms Williams, testified that she saw a car the same colour and model as the defendant Adams', parked along Barrack Street near the scene of the alleged crime on the day in question as she walked from her job at Baskin Robbins ice cream parlour toward the train station on Wellington street. In cross-examination by Mr. Davies, who appeared for Defendant Adams, it was put forth that although his car was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement in the alleged crime.

The prosecutor, Mr. Peterson, put forth evidence that placed the Defendant Sutton near the scene of the alleged crime. The prosecution witness, Mr. Jenkins owns a music store in the Murray Street mall and testified that the security surveillance video in his store showed the Defendant Sutton browsing in his store on the date in question. In cross-examination by Mr. Tanner who appeared for Defendant Sutton, it was put forward that although the Defendant Sutton was sighted near the alleged crime scene via the store video, this did not necessarily demonstrate his involvement in the alleged crime.

The next witness called forth by Mr. Peterson for the prosecution was Sergeant Sherman from the Forensics Division of Perth Police Headquarters. Sergeant Sherman testified that a muddy shoe print matching the defendant Adams' Adidas shoe was found at the scene of the alleged crime. The defence lawyer, Mr. Davies, raised the point that Adidas shoes are common and therefore the footprints are not necessarily those of the Defendant Adams. Upon questioning, Sergeant Sherman agreed that this is possible.

The next witness called forth by Mr. Peterson for the prosecution was Ms Johnson. She testified that the broken 9 ct. gold necklace found at the scene of the alleged crime was identical to the one she gave to the defendant Sutton 4 years previous to the alleged crime. The defence lawyer, Mr. Tanner raised the point that the necklace was a very common style that many people wear and therefore the necklace found at the scene of the alleged crime did not necessarily belong to the Defendant Sutton. Ms Johnson agreed that it was a possibility.

Mr. Peterson called forth Senior Constable Smithson as his next prosecution witness. Senior Constable Smithson testified that upon Defendant Adams' arrest one day after the alleged event, Defendant Adams had a deep purple bruise on his right cheekbone which appeared to him to be recently inflicted. Mr. Davies, in cross-examination of this witness, proposed to Senior Constable Smithson that the bruise may have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

Senior Constable Smithson further testified that upon the Defendant Sutton's arrest one day after the alleged event, Defendant Sutton's gums were bleeding and one of his teeth was Chipped. Mr. Tanner, in cross examination, proposed to Senior Constable Smithson that the Chipped tooth and bleeding gums may not be the result of the alleged assault. Senior Constable Smithson agreed that this was possible.

In Defendant Adams' defence, Mr. Davies called Defendant Adams' partner, Ms Simone Waters. She testified that on the date in question, Defendant Adams was with her. She reported that they parked the car along Barrack Street in the city that morning at approximately 10am, and then walked to the Swan River foreshore to have a picnic. She further testified that they returned to the car at approximately 6.30 pm on the date in question, and then went home. In addition, Ms Waters testified that she was responsible for the Defendant Adams' bruise the day before the alleged event when she was intoxicated and became quite aggressive. In cross-examination, Mr. Peterson, elicited from Ms Waters that she had been drinking whiskey quite heavily from noon on the date in question. Upon further questioning it emerged that Ms

Waters was a chronic alcoholic, who drank at least one bottle of whiskey daily. The defence objected to this line of questioning, however, the judge overruled this, stating that the evidence was relevant to evaluate the credibility of the witness. Mr. Peterson suggested that Ms Waters' capacity to give evidence was questionable, as she was intoxicated not only on the date in question, but the surrounding days also. Mr. Peterson then proposed that there was the possibility that Defendant Adams may have left her for a short time and met up with the other three alleged assailants while she lay intoxicated in the park. Although she stated that she could not remember the exact events of the date in question, Ms Waters was sure that Defendant Adams was with her at all times.

In Defendant Sutton's defence, Mr. Tanner called the Defendant Sutton's grandmother, Mrs. Roberts to testify. She testified that on the day in question, the Defendant Sutton arrived at her house at approximately 10:00 in the morning to help her look after her grandson, aged one and a half, for the majority of the day. At about 4pm Mrs. Roberts testified that she realised the infant would soon be ready to take a nap so she told the Defendant Sutton to put the infant in his crib when he falls asleep, and then she went off for a nap herself. She testified that when she woke up at 7:00pm the Defendant Sutton was still there. By that time his gums were bleeding and one of his teeth was Chipped. Upon questioning him about the tooth, Mrs. Roberts testified that the Defendant Sutton told her that he was lying on the floor watching tv when the infant crawled over to him with a glass in his hand and dropped it on his face, consequently breaking his tooth off and causing his gums to bleed. In cross examination by the prosecutor Mr. Peterson, it was put to Mrs. Roberts that because she had been sleeping for part of the day in question, it was possible that the Defendant Sutton had actually left her house and committed the alleged crime. Further, because she had not actually seen the infant drop the glass on the Defendant Sutton's face, she could not be certain that this had actually caused the injury. Mrs. Roberts accepted that this was a possibility but was still sure that the Defendant Sutton had not actually left the house until later that evening and had sustained the injury from the infant as he was an active little boy.

In summarising the prosecution's case against the Defendant Adams, Mr. Peterson stated that the sighting of Defendant Adams at the scene and his car near the scene of the alleged crime as well as his facial bruising and the footprint matching his brand of shoe, implied his involvement in the alleged event. He further stated that the alibi provided by Ms Waters was questionable, due to possible impairments stemming from her alcohol problem.

In summarising the prosecution's case against the Defendant Sutton, Peterson stated that the sighting of the Defendant Sutton near the scene and at the scene of the alleged crime on the day in question, the injury to his tooth and gums, and a necklace similar to that previously worn by the Defendant Sutton found at the scene of the alleged crime implied his involvement in the alleged event. He further stated that the alibi provided by Mrs. Roberts was questionable as she had been sleeping for part of the day.

In summarising the case for the defence of the Defendant Adams, Mr. Davies put forth that the evidence by the elderly Mrs. Wesley was questionable and the other

items of evidence did not necessarily prove that the Defendant Adams had any involvement in the alleged offence.

In summarising the case for the defence of the Defendant Sutton, Mr. Tanner put forth that the evidence presented by the elderly Mrs. Wesley was questionable and the other items of evidence did not necessarily prove that the Defendant Sutton had any involvement in the alleged offence.

The judge then explained to the jury that they must consider the case of each Defendant separately and that they are to reach independent verdicts for each of the two defendants. The judge further instructed that they must only find a defendant guilty if the evidence proves beyond a reasonable doubt that he was involved in its commission.

APPENDIX J

RESPONSE SHEET FOR CONDITION 1 OF MAIN STUDY
DEFENDANT A ONLY

How do you find the defendant, Mr. Steven Adams, on the charge of unlawful assault?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

APPENDIX K

RESPONSE SHEET FOR CONDITION 2 OF MAIN STUDY
DEFENDANTS A AND B

How do you find the defendant, Mr. Steven Adams, on the charge of unlawful assault?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

How do you find the defendant, Mr. George Bartlett, on the charge of unlawful assault?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

APPENDIX L

RESPONSE SHEET FOR CONDITION 3 OF MAIN STUDY
DEFENDANTS A, B, AND C

How do you find the defendant, Mr. Steven Adams, on the charge of unlawful assault?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

How do you find the defendant, Mr. George Bartlett, on the charge of unlawful assault?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

How do you find the defendant, Mr. Sean Cole, on the charge of unlawful assault?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

APPENDIX M

RESPONSE SHEET FOR CONDITION 4 OF MAIN STUDY
DEFENDANTS A AND D

How do you find the defendant, Mr. Steven Adams, on the charge of unlawful assault?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

How do you find the defendant, Mr. Greg Sutton, on the charge of grievous bodily harm?

Please circle your verdict: Guilty Not Guilty

How confident are you in your verdict?

Please circle a number on the scale of 1 to 7:

not very confident 1 2 3 4 5 6 7 very confident

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