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# The Impact of Summaries by Judges and Juror Characteristics on Juror Decision Making

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As judges in the UK provide a summary of the evidence to juries during criminal trials, the study aimed to investigate if this had the potential to influence the verdict given by mock-jurors. One hundred and thirty-three mock-jurors ( $M = 21.30$  years,  $SD = 6.70$ ) were asked to read witness statements from a genuine rape case, as well as the closing remarks made by the defence and prosecution. The participants were randomly assigned to one of two groups. Only one group read the summary made by the judge in the trial. All participants were asked to rate how reliable they found each witness and how likely they would be to render a guilty verdict. There were no significant differences between either group, though female mock-jurors were significantly more likely to render a guilty verdict than male mock-jurors.

Keywords: mock-jurors, rape, judge's summary, juror-age, juror-gender

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The data that support the findings of this study are available on request from the corresponding author.

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The aim of this study was to understand how summaries of evidence by judges influence decision making by jurors.

### **Summaries by Judges**

In England, it is common for judges in Crown Courts to summarise evidence at the end of a trial, though it is not specifically required by statute or case law (Marcus, 2013). This involves judges summarising the evidence presented at trial after prosecution and defence counsel have given closing speeches and before juries are asked to consider a verdict. Though the judge is meant to provide an impartial summary, they have considerable leeway over what points they decide to make and which points they choose to leave out of their summary since they are not required to recite points already made by the defence and prosecution during trial. In Scotland, trial judges do not so routinely summarise the evidence, but it does still happen in some cases.

In other countries, such as the United States, judges are far more wary about summarising evidence for juries as verdicts can be overturned due to any indication of bias by trial judges. In the case of *United States v. Godwin* (2001), the court strongly discouraged judges from summarising evidence for juries due to being particularly persuasive in the eyes of juries. Marcus (2013) reported that judges from several states had never heard of a trial judge summarising evidence for juries and felt certain that such an action would be grounds for an appeal. They felt strongly that such behaviour invaded the responsibility of juries and that judges should have no role in determining the facts of a case for a jury due to the strong possibility of swaying the jury's decision.

Despite these concerns, it is still common for judges in the United Kingdom to summarise evidence for juries. One British law expert said, "It is absolutely routine practice and the judge will get in trouble if he does not sum up" (Marcus, 2013, p. 22). To the researcher's knowledge, no studies have investigated what impact evidence summaries from judges actually have on jury decision making using an experimental design. A genuine rape case was chosen for this experiment on the basis of there being limited physical evidence presented and due to the trial judge indicating his own opinion over the case once the jury returned a verdict. The details of the case are provided below.<sup>1</sup>

### **The Case**

Sophie was a 21-year-old student at the University of Bristol in her final year. Two weeks before graduation, she went out with friends for drinks in the city centre. They met another group they knew from university, including Jake (the defendant), and all went back to Jake's house for more drinks. The following morning, Sophie reported to a nurse at the university that Jake had raped her. The nurse called the police and Jake was arrested.

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<sup>1</sup> Names, locations, and dates have been changed to protect the privacy of those involved.

A jury heard testimonies from those who were there. While there was physical evidence presented that Jake and Sophie had sexual intercourse, Jake said it was consensual. Sophie, meanwhile, maintained that she had willingly gone to Jake's bedroom that night and kissed him, but that she had not consented to anything more than kissing, though her memory of the night was incomplete due to how much alcohol she had consumed. She testified that she had fallen asleep after kissing Jake, then woke up to find him inside of her. The majority of the other witnesses in the house supported Sophie's claims that she had woken her friends up in the early hours of the morning, crying and trembling (other witnesses claimed to have slept through the ordeal). It was then she had told her friends she had been raped. Inconsistent with the claims of the other witnesses, Jake testified that he had walked Sophie and her friends to the door the next morning and that there was no mention of rape until the police arrived at his door later that day. Jake, however, did admit to taking a picture of Sophie asleep in his bed and to sending it to a friend. After hearing closing arguments from the defence and prosecution, the jury heard a summary of the evidence by the judge, who dedicated most of his remarks to summing up the arguments made by the defence, particularly focusing on the complainant's hazy memory of that night. The jury returned a not-guilty verdict in less than twenty minutes. After hearing the verdict, the trial judge told the jury that they had "made the right decision."

### **Juror Impactors on Rape Cases**

Given the nature of this case, it is important to consider characteristics of jurors that have been found to impact the outcome of rape trials. Firstly, female jurors are typically more likely to find victim-witnesses credible in sexual assault trials than male jurors and are also more likely to vote for a conviction (e.g., Devine & Caughlin, 2014; Schutte & Hosch, 1997). This may be because women score higher in empathy on average than males (e.g., Christov-Moore et al., 2014; Mestre et al., 2009), or perhaps because women are more likely to be sexual assault victims themselves (Office for National Statistics, 2020) and so are more likely to sympathise with the victim of the case. Golding et al. (2007) found a similar finding when investigating jury decision making, as opposed to juror decision making. In the case of a 6-year-old female who claimed to have been a victim of sexual abuse, mock juries with a female majority were more likely to convict. Interestingly, females who originally voted not guilty were also more likely to change their verdict to guilty if they were within a female majority group.

A second characteristic to consider is juror age, which has been largely ignored in the literature. Though there is some evidence to suggest that older jurors may be more likely than younger jurors to give a verdict of not guilty (e.g., Mossière & Dalby, 2007), the results are mixed and are dependent upon the characteristics of the crime and the defendant (Anwar et al., 2012). Given though that age has been found to positively correlate with

rape myth endorsement (e.g., Kassing et al., 2005), it may be the case that older jurors would be more likely to render a not-guilty verdict in this specific case. In this case, the complainant admitted to being intoxicated, as well as going to the defendant's bedroom and to kissing him, though she denied consenting to sexual intercourse. In such a case (i.e., an intoxicated victim), endorsers of rape myths are unlikely to vote guilty (Hockett et al., 2016; Koss, 1985; Orchowski et al., 2016; Seabrook et al., 2018; Stormo et al., 1997; Wenger & Bornstein, 2006).

### Consent and Intoxication in the UK

Even nearly 20 years after the Sexual Offences Act 2003, consent and intoxication still causes a number of problems for judges, jurors, and lawyers involved in rape cases.

According to the conclusions of a recent review on the issue, "It appears that intoxication sometimes gives inauthentic, yet legally valid consent, unless a person is almost at the point of unconsciousness. Whilst it might be morally wrong to take advantage of a person who is displaying many outward signs of being heavily intoxicated, the law still allows for this person to make decisions which may be deeply regrettable the next day" (Clough, 2019, p. 14). Indeed, when a complainant is intoxicated during the alleged rape, prosecutors are often left trying to prove either that the complainant was too intoxicated to give valid consent or that they never gave consent at all and were taken advantage of by the defendant. However, it is unsurprisingly difficult to determine level of capacity and intoxication after the fact.

### Hypotheses

There were three hypotheses in this study:

1. Mock-jurors who read the summary of evidence by the judge will be significantly more likely to render a not-guilty verdict than mock-jurors who do not read the summary of evidence.
2. Female mock-jurors will be significantly more likely to render a guilty verdict than male mock-jurors.
3. There will be a significant, negative relationship between age and likelihood of rendering a guilty verdict.

## Method

### Design

The study was a between-group design as some participants were provided the summary of evidence by the judge and some were not. Participants were also asked to give their age and gender. The dependent variables were the reliability of the witnesses according to mock-jurors and their self-reported likelihood of rendering a guilty verdict. All responses were measured on a 9-point Likert scale (e.g., *extremely reliable* to *extremely unreliable*), except for the final verdict (which was either guilty or not guilty).

### Participants

Participants responded to adverts on social media and to invitations to take part sent around Coventry University and Edinburgh Napier University in the United Kingdom, widening the study's geographical representation. Out of the 133 participants, 97 self-identified as female and 36 as male. They ranged from 18- to 73-years-old ( $M = 21.30$ ,  $SD = 6.70$ ).

### Procedure

Permission for the study was approved by ethics committees at Coventry University and Edinburgh Napier University. The researcher had permission from the criminal court to be present during the trial. Individuals who responded to social media adverts or to invitations to take part were asked to read an information sheet, suggesting they not take part if they feel they would be triggered by details of rape, and then to complete a consent form if they agreed to take part. The participants were asked to read a summary of the case and statements from six witnesses who were there that night and gave testimony at trial, including the complainant and defendant. They then read closing remarks by the defence and prosecution. Participants were randomly assigned to being provided with the summary of the evidence by the trial judge or to not being provided with this information. Lastly, they were asked to complete a questionnaire, measuring their perceived reliability for each of the witnesses and their self-reported likelihood of rendering a guilty verdict on a 9-point Likert scale. The questionnaire also contained questions designed to check the participants had been paying attention (e.g., "What was the name of the defendant in the case?"). If participants answered any of these questions incorrectly, they were immediately excluded. The final item on the questionnaire asked participants to vote simply guilty or not guilty. Participants were debriefed and provided with information to relevant services in case they had felt distressed by any details of the study.

## Results

### Hypothesis one: Mock-jurors who read the summary of evidence by the judge will be significantly more likely to render a not-guilty verdict than mock-jurors who do not read the summary of evidence

Table 1 reports the average ratings by both groups of participants. A series of independent t-tests were run to test these differences.<sup>2</sup> All differences were non-significant ( $ps > 0.05$ ). Table 2 shows the number of guilty verdicts for both groups. No significant association was observed,  $\chi^2(1) = 2.21$ ,  $p = 0.14$ , Cramer's  $V = 0.13$ .

<sup>2</sup> A MANOVA was not run due to strong associations between some of the dependent variables.

Table 1. Average ratings for both groups (judge summary and no judge summary).

Question	Judge Summary Group (n = 73)	No Judge Summary Group (n = 60)
How reliable did you find Sophie (the complainant)?	6.01 (SD = 1.73)	5.47 (SD = 1.85)
How reliable did you find Mia (the complainant's friend)?	5.53 (SD = 2.04)	5.63 (SD = 1.80)
How reliable did you find Bess (the complainant's friend)?	5.33 (SD = 2.07)	5.55 (SD = 1.91)
How reliable did you find Jake (the defendant)?	4.19 (SD = 1.98)	4.57 (SD = 1.82)
How reliable did you find Oliver (the defendant's friend)?	4.25 (SD = 2.11)	4.53 (SD = 1.64)
How reliable did you find April (the defendant's witness)?	4.92 (SD = 2.14)	4.77 (SD = 2.24)
How convincing did you find the defence's closing remarks?	4.44 (SD = 1.68)	4.38 (SD = 1.81)
How convincing did you find the prosecution's closing remarks?	5.63 (SD = 1.81)	5.57 (SD = 1.53)
How responsible do you think Sophie is for what happened to her?	3.11 (SD = 2.05)	3.40 (SD = 2.29)
To what extent do you think Jake's behaviour was morally wrong?	7.03 (SD = 1.63)	7.03 (SD = 1.86)
To what extent do you think Jake's legally guilty of raping Sophie?	6.62 (SD = 1.86)	6.52 (SD = 1.94)

Table 2. Number of guilty verdicts for both groups (judge summary and no judge summary).

	Guilty verdicts	Not-guilty verdicts
Judge summary (n = 73)	56	17
No judge summary (n = 60)	39	21

**Hypothesis two: Female mock-jurors will be significantly more likely to render a guilty verdict than male mock-jurors**

Table 3 reports the average ratings for males and females. Homogeneity of variance between the groups was violated for *To what extent do you think Jake's legally guilty of raping Sophie?* Therefore, a Mann-Whitney U test was run for this item. A series of independent t-tests were run to test for all other differences. Female mock-jurors were significantly more likely to rate Sophie (the complainant) more favourably than male mock-jurors  $t(131) = 2.86, p = 0.005, d = 0.56$ . They also rated the defendant's friend as significantly less reliable than male mock-jurors,  $t(131) = -2.22; p = 0.028, d = 0.43$ , the defence as significantly less convincing,  $t(131) = -2.55; p = 0.01, d = 0.50$ , and were significantly more likely to rate the defendant's behaviour as morally wrong,  $t(131) = 2.95; p = 0.004, d = 0.58$ . Female jurors were also significantly more likely to find the defendant as being legally guilty (*Median* = 7.00 vs. 5.00; *IQR* = 2.00 vs. 4.00),  $U = 2417.00, p < 0.001, r = 0.38$ . Male jurors rated the complainant as being significantly more responsible for what happened to her than female jurors,  $t(131) = .62, p = 0.01, d = 0.51$ . All other differences were non-significant ( $ps > 0.05$ ). Table 4 shows the number of guilty verdicts for female and male mock-jurors. A significant association was observed,  $\chi^2(1) = 14.17, p < 0.001$ , Cramer's V = 0.33.

Table 3. Average ratings for female and male mock-jurors.

Question	Female mock-jurors (n = 97)	Male mock-jurors (n = 36)
How reliable did you find Sophie (the complainant)?	6.03 (SD = 1.70)	5.06 (SD = 1.88)
How reliable did you find Mia (the complainant's friend)?	5.46 (SD = 2.01)	5.89 (SD = 1.69)
How reliable did you find Bess (the complainant's friend)?	5.37 (SD = 2.02)	5.58 (SD = 1.95)
How reliable did you find Jake (the defendant)?	4.41 (SD = 1.92)	4.22 (SD = 1.90)
How reliable did you find Oliver (the defendant's friend)?	4.16 (SD = 1.85)	4.97 (SD = 1.99)
How reliable did you find April (the defendant's witness)?	4.85 (SD = 2.23)	4.86 (SD = 2.05)
How convincing did you find the defence's closing remarks?	4.19 (SD = 1.64)	5.03 (SD = 1.83)
How convincing did you find the prosecution's closing remarks?	5.73 (SD = 1.70)	5.25 (SD = 1.61)
How responsible do you think Sophie is for what happened to her?	2.95 (SD = 2.01)	4.03 (SD = 2.36)
To what extent do you think Jake's behaviour was morally wrong?	7.30 (SD = 1.73)	6.31 (SD = 1.70)
To what extent do you think Jake's legally guilty of raping Sophie?	7.00 (SD = 1.58)	5.50 (SD = 2.22)

Table 4. Number of guilty verdicts for female and male mock-jurors.

	Guilty verdicts	Not-guilty verdicts
Females (n = 97)	78	19
Males (n = 36)	17	19

**Hypothesis three: There will be a significant, negative relationship between age and likelihood of rendering a guilty verdict**

There was a significant, positive correlation between age and how convincing mock-jurors found the closing remarks to be by the defence,  $r(131) = 0.19, p = 0.03$ , as well as with how responsible the complainant was believed to be for what happened to her,  $r(131) = 0.30, p < 0.001$ . All other relationships with age were non-significant ( $ps > 0.05$ ).

**Discussion**

**Hypothesis one: Mock-jurors who read the summary of evidence by the judge will be significantly more likely to render a not-guilty verdict than mock-jurors who do not read the summary of evidence**

There was no significant association between having heard the judge's summary and likelihood of rendering a guilty verdict. Therefore, the first hypothesis was not supported by the results. In both conditions, the majority of mock-jurors returned guilty verdicts. This is unlike the actual jury, who returned a not-guilty verdict in less than 20 minutes. The difference may be because the sample of this study was mostly female university

students below the age of 30, while the mean age of actual juries is often older than it should be due to younger people being more likely to be excused. It is difficult, therefore, to fully understand what the implications may be of judge's summaries, as well as to know if they have the potential to sway the verdicts of juries. Given that this is the first study the researcher is aware of to examine this, future research should investigate this with a wider range of cases and with a more representative sample.

**Hypothesis two: Female mock-jurors will be significantly more likely to render a guilty verdict than male mock-jurors**

Female mock-jurors were significantly more likely to render a guilty verdict than male mock-jurors. Furthermore, they rated the complainant significantly more favourably and the defendant's friend significantly less favourably. They also rated the closing remarks made by the defence as significantly less convincing and were significantly more convinced that the defendant's behaviour was morally wrong and legally guilty. Male jurors rated the complainant as being significantly more responsible for what happened to her than female jurors. Therefore, there is significant support for the second hypothesis. This is congruent with a large body of research finding that females are more likely to find victim-witnesses credible in sexual assault trials and are more likely to vote for a conviction (e.g., Devine & Caughlin, 2014; Golding et al., 2007; Schutte & Hosch, 1997). As mentioned in the Introduction, this may be because women are typically higher in empathy (e.g., Christov-Moore et al., 2014; Mestre et al., 2009) or because they are more likely to be sexual assault victims themselves (Office for National Statistics, 2020). In this study, the difference may also have been partly due to the fact that females are typically significantly less likely to endorse rape myths (Barnett et al., 2016); therefore, they may be less likely to believe that the complainant in this case was responsible for what happened to her despite willingly going to the defendant's bedroom and kissing him, as she claimed to have consented to this but not to sexual intercourse. For example, a male participant in the study said, "If she didn't want to get physical with Jake, she definitely should [not] have made out with him ... She also could have made it clear she didn't want to have sex." In contrast, comments by female participants tended to voice the opinion that the defendant had taken advantage of the complainant.

**Hypothesis three: There will be a significant, negative relationship between age and likelihood of rendering a guilty verdict**

Though older mock-jurors were significantly more convinced by the defence's closing remarks and significantly more likely to rate the complainant as being responsible for what happened to her, there was no significant association between age and likelihood of rendering a guilty verdict. Therefore, the third hypothesis in this study was not supported by the results. Of course, the participants in this study were mostly under 30 years, and it may be that a more representative sample is needed to tap

into significant findings.

**General Discussion**

The main intended purpose of judges summing up evidence is said to be to rectify any distortions made by lawyers during trials (Marcus, 2013). An alternative way of addressing this could be in the form of objections and instructions to jurors, as is the way in the United States. While judges are meant to appear impartial while summing up evidence, it was clear in this particular case the trial judge had his own opinions on the case, evident by him telling the jurors they had 'made the right decision' once they returned a not-guilty verdict. The researcher (who was present for the trial) also believes that the judge's feelings were clear during his summing up, which is why this case was chosen for the present study (to see if summing up had the potential to impact verdicts), but, granted, this is only the researcher's opinion. It is the Court of Appeal who is responsible for regulating summaries by judges, but this process is only ever likely to happen if the defence makes a request and believes the judge's summary favoured the prosecution. There is little to no regulation of summaries that may favour the defence. Furthermore, the Court of Appeal, who would only have access to transcripts of the case, is unable to consider body language or emotional tone. A better alternative might be for summaries by judges to be subject to scrutiny before being presented to juries, perhaps by both defence and prosecution, if not an independent body. Though the present study did not find evidence to suggest that the judge's summary in this particular case impacted verdicts by jurors, this may have been because the mock-jurors were largely inclined to render a guilty verdict. A number of other cases should be examined to determine the impact, if any, summaries by judges have on decisions by jurors.

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