

How Trauma Informed Judicial Instructions Can Influence Credibility Judgements in Mock

Jurors

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Table of Contents

List of Figures..... 3

List of Tables..... 3

Abstract 4

Declaration..... 5

Contribution Statement 5

Acknowledgements 5

How Trauma Informed Judicial Instructions Can Influence Credibility Judgements in Mock Jurors 6

The Emotional Victim Effect (EVE) 8

The Emotional Defendant..... 12

Judicial instructions and trauma 14

The current study 17

Method..... 19

Design and Procedure..... 19

Participants 20

Materials..... 20

Demographic questions and Juror Eligibility 20

Case Summary and Defendant Transcript 21

Credibility Ratings Measure..... 22

Judicial Instructions..... 22

Comprehension of Judicial Instructions 23

Expectancy Violation Measure and Measure of Guilt and Verdict..... 23

Results 24

Descriptive statistics 24

Manipulation checks 25

Table 1..... 25

Frequencies for the dominant emotion displayed by the defendant. 25

Assumption and Hypothesis Tests..... 26

Figure 1. Mean (and 95% CI) credibility ratings across conditions..... 27

Table 2..... 28

Verdict Frequencies Across Instruction Conditions 28

References..... 36

Appendices..... 41
Appendix 1: Scales and Measures 41
Appendix 2: Testimony and Judicial instructions transcripts 45

List of Figures

Figure 1. Mean (and 95% CI) credibility ratings across conditions.

List of Tables

Table 1: Frequencies for the dominant emotion displayed by the defendant.

Table 2: Verdict Frequencies Across Instruction Conditions

Abstract

Jurors have the important task of deciding whether the defendant is guilty of an offense in a criminal trial. A jury makes a subjective determination of defendant or witness credibility solely based on their testimony and is asked to refrain from using personal beliefs and common sense in making their verdict. They must apply judicial instructions, which outline the relevant law, to the evidence presented at the trial. Previous mock juror literature has illustrated that judgements of credibility are often governed by various social stereotypes and beliefs about accepted norms of behaviour. Emotional displays by a witness that fit held stereotypes during their testimony are often a strong determinant of both perceived credibility and judgements of guilt. However, the literature is heavily saturated with rape, sexual assault, and partner violence cases whereby the victim is often a female and the suspect a male. There is also little understanding about how trauma-informed judicial instructions can influence perceptions of guilt. Here we explore how emotion displayed by a female defendant in a murder case affects credibility ratings given by mock jurors. We hypothesise that trauma-informed judicial instructions can moderate stereotypes regarding emotional expression and influence verdicts given by mock jurors. The results illustrated that mock jurors rated the defendant as more credible in the high emotion (vs. the neutral emotion) condition. However, an effect of trauma-informed judicial instructions on measures of guilt was not found.

Declaration

This thesis contains no material which has been accepted for the award of any other degree of diploma in any University, and, to the best of my knowledge, this thesis contains no material previously published except where due reference is made. I give permission for the digital version of this thesis to be made available on the web, via the University of Adelaide's digital thesis repository, the Library Search and through web search engines, unless permission has been granted by the School to restrict access for a period of time.

Contribution Statement

In writing this thesis, my supervisor and I collaborated to generate research questions of interest and design the appropriate methodology. I conducted the literature search, completed the ethics application and wrote up all aspects of the thesis.

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TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

How Trauma Informed Judicial Instructions Can Influence Credibility Judgements in Mock Jurors

In 1982, a jury sentenced Lindy Chamberlain to life in prison for killing her nine-week-old baby Azaria, however, she was later acquitted of her charge due to exculpatory evidence (Parkes & Cunliffe, 2015, *R v Chamberlain*, 1984). Similarly, Kathleen Folbigg was convicted of killing her four infants, her convictions were based in part on personal diary entries, flawed expert evidence and because her expression of emotion did not fit the role of the stereotypical mother who is grieving the loss of her children (*R v Folbigg*, 2003). Although there was no solid evidence that Kathleen inflicted any harm upon her children, the jury nevertheless found her guilty of all counts of murder and manslaughter. Further, a common observation of the behaviour of these women by media and people in the courtroom, was that they showed a “lack of emotion” when giving their testimonies. The public and media perception of these women was heavily couched in terms of stereotypes regarding gender. The absence of “feminine” or “maternal” emotion potentially influenced juror’s perceptions of the defendant in both cases. Historically, women are overwhelmingly likely to be victims of crime rather than perpetrators particularly in cases involving sexual assault (Parkes & Cunliffe, 2015).

In judicial contexts, making decisions is a highly complex process. It is often assumed that a jury’s decision is based solely on the facts and evidence presented by both legal parties (Ford, 1986, Micle et al., 2012). However, there is data both in legal and psychological literature showing how extra-legal factors such as media coverage of the defendant and witnesses, juror attributes and personality, sex, age and ethnicity, juror biases and prejudicial beliefs have the potential to complicate the decision-making process and influence verdicts (Ford, 1986). Further, jurors interpret the trial evidence within the context of their own individual and unique experiences which include but are not limited to, sex, age, race, and

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

personality. Each of the mentioned factors have potential to influence juror verdicts and are subject to influence and change. Factors which are innate during a trial such as presentation of evidence or witness and victim testimonies, may also shape juror's decision-making processes (Ford, 1986; Micle et al., 2013). Further, a significant number of studies have focussed on defendant or witness's attractiveness and credibility and how they influence juror decision making. The findings by Ford (1986) suggest that attractiveness may refer to physical characteristics or be measured by age, cultural background, and social class. Perceptions of attractiveness are often associated with leniency in juror verdicts and socially unattractive defendants tend to be convicted more frequently as compared to socially attractive defendants. Further, jurors tend to rely on non-verbal behaviours when assessing a defendant's credibility during a trial. For instance, a defendant who exhibits fewer signs of anxiety is more likely to be perceived as credible and less likely to be found guilty (Ford, 1986). This research on extra-legal factors such as defendant credibility, provides a good framework, however it is quite outdated. More recent mock juror research in this field explores emotional expression as a significant factor influencing juror decision making.

Moreover, the decisions made by jurors in sexual assault and rape cases specifically, has attracted reasonable concern about prejudicial beliefs and attitudes (Leverick, 2020; Dahl et al., 2007). In their research, Wessel et al. (2012) looked at the relationship between emotional displays and credibility whereby they found that the level of emotion displayed by rape victims during their testimony is a strong determinant of both perceived credibility and assessments of the probability of the suspect being guilty of rape. Previous research on perceptions of witness credibility indicate that credibility judgements are influenced by not only the contents of the testimony, but also how the witness performs (Wessel et al., 2006). Evidently, the judgements made are based on various behavioural signs which are associated with lying or truth telling, along with stereotypes regarding physical appearance. It is

important to note that these judgements of credibility, even in forensic contexts, are often highly unreliable, but are imperative in understanding why people, especially jurors make certain decisions.

The Emotional Victim Effect (EVE) and Expectancy Violation Theory

A growing number of experimental research has demonstrated that the emotion a victim displays in a courtroom setting has a profound influence on impressions others form of their credibility (Landstrom et al., 2019). Victim credibility has become one of the most significant determinants of the decisions to both prosecute and convict a defendant, thus it is important to understand the foundation of credibility judgements (Doorn & Koster, 2019). The idea that the non-verbal expression of emotion can have effects on an individuals' perception of a victim's credibility, is known as the emotional victim effect (EVE). Wrede and Ask (2015) define the EVE as "*victims who express strong negative emotions when talking about their victimization are perceived as more credible than victims who display little emotion or positive feelings*" (p. 903). Negative emotions are commonly sadness, fear, and distress, whereas positive emotions or feelings are happiness, joy and even displays of numbness.

Ask (2010) illustrated that a victim who behaves in an emotionally agitated way is then more likely to be considered a 'real victim' rather than one who depicts a more numbed or emotionally neutral manner. Similarly, Wessel et al., (2012) found that when a victim shows despair and sadness in their testimony, they were rated as more credible by mock jurors. Credibility ratings significantly dropped when the testimony was neutral and were degraded further when more positive emotions were displayed (Wessel et al., 2012). In addition to this, Heath et al. (2006) report that an offender who displays sadness would be rated as less deserving of punishment than an offender who is displaying clear signs of anger. Research on remorse illustrates the idea that a possible reason perceived emotion has an

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

effect on decisions made by mock jurors is because a strong display of emotion such as evident sadness and crying is seen by most individuals as a sign of remorse. In their study, Ellison and Munro (2009) presented a mock jury with a set of shortened rape trials and asked them to deliberate. The jurors revealed that they expected the victim to show a more visible display of negative emotion and expressed that they felt “perplexed” when the victim was emotionally flat and ‘extremely calm’ in their testimony (Ellison & Munro, 2009). These findings, however, can become problematic when considering that there is significant variation in how individuals respond to and cope with negative events and that victims of crime or those who experience traumatic events display a wide range of psychological reactions which can range from mild to severe (Landstrom et al., 2019). Evidently, there are myriad limitations of using emotion expression as a cue for credibility in legal settings. Firstly, expectations about emotion can be problematic as witnesses and defendants in a courtroom can display signs of nervousness or emotional numbness, which according to the EVE literature is often attributed to deception and low credibility. However, this framework does not consider the reasons for displays of nervousness such as the stress that is attached to feelings of possibly being falsely accused (Heath et al., 2006). In addition to this, it is not uncommon for victims to regulate their emotional expression simply for presentation purposes which further emphasises the limitations of using emotion expression as a sign of credibility (Winkel & Koppelaar, 1991).

In survey research which investigated lay people and professionals’ beliefs about deception of an offender, it was discovered that the signs which indicate emotional activation and nervousness present as indicators of deception (Vrij, 2004). Subsequently, the literature has since adopted a stereotype-based explanation as to why EVE occurs. It is assumed that individuals carry stereotypical expectations which constitute an expected or ‘normal’ reaction to victimisation (Landstrom et al., 2019; Winkel & Koppelaar, 1991). Thus, victims who do

not present such a reaction are viewed as being less credible. The Hackett et al. (2008) findings were consistent with this notion whereby individuals with strong expectations about emotional victim behaviours were more likely to exhibit the EVE. This concept can also be explained through expectancy violation theory which predicts and explains the effects of non-verbal behaviour on interpersonal communication outcomes such as credibility (Burgoon et al., 2016).

Evidently, a vast majority of human interactions are strongly governed by expectations which when they are violated, are arousing and trigger appraisal processes. Expectancies are fundamentally based on social norms and past experiences (McAuliff & Kovera, 2012). Essentially, people expect behaviours which they consider to be typical and sufficient for a particular setting and purpose. Ultimately, expectancy violations attract attention and then result in an interpretation and evaluation process where people assess the probable meaning of the expectancy violation and assign a positive or negative valence and then react accordingly (McAuliff & Kovera, 2012). Expectations are most often based on the social norms that are associated with an individual's personal characteristics which include sex, cultural background, relationship factors such as trust, and contextual factors (Burgoon et al., 2016). Expectancy violation theory predicts that people react more favourably to positive expectancy violations than they will to negative ones. In legal settings, expectancy violations can affect juror attitudes and decision-making processes (Ask & Landstrom, 2010). This prediction is supported by Feldman and Chesley (1984) study where they explored the effects of a defendant's non-verbal behaviour and severity of crime on judgements of the defendant's credibility. They found that the defendant's non-verbal behaviour such as body language and emotional expression had significant effects on ratings of believability and credibility (Feldman & Chesley, 1984).

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

Furthermore, most individuals have an implicit idea of how a victim should behave. In their study, Bosma et al. (2018) alludes to the idea that the types of emotions that seem to fit the stereotypical victim are those that tend to correspond with the someone who is powerless, vulnerable, and passive. Essentially, those who observe a victim, expect them to express emotions that indicate passivity such as sadness, guilt, shame, and fear. In contrast, emotions such as pride, anger and contempt are not expected to be displayed by a victim (Bosma et al., 2018). Further, Schuster and Proven (2010) conducted a study that looked at interviews with district court judges from the United States. In their sample of judges, they found that the judges believed expressions of grief, especially when it is related to loss of life, are more appropriate in a courtroom setting than expressions of anger. Additional findings suggest that expressions of compassion by a victim are generally admired by judges, however not in the context of domestic violence cases whereby compassion elicits suspicion. Evidently it alludes to the idea that expressions of sadness and compassion are a more suited the passive position of a victim but should not be expressed too intensely or in the wrong context as it may lead to undesirable reactions by observers (Schuster & Proven, 2010). Theories in social psychology consistently pose the idea that individuals go above and beyond to retain their implicit beliefs and often respond with anger and denial when these beliefs are challenged to avoid distress (Bosma et al., 2018). Further, victim sex is another key point brought forward in Bosma et al. (2018) study whereby they illustrate the idea that stereotypical feminine women similar to the stereotypical victim, include associations that refer to vulnerability, weakness, and defencelessness. Thus, this further strengthens the argument that female victims are perceived as less credible when they share their experiences in an emotionally inexpressive way rather than with sadness (Bosma et al., 2018).

In addition, Wrede et al. (2015) found that victims who expressed sadness are generally perceived as being warmer. Also present in the literature is the notion that in order

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

for a victim to receive sympathetic reactions from an observer or decision maker such as juror, the intensity of the emotional display should match the perceived severity of the crime. For instance, an intense emotion response would include a combination of anger, sadness, anxiety, fear, and disgust and this reaction would be associated with crimes such as sexual assault and murder (Lens et al., 2014). If, however, a victim of a low severity crime gave an intense emotional response this would often not reflect an observer's expectations and leads to a violation of the observer's beliefs. Thus, observers who experience an expectancy violation generally rate the victim as less credible.

Further, it is important to note that the presence of these expectancies does not implicitly imply that these expectancies will be identical across different cultures. The content of expectancies will vary across different cultures. For instance, femininity, masculinity, and the expression of emotion are a few factors that differ immensely throughout different cultures (Burgoon et al., 2016). For instance, cultures such as those in Australia, are more expressive and assertive and may expect others to be more dominant and talkative as compared to more collectivist cultures such as China and Japan whereby there is an expectation for greater verbal indirectness and politeness (Burgoon et al., 2016). Thereby, the concept of cultural differences in expectancies is important to consider for the current study as it would not be sufficient to assume that everyone will hold the same expectancies especially with regard to emotional expression in a victim or defendant. Evidently, the empirical evidence on expectancy violation and EVE suggests that victims who have intense emotional responses to victimisation, especially if they are the stereotypical feminine victim, are most often rated as more credible. Also, if an expectancy violation is experienced by an observer, they generally judge the victim as less credible, however this response may differ in different cultures.

The Emotional Defendant

It is evident that the current literature on emotional expression, EVE and expectancy violation is extensive and illustrates a clear understanding of victims. However, the current study uses the empirical evidence outlined to explore whether the same principles apply to a defendant in a criminal murder trial. The current mock juror literature on emotional expression and credibility, and how it relates to defendants is limited but not scarce. Heath et al. (2006) provides an insight into mock juror research whereby they provide audio recordings of a defendant testimony and manipulate the level of emotion (low, moderate, and high). They found that level of emotion displayed by the defendant during their testimony affected the decisions made by mock jurors, and higher emotion led to the defendant appearing more credible and less guilty of the crime (Heath et al., 2006).

Continuing on from this research, the current study aims to observe a very specific defendant and if the fundamental principles of EVE and expectancy violation theory still apply. The defendant will be a female and a mother who may or may not be guilty of inflicting harm and murder upon her young daughter. Thus, an exploration of a specific expectancy violation will be observed, as suggested by research, many individuals hold a stereotype that a mother is a feminine woman who is passive, innocent, vulnerable and will show heightened emotion of sadness and fear in their testimony when communicating information about the death of her child (Bosma et al., 2018; Lens et al., 2014). If on the contrary she displays low emotion and does not fit the stereotype, it is expected that a violation will be experienced and cause participants to rate her as less credible and more guilty.

Further, research on grief and bereavement suggests that parents of children who pass away from any cause are likely to experience symptoms of traumatic stress and thus experience a higher severity of problems with emotional dysregulation (Christ et al., 2003).

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

Further, parents who experience the loss of a child can experience numbness, absence of emotional responsiveness, difficulty acknowledging the death that has occurred, feelings of emptiness and anger related to the death. Further, the circumstances of a child's death can also shape bereavement reactions, higher levels of traumatic symptoms are associated with sudden death of children (Christ et al., 2003). Evidently, research on grief and bereavement is crucial for the methodology of the current study and is important in establishing the specific expectancy violation that is anticipated. Moreover, it is important to understand that although the mock juror literature outlined is predominantly based on victim research, the current study is exploring a defendant.

Judicial instructions and trauma-informed practice

Jurors have the critical task of deciding whether a defendant is guilty or not guilty, by applying judicial instructions given by the judge to the evidence they were presented throughout the trial. Judicial instructions are designed to ensure that legally accurate decisions are made by jurors and avoid the risk of wrongful convictions (Baguley et al., 2020). However, while instructions are legally accurate, they are often quite complex and hard to comprehend for lay people (Semmler & Brewer, 2002). Empirical research on judicial instructions has estimated that mock jurors typically only comprehend between 50% and 70% of instructions they hear, and this conclusion applies regardless of participant age, education, or sex (Lieberman, 2009; Baguley et al., 2020). Consequently, research has aimed to illustrate techniques to simplify comprehension for jurors. The main techniques include shortening lengthy sentences, incorporating factual examples to make legal concepts appear less abstract, and providing a written copy of the instructions (Shaked-Schroer et al., 2008; Brewer et al., 2004).

In their study, Trimboli (2008) found that there was a significant relationship between whether jurors received a written copy of the judge's instructions and the extent to which it

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

assisted the jury in reaching a verdict. They explain that jurors who did not receive the written transcript were more than twice as likely than those who did, to express that the instructions did not help ‘at all’ or ‘very little’ in reaching their verdict. By providing written materials to jurors, it eliminates the need for them to rely so heavily on their memory of what the judge said. This then also decreases the possibility of different interpretations being made about the judge’s connotation (Trimboli, 2008). Evidently, past research illustrates that the comprehension of judicial instructions plays a pivotal role in juror decision making and that it is important to consider techniques which can increase juror comprehension of judicial instructions.

Although the comprehension of judicial instructions is an important element of juror decision making, recent literature has alluded to the idea of considering the contents of judicial instructions and whether the information presented to jurors is substantial enough for informed decisions to be made. Randall and Haskell (2013) have suggested that the paradigm of ‘trauma-informed practice’ should be strongly implemented in legal systems. Trauma-informed practice requires the basic knowledge of the impacts of stress on the brain and body along with understanding the impact of trauma on expressed emotion and daily functioning. Trauma, including singular or multiple, long-lasting events impact each individual differently meaning that reactions to trauma will ultimately differ from person to person. Initial reactions to trauma often include sadness, confusion, anxiety, numbness, and physical arousal. Moreover, delayed responses to trauma are often persistent fatigue, depression, sleep disorders and most importantly avoidance of emotions (Bosma et al., 2018; Mckenna & Holtfreter, 2019).

The idea of trauma-informed practice is not new in legal settings within Australia. Mckenna and Holtfreter (2019) indicate that trauma-informed practices ultimately realise the impact of trauma along with the relevant signs and symptoms of trauma and respond by

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

acknowledging its impact and integrating this knowledge along with education into practices and policies to positively impact compliance and fairness in the criminal justice system. In legal settings, credibility determinations are often made without the recognition of the impact of trauma on victims, witnesses, and defendants. Judges along with jurors determine whether a defendant is credible and reliable based on their recollection of events, and by the way they look and sound. However, what is often not considered is that experienced traumatic events can significantly alter the way an individual thinks, behaves and recalls events from their memory (Trujillo & Moen, 2019).

Traditional practices in both adult and juvenile legal settings use confinement and punishment which often disregard past experiences, and that offenders are often likely to be victims themselves and this may trigger their past trauma (Mckenna & Holtfreter, 2019). Current trauma-informed practices in juvenile justice settings aim to reduce risk factors, increase protective factors, and create meaningful opportunities for youth, they consider trauma histories, cultural background and stigmas which are associated with justice system involvement at a young age (Mckenna & Holtfreter, 2019). Alongside this, successful implementation of trauma-informed practice in juvenile settings focuses on the cognitive, psychological, and social factors that impede and limit youth. Courts must address certain traumatic stressors such as exposure to cruelty, coercion, violence, and neglect in order to make informed decisions without re-traumatising offenders (Mckenna & Holtfreter, 2019).

Further, the National Domestic and Family Violence Benchbook outlines the approach taken to protect vulnerable or special witnesses and victims. These protections consider the impact of trauma and the possibility of re-traumatising in courtroom settings and thus offers closed courtrooms, pre-recorded victim, or witness evidence, allows the presence of a support person and disallows direct cross-examination of vulnerable persons. For instance, part 2 of the Evidence Act 1977 (QLD) provides protection for witnesses or victims

who are likely suffering emotional trauma and would be potentially intimidated or disadvantaged whilst providing evidence in a courtroom setting. This evidence further outlines the current trauma-informed practices being implemented in Australian juvenile and adult settings and further indicates that the courtroom and its actors have the ability to provide a supportive and safe place for individuals involved in court proceedings that may otherwise be confrontational and potentially re-traumatising. They are also a significant steppingstones to explore the implementation of similar practices to assist jurors in their decision-making processes.

In Australia, Standardised Judicial instructions are quite linear and logical and often do not consider the after-effects of trauma which in turn alters how a witness or defendant is perceived by a jury. Understanding and recognising that the way an individual presents themselves may be a product of coping mechanisms and attempted self-protection in consideration of prior experiences is important (Randall & Haskell, 2013). Appreciating that coping styles can vary from being action orientated to reflective and from highly emotionally expressive to numb and reserved, can be a very useful tool to incorporate into judicial instructions. Evidently, there are various trauma-informed practices in juvenile justice systems within Australia which illustrate the importance for implementation of trauma-informed practices in legal settings. Thus, it would be beneficial to establish an awareness to the framework to essentially allow jurors to make more informed decisions and avoid wrongful convictions based on stereotypes.

The current study

The literature examining emotional expression in witnesses is heavily saturated with rape, sexual assault, and partner violence cases whereby the victim is most often a female and the defendant a male. This study aims to take a more nuanced approach and explore outcomes when the case involves a female defendant who is being charged with murdering

her young daughter, however it is not explicitly stated whether she is guilty or not guilty of the offense. The methodology of this study is based on the *R v Folbigg* (2003) case. We did not explore differences in the gender of participants as it would be too difficult to balance the number of male and female participants in each condition. The primary aim of this study is to investigate the role of displayed emotion on perceived credibility of a female defendant in a murder case. It is suspected that the level of emotion displayed in a testimony can affect the way a jury perceives a suspect's credibility and thus, affecting the verdict given. It is hypothesized that these verdicts are related to unanticipated violations of social norms, which is known as the expectancy violation theory. The first two hypotheses are as follows:

1. Participants in the high emotion condition will rate the defendant as more credible than those in the neutral emotion condition.
2. There will be a relationship between expectancy violation and credibility ratings.

The secondary aim of this study is to consider the effects of judicial instructions on mock juror decision making. There is limited understanding in the current literature about how lay people (i.e., mock jurors) understand trauma and how it can impact the way in which a suspect or defendant displays emotion in a court setting. The aim is to investigate if trauma-informed judicial instructions adapted from standard South Australian Bench book judicial instructions, influence measures of guilt and verdict. In line with previous studies (Trimboli, 2008; Kramer & Koenig, 1990), mock jurors received a written copy of the judicial instructions. The next hypothesis is as follows:

3. There will be an effect of trauma-informed judicial instructions on measures of guilt, with jurors hearing the trauma-informed instructions less likely to give guilty verdicts than those given standard instructions.

Method

Ethics approval for this study was granted by the sub-committee of the School of Psychology Human Ethics Committee (approval number 21/39).

Design and Procedure

In the current study, participants were first randomly assigned to one of 2 conditions and then subsequently randomly assigned to one of 3 conditions, in a two by three between-subjects design. Manipulated variables included the type of instructions: Standard Bench book judicial instructions, trauma-informed judicial instructions, and the control (no instructions) and the level of emotion displayed by the female defendant; neutral emotion or heightened emotion.

Participants were asked to read a short case summary describing the incident of a child being found deceased in their home and the mother as the prime suspect. They were then asked to complete a series of multiple-choice questions (MCQ) which functioned as manipulation checks to ensure the participant had understood the contents of the case summary. Participants then either watched the high emotion testimony video recording, or the neutral emotion testimony recording. Immediately after viewing the video, the participants were asked to rate the credibility of the defendant and answer a series of MCQ's to measure attention and comprehension of the trial material. Next, the participants were either presented with written standard judicial instructions, trauma-informed judicial instructions or they did not see any instructions. Participants then completed a measure of comprehension of judicial instructions.

Expectancy violation was measured through a series of short answer questions. Participants then completed a measure of guilt and verdict before viewing a debrief page where they were thanked for their participation and given the opportunity to disclose their contact details if they were interested in obtaining a copy of the final thesis. Participants were

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

also provided with mental health help contacts if any part of the experiment was emotionally triggering. These contacts included The University of Adelaide Counselling services, Beyond Blue, The Mental Health Triage, Lifeline and Headspace. All the relevant phone numbers, email addresses and webpage links were provided.

Participants

The participants who took part in the study were adult Australian citizens who were eligible for jury duty in accordance with the South Australian Juries Act (1927). In order to be eligible, participants must be over the age of 18, on the electoral roll and cannot be legal professionals, work for the South Australian Police Department, a member of Parliament, a governor. Participants were recruited from the community through an Adelaide University first year psychology student participation pool and through social media posts. A prior power analysis indicated that 200 participants were needed in order to achieve an 80% power, 114 participants were recruited. Prior to commencing the online questionnaire, participants were asked to complete demographic questions which were informed by the Australian Psychological Association guide on writing demographic questions to ensure inclusivity. The questions related to age, sex, level of education, whether they are Australian Citizens, and whether they hold any law related degrees or work in the field. These questions were important to establish if a participant is eligible to be a mock juror.

Materials

Demographic questions and Juror Eligibility

Prior to completing any measures in the survey, participants were asked two demographic questions which were based on guidelines outlined in Hughes and Camden (2016) study. They were asked to select which age group they belonged and to also specify their sex, the options included Female, Male, Non-Binary and a 'type box' was included as an option in order to avoid underrepresentation. As this is a mock jury study, in order for

participants' results to be included in the final data analysis, they had to be eligible for jury duty in Australia. Therefore, a series of yes or no questions were asked, a list of all these questions can be found in Appendix 1.

Case Summary and Defendant Transcript

Participants were asked to read a case summary which is based on the judge's summary of *R v Folbigg* (2003). The summary was condensed due to its length and a more concise version was used. This case is from the Supreme Court of New South Wales and describes a mother (Kathleen Folbigg) accused and convicted of murdering her four infants. While the identities and some of the details of the real case were changed or removed, the case summary attempted to retain as much information as possible in a short, easy to read summary. Similarly, the defendant transcripts (high emotion and neutral) were based on Kathleen Folbigg's testimony given to police in 1999 prior to her trial whereby she conveyed the events of the day that her first child passed away (*R v Folbigg*, 2003).

The testimonies were videotaped with a woman who played the part of the defendant, the actress was not known to the general public. She memorised the two transcripts and performed them in two separate versions: in the *high emotion* version she displayed the types of emotions that may be expected of a mother who is grieving the loss her child, she showed despair and told the story with occasional sobs and pauses throughout. In the *neutral* emotion condition, the actress told the story in a very emotionally numbed way without showing many expressive emotions. The video recording showed the actress's face and upper torso with a very plain background as if she was in a police interrogation room. The video background, actress's hair, clothes, makeup, and any props were kept constant in both recordings which were approximately 2 to 3 minutes long each. A copy of both the transcripts and the case summary can be found in Appendix 2.

Credibility Ratings Measure

Credibility ratings were measured immediately after participants viewed either the high emotion or neutral defendant testimony. Participants were first asked to rate statements on a five-point Likert scale. The first item asked, “How emotional was the defendant?”, the options on the scale were 1 = highly emotional to 5 = not emotional. The following items read: “The defendant appeared...”, followed by the scale with words ‘credible’, ‘not credible’, ‘reliable’ and ‘not reliable’ as the items. The options on the scale were 1= strongly agree to 5= strongly disagree. Therefore, a higher numerical score on the ‘credible’ and ‘reliable’ items, would indicate lower perceived credibility and reliability and the opposite would apply for the “not credible” and “unreliable” items. The final question in this set of items asked participants to “Identify the dominant emotion that the defendant displayed in her testimony”. They were only permitted to choose one out of six options: fear, sadness, anger, disgust, happiness, or no feeling. The questions in this section of the survey were based on The Witness Credibility Scale developed by Brodsky and Griffin (2010). The measure yields high overall internal consistency in credibility scores (.91 to .98).

Judicial Instructions

Participants who were assigned to the standard judicial instructions and trauma-informed judicial instructions groups, were asked to read written instructions which were displayed on their device. The instructions were in written form to ensure that the participants could read each word carefully. The standard judicial instructions were based on South Australian Supreme Court Bench Book (Courts Administration Authority, 2021). A majority of the information was retained in order for the participants to have a realistic experience. Further, the trauma-informed judicial instructions were identical to the standard judicial instructions with the addition of a paragraph based on research by Trujillo and Moen (2019) and Conover et al. (2015) regarding the impact of trauma on emotion expression. The trauma

informed portion is intended to provide the participants in that condition with information about the different ways trauma can be displayed by an individual and it presents the idea that although a defendant or suspect is not displaying high levels of emotion, it does not always mean that they are not impacted by the event. The full standard judicial instructions and trauma informed judicial instruction transcripts can be found in Appendix 2.

Comprehension of Judicial Instructions

In the standard and trauma-informed judicial instructions conditions, participants' comprehension of the instructions was measured (e.g., Baguley, 2020). As judicial instructions are ineffective if they are not understood properly, it was important to assess whether the participants understood the information presented to them. The comprehension questions for the participants in the *standard judicial instructions* condition included three true or false questions that covered the main topics covered in the instructions (e.g., "In reaching my verdict, I will ask myself whether the evidence has satisfied me of the guilt of Ms Gordon beyond a reasonable doubt?"). Participants in the *trauma-informed judicial instructions* condition were asked to answer seven true or false questions (with the first three being the same as the standard instruction condition).

Expectancy Violation Measure and Measure of Guilt and Verdict

Expectancy violation is measured based on one item: "Did the defendant's behaviour during the testimony match the behaviour you would expect from a woman who lost their child?", with response options ranging from 'matched completely' to 'did not match at all'. These answers were used to determine whether the defendant displayed emotions that violated the held expectations of the participant. Lastly, to capture judgements of guilt, participants were asked the following: "*Assuming you were to vote on the question of guilt in a court trial. We understand that there are other pieces of information that must be considered when deciding on a verdict, however we would like you to give an opinion on the*

basis of the testimony you have seen". Participants were then asked to rate the likelihood that the defendant committed the crime on a 10-step percentage scale (0-100%), and the finally decide whether the defendant is guilty or not guilty.

Results

All statistical analyses for this study were completed using JASP, which is an open-source statistical program supported by the University of Amsterdam.

Descriptive statistics

Of the 135 participants who responded to the request to participate in the current study, only 114 participants completed the entire survey and were eligible to participate as a mock juror, at a response rate of 87%. Of the 114 participants, 97 of them were between the ages of 18 and 25, that is 85%. Further, 8% of participants were between the ages of 26 and 35. 4% were between the ages of 36 and 45 and 3% were ages 50 or over. Sex demographics showed that 70% of participants were female, 29% were male, and 0.8% did not report sex.

Juror eligibility was assessed through 8 yes or no questions. 80% of participants identified that they were on the electoral roll in Australia and 20% were not, 6 participants or 5% identified that they have previously had or are currently undertaking legal training and 95% have/had not. Again, 5% of participants identified that they are currently undertaking a Bachelor of Law or related degree, these participants were excluded from the final dataset as they would not be eligible for jury duty within Australia. Further, each participant identified that they are not a Judge or Judicial Officer, legal practitioner or Governor, are not employed by the South Australian Police Department, and are not a person whose duties or activities are affiliated with the administration of justice in Australia. Out of the 114 participants, 54 were randomly assigned to the neutral testimony condition and 60 participants were assigned to the emotive testimony condition. Please note that the terms "emotive condition" and "high emotion condition" will be used interchangeably throughout this study but are intended to be

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

synonymous. Further, 39 participants were randomly assigned to the standard judicial instructions condition, 37 to the trauma-informed judicial instructions condition, and 38 participants did not receive any judicial instructions.

Manipulation checks

The effectiveness of the emotion manipulation was assessed by asking each participant to nominate the dominant emotion that the defendant displayed in their testimony. As illustrated in Table 1, in the neutral condition 90.7% of participants indicated that the dominant emotion displayed was numbness. In the emotional condition 73.3% indicated that sadness was the dominant emotion displayed, 13.3% indicated fear and 11.7% indicated numbness as the dominant emotion displayed. Thus, these findings suggest that the manipulation was effective.

Table 1

Frequencies for the dominant emotion displayed by the defendant.

Testimony	The dominant emotion	Frequency	Percent	Valid Percent	Cumulative Percent
Neutral	Fear	1	1.852	1.852	1.852
	Sadness	4	7.407	7.407	9.259
	Anger	0	0.000	0.000	9.259
	Numbness	49	90.741	90.741	100.000
	Missing	0	0.000		
	Total		54	100.000	
Emotional	Fear	8	13.333	13.333	13.333
	Sadness	44	73.333	73.333	86.667
	Anger	1	1.667	1.667	88.333
	Numbness	7	11.667	11.667	100.000
	Missing	0	0.000		
	Total		60	100.000	

Further, once participants had completed the survey, they were asked to identify whether they had heard of the Kathleen Folbigg case. The results suggest that 106 participants or 93% were not familiar with the Folbigg case. 5 participants or 4.4% had heard

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

of the case prior to completing the survey, and 2 participants or 0.9% were not sure whether they had heard about the case. This question was asked because the methodology of the current study contains a testimony that was based on one of Folbigg's testimonies throughout her trial. Although names and circumstances of the testimony were changed, it was still an important question to ask.

Comprehension of the case summary was assessed through 3 multiple-choice questions. The questions were relevant to the defendant's name, what she was being charged with and the victim's sex. 90% of participants answered question one correctly, 89% answered question two correctly, and 97% answered question three correctly. Moreover, comprehension of judicial instructions was assessed through true or false questions. Participants who were in the standard judicial instruction condition were asked 3 questions. Out of the 39 participants assigned to the standard judicial instructions, 87% answered question one correctly, 100% answered question two correctly, and 79% answered question three correctly. Participants who were randomly assigned to the trauma-informed judicial instructions condition were asked 7 comprehension questions. Out of the 37 participants, 92% answered question one correctly, 94% participants answered question two correctly, 73% answered question three correctly, 81% answered question four correctly, 89% answered question five correctly, 95% answered question six correctly, and 97% answered question seven correctly. A full list of questions can be found in Appendix 1.

Assumption and Hypothesis Tests

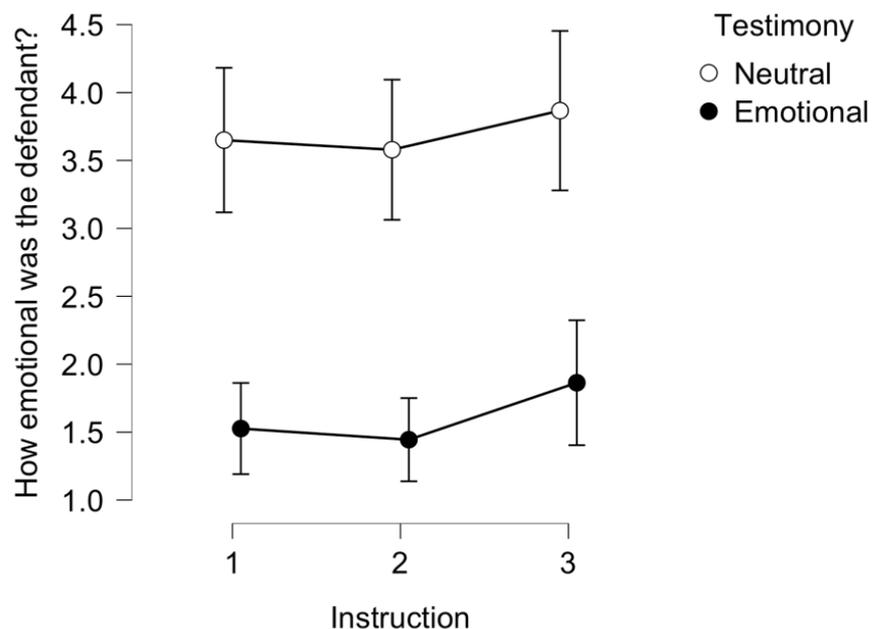
Prior to running any statistical analyses, data were tested for normality and homogeneity of variance. To test the hypothesis that participants in the emotive condition will rate the defendant as more credible than those in the neutral condition, we ran an analysis of variance (ANOVA). A Shapiro-Wilk test indicated that the data deviated from normality, thus the Kruskal-Wallis test is used as a non-parametric alternative to ANOVA. For

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

credibility ratings, the Kruskal-Wallis returned a statistically significant result ($H(1) = 11.38$, $p = <.001$). Post hoc analyses using the Bonferroni correction indicated a significant difference ($p = <.001$) between credibility ratings given in the neutral ($M = 3.04$, $SD = 1.08$) and emotive ($M = 2.36$, $SD = 0.79$) testimony conditions. Figure 1 shows the difference in credibility ratings across emotion and instruction conditions.

Figure 1

Mean (and 95% CI) credibility ratings across conditions.



Then, to test the hypothesis that there will be a relationship between expectancy violation and credibility ratings, we ran a Pearson's correlation. A moderate, positive correlation was found ($r(114) = 0.46$, $CI_{95} = [.30, .59]$, $p = <.001$) which indicates that hypothesis two was supported.

Finally, to test hypothesis three that there will be an effect of trauma-informed judicial instructions on measures of guilt, we ran a chi-squared test. The results indicated a non-significant result $\chi^2(2, N=114) = 0.043$, $p = 0.979$. This indicates that the type of judicial

instructions participants read had no impact on their verdict and measures of guilt. As illustrated in Table 2, due to the number of instruction conditions, the test was underpowered producing results which are not significant.

Table 2

Verdict Frequencies Across Instruction Conditions

Instruction	I find the defendant:		
	Guilty	Not Guilty	Total
Standard instructions	17	22	39
Trauma-informed instructions	17	20	37
No instructions	17	21	38
Total	51	63	114

Discussion

This study examined how emotion displayed by a female defendant in a murder case affects credibility ratings given by mock jurors. It has also explored how trauma-informed judicial instructions can influence measures of guilt and verdict in the same sample. The study yielded three main findings which will be highlighted. The first hypothesis explored whether participants who were in the high emotion condition would rate the defendant as more credible than those who were assigned the neutral emotion condition. The findings were statistically significant which illustrates that higher emotional expression displayed by the defendant resulted in higher credibility ratings given by the mock jurors. This finding is consistent with that put forward by Ask (2010), and Ellison and Munro (2009) who indicate the idea that non-verbal expression of emotion can have effects on an individual’s perception of a victims, or in this case, a defendant’s credibility. Further, this finding also aligns with the literature on the emotional victim effect (EVE) which Wessel et al. (2012) describe as when a

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

victim shows despair and sadness in their testimony, they were rated as more credible by mock jurors.

The results of the present study also replicate the results found in Heath et al. (2006) in that they found that when the defendant displayed more neutral emotions, she was perceived as more guilty than when the defendant displayed higher levels of emotion. As previously mentioned, the methodology and the development of hypotheses for this study were based heavily on mock juror literature which investigated victims of predominantly sexual assault-based crimes. The results of the current study indicate the fundamental principles of the emotional victim effect (EVE) were supported by the findings. More specifically, the idea that EVE perceives victims who express strong negative emotions when talking about their victimization as more credible than victims who display little emotion or positive feelings (Wrede & Ask, 2015). Also, although the results of the current study based on a female defendant in a murder trial, they are still consistent with the rape and sexual assault-based research on emotional expression in victims such as those from Wessel et al. (2006) and Dahl et al. (2007) whereby the defendant is a male.

However, although the literature on the EVE was supported by the results of this study, it is also important to note that the current findings also show that the mean credibility ratings given by participants in the neutral condition as compared to the high emotion condition did not differ significantly from one another, meaning that the difference between the two mean scores was small. Participants in the neutral condition did rate the participant as less credible than participants in the high emotion condition which again is consistent with the findings put forward by Ellison and Munro (2009) and Wrede and Ask (2015). Also, the results of the current study identified that only a small percentage of participants had heard of the Kathleen Folbigg case prior to completing the survey. This is significant as it suggests that even though the defendant testimony was based on one of Folbigg's testimonies, a high

percentage of participants did not use any prior knowledge or biases they had formed about the case in their final verdict in this study, it was solely based on the contents of the survey itself.

Furthermore, the second hypothesis explored the relationship between expectancy violation and ratings of credibility. The significant results suggest that the extent to which participants thought the defendant was credible was related to whether they also believed their testimony matched the expectation of someone who lost their child. These findings align with Feldman and Chesley (1984) and Burgoon et al. (2016) who in their research found that a defendant's non-verbal behaviour such as body language and emotional expression had significant effects on ratings of credibility. The results of the manipulation indicate that there was an expectancy that was violated for participants. In other words, participants hold stereotypical expectations for how a mother who has lost her child should behave and the emotion that she should show during a testimony. As Bosma et al., (2018) outlined, people expect to see women who are mothers as protectors and nurturers of children and when that expectation is violated, reactions towards the defendant are most often negative. The results of the current study indicate that participants did identify that the defendant was displaying emotional numbness in the neutral condition and that she was displaying sadness and fear in the high emotion condition. It is evident that there is an effect of the manipulation, however it is difficult to know whether any expectations were actually violated. This is because participants were not asked about their pre-existing stereotypes about mothers and their children prior to completing the study. Thus, although the results indicate a significant relationship between expectancy violation and ratings of credibility, it is challenging to pinpoint what caused the violation.

Therefore, in future studies it may be beneficial to ask participants what their beliefs are about a mother who has lost her young child to understand any pre-existing stereotypes

they may hold prior to completing the study measures. However, this may be problematic as it could prime the participants about the context of the study that could lead to participants altering their responses leading to increased response bias which could impact the research findings. Furthermore, an alternative to this may be to ask participants to offer a reason for their credibility ratings and verdict after completing the study. This may help determine if the emotion displayed by the defendant was a key influence for their final verdict and how it affected their perception of the defendant's credibility.

While the research presented provides further support for the current literature on expectancy violation theory and credibility, to further broaden the scope of the study it would be worthwhile to investigate how different types of emotions can affect credibility ratings. For instance, in the current study the actress displays distress and sadness which is consistent with the severity of the crime in question (murder). Future research might also want to explore how different types of emotion such as anger or happiness (giggling or laughing) would be perceived when displayed by a testifying defendant. It may also be interesting to further investigate how these different levels and types of displayed emotions would be perceived in a female versus male defendant. As Bosma et al. (2018) findings suggest, male victims are generally perceived less positively than female victims. Also, stereotypically, women are perceived as more emotionally expressive than males are. As past research suggests, stereotypes about women and men are different, thus exploring attitudes and beliefs that participants have about both mothers and fathers in the same context would be beneficial as an addition to the current literature. Further, cultural differences in expectancy violations were only briefly addressed in the current study. As cultural background can influence the expectations people hold about factors such as femininity, masculinity, and emotional expression, it would be an important aspect to continue researching especially in a multi-cultural population such as Australia (Burgoon et al., 2016).

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

The third and final hypothesis anticipated an effect of trauma-informed judicial instructions on measures of guilt. The results as indicated by a chi-squared test produced a non-significant result, meaning that the data did not support the hypothesis. This non-significant relationship has various possible explanations. One possible explanation is that the sample size ($N = 114$) was underpowered as there were three instruction conditions participants could have been randomly assigned to, meaning that there between 37 and 39 participants in each condition. Essentially, this study does not have sufficient power to distinguish between instruction groups. A priori power analysis indicated that 200 participants would be needed to achieve 80% power for an analysis of variance, however, this study achieved ($n = 114$).

A second possible explanation is the format the instructions were in. Participants in the standard judicial instructions and trauma-informed judicial instructions conditions, were asked to read a written transcript of the instructions. This may have resulted in participants not reading the entirety of the instructions, or just reading them at a rapid rate to decrease the overall completion time of the survey. However, some participants may have benefitted from the written format of the instructions as depicted in Trimboli (2008) study. Having written instructions allowed participants to read at their own pace and this may have especially been valuable for participants where English is not their first language. Future research should consider how judicial instructions are presented to participants. As the results from this study illustrate, providing only written instructions may not suffice, but rather having an actor read the instructions while being videotaped along with the addition of a written copy may be a better option as suggested by Trimboli (2008). This allows participants to simultaneously listen to the instructions and view the judge reading them which emulates a more realistic courtroom setting while also potentially increases participant attention and comprehension.

Another possible explanation for the non-significant results obtained could simply be that there is no effect on trauma-informed judicial instructions and measures of guilt. As the literature on trauma informed practice in legal settings is limited, future research with a more diverse sample is essential to determine whether there is a significant effect. As the results from this study and previous research depict, (e.g., Shaked-Schroer et al., 2008; Brewer et al., 2004) the comprehension of judicial instructions is a complex concept, and a multifaceted approach is needed to obtain significant findings which goes beyond the scope of this study alone. However, although the effects of trauma-informed judicial instructions on mock jurors is not a very evident area of focus in current psychology and law literature, the current trauma-informed practices being implemented in many Australian jurisdictions do not discredit the results found in this study. It is evident that the current practices are successfully benefiting individuals both in adult and juvenile settings by using a deeper understanding of trauma to postulate fair court proceedings (Mckenna & Holtfreter, 2019).

Strengths, Weaknesses and Conclusions

The strengths of this study lie in its exploration of new concepts in mock juror research through its examination of trauma-informed practice in legal settings. Although the literature outlines emotional expression and credibility and trauma-informed practices individually, there are inadequate studies that bring the two concepts together which this study aimed to accomplish. Further, the current study also takes a more nuanced approach to emotion expression and credibility research by using a female defendant in a murder case. This study thus provides another steppingstone to bringing more awareness to the complexity of trauma in victims of crime and defendants in a criminal trial. Although this study contains strengths, the limitations are also important to address.

Firstly, the study has low power, which can be predominantly attributed to insufficient recruitment of participants leading to a smaller sample size. Also, the sample that

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

was recruited lacked diversity as a large proportion of participants were psychology students from the University of Adelaide, were aged between 18 and 25 and predominantly female. Also, there is a possibility that the recruited sample were more aware of their internal stereotypes with regard to the expression of emotion from a defendant. Thus, given the wider literature showing the effects of emotional expression on ratings of credibility, it seems worthwhile to explore a more diverse sample. Perhaps recruiting a sample with an equally distributed age range and different cultural backgrounds would allow for generational differences to be observed. Also, a larger sample size is needed to increase power of the study to 80%.

Further, given that mock juror methodology was used in this study, it is important to acknowledge the generalisability of the results or lack thereof. This study only captures a small snapshot of what being a real juror is like, it does not include the contextual information that would be available in a normal trial. Therefore, caution is recommended when inferring the real-life applicability of the findings this study has produced. Further, it is important to address that participants in this study made their final decisions about the guilt of the participant on their own, as opposed to real-life juries where decisions are made by deliberating in a group (Heath et al., 2006). This further decreases the generalisability of the results and as research by Dahl et al. (2007) suggests, participants who deliberate with a group often become more aware of their own biases and look for alternative explanations of a victim's behaviour with other participants in the group, as compared to participants who made individual decisions. Thus, future studies should consider the effects of deliberation in groups and individually. Further, another limitation to consider which could have affected the generalisability of the results is mode of presentation. The current study used an online platform to conduct the survey which evidently differs from real-life courtroom situations and should be addressed as a limitation.

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

Further, in real life juror scenarios, a defendant's emotional expression and the instructions given by a judge are factors which interact with many other factors to produce a final decision on credibility and guilt. Participants in this study are only presented with limited information about the case and the defendant and this manipulation allowed factors such as emotional expression to be isolated, but in a real-life situation, jurors are presented with a high degree of information and must consider a myriad of different factors. Although ecological validity is compromised throughout this study like the majority of mock juror studies are, it nevertheless still provides further evidence to support psychological theories such as the emotional victim effect, expectancy violation theory and alludes to the importance of trauma-informed practice.

To conclude, the current study has further established the idea that mock jurors use a defendant's display of emotions as an important factor to guide their decision making. The idea of trauma-informed practice and its importance in courtroom settings is also highlighted throughout this study. Given the knowledge from the current study, related literature, and cases like those of Kathleen Folbigg and Lindy Chamberlain, it is evident that an individual's level of emotional expression and display can effectively mislead others, especially decision makers in a courtroom setting and thus, this type of evidence should not be a strong determinant of a case outcome. Yet, it continues to be a strong influence, therefore by educating decision makers on the vast concepts of trauma during trials, their decisions will then predictably become more informed. The primary aim of utilising trauma-informed instructions was to provide more evidence to a limited and lacking area of literature and to encourage future research to further build on the idea and identify the evident gaps.

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Appendices

Appendix 1: Scales and Measures

Demographic and Juror Eligibility Questions

1. Please state your age (type box)
2. Please state your sex (type box)
3. Are you on the electoral roll in Australia?
 - a. Yes
 - b. No
 - c. Not sure
4. Have you previously had/or are currently undertaking legal training?
 - a. Yes
 - b. No
 - c. Not sure
5. Are you studying a Bachelor of Law or any related degree?
 - a. Yes
 - b. No
6. Are you a Judge or Judicial Officer of a state or territory in Australia?
 - a. Yes
 - b. No
7. Are you a legal practitioner who holds a practicing certificate under state or territory law in Australia?
 - a. Yes
 - b. No
8. Are you a member of Parliament or Legislative Assembly?
 - a. Yes
 - b. No
9. Are you The Governor or Administrator of a state or territory in Australia?
 - a. Yes
 - b. No
10. Are you employed by the South Australian Police Department?
 - a. Yes
 - b. No
11. Are you a person whose duties or activities are affiliated with the administration of justice, the investigation or prosecution of crime or the punishment of offenders?
 - a. Yes
 - b. No

Multiple Choice Questions (MCQ) following Case Summary – Manipulation check

1. What is the name of the defendant in the Case?
 - a. Elizabeth Guy
 - b. Emily Gordon

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

- c. Eliza Garner
2. What is the defendant being charged with?
 - a. Theft
 - b. Child Abuse
 - c. Murder
3. What is the sex of the victim?
 - a. Male
 - b. Female

Multiple Choice Questions (MCQ) following Video Testimony – Credibility Ratings

1. How emotional was the defendant?
 - a. Highly emotional
 - b. Emotional
 - c. Neutral
 - d. Somewhat emotional
 - e. Not emotional

2. The defendant appeared...

Credible

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

Not credible

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

3. The defendant appeared...

Reliable

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

Not reliable

1. Strongly agree
2. Somewhat agree
3. Neither agree nor disagree
4. Somewhat disagree
5. Strongly disagree

Identify the dominant emotion that the defendant displayed in her testimony.

- i. Fear
- ii. Sadness
- iii. Anger
- iv. Disgust
- v. Happiness
- vi. No feeling

Comprehension of judicial instructions measure (Standard judicial instructions)

1. My ultimate role in this case is to decide if Ms Gordon is guilty or not guilty?
 - a. TRUE
 - b. FALSE
2. It is my responsibility to judge whether the defendant is telling the truth.
 - a. TRUE
 - b. FALSE
3. I must only consider the evidence that was presented to me?
 - a. TRUE
 - b. FALSE

Comprehension of judicial instructions measure (Trauma-informed judicial instructions)

1. My ultimate role in this case is to decide if Ms Gordon is guilty or not guilty?
 - a. TRUE

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

- b. FALSE
- 2. It is my responsibility to judge whether the defendant is telling the truth.
 - a. TRUE
 - b. FALSE
- 3. I must only consider the evidence that was presented to me.
 - a. TRUE
 - b. FALSE
- 4. In reaching my verdict, I will ask myself whether the evidence has satisfied me of the guilt of Ms Gordon beyond a reasonable doubt?
 - a. TRUE
 - b. FALSE
- 5. Trauma is displayed very similarly in each individual.
 - a. TRUE
 - b. FALSE
- 6. Some individuals exhibit resilient responses to trauma that fall out of the diagnostic criteria of Post-Traumatic Stress Disorder (PTSD)?
 - a. TRUE
 - b. FALSE
- 7. Initial reactions to trauma can include sadness and anxiety?
 - a. TRUE
 - b. FALSE
- 8. Delayed responses to Trauma can include avoidance of emotion?
 - a. TRUE
 - b. FALSE

Expectancy Violation Measure

- 1. Did the defendant's behaviour during the testimony match the behaviour you would expect from a woman who lost their child?
 - a. Matched completely
 - b. Somewhat Matched
 - c. I don't know
 - d. Somewhat didn't match

- e. Did not match at all

Measure of Guilt and Verdict

‘Assuming you were to vote on the question of guilt in a court trial. We understand that there are other pieces of information that must be considered when deciding on a verdict, however we would like you to give an opinion on the basis of the testimony you have seen.’

1. Rate the probability that the defendant committed the crime:

- a. 1-100 (in increments of 10)

2. I find the defendant:

- a. GUILTY
- b. NOT GUILT

Appendix 2: Testimony and Judicial instructions transcripts

Case Summary used in online survey:

Emily Gordon has been charged with the murder of her young daughter Olivia Gordon. On the 14th of March 2018 at approximately 12:30pm, Ms Gordon made a call to emergency services whereby she alleged that she found her daughter lifeless and not breathing in her cot after taking a nap.

The prosecution argues that Ms Gordon murdered Olivia between the times of 11:00am and 12:00pm by using an object such as a pillow to restrict her airways.

You will now hear Ms Gordon's testimony where she explains her memory of the event. Imagine you are a juror and your role is to determine the probability of guilt in this case, please take this role seriously.

Defendant Testimony Transcript

Interpreted from Kathleen Folbigg Testimony (March 1999)

The morning was regular, it was a Thursday, so Michael had to leave for work earlier, around 7:30am. He is usually in the shower by 7:00am but this particular morning he decided to feed Olivia and play with her. Olivia was quite a restless and unhappy child in the mornings but was particularly happy when Michael was around her. This frustrated me, I snapped at

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

Michael telling him that Olivia only behaves this way when he is around. I had a stressful week with Olivia, it was like she didn't want to be around me, only Michael.

Michael told me to calm down, he said I looked as if I was going to punch someone, of course I interpreted this as him suggesting I would hurt Olivia, which I would never do I love my daughter. This helped me calm down, as Olivia looked frightened when I raised my voice which we never really do in front of her, I didn't want her to see me like that, getting frustrated and angry at something so silly.

Michael went to shower and continue getting ready for work, things had calmed down and once he left around 7:15am, the rest of the morning went smoothly. I got ready while Olivia watched her favourite movie Dumbo. I dressed Olivia and fed her, and I packed my bag ready for the grocery store. We left the house by 8:30am and arrived at Woolworths close to 9:00am.

I noticed Olivia had a bit of a cough, *but I thought nothing of it as the morning was quite cold. Otherwise, she was her usual self.* Once we finished up at the grocery store, I got myself and Michael a coffee from our local café, I decided to bring Michael his coffee to work and apologise for my outburst that morning and to show him that everything was okay.

We came straight home after that, Olivia had fallen asleep in the car on the way home as she usually did. I got her out and carried her inside. I took her shoes off at the front door and carried her into her room. I placed her in her cot on her right side, *making sure I was conscious of her airways.* I placed a light blanket over her and left her door slightly ajar in case she started crying, which is what I always did.

I took the groceries out of the car and went about my daily chores; I remember I didn't take a shower as I didn't like to in case she woke up and I couldn't hear her. I went outside and took the baby monitor with me while I cleaned up the veranda and made sure the dogs were okay while we were gone.

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

While I was cleaning, *I heard Olivia cough, I didn't go straight away as I was in the middle of cleaning the dog beds.* When I was finished, I went into Olivia's room to check on her, about 10 minutes had passed since I heard her cough. When I opened the door, I noticed she was laying on her back and her blanket was at her knees. I looked at her, *she was very pale in the face and her lips were slightly blue, bit nothing too bad. When I touched her face, she was cold to the touch.*

I immediately picked her up after calling her name and trying to get any sort of response from her, *she was not responding. With her in my arms, I ran to the kitchen where I placed her on the bench to perform CPR. I rang 000 as I was doing CPR, I checked for a heartbeat, there was none. I don't really remember what they said to me on the phone.*

The ambulance arrived after 10 minutes, 2 officers came, at this point I had grabbed Olivia in my arms and was hugging her. *Everything after this is quite a blur,* I think one of the officers called Michael from my phone when we were on the way to the hospital, I met him there.

Standard judicial instructions (interpreted from South Australian Courts Benchbook):

Members of the jury, your role is to decide what facts have been proved based on the evidence. I'm now going to give you some very general advice about how you assess evidence. Most of the evidence has come from the defendant. It is up to you to decide how much or how little of the evidence you will believe or rely on. You may believe all, some or none of the evidence. It is also for you to decide what weight should be attached to any particular evidence – that is, the extent to which the evidence helps you to determine the relevant issues.

In assessing the defendant's evidence, matters which may concern you include their credibility and reliability. Credibility concerns honesty – are they telling you the truth? Reliability may be different. They may be honest but have a poor memory or be mistaken.

It is for you to judge whether the defendant is telling the truth, and whether they correctly recall the facts about which they are giving evidence. This is something you do all the time in your daily lives. There is no special skill involved – you just need to use your common sense.

TRAUMA INFORMED JUDICIAL INSTRUCTIONS AND CREDIBILITY

In making your assessment, you should appreciate that giving evidence in a trial is not common and may be a stressful experience. So, you should not jump to conclusions based on how the defendant gave the evidence. Looks can be deceiving. People react and appear differently. Witnesses come from different backgrounds, and have different abilities, values and life experiences. There are too many variables to make the manner in which a witness gives evidence the only, or even the most important, factor in your decision.

You should keep an open mind about the truthfulness or accuracy of the defendant until all the evidence has been presented. In deciding whether the prosecution has proved its case, you must also consider the exhibits [and admissions]. Consider all the evidence in the case, use what you believe and reject what you do not believe. Give each part of it the importance which you – as the judges of the facts – think it should be given, and then determine what, in your judgment, are the true facts.

I will now ask you to retire to the jury room and consider your verdict.

Trauma informed judicial instructions:

Members of the jury, your role is to decide what facts have been proved based on the evidence. I'm now going to give you some very general advice about how you assess evidence. Most of the evidence has come from the defendant. It is up to you to decide how much or how little of the evidence you will believe or rely on. You may believe all, some or none of the evidence. It is also for you to decide what weight should be attached to any particular evidence – that is, the extent to which the evidence helps you to determine the relevant issues.

In assessing the defendant's evidence, matters which may concern you include their credibility and reliability. Credibility concerns honesty – are they telling you the truth? Reliability may be different. They may be honest but have a poor memory or be mistaken. It is for you to judge whether the defendant is telling the truth, and whether they correctly recall the facts about which they are giving evidence. This is something you do all the time in your daily lives. There is no special skill involved – you just need to use your common sense.

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I would like to also draw your attention to the concept of trauma, especially given the circumstance of this case. I want you to understand that trauma affects each individual differently, some people clearly display behaviour that is associated with the criteria of post-traumatic stress disorder, but more commonly, others exhibit resilient responses to trauma that fall out of the diagnostic criteria.

Initial reactions to trauma can include exhaustion, confusion, sadness, anxiety, agitation, numbness, dissociation, confusion, physical arousal, and blunted affect. Indicators of more severe responses include continuous distress without periods of relative calm or rest, severe dissociation symptoms, and intense intrusive recollections that continue despite a return to safety. Delayed responses to trauma can include persistent fatigue, sleep disorders, nightmares, fear of recurrence, anxiety focused on flashbacks, depression, and avoidance of emotions, sensations, or activities that are associated with trauma such as losing a child.

You should keep an open mind about the truthfulness or accuracy of the defendant until all the evidence has been presented. In deciding whether the prosecution has proved its case, you must also consider the exhibits [and admissions]. Consider all the evidence in the case, use what you believe and reject what you do not believe. Give each part of it the importance which you – as the judges of the facts – think it should be given, and then determine what, in your judgment, are the true facts.

I will now ask you to retire to the jury room and consider your verdict.