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Debunking Misconceptions: Do Jury Instructions Influence Comprehension and Verdict Selection

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Running head: DEBUNKING JUROR MISCONCEPTIONS

Debunking Misconceptions: Do Jury Instructions Influence
Comprehension and Verdict Selection

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Master of Arts

Forensic Psychology

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ROGER WILLIAMS UNIVERSITY
MASTER'S PROGRAM IN FORENSIC PSYCHOLOGY
THESIS PROJECT FORM

Date: 2/8/2011

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a candidate for degree of Master of Arts in FORENSIC PSYCHOLOGY, to conduct the following research project:

Debunking Misconceptions: Do Jury Instructions Influence Comprehension & Verdict Selection
Title of Research Project

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Abstract

The purpose of this study was to compare the efficacy of jury instructions that debunk common misconceptions versus standard instructions, with regards to verdict choice, comprehension of the legal standard, and reasoning used to support verdict decisions. A case summary was read by 159 participants who then listened to auditory instructions from a judge regarding the legal standards for second degree murder and voluntary manslaughter. They then completed measures assessing verdict, comprehension, and reasoning. While the results revealed that the legal instructions did not influence participants' verdicts or comprehension of the legal standard, the data suggests that participants may have relied upon their prototypes of the case to make their decisions.

Keywords: Jury instructions, comprehension, verdict selection, misconceptions, murder/manslaughter.

Debunking Misconceptions: Do Jury Instructions Influence Comprehension and Verdict Selection

In the judicial system, the task of deciding the fate of the defendant is placed in the hands of the jury. The jury has the responsibility to sift through testimonies, presented evidence, and jury instructions to render a verdict. Jury instructions are presented by the judge to provide jurors with definitions regarding the laws that apply to the case at hand. Typically, jury instructions are delivered after all the evidence has been presented and before deliberation. Essentially, laypersons serving on juries are required to listen to possibly days or weeks of testimony before receiving the judge's instructions and then integrate the facts of the case with the legal criteria to reach a verdict. Individuals serving on juries are generally thought to have no prior knowledge of the law, or are otherwise assumed to be able to disregard any prior knowledge after the instructions are given (Smith, 1991). Thus, as the average juror lacks legal knowledge, it becomes the judge's obligation to instruct them during the trial so jurors can accurately apply the law to decision tasks and ensure the defendant's right to a fair trial.

There are three types of laws that the judge's instructions may include during a criminal trial: procedural laws, substantive laws, and standards of proof (Smith, 1991). Procedural law addresses how jurors are to assess both witness credibility and assess various kinds of evidence. Substantive laws define the crime that the defendant is being charged with, address any proposed defenses, and stipulate a set of features for each crime (Smith, 1991). Standards of proof address the amount of proof necessary to render a guilty verdict. In essence, any particular case must sufficiently meet all the features stipulated by the relevant substantive and procedural laws based on the applicable standard of proof (i.e. reasonable doubt) before a guilty verdict is rendered. However, extant literature has shown that jurors struggle to apply legal instructions to decision-

making tasks and fact situations. The current proposal seeks to investigate ways to increase jurors' reliance upon and accurate use of instructions on decision-making tasks by addressing common juror misconceptions of a crime.

Jurors' Prior Knowledge

How jurors choose their verdicts is an important issue to consider given that the current U.S. legal system assumes laypersons are "blank slates" bringing no prior knowledge of the law and crimes to the courtroom (Smith, 1991, p.858). This is not always the case, however. Three states of jurors' prior knowledge of the law have been identified. First, jurors may in fact be "blank slates" and learn the legal requirements provided by the judge's instructions (Smith, 1991). Second, jurors might bring some accurate information about the law to the trial, in which case the judge's instructions should serve to provide the missing information in jurors' existing concepts (Smith, 1991). Third, jurors may bring false information about the law to the trial. Thus, depending on which of these situations is occurring, it is sometimes hard to know what the main purpose of jury instructions should be. If jurors truly have no prior knowledge about the law, then the goal of jury instructions should be concept formation (Smith, 1991). However, because jurors are community members with varied experiences and backgrounds, it is unlikely that they come to court without prior knowledge of at least some legal concepts. If jurors have some, or completely false prior concepts, then the goal of jury instructions should be to revise jurors preconceptions, and jurors' misconceptions must be replaced by an accurate representation of the law, which may require a different approach than simple instruction (Smith, 1991).

Further complicating matters, Breeden (2000) argues that jurors cannot evaluate most presented issues accurately due to the complexity of the law, lengthy trials, and copious amounts of unfamiliar information. While Finkel (1995) acknowledges that, sometime, jurors' use of

commonsense justice can result in reasonable and accurate judgments based on the context of the case, under other circumstances, jurors' use of what they perceive as fair and just results in prejudicial or erroneous legal judgments. In essence, jurors may have difficulty straying from their own knowledge structures and perceptions in order to make an accurate and fair decision (verdict). This difficulty is in part due to the fact that jurors don't necessarily understand the procedural and substantive instructions they are prescribed to apply.

Miscomprehension of Judges Instructions

Existing research has consistently shown that the efficacy of jury instructions with regards to educating jurors yields fairly poor comprehension (Smith, 1993; Finkel, 2000). So poor in fact that Elwork, Sales, and Alfini (1977) found that after being given the judge's instructions, only 30-33% of jurors were able to apply the law to a mock fact situation. Studies have repeatedly revealed that jurors do not understand the legal instructions they are given, and comprehend these instructions at a rate no higher than chance levels (Reifman, Gusick, & Ellsworth, 1992).

Reifman et al. (1992) compared the comprehension abilities of actual jurors' who served on a jury to the abilities of non-instructed eligible jurors with regard to both substantive and procedural law. After being instructed on the particular case they heard, jurors completed a questionnaire designed to measure their knowledge of the law. Results revealed that jurors who served on criminal cases were correct on 41% of the legal issues relevant to the cases they had heard, and 33% of legal issues unrelated to the cases they heard (Reifman et al., 1992).

Unfortunately, non-instructed jurors performed similarly, answering 35% of the questions on the questionnaire correctly. Reifman and his colleagues (1992) also found that whereas the judge's instructions improved comprehension on procedural laws, they were ineffective with jurors'

comprehension of the substantive law they were to apply. Therefore, jury instruction comprehension was lacking. Even individuals who had previously served on juries did not fully understand substantive legal instructions and thus may not have applied the instruction appropriately to the case they decided.

As the literature suggests, the judge's instructions fail to assist jurors in understanding and applying the law to their decision-making processes, partially because of jurors' background knowledge and possibly in part because of the legal language. Hacken (2010) claims that the conflict between jurors' prior knowledge structures and legal instructions exists because legal terms are not naturally formulated in American language. According to Hacken (2010), legal terms are actually American words redefined, or constructed and used in a specific manner within the legal arena. These terms therefore, have many connotations depending on an individual's speech community and natural language. Much of the focus in recent research has been spent on the language of jury instructions to help enhance juror comprehension and improve juror application of legal instructions.

To address potential issues with language, Elwork, Alfini, and Sales (1982) attempted to rewrite jury instructions using psycholinguistic principles. They substituted infrequent words with more common ones, and abstract words with more concrete words. They further removed words with multiple meanings and negations from the jury instructions. Legal jargon was reduced, sentences were shortened, and the legal concepts were then ordered logically (Elwork, Alfini, & Sales, 1982). After rewriting the instructions twice, one simulation with participants revealed an improvement in instruction comprehension from 51% to 80% (Elwork & Alfini, 1982).

Since psycholinguistic alterations have only proven to partially increase juror comprehension, other alterations to jury instructions have been examined, such as visual adjuncts. Visual communication may also be effective in communicating what prior knowledge is acceptable for jurors to use and what prior knowledge is consistent with the provided legal instructions. Semmler and Brewer (2002) examined whether a flow-chart depicting the legal features of self-defense assisted mock-jurors' comprehension of judge's instructions, and their application of these instructions to 4 novel scenarios. Semmler and Brewer (2002) found that overall performance levels were insignificant. The researchers also found that mock-jurors who heard the customary audio instructions performed rather poorly when describing self-defense elements, performing no better than those who received no instructions. When a supplemental instruction flow-chart, or case summary, was provided with traditional audio instructions, participants performed better than those who only received instructions (Semmler & Brewer, 2002). Although these findings were modest, they do suggest that an added visual aide to traditional jury instructions may enhance juror comprehension of legal concepts.

Brewer and his colleagues proposed that if the use of text-based flow charts produced some improvements in juror comprehension of self-defense instructions, the effects of replacing key components of the text instructions with animations or pictures may significantly enhance juror comprehension (Brewer, Harvey, & Semmler, 2004). Brewer et al. (2004) used audiovisual presentations for instructional purposes because, according to the authors, both visual and verbal modes exercise different memory subsystems, decreasing subject overload and facilitating greater information processing. Thus, they examined whether mock-jurors' comprehension of self-defense instructions improved with the use of an audio-visual instruction format which included animations and a flow chart. Law students and laypersons were randomly assigned to

an audio-only, audio-elaborated (included verbal elaboration of the information presented with the visual instructions), or an audio-visual instruction condition. Brewer et al. (2004) measured comprehension of the delivered self-defense instruction via juror verdicts, jurors' recognition accuracy, jurors' ability to paraphrase instruction, and jurors' accuracy in constructing novel scenarios. While comprehension did improve in the audio-elaborated condition, results still revealed that law students outperformed laypersons on the self-defense comprehension tests. However, Brewer et al. (2004) found that receiving both audio and visual instructions significantly increased laypersons' comprehension scores to reflect those of law students. These findings suggested that audio-visual supplementary crime instructions may be effective in increasing juror comprehension of substantive laws. Just because jurors may comprehend instructions however, does not imply that jurors will actually use this acquired knowledge when choosing their final verdict.

Despite attempts to increase juror comprehension by altering jury instructions via psycholinguistics or audio-visual techniques, it is clear that problems still occur in the application of instructions to juror verdicts. Variations in the legal definitions and instructions for insanity have consistently shown that the instructions make no difference in jurors' decisions (Finkel, 1995b; Finkel & Handel, 1989). Spackman, Blecher, Calapp, and Taylor (2002) asserted that jurors interpret instructions in a manner that fits their own biases and commonsense notions of murder and manslaughter, because despite changes made to instructions, jurors' verdicts remain the same (Spackman et al., 2002). Spackman and his colleagues (2002) investigated differences between a detailed objective, legalese-driven, form of instruction and a subjective, succinct, form of instruction on mock-juries' murder/manlaughter distinctions and verdict preferences. It was found that instruction type did not affect jurors' murder/manlaughter

categorizations (Spackman et al., 2002). Instruction type did, however, influence jurors' reasoning for their final verdict, but did not change the actual verdict. This indicates that jury instructions can create comprehension, but does not necessarily follow that jurors will abandon their own commonsense knowledge structures altogether to make a decision. Therefore, jurors may be apt to construe the judge's instructions to fit their own conceptions of the crime (Spackman et al., 2002). This study shows that jurors may have difficulty straying from their own knowledge structures and perceptions in order to make an accurate and fair decision (verdict); and in fact it is these very knowledge structures which may in fact complicate the task.

Prototypes—Why Verdicts Don't Change

English & Sales (1997) also suggested that despite linguistic changes, jurors' preexisting knowledge structures and cognitive strategies still limited their reliance on jury instructions. According to Diamond (1993), instructions will fail to instruct when they compete with jurors' preconceived notions about legal aspects. Researchers have recently begun investigating how juror knowledge structures and perceptions may interfere with juror decision-making, as well as investigating various ways to inhibit dependence on those structures when attempting to apply the law to fact situations.

Knowledge about any category (or concept) is represented in memory by a prototype, or exemplary member (Skeem & Golding, 2001). Accordingly, these prototypes are defined by a group of abstract features regularly linked with members of a category (Skeem & Golding, 2001). The features that make up a category create a picture of the prototype's meaning (Skeem & Golding, 2001). Skeem and Golding (2001) used prototype theory to explain the nature, variability, and outcome of jurors' conceptions of insanity. After jurors described features of their prototypes, and the features were combined, actual jurors and undergraduates completed

measures of individual differences in prototypes and attitudes toward the insanity defense, and then made insanity case judgments (Skeem & Golding, 2001). The results revealed three different prototypes that accentuated severe psychosis, ruthless immorality, and state of mind at the time the crime was committed (Skeem & Golding, 2001). Jurors also expressed discrete knowledge structures that stipulated the circumstances in which an insanity defense may be accepted. As more than one prototype was found, it becomes apparent that jurors' prototypes may vary based on their prior knowledge of the concept.

Wiener, Richmond, Seib, Rauch, and Hackney (2002) agreed with the idea that jurors have prototypes, but also emphasized that jurors use common sense and integrate case information into those prototypes. Wiener et al. (2002) hypothesized that people do not store crime stories as simple prototypes. Jurors collect information during the trial and modify it with their own general knowledge to create case stories. Wiener et al. (2002) proposed that jurors make sense of evidence presented at trial by creating stories about what happened based on witness testimonies and on inferences about the evidence from their prior knowledge structures. In this study, jury eligible laypersons were asked to imagine a first degree murder scenario and the events that led to it. The researchers identified at least three shared story prototypes, supporting the idea that people store crimes as more than just prototypes. In essence, jurors integrate the relevant case material into their own knowledge structures and create a story prototype that assists them in their decision tasks.

Not only do prototypes of a particular crime vary among individuals, they often times do not reflect the more common cases of that crime scene in the legal arena. Finkel and Groscup (1997) completed two experiments that also examined jurors' verdicts, their reasoning for those verdicts, and sentencing decisions. The first experiment used a narrative approach in which

participants constructed stories for four different crimes (insanity, euthanasia, heat of passion, and self-defense). Then, all of the stories were assessed on 30 different dimensions including what precipitated the event, what the criminal act consisted of, and if the defendant used a weapon. Finkel and Groscup (1997) found that compared to the typical legal case, participants' prototypes of a crime category described the extraordinary or dramatic cases across the four crimes. In the second experiment, college students were asked to construct what they perceived as the typical case of burglary, kidnapping, self-defense, and rape (with a consent defense) when the defendant was guilty or not guilty, and when the crime fit or did not fit the legal definition. In this study, Finkel and Groscup (1997) found that subjectivity does not dominate when determinations of culpability are involved. Rape cases were the only cases that showed that subjective factors prevailed at a rate of 91%, over objective factors (Finkel & Groscup, 1997). Finkel and Groscup (1997) concluded that juror prototypes were extraordinary, or extreme, compared to what is typically seen in legal situations. Aside from the rape cases these conclusions imply that jurors' do use objective anchors provided by the judge's instructions and do not fully nullify defining features of legal concepts.

Similar to Finkel and Groscup (1997), over several experiments, Smith (1991) considered whether people construct and use prototypes in legal situations and whether they are flexible enough to forget their prototypes and use the instructed alternative decision process. In her first experiment, Smith (1991) examined whether people have naïve concepts of assault, burglary, kidnapping, murder, and robbery, and if these concepts include defining features (consistent with the law) or associate features (consistent with the prototype representation). Smith (1991) found that participants provided approximately seven features per crime that addressed aspects of the victim, perpetrator, location, event, and reasons for committing the crime. Like Groscup and

Finkel (1997), Smith (1991) also noted substantial incongruity between the features participants listed and the correct defining features of the crimes.

Part two of Smith's first experiment examined whether the previous listed features operate as necessary conditions for guilt. Conviction rates ranged from 71% to 100%, indicating that the listed features were merely features associated with crimes and were not necessary for a guilty verdict to be given (Smith, 1991). Part three evaluated whether subjects' representations had a graded structure as a prototype would. Subjects were presented with fact situations containing numerous, some, or few characteristic features perceived to be typical of the crime. Results revealed that fact situations that contained numerous characteristic features were perceived as significantly more typical than those with few, supporting that participants' representations had a graded structure (Smith, 1991). Thus, jurors' prototypes are not only incongruent with the features of the legal definition of the crime, but fact situations are assessed in relation to their typicality with the juror's prototype.

In the second experiment of Smith's (1991) study, the impact of prototypes on categorization was investigated. In part one, subjects provided the correct category label more often for typical exemplars of knowledge structures than for atypical category members for assault, burglary, kidnapping and robbery, but not for murder. In part two, subjects voted guilty more often for typical than atypical category members for assault, burglary, and kidnapping but not for murder or robbery. Smith's (1991) findings indicate that when uninstructed, subjects used their prototypes to direct their verdict selection when deciding kidnapping, assault, and burglary cases. However, Smith (1991) found that typicality did not influence jurors' ability to correctly label murder cases nor was there any difference in typicality for guilty verdicts of

murder; however, she does note that participants did not differentiate murder from manslaughter in her study.

In Smith's (1991) third experiment, she discovered that the verdict decisions of instructed subjects were similar to those of uninstructed participants. Instructed decision makers did not discount their prior knowledge in favor of the defining features given by the judge's instructions (Smith, 1991). Overall, judge's instructions did not change subjects' decision strategies; instead, typicality mainly influenced verdict selection (Smith, 1991). This is contrary to what was found in Spackman et al.'s (2002) study which revealed that regardless of instruction type jurors did not change their verdicts, but did alter their reasoning for choosing said verdicts. Basically, jurors do have specific knowledge structures of particular crimes, or prototypes, and rely on them regardless of the presence of judge's instructions, which may be why previous studies have failed to show marked improvements (Smith, 1991).

Also proposing that jurors use their own knowledge structures, Hacken (2010) proposed that individuals have a prototype-based understanding of legal terms or laws, meaning novices will understand legal concepts based on the way they know the concept in their everyday world. Jurors are supposed to rely on the judge's instructions for verdict selection, but the aforementioned literature has indicated that people have constructed naïve representations of crimes that sometimes conflict with the judge's instructions influencing decision making. For instance, jurors recently introduced to the legal arena, may have their own preconceived definitions of legal terms or a prototype structure that incorporates that term (Hacken, 2010). Two ways in which prior knowledge of the law may conflict with proper legal decision making include the fact that the content of prototypes may be largely incorrect, or overly dramatic, and thus decision strategies are influenced by prototypes of crime categories when they should be

based on a set of specific necessary and sufficient conditions. Hacken (2010), stated that general language concepts are based on prototypes with graded degrees of typicality. As an example he posed the idea of parking instructions in the United Kingdom (Hacken, 2010). Laypersons tend to have their own category of what is typically thought of to mean that something is parked; however, the commonsense concept of parking does not necessarily reflect the legal traffic regulations (Hacken, 2010). In the UK, instructions on parking presupposes that laypersons get the definition of the concept (i.e., parking) elsewhere, but rather than defining the concepts, instructions provide a description of what is not considered a parking violation (Hacken, 2010). This instruction format suggests that as laypersons have preconceived notions of concepts, simply instructing decision-makers may not be as effective as providing individuals with what the concept does not entail. Revising jury instructions to alter jurors' false understandings of legal concepts to better comply with the law has been discussed as a viable way to address the prototypes of these legal concepts.

Addressing Juror Prototypes

Smith (1993) also examined how to influence juror prototypes and suggested that substantive jury instructions must correct both the content of jurors' prototypes and their strategies for using that content. Experiments one and two of Smith's (1993) study attempted to address the conflict between jurors' naïve representations of a crime and the legal instructions for a crime by withholding the name of the crime charged against the defendant. It was hypothesized that without the retrieval cue of the name, participants would have to rely on the judge's instructions when selecting verdicts, because access to their prior knowledge was hindered (Smith, 1993). However, the results revealed that even when the crime name was withheld, participants applied their own category label and still accessed their own prior knowledge in their

decision making (Smith, 1993). Not only was label withholding ineffective at resolving the conflict between prior knowledge and law, it added the danger that jurors may choose the wrong label for the crime and access completely irrelevant prior knowledge (Smith, 1993).

Smith's (1993) third experiment investigated the possibility that people could be discouraged from using their prior knowledge of the target crime by informing them explicitly that they must disregard their existing notions of the crime and rely solely on the judge's instructions for decision making (Smith, 1993). This supplementary instruction also proved ineffective in correcting jurors' decision making as measured by verdict selection (Smith, 1993). Regardless of instruction type, subjects relied on their prior knowledge of the target crime (Smith, 1993).

The goal of Smith's (1993) fourth experiment was to address participants' prior knowledge of kidnapping. The supplementary instruction provided participants with the necessary information about which features of their prototypes should be revised, and how to do so (Smith, 1993). Instead of asking people to set aside a naïve representation, this instruction focused on revising the misconceptions contained in people's representations to make them more consistent with the legal definition (Smith, 1993). Participants in this study were given either preliminary instructions that described how to complete the task, preliminary along with substantive instructions (for kidnapping), or preliminary and supplemental feature-based substantive instructions. The preliminary and feature-based instruction condition used a short supplementary instruction that contained a feature-by-feature evaluation of people's prior knowledge which was in addition to the substantive instructions (Smith, 1993). Subjects listened to an audiotape of the judge's instructions, and then made verdict decisions on 4 typical and 4 atypical kidnapping scenarios (Smith, 1993). The typical scenarios were consistent with common

juror prototypes in that they consisted of a large number of features jurors generally perceive. The atypical scenarios had fewer features in common with juror prototypes and were more representative of realistic (less dramatized) kidnapping scenarios.

As in previous studies, subjects who received only preliminary instructions and those who received preliminary and substantive instructions performed similarly at rates less than chance (Smith, 1993). Participants who received the preliminary and supplemental feature-based instructions, however, were significantly better at identifying atypical cases and rendering the correct guilty verdict (Smith, 1993). Further, subjects who received the feature-based instructions performed just as accurately on the atypical kidnappings as they did on the typical kidnappings. Participants who received substantive instructions performed better on the typical kidnapping scenarios than those who only received preliminary instructions. It should be noted, however, that Smith (1993) measured the efficacy of instruction type based merely on participants' verdict selection without the inclusion of a comprehension measure, nor measure of juror reasoning that accounted for differences in participants' selections.

The results discussed above indicate that acknowledging jurors' common misconceptions and providing them with legally accurate crime features can markedly improve jurors' ability to identify atypical cases without impairing their ability to identify typical crime cases. In essence, by addressing the features of jurors' prototypes, instructions are able to increase the likelihood of jurors identifying cases which represent more common legal scenarios. Overall, Smith's (1993) findings indicated that the conflict between people's prior knowledge and the law cannot easily be circumvented, but its impact may be reduced by revising people's existing concepts.

Otto, Applegate, and Davis (2007), used a similar approach, a "debunking" method to improve jurors' misunderstandings associated with capital sentencing instructions.

Undergraduates were randomly assigned to one of two conditions. Both groups listened to a judge read a fact scenario, and then one group received the pattern instructions, while the “debunking” group received instructions that had additional statements that refuted misconceptions that had been linked with established areas of miscomprehension (Otto et al., 2007). Otto and his colleagues (2007) found that participants exposed to the “debunking” statements had higher comprehension than those who only got the pattern instructions, suggesting that addressing the incorrect features of jurors’ prior knowledge structure may be effective in increasing jurors’ ability to apply legal instructions to decision tasks. However, Otto et al.’s (2007) measured only comprehension, but not verdict selection, making the debunking technique untested with regards to a study including both verdicts and juror comprehension.

Using “Debunking” Methods to Influence Juror Verdicts

It is clear from the above mentioned research that the legal system may not be functioning as it was intended. Defendants deserve the right to a fair trial; however, the inability of jurors’ to apply the judge’s instructions may interfere with an individual’s legal rights. Jurors are supposed to use the facts of the case presented and the instructions provided by the judge to help them decide upon a verdict. Extant literature has repeatedly revealed that jurors do not understand or apply jury instructions to legal decision-making tasks (Finkel, 1995; Reifman et al, 1992). Furthermore, despite linguistic changes to jury instructions, research has revealed that even when comprehension increases, juror verdicts remain the same (Spackmen et al., 2002; Elwork, Alfini, & Sales, 1982; English & Sales, 1997). Other adjustments to jury instructions, such as flow-charts, and audiovisual charts have been shown to partially increase juror comprehension; however, not necessarily change jurors’ verdicts (Semmler & Brewer, 2002; Brewer et al., 2004). Instead, these juror difficulties with instructions may possibly be due to the

fact that jurors have prototypes, or naïve knowledge structures of crimes that interfere with their ability to use jury instructions (Smith, 1991). Several experimenters have presented the idea that jurors have pre-existing knowledge structures of legal concepts that interfere and may even conflict with the necessary conditions of a legal concept (Smith, 1991; Skeem & Golding, 2001; Loudon & Skeem, 2007). As opposed to relying on the judge's instructions, jurors usually will refer back to their own prototypes to assist them in making decisions (Wierner et al., 2002; Finkel & Groscup, 1997). The notion of “debunking” or addressing laypersons misconceptions feature-by-feature and providing them with legally accurate features has been shown to be partially effective in assisting jurors in applying jury instructions (Otto et al., 2007; Smith, 1993). However, these studies have failed to investigate the effectiveness of “debunking” or feature-refuting jury instructions on jurors' verdict selection. As Spackman et al. (2002) noted, despite comprehension improvements, mock-jurors in cases of murder/manslaughter refused did not alter their verdicts, but rather interpreted the instructions to support their preconceived notions. Spackman et al. (2002) only compared lengthy yet detailed objective instructions with simple, defining subjective instructions—neither of which addressed common misconceptions held by jurors. Because Otto et al., (2007) and Smith (1993) found that addressing juror misconceptions of a crime improved juror comprehension, it has yet to be examined whether jurors' verdicts will be changed as a result of newfound comprehension.

Hypothesis

Otto et al. (2007) and Smith (1993) found that comprehension increased when the jury instructions specifically addressed common misconceptions about a particular crime held by jurors. Spackman et al. (2002) discovered that jurors tend to use jury instructions to fit their own personal concepts, or prototypes, of the crime in order to make verdict decisions despite

increased comprehension. It stands to reason that when mock-jurors' personal concepts, or misconceptions of murder/manslaughter are addressed in jury instructions, jurors will be able to correctly apply the instructions to their verdict selection with reasoning that reflects the legal definitions. This study proposes to measure the effectiveness of the "debunking" instructions regarding murder/manslaughter distinctions on verdict selection via mock-juror comprehension of the legal standard and juror reasoning. It is hypothesized that people who receive the debunking instructions will be able to correctly give a guilty verdict of second degree murder and be more certain of their verdict. It is further hypothesized that people who receive the debunking instructions will also have improved comprehension of the legal instructions, more so than those who receive the standard instructions.

Method

Participants

The participants in this study consisted of 159 current undergraduate students attending Roger Williams University. Participants were at least 18 years or older and thus jury eligible.

Materials & Procedures

Participants were randomly assigned to receive either "debunking" jury instructions or the standard pattern instructions used for second degree murder and voluntary manslaughter. Before each session, the experimenter flipped a quarter to randomly determine which instruction type would be heard during that particular session. Participants were first required to sign consent forms agreeing to take part in this study (see Appendix A for script of directions, and Appendix B for informed consent form). After all participant consent forms were collected by the experimenter, each participant was provided a written copy of a case summary to read (Appendix C).

Participants were asked to carefully read the summary, and to treat the case as if they were an actual juror whose decisions carried the full weight of the law. The case summary consisted of mock-facts adapted from Brewer et al. (2004), which provided contextual information regarding the murder of a young woman by another female after an altercation at a bar. The summary also included statements from both the prosecution and defense. The verdict choices presented to the participants included both second degree murder, manslaughter, and not guilty. If mock-jurors followed the judge's instructions which were provided to them, the crime committed should have elicited a guilty verdict of second degree murder. The case summary was designed in such a way that verdict selection also reflected comprehension, as by legal standards, the case solely represented a second-degree murder case. This case was constructed with the assistance of attorney David Zlotnick, to determine that the case properly represented a second degree murder case and not a voluntary manslaughter case. This was verified by two attorneys consulted for this study.

It is important to note that in the American legal system, there is no correct or incorrect verdict. Ultimately, a "correct" verdict is based on the jury's decision. The case was specifically designed, however, so that features consistent with the standards for second degree murder were present, while features consistent with voluntary manslaughter (heat of passion and adequate provocation) were not. A verdict choice of not guilty would then disregard any use of the facts of the case or the legal standard provided, whereas a verdict of voluntary manslaughter reveals a misapplication of the legal standard. The distinguishing feature of voluntary manslaughter versus second degree murder in the instructions is the presence of mitigating circumstances (provocation in the current case). Although the case summary includes the defendant being called names, it does not fit the legal definition of adequate provocation provided by both types

of the legal instructions. Thus, the only reason a verdict, in the current case, should move from second degree murder to voluntary manslaughter is if a participant found that the defendant was adequately provoked. For the purpose of the current study however, verdicts of guilt of second degree murder will be referred to as the “correct” verdict and verdicts of voluntary manslaughter and not guilty will be referred to as “incorrect.”

After all participants finished reading the summary, participants listened to an audio presentation of either standard jury instructions taken from the District of Columbia Jury Instruction Manual (Appendix D), or a modified version of the same standard instructions (Appendix E) which included debunking statements that further explained each element of the second-degree murder/voluntary manslaughter instructions (debunking procedure adapted from Otto et al., 2007). These debunking statements were also written in plain English and refuted possible misconceptions of each element of the standard. Both instruction types were read and recorded by Former Chief Justice Frank Williams of Roger Williams University.

After listening to their assigned instructions, each participant was handed a packet that contained questions assessing verdict, comprehension, and reasoning. Participants were then instructed that the packet should be completed in the order in which it was given. The first page of the packet asked participants to select a verdict (either second-degree murder, manslaughter, or not guilty), whichever they believed was appropriate for the case they read based on the legal instructions they had previously heard. They then rated their level of certainty in their verdict (Appendix F). Participants’ verdict selections were multiplied by their certainty ratings for a possible range of scores from -9 to 9. A score of 9 indicated the participant was as certain as possible of his/her guilty of second degree murder verdicts the correct verdict, while a -9 indicated that a participant was as certain as possible of the incorrect verdict.

The second item in the packet measured comprehension of the legal instructions based on participants' answers to 15 multiple choice questions (Appendix G; adapted from Otto et al., 2007). Each question is directly associated with an element of the standard jury instruction that participants heard. One point was given for each correct answer that participants provided which was then summed (for a total of 19 possible points) to provide a total comprehension score.

The final item in the packet assessed verdict reasoning. It included an open ended question asking participants to provide their reasons for the verdict they selected (Appendix H; adapted from Brewer et al., 2004). Six points were possible on the verdict reasoning measure, based on the number of elements the participants correctly identified. The number of points received on this measure represented the reasoning score for that participant (See Appendix I for scoring protocol). The particular reasons that participants endorsed to support their verdict decisions was also coded. Only reasons that correctly supported their verdict choice were coded. Basically, the way participants worded the reasons they provided, had to match the verdict selected. Of the six possible legal reasons identified in the murder/manslaughter standard, each reason was assigned a number [0—none, 1-proven beyond reasonable doubt, 2-Defendant had the intent to kill/seriously injure, or acted in disregard of risk to harm, 3—adequate provocation, or immediate threat of violence, 4—heat of passion, 5—Immediate threat of violence, 6—self-defense, 7—mitigating circumstances not otherwise specified (NOS)]. After completing the packet, participants were debriefed and given credit for their participation.

Results

This study used a one-way between subjects design measuring the effects of hearing debunking versus standard jury instructions on participants' legal decision making. The independent variable of instruction type (Debunking v. Standard) was analyzed for its impact on

mock-jurors' comprehension of the legal standard, verdict choice and certainty, and legal reasons for verdict choice.

Verdict Selection

Guilt Preference. Of the total sample (N=159), 70 (44%) participants decided the defendant was guilty of voluntary manslaughter, 87 (54.7%) participants decided the defendant was guilty of second degree murder, and 2 participants (1.3%) chose not guilty as the verdict. For the purpose of this study, data for the not guilty verdicts were excluded from the analyses, because this verdict was truly incorrect considering the case summary and legal standard.

Differences in Verdict Selection. Of participants who heard the debunking instructions, more (n=43) selected the correct verdict of second degree murder, while fewer (n=38) made the incorrect verdict choice of voluntary manslaughter. For those who heard the standard instructions, more participants (n=42) chose the correct verdict of second degree murder, while fewer participants (n=32) made the incorrect verdict choice of voluntary manslaughter. A Chi-square test for independence (with Yates Continuity Correction) was conducted to analyze whether there was a significant difference between the two groups (Standard v. Debunking) on their verdict selections. The results reveal no significant difference in verdict choice between those who heard standard instructions and those who heard debunking instructions, $\chi^2(157) = .20, p > .05$. Table 1 depicts the percentage of guilty verdicts distributed across the instruction types. Thus, results indicate that participants who heard the debunking instructions were no more likely than those who heard the standard instructions to select the correct verdict.

Table 1.

Percentage of Guilty Verdicts for Each Instruction Type

Instruction Heard	Voluntary Manslaughter	Second Degree Murder
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Standard Instructions	42.10%	57.90%
Debunking Instructions	46.90%	49.40%

Note. The percentage of guilty verdicts for voluntary manslaughter and second degree murder for participants who heard either standard or debunking instructions. No significant difference between instructions heard and verdicts selected by participants ($p > .05$).

Verdict Certainty. A one-way between-subjects analysis of variance was conducted to explore the impact of instruction type on mock-jurors level of verdict choice certainty. There was no statistically significant difference in participants' level of verdict certainty between the two groups: $F(1, 157) = .605, p > .05$. Participants who heard the debunking instructions ($M = .56, SD = 6.95$) were no more certain of their verdict choice than those who heard the standard instructions ($M = 1.42, SD = 6.98$). The effect size, calculated using eta squared, was .001.

Certainty Only. In order to further examine trends in participants' decisions, a one-way between-subjects analysis of variance was conducted to explore participants overall level of certainty without verdict. There was no statistically significant difference in participants' level of certainty between the two groups: $F(1, 159) = .277, p > .05$. Participants who heard the debunking instructions ($M = 6.82, SD = 1.20$) were no more certain of their verdict choice than those who heard the standard instructions ($M = 6.92, SD = 1.30$). The effect size, calculated using eta squared, was .001. This result indicates that despite the instruction type heard, participants were equally, fairly certain of their verdict choice.

Comprehension of the Legal Standard

A one-way between subjects analysis of variance was used to explore the impact of instruction type on mock-jurors' comprehension of the legal standard, as measured by scores on the multiple choice comprehension test. There was no statistically significant difference in

comprehension scores between the two groups: $F(1,157) = 2.73, p > .05$. Individuals who heard the debunking instructions ($M = 11.15, SD = 2.9$) did not understand the legal instructions any better than those hearing the standard instructions ($M = 11.93, SD = 3.05$). The effect size, calculated using eta squared, was .02. These results reveal that despite the type of instruction heard, participants performed similarly on the comprehension measure, which was slightly above chance. This indicates that the debunking instructions, when compared to the standard instructions, had no effect on mock jurors' comprehension of the legal standard.

Legal Reasoning for Verdict

A one-way between-subjects analysis of variance was conducted to explore the impact of instruction type on participants' legal reasoning for their verdict choice, as measured by scores on the verdict reasoning test. There was no statistically significant difference between instruction types in scores on the verdict reasoning test: $F(1,157) = .009, p > .05$. Individuals who heard the debunking instructions ($M = 1.57, SD = .903$) did not endorse any more legal reasons for their verdicts than individuals who heard the standard instructions ($M = 1.56, SD = 1.05$). The effect size, calculated using eta squared, was .00. This indicates that the number of reasons endorsed by participants' did not differ based on instruction type. Results reveal that participants who heard the debunking instructions did not endorse any more legal reasons for their verdict choice than those who heard the debunking instructions.

Further frequency analyses were conducted to explore which reasons in particular were endorsed most often by participants to support their verdict decisions. The modal reason for participants in either instruction condition selecting either voluntary manslaughter or second degree murder verdicts was the defendants "intention to kill, seriously injure, or disregard of risk to harm," despite the type of instruction heard. This result indicates that despite the type of

instruction heard and verdict choice, participants used the same part of the legal standard to support their decision. However this standard was used in opposite ways. Participants who selected second degree murder said the defendant had intent, while participants who selected voluntary manslaughter said that the defendant did not have intent. Figure 1 shows the frequency at which specific legal reasons were endorsed by participants who heard the standard instructions. Figure 2 shows the frequency at which specific legal reasons were endorsed by participants who heard the debunking instructions.

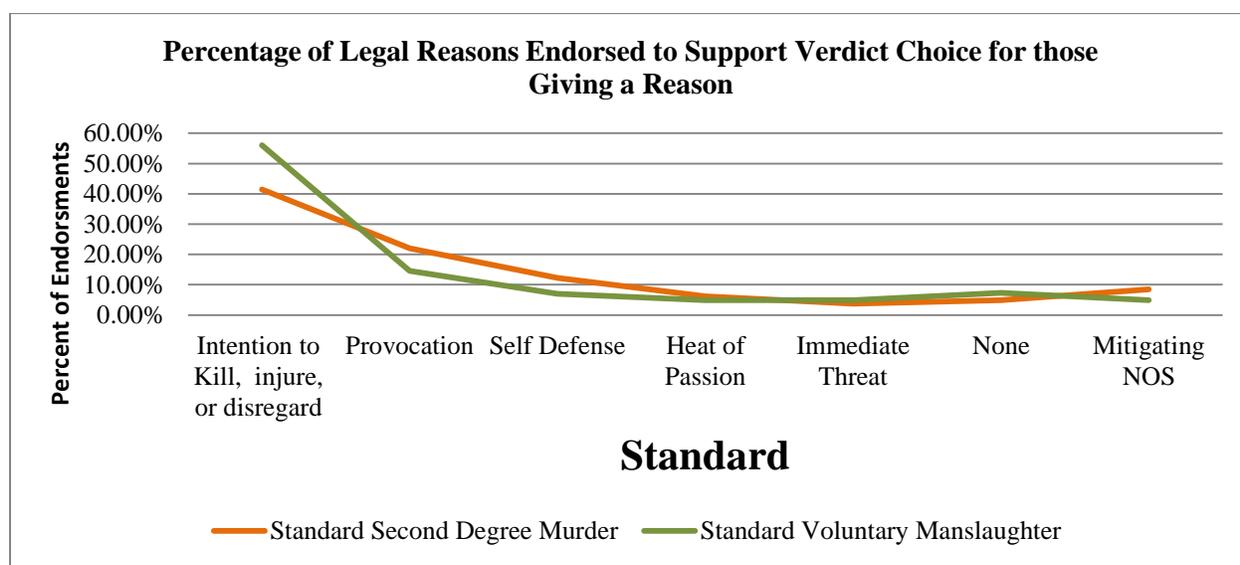


Figure 1. The frequency at which particular legal reasons were endorsed in support of the specified verdict, for participants who heard standard instructions.

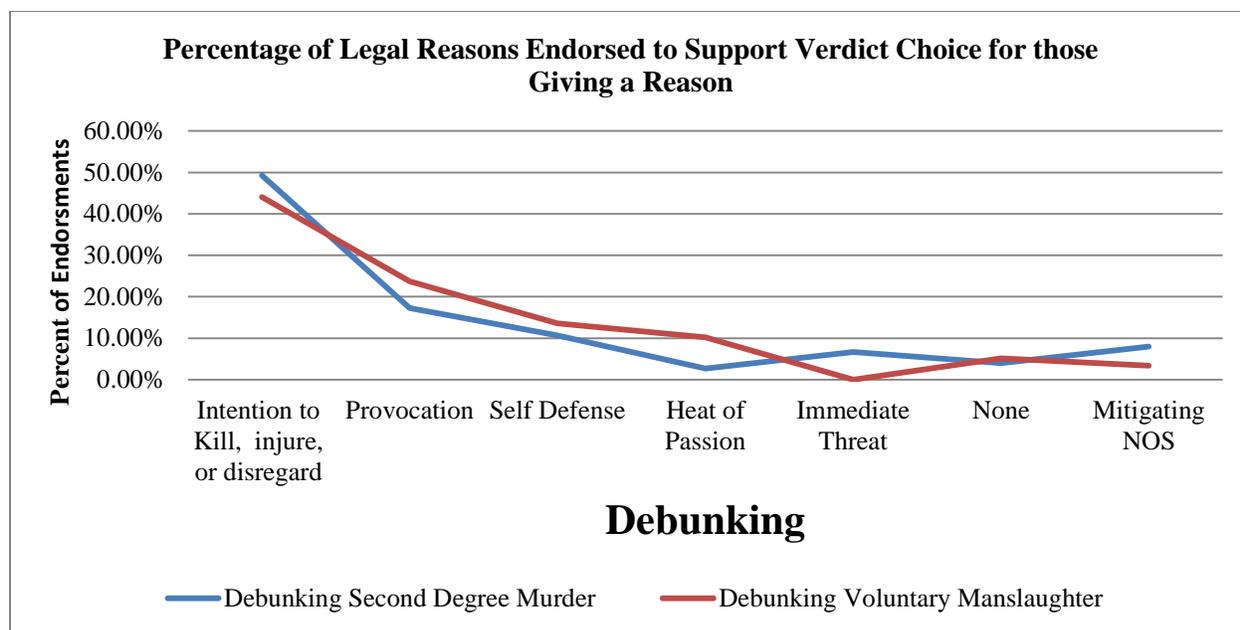


Figure 2. The frequency at which particular legal reasons were endorsed in support of the specified verdict, for participants who heard debunking instructions.

Discussion

This study proposed to measure the effectiveness of “debunking” instructions regarding second degree murder and voluntary manslaughter distinctions on verdict selection, juror comprehension and juror reasoning. It was hypothesized that people who received the debunking instructions would be able to correctly give a guilty verdict of second degree murder and be more certain of their verdict, than participants who received the standard instructions. It was further hypothesized that people who received the debunking instructions would also have improved comprehension of the instructions, more so than those who received the standard instructions. The current study constructed a case summary that was designed in such a way that selection of a particular verdict would indicate the extent to which the participants understood the judge’s instructions. More specifically, the selection of guilty of manslaughter verdict necessarily meant that those particular individuals did not understand the instructions, whereas selection of second

degree murder indicated that they did. Finally, participants who understood the instructions were expected to be able to apply legal reasoning in support of their correct verdicts, more so than participants who did not understand the instructions and chose a verdict of voluntary manslaughter.

Contrary to Otto et al.'s (2007) and Smith's (1993) findings, the current study found that comprehension of the legal standard remained unaffected when the judge's instructions addressed common misconceptions about a particular crime held by jurors. It was expected that when mock-jurors' personal concepts, or misconceptions of murder/manslaughter were addressed in jury instructions, mock-jurors would better understand the legal definition, and thus select the correct verdict of second degree murder over voluntary manslaughter. Unfortunately, in the current case, performance on the comprehension measure was slightly above chance levels (around 57% for both conditions), despite the instruction type heard. Although levels of 57% are higher than some previous studies have found in terms of comprehension, when assessing the case and rendering a verdict decision, the type of instruction given did not seem to influence participants' comprehension of the legal standard. Elwork, Alfini, and Sales (1982) found that rewriting instructions using psycholinguistic principles improved instruction comprehension. In contrast, the current study found that the added simplified language used in the debunking statements did not improve mock-juror comprehension.

It is of note that although participants did not readily understand the legal instructions, the findings of this study reveal that they were very certain of the verdicts they chose. Participants, who felt the defendant was guilty of second degree murder, were equally as confident in their decisions as participants who felt the defendant was guilty of voluntary manslaughter. Predominately, participants were pretty certain (almost 77% certain) that they had

selected the correct decision, despite the fact that their comprehension of the legal standard was fairly limited. Diamond (1993) asserted that instructions would not educate laypersons when the instructions compete with their preconceived notions about legal aspects, which may give reason to the findings of the current study. Because it appears that participants in the current study were not basing their decisions upon the legal standard, this finding indicates that mock-jurors possibly depended on their own conceptions of the particular crime to help them make decisions.

While slightly more participants chose the correct verdict of second degree murder, the differences were not significant. Both Smith (1993) and Otto et al. (2007) found that explicitly addressing common or even possible misconceptions within the legal instruction improved individual comprehension of the applicable legal standard; however, their participants assessed cases of kidnapping and capital punishment, respectively. Spackman et al. (2002) examined the impact of instruction type, objective (similar to debunking instructions) versus subjective (similar to standard instructions), for its impact on mock-jurors verdict choice across three murder/manslaughter crime scenarios. The current study's findings replicated Spackman et al.'s (2002) finding in that the instruction type had no influence on participants' selection of verdicts. It is possible that crime instructions regarding murder/manslaughter are more difficult to understand due to their similarities. The findings of the current study are consistent with Smith (1991) who found that laypeople struggled with differentiating between murder and manslaughter, and that the intentionality of the defendant was most influential for participants' verdict choice. In Smith's study (1991), the more an individual could identify the crime as intentional, the stricter the verdict choice. In essence, laypersons prototype of manslaughter tend to represent an act in which the defendant did not have specific intent to kill or seriously injure,

so participants may have tried to fit their prototype of what manslaughter is to the choice of voluntary manslaughter in the current study.

Participants in the current study may have also had difficulties in differentiating second degree murder from voluntary manslaughter because the instructions are fairly similar with the exception of one standard distinction. A proponent of both the second degree murder and voluntary manslaughter instructions is “the intention to kill, seriously injure, or a disregard of risk for harm.” Hacken’s (2010) claim that conflict between jurors’ prior knowledge structures and the legal instruction is because legal terms are not naturally formulated in American language, may give reason to the current study’s findings. While the term “manslaughter” has specific definitions in the legal arena, the perceived connotation of the term by laypersons may not match, thus participants may end up relying on what they “know” versus the new information provided by the instructions to make decisions. Another possible explanation of the current study’s finding is that, as intentionality tends to be how laypersons are able to differentiate murder from manslaughter, participants in the present study may have relied on this misconception to decipher whether the defendant in the case summary committed second degree murder or voluntary manslaughter.

Not only were the instructions addressing common misconceptions expected to increase mock-juror comprehension of the legal standard, it was expected that the debunking statements would also positively influence participants’ recall and application of the legal standard. In the current study, participants who heard and understood the debunking instructions were not expected to construe the legal standard to fit their own prototypes or conceptions of the crime. Participants’ recall and application of the standard would be represented by the fact that they could select the correct verdict, and then use the fundamental elements of the legal standard to

support the selected verdict. The current study's findings suggest that, while they did not completely misunderstand the instruction, participants were able to recall a number of reasons to support their verdicts. This finding suggests that to some extent mock-jurors understood the instructions enough to recall legal information, but when applying reason to their verdicts they did so in a manner that fit their verdict choice as opposed to fitting their verdict to the instructions. Almost all participants endorsed one reason supporting their verdicts, but it was a reason that was applied in such a way as to fit their preconceived notions, not the actual, proper reason itself. Based on Spackman et al.'s (2002) findings, participants' reasons for their verdict choices for those who heard debunking instructions were also expected to reflect the standards prescribed by the law, more so than those who heard standard instructions.

Spackman et al. (2002) found no difference in instruction type (long and objective vs. short and subjective) on the convictions given across three murder/manslaughter scenarios, suggesting that intentionality did not matter as much as other mitigating factors (dwelling upon emotion or history of violence) when considering convictions. This finding opposes Smith's (1991) discovery that the intent of the defendant is highly influential of mock-jurors verdict selections. The current study's findings replicated Smith's finding in that intentionality with regards to second degree murder and voluntary manslaughter held more weight than the mitigating circumstance of adequate provocation on mock-jurors ability to choose the most legally appropriate verdict.

Participants in the present study were more likely to endorse a defendant's "intent to kill, seriously injure, or disregard of harm," as a reason to support their verdicts rather than the presence of "adequate or inadequate provocation." In fact, the element of intention of the legal standard is the exact same for voluntary manslaughter and second degree murder instructions.

The presence of a mitigating circumstance (such as adequate provocation or heat of passion) is the only reason a verdict should move from second degree murder to voluntary manslaughter.

While the crime scenario in the current experiment included provocation, it did not fit the legal definition of adequate provocation. A verdict choice of voluntary manslaughter, thus, should not be supported by reason of intent, but for the presence of adequate provocation.

In the current case however, participants were more likely to reason a verdict of voluntary manslaughter due to defendant's intent (or lack thereof) to kill, seriously injure, or disregard a risk to harm. So participants who selected second degree murder said the defendant had intent, while those who selected voluntary manslaughter said the defendant did not have any intention to kill, seriously injure, or disregard harm. Participants actually supported their verdict decisions by reason of provocation in similarly opposing manner. What is more interesting is that another reason frequently endorsed by participants in the same opposing manner is that of self-defense. This finding supports the notion that participants may have been using their own prototypes to base decisions because neither the instructions, nor the verdict choices made mention of self-defense as a proponent of the defendant's guilty status.

One factor to consider is that the discussion of intent to kill, seriously injure, or disregard risk to harm is heard at the very beginning of the instructions for second degree murder and voluntary manslaughter. Mitigating circumstances, in this case provocation and heat of passion, are discussed after the second degree murder standard and before the standard for voluntary manslaughter. It could be that participants just were not paying close enough attention and once they heard what they thought they wanted to hear, they stopped listening. Because participants were so certain of their verdict choice, it could be that once they heard this part of the instruction, they construed it to fit their prototype of the crime committed in the case scenario.

Lord, Ross, and Lepper's (1979), study on biased assimilation and attitude polarization may be relevant to the finding in the current study. In Lord, Ross, and Lepper's (1979) study, participants supporting and opposing capital punishment were exposed to information that both confirmed and disconfirmed their preexisting beliefs. Lord, Ross, and Lepper (1979) found that both supporters and opponents of capital punishment, reported that the results and procedures that confirmed their own beliefs were more substantial and probative than any of the others. In the current study, participants' tendencies to endorse the same reasons for their verdict regardless of verdict choice may be for similar reasons.

Participants may have entered the current study with strong opinions on the issue of intentionality and murder, thus they may have examined the case material in a manner that fit their pre-existing concept of murder and defendant intention. Lord, Ross, and Lepper (1979) suggested that people are more likely to readily accept information that confirms their bias. Similarly, Wiener et al. (2002) found that as opposed to having simple prototypes, mock jurors integrate relevant case material into their own knowledge structures to create a story prototype of the crime that assists mock-jurors in decision tasks. It is possible that participants in the current study interpreted the same information and the legal standard as supporting their opinions, despite having different opinions about what the correct verdict should be. Essentially, mock-jurors take what information fits their opinions from the case summary, and then construe the instructions in a manner that fit their perception of the crime. In the current study, participants may have created a prototype crime story using whichever parts of the case material and legal instructions that confirmed their bias. This bias, in turn, may have also led them to ignore the truly distinguishing feature of the instructions, the issue of mitigation.

While the hypothesis that the inclusion of debunking statements in second degree murder and voluntary manslaughter instructions would improve mock-juror comprehension and abilities to apply the legal standard to decision making tasks was not supported, the current study did generate some interesting findings. In the future it may be interesting to compare the efficacy of debunking instructions using a variety of crime scenarios to examine whether the type of crime committed alters mock-jurors use of instructions in decision making. Smith (1993) and Otto et al. (2007) found that debunking instructions helped, but they used crimes other than murder/manslaughter. Comparing whether debunking instructions are more effective for cases involving robbery, kidnapping, or murder, may provide more information as to whether pre-existing notions of murder are more likely to interfere with decision tasks than that of other crimes. On that note, because participants in the current study appeared to have issues grasping the concepts of intentionality and voluntary manslaughter it would be beneficial to explore this further. Exposing participants to standard and debunking instructions and then having participants make decisions on several murder/manslaughter cases with variations of defendant's intent to kill, or harm, may provide further understanding of how to influence mock-jurors decisions. Participants in the current study used the same part of the legal instruction to support their varied verdict selections, future research may want to examine whether participants' reasoning changes as elements of mitigation (provocation) are adjusted. This would further provide information as to whether mock-jurors understand the instructions but choose to construe them, or whether mock-jurors just don't understand the legal concept of mitigation in murder/manslaughter cases. It may also be beneficial to run an initial study examining mock-jurors perceptions of murder and manslaughter (various types), and then formatting debunking instructions off of the most commonly endorsed features as Smith (1991; 1993) did in her

research. While the current study did address mock-juror misconceptions we did not explicitly ask participants beforehand, what is murder and what is manslaughter to see how individuals commonly misperceive manslaughter in particular. Instead we addressed common misconceptions of murder/manslaughter, and problem areas for laypersons as they were described by extant literature sources, in the same manner that Otto et al. (2007) constructed his debunking instructions. On that note, a study comparing not only the debunking methodologies of Otto et al. (2007) and Smith (1993), but also other effective methods identified in the literature for their impact on specific types of crimes could reveal ways in which to best address particular issues with specific crime situations.

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Appendix A

Experimenter Script Used For Study

Before participants arrive, flip a quarter to decide which instruction will be played during this experimenter session (Heads = Standard; Tails = Debunking), then record on the folder provided for this session, experimenter name, the date, and instruction type, number of participants present.

Each experiment may run a session with a maximum of 15 participants per session. As Students enter into the experiment room, check off names from the list. At this time ask each participant if they have something to write with, and give them a pencil if they do not have one. Provide them with an informed consent form and direct them to take a seat anywhere within the room but spread out and read through the form. Wait one-two minutes from when the last consent form is handed out to give time to read through it.

Step 1

Say: Good Morning/Afternoon Ladies and gentlemen, and thank you for participating in our experiment today. At this time we ask that you turn off all cell phones or pagers. When you came in today you were given an informed consent form asking you to agree to participate in this experiment. As you can see from the form, this experiment is designed to examine juror decision making, and the approximate time of your participation is around_____, for which you will receive ____credit towards your psychology course requirements. If you agree to participate in the experiment, please sign the form and pass it to the end of the row.

Step 2

Say: As I stated before, this study is interested in juror decision making. As such, you will be reading a case summary, regarding the defendant Casey Shaw. Since we are interested in how jurors make decisions in the real world, we ask that you treat this experiment as if you had been called to sit on a real jury and as if your decisions carried the full weight of the law.

You will be asked to make a verdict based on the facts of the case and the law that you will hear explained by the Judge. We would like you to pay close attention to the summary of the case and the judge's instructions and try to take the case as seriously as you would if you were sitting on an actual jury. While you are reading the case, you should not communicate with anyone else,

and you should not take notes, as we would like this experience to reflect that of real jurors as much as possible.

Do you have any questions before we begin? You will be provided with the case summary to read for approximately 10 minutes. At this time you may read through it carefully. After 10 minutes has passed, I will collect your summaries and provide you with further instructions. {Experimenter remains in room} Please turn over the summary when you feel you've fully and completely read it.

[Pass out case summary Now]

Step 3

After 10 minutes: Okay, please pass your summaries to the left/right of your row [Collect Summaries]. At this time I am going to play an audio recording of the Judge's instructions that apply to this case. Remember pay close attention to the instructions given, as you will be asked later to consider them for juror decision tasks. Also, consider how these instructions do or do not apply to the case you just read.

[PLAY AUDIO OF JUDGES INSTRUCTIONS]

Step 4

You have just heard the judge's instructions that apply to the case of. At this time, I am going to hand out a stapled questionnaire we would like you to fill out with regards to the case you just read and the instructions you just heard. This questionnaire consists of three parts that must be completed in the order they are given to you. On each page, on the top right corner please write your juror number. Please carefully read the instructions that are provided on the first page of each part.

Are there any questions at this point? Remember, during this part we ask that you do not communicate with other participants. When you are finished please turn over your packet to let me know that you are finished and I will come pick up your questionnaire packet. When

everyone is finished I will tell you a little more about the experiment and answer any questions.
Are there any questions before we proceed?

[PASS OUT QUESTIONNAIRE PACKET]

Step 5

[DEBRIEF]

Appendix B
CONSENT FORM

You are being asked to participate in a research project concerning individual judgments of a legal scenario. The persons responsible for this project are Aryssa Washington and Dr. Jacqueline Cottle, Department of Psychology, phone (401) 254-3773.

The purpose of this project is to gather information regarding judgments of a legal scenario. If you agree to participate, you will be given a packet containing various questionnaires for you to complete.

The total duration of your participation will be less than ____ minutes.

Risks/Discomfort and benefits to the participants- it is believed that the participants should experience no risks of discomforts. A potential benefit is that, based upon the response of the questionnaires, the participants may come to have a better understanding of psychological research. Consistent with the guidelines with the American Psychological Association, data will be stored in the office of the faculty member at least 5 years after the date of potential publication.

In return for the time invested in this project as a participant, you will receive credit toward a requirement in your Psychology class as stated in the course syllabus or described by your instructor, or given extra credit for the course, as described by your instructor.

Only Aryssa Washington, Dr. Cottle, and her assistant will have access to the identifiable records and/or data collected for this study; and all data associated with this study will remain strictly confidential.

Participation is voluntary. There is no penalty for refusal to participate. You may withdraw from the experiment at any time without penalty.

Aryssa Washington will answer any questions you have about the study.

This is to certify that I consent to or give permission for my participation as a volunteer in this research study. I have read this form and understand the content.

Participant's signature

Date

PRINTED NAME: _____

*****PLEASE LET THE EXPERIMENTER KNOW IMMEDIATELY IF YOU ARE NOT 18 YEARS OF AGE OR OLDER***

This is to certify that I have defined and explained this research study to the participant named above.

Aryssa Washington

Date

Appendix C

Case Scenarios (adapted from Brewer et al., 2004)

Please read the following case as if you were a juror on the case and your decision carried the full weight of the criminal law.

- On Tuesday, November 8th, 2009, shortly after 12am, an officer Davis responded to 44 N Spruce Street to investigate a report of a disturbance occurring in the parking lot of Terri's Bar 'N' Grill.
- When Officer Davis arrived, the Hamden paramedics were already on scene attending to a 21 year old, white female—Megan Neil. Ms. Neil was conscious but covered in blood from a wound on the right side of her head and struggling to breathe. Before transporting Ms. Neil to Hamden General Hospital, the paramedics relayed that Ms. Neil had stated she was injured by another female, an acquaintance named Casey.
- Megan Neil was pronounced dead an hour after making it to the hospital, due to injuries to her ribcage causing extensive internal bleeding.
- Upon interviewing several patrons of Terri's Bar 'N' Grill, it was revealed that Ms. Neil and another young lady with medium-length brown hair, green eyes, and driving a black car had an altercation earlier in the evening regarding a mutual friend, Kara Simpson. Witnesses of this altercation said that Ms. Neil called the other young lady a “bitch” and a “dyke” at points throughout their conversation. Witnesses also reported that Ms. Neil had also told the young lady that she'd better leave because no one wanted a lesbian around.
- Officer Davis was able to identify Casey Shaw as Ms. Neil's attacker via interviews with Ms. Neil's friends. Officer Davis was able to match Ms. Shaw's physical presentation with the description provided by the Bar's patrons.
- Upon investigation it was determined that Ms. Neil and Ms. Shaw were acquaintances and classmates at Quinnipiac University. Both women were friends of Kara Simpson, but were reportedly always in disagreement with one another. It was approximately 9:30pm when several bar patrons reported that they heard Ms. Neil call Ms. Shaw a “bitch” and “dyke.” Ms. Shaw proceeded to flip Ms. Neil off and get up to leave the bar. As Ms. Shaw was exiting the bar, Ms. Neil commented that “yeah, you better leave; no one wants a lesbian around.” Witnesses reported seeing Ms. Shaw get into a black SUV and drive west, out of the parking lot.
- Ms. Shaw reports coming back to the bar at about 11:00pm under the assumption that Ms. Neil would have left the establishment, but upon arrival Ms. Neil was outside the bar in the parking lot. Ms. Shaw reports that upon seeing her back at the bar, Megan began walking quickly towards her car with her hand in her pocket. Ms. Shaw states that she tried to simply scare Ms. Neil away by putting the car in drive and accelerating slowly out of the parking lot, but intentionally aiming to break Megan's leg so she'd get the message and leave her alone.

- Casey Shaw was charged with second degree murder in the death of Megan Neil

The Prosecution's Theory

- The prosecution introduces into evidence the facts stated above.
- According to the prosecution, both ladies had never been in agreement (as reported by friends of both Ms. Shaw and Ms. Neil). There had been numerous occasions when both women had verbally attacked the other.
- The interviews from the patrons of the bar state that a black SUV, matching the description of Casey Shaw's, left the parking lot at 9:30pm, but also returned around 11:00pm.
- Witnesses place Ms. Shaw at Terri's Bar 'N' Grill at two times the night of December 7th.
- Inspection reports of Ms. Shaw's vehicle revealed damage consistent with impact of an object.
- Therefore, the prosecution believes that there is no question that Ms. Shaw intentionally and willingly hit and killed Megan Neil.

The Defense Theory

- The defense claims the prosecution is neglecting to account for the fact that the defendant, Ms. Shaw, was provoked by Megan Neil. While the defense admits Ms. Shaw intended to assault and deter Megan Neil, the defense maintains that it was never Casey Shaw's intention to kill Ms. Neil. Therefore, because of her lack of intent and the provocation by Ms. Neil, Ms. Shaw is guilty of manslaughter, not second-degree murder.

Appendix D

Standard Jury Instructions (District of Columbia Criminal Jury Instructions)

HOMICIDE – SECOND DEGREE MURDER AND VOLUNTARY MANSLAUGHTER (SELF-DEFENSE AND HEAT OF PASSION CAUSED BY ADEQUATE PROVOCATION)

The defendant is charged second degree murder. I am going to instruct you on this charge and also on the lesser included offense of manslaughter. After I give you the elements of these crimes, I will tell you in what order you should consider them.

A. SECOND DEGREE MURDER

The essential elements of second degree murder, each of which the government must prove beyond a reasonable doubt, are:

1. That the defendant caused the death of the decedent;
2. That at the time the defendant did so, s/he had the specific intent to kill or seriously injure the decedent, or acted in conscious disregard of an extreme risk of death or serious bodily injury to the decedent;
3. That there were no mitigating circumstances; and
4. That the defendant did not act in self-defense.

Specific intent to kill means purpose or conscious intention to cause death.

Inference on Use of a Weapon

You have heard evidence about the defendant's use of a weapon. If you decide that the defendant did use a weapon, you may consider the nature of the weapon, the way the defendant used it, and other circumstances surrounding its use. If use of the weapon under all the circumstances would naturally and probably have resulted in death, you may conclude that the defendant had the specific intent to kill. Or, you may conclude that s/he had the specific intent to inflict injury or acted in conscious disregard of an extreme risk of serious bodily injury. But you are not required to reach any of these conclusions. Consider all the evidence in deciding whether the defendant had the state of mind required to establish guilt.

Mitigating Circumstances

Mitigating circumstances exist where a person acts in the heat of passion caused by adequate provocation. Heat of passion includes rage, resentment, anger, terror, and fear. A person acts upon adequate provocation if his/her action is provoked by conduct that would cause an ordinary, reasonable person in the heat of the moment to lose his/her self-control and act on impulse and without reflection. An act of violence or an immediate threat of violence may be adequate provocation, but a slight provocation, entirely out of proportion to the retaliation, is not adequate provocation. Mere words, no matter how offensive, are not adequate provocation.

Mitigating circumstances also exist where a person honestly but unreasonably believes that s/he is acting in self-defense. This may occur when s/he honestly but unreasonably believes that s/he is in danger of serious bodily injury or when s/he honestly but unreasonably believes that the force s/he uses is necessary to defend him/herself.

The government must prove beyond a reasonable doubt that there were no mitigating circumstances.

B. VOLUNTARY MANSLAUGHTER (IMPERFECT SELF-DEFENSE, HEAT OF PASSION CAUSED BY ADEQUATE PROVOCATION)

Voluntary manslaughter is a killing that would otherwise be second-degree murder except that mitigating circumstances are present. Mitigating circumstances do not result in a verdict of not guilty, but reduce the level of guilt from murder to manslaughter. Thus, to prove voluntary manslaughter, the government must prove that the defendant caused the death of the decedent and that s/he had the specific intent to kill or seriously injure the decedent or acted in conscious disregard of an extreme risk of death or serious bodily injury. Mitigating circumstances are not a defense to manslaughter.

Order of Considering Charges

You should consider first whether the defendant is guilty of second degree murder. If you find the defendant guilty, do not go on to consider manslaughter. If you find the defendant not guilty, go on to consider manslaughter.

Appendix E

Debunking Jury Instructions (Procedure adapted from Otto et al., 2007)

HOMICIDE – SECOND DEGREE MURDER AND VOLUNTARY MANSLAUGHTER (SELF-DEFENSE AND HEAT OF PASSION CAUSED BY ADEQUATE PROVOCATION)

The defendant is charged second degree murder. I am going to instruct you on this charge and also on the lesser included offense of manslaughter. After I give you the elements of these crimes, I will tell you in what order you should consider them.

A. SECOND DEGREE MURDER

The essential elements of second degree murder, each of which the government must prove beyond a reasonable doubt, are:

1. That the defendant caused the death of the decedent;
2. That at the time the defendant did so, s/he had the specific intent to kill or seriously injure the decedent, or acted in conscious disregard of an extreme risk of death or serious bodily injury to the decedent;
3. That there were no mitigating circumstances; and
4. That the defendant did not act in self-defense.

Specific intent to kill means purpose or conscious intention to cause death.

Debunking Statement: Many people think that a defendant had to intend to kill or seriously harm the decedent, but that is not true. The defendant may have ignored the fact that the his/her actions were risky enough to possibly cause death or serious bodily injury.

Inference on Use of a Weapon

You have heard evidence about the defendant's use of a weapon. If you decide that the defendant did use a weapon, you may consider the nature of the weapon, the way the defendant used it, and other circumstances surrounding its use. If use of the weapon under all the circumstances would naturally and probably have resulted in death, you may conclude that the defendant had the specific intent to kill. Or, you may conclude that s/he had the specific intent to inflict injury or acted in conscious disregard of an extreme risk of serious bodily injury. But you are not required to reach any of these conclusions. Consider all the evidence in deciding whether the defendant had the state of mind required to establish guilt.

Debunking Statement: When considering the nature of the weapon, most people think in terms of conventional weapons (i.e. guns and knives). However, a weapon can be anything used in a manner that is generally believed to, or can be used in a manner, to cause death or serious injury. Most people believe that if a weapon is used then you must conclude that the defendant had specific intent to kill, but even if you believe the defendant used a weapon, you are not required to make any conclusion as to the defendant's intent to kill.

Mitigating Circumstances

Mitigating circumstances exist where a person acts in the heat of passion caused by adequate provocation. Heat of passion includes rage, resentment, anger, terror, and fear. A person acts upon adequate provocation if his/her action is provoked by conduct that would cause an ordinary, reasonable person in the heat of the moment to lose his/her self-control and act on impulse and without reflection. An act of violence or an immediate threat of violence may be adequate provocation, but a slight provocation, entirely out of proportion to the retaliation, is not adequate provocation. Mere words, no matter how offensive, are not adequate provocation.

Mitigating circumstances also exist where a person honestly but unreasonably believes that s/he is acting in self-defense. This may occur when s/he honestly but unreasonably believes that s/he is in danger of serious bodily injury or when s/he honestly but unreasonably believes that the force s/he uses is necessary to defend him/herself.

The government must prove beyond a reasonable doubt that there were no mitigating circumstances.

Debunking Statement: Most people think that being provoked includes being subjected to racial slurs, being called names, or to persistent use of derogatory terms, but in fact that is not considered adequate provocation according to the law. Provocation is an act of physical violence toward the defendant. Or provocation may be considered as a threat of immediate violence, in which case at the particular point in time of the actual killing, the defendant felt threatened with bodily harm.

B. VOLUNTARY MANSLAUGHTER (IMPERFECT SELF-DEFENSE, HEAT OF PASSION CAUSED BY ADEQUATE PROVOCATION)

Voluntary manslaughter is a killing that would otherwise be second-degree murder except that mitigating circumstances are present. Mitigating circumstances do not result in a verdict of not guilty, but reduce the level of guilt from murder to manslaughter. Thus, to prove voluntary manslaughter, the government must prove that the defendant caused the death of the decedent and that s/he had the specific intent to kill or seriously injure the decedent or acted in conscious disregard of an extreme risk of death or serious bodily injury. Mitigating circumstances are not a defense to manslaughter.

Debunking Statement: Most people believe that manslaughter means the defendant did not have specific intention to kill or seriously injure, but that is not the case. Just because the defendant acted in the heat of passion caused by provocation does not mean that he/she is not guilty. This means that he/she is not guilty of second-degree murder, but is guilty of the lesser charge—voluntary manslaughter.

Order of Considering Charges

You should consider first whether the defendant is guilty of second degree murder. If you find the defendant guilty, do not go on to consider manslaughter. If you find the defendant not guilty, go on to consider manslaughter.

Appendix F

JUROR NUMBER:

Verdict Form

Verdict Selection

Please select your verdict for Casey Shaw by placing a check mark on the corresponding line.

- Guilty of Second-Degree Murder
- Guilt of Voluntary Manslaughter
- Not guilty of either count of either indictment

Level of Certainty

Please rate how certain you are of your previous verdict selection (1 most uncertain, 9 very certain) by circling a number below.

- | | | | | | | | | |
|--------------------------|---|---|---|---|---|---|---|-----------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Not at
all
certain | | | | | | | | As
certain
as you
can be |

Appendix G

Comprehension Measure

Multiple Choice Questions – *1 point is awarded to every correct answer*

1. What is the burden of proof that the government must provide for second degree murder?
 - a. Preponderance of evidence
 - b. Beyond reasonable doubt
 - c. Clear and convincing certainty
 - d. That there was a reasonable possibility
2. In order for second-degree murder to apply, the defendant must have:
 - a. Caused significant injury to the decedent
 - b. Caused the death of the decedent
 - c. Made a threat that resulted in the decedents severe injury or death
3. *Complete the sentence:* At the time the defendant did so, s/he had the specific _____ to kill or _____ the decedent, or acted in conscious _____ of an extreme risk of death or serious bodily injury to the decedent.
4. *Complete the sentence:* To consider a charge of second degree murder there may be no _____ circumstances; and the defendant may not have acted in _____.
5. Specific intent to kill means:
 - a. Purposeful, or conscious decision to
 - b. Premeditated, or pre-planned
 - c. Specific thought to cause harm
6. If the use of the weapon under all circumstances would naturally and probably have resulted in death, you should conclude:

- a. That the defendant had the specific intent to inflict injury
 - b. That the defendant acted in conscious disregard of an extreme risk to serious bodily injury.
 - c. You are not required to reach any of these conclusions based on the use of a weapon
7. *Complete the sentence:* Mitigating circumstances exist where a person acts in the _____ caused by _____ provocation.
8. Heat of passion includes:
- a. Rage and anger
 - b. Resentment
 - c. Terror and fear
 - d. All of the above
9. Adequate Provocation may include (*circle all that apply*)
- a. Act of violence
 - b. Racial slurs
 - c. Verbal threat
 - d. Persistent name-calling, degradation
 - e. Immediate threat
10. A mitigating circumstance may also exist where a person _____ but _____ believes that s/he is acting in self-defense.
- a. Knowingly, but fearfully
 - b. Honestly, but unreasonably
 - c. Dishonestly, but reasonably

11. What is the burden of proof that no mitigating circumstances exist, that the government must provide?
- Preponderance of evidence
 - Beyond reasonable doubt
 - Clear and convincing certainty
 - That there was a reasonable possibility
12. Voluntary manslaughter is a killing that would otherwise be second-degree murder except that _____
- The defendant acted in self-defense
 - The defendant was negligent in care
 - Mitigating circumstances were present
13. Mitigating circumstances result in:
- A not guilty verdict
 - A guilty verdict
 - A reduction in level of guilt from manslaughter to murder
 - An increase in level of guilt from murder to manslaughter
 - An increase in level of guilt from manslaughter to murder
 - A reduction in level of guilt from murder to manslaughter
14. Self-defense is a complete defense to :
- Murder
 - Manslaughter
 - Both
 - Neither

15. You should consider first whether the defendant is guilty of _____, but if you find the defendant not guilty, go on to consider _____.

- a. Second degree murder, Manslaughter
- b. Manslaughter, second degree murder
- c. Manslaughter, self-defense

Appendix I**Questionnaire & Reasoning Protocol****Multiple Choice Protocol** – *1 point is awarded to every correct answer*

16. What is the burden of proof that the government must provide for second degree murder?

1 point

- a. Preponderance of evidence
- b. Beyond reasonable doubt**
- c. Clear and convincing certainty
- d. That there was a reasonable possibility

17. In order for second-degree murder to apply, the defendant must have: *1 point*

- a. Caused significant injury to the decedent
- b. Caused the death of the decedent**
- c. Made a threat that resulted in the decedents severe injury or death

18. *Complete the sentence:* At the time the defendant did so, s/he had the specific intent to kill or seriously injure/harm the decedent, or acted in conscious disregard of an extreme risk of death or serious bodily injury to the decedent. *2 points*

19. *Complete the sentence:* To consider a charge of second degree murder there may be no mitigating/outstanding circumstances; and the defendant may not have acted in self-defense. *2 points*

20. Specific intent to kill means: *1 point*

- a. Purposeful, or conscious decision to**
- b. Premeditated, or pre-planned
- c. Specific thought to cause harm

21. If the use of the weapon under all circumstances would naturally and probably have resulted in death, you should conclude: *1 point*
- a. That the defendant had the specific intent to inflict injury
 - b. That the defendant acted in conscious disregard of an extreme risk to serious bodily injury.
 - c. **You are not required to reach any of these conclusions based on the use of a weapon**
22. *Complete the sentence:* Mitigating circumstances exist where a person acts in the heat of passion caused by adequate provocation. *2 points*
23. Heat of passion includes: *1 point*
- a. Rage and anger
 - b. Resentment
 - c. Terror and fear
 - d. **All of the above**
24. Adequate Provocation may include (*circle all that apply*) *2points*
- a. **Act of violence**
 - b. Racial slurs
 - c. Verbal threat
 - d. Persistent name-calling, degradation
 - e. **Immediate threat of violence**
25. A mitigating circumstance may also exist where a person _____ but _____ believes that s/he is acting in self-defense. *1 point*
- a. Knowingly, but fearfully

b. Honestly, but unreasonably

c. Dishonestly, but reasonably

26. What is the burden of proof that no mitigating circumstances exist, that the government must provide? *1 point*

a. Preponderance of evidence

b. Beyond reasonable doubt

c. Clear and convincing certainty

d. That there was a reasonable possibility

27. Voluntary manslaughter is a killing that would otherwise be second-degree murder except that _____ *1 point*

a. The defendant acted in self-defense

b. The defendant was negligent in care

c. Mitigating circumstances were present

28. Mitigating circumstances result in: *1 point*

a. A not guilty verdict

b. A guilty verdict

c. A reduction in level of guilt from manslaughter to murder

d. An increase in level of guilt from murder to manslaughter

e. An increase in level of guilt from manslaughter to murder

f. A reduction in level of guilt from murder to manslaughter

29. Self-defense is a complete defense to : *Do Not Score*

a. Murder

b. Manslaughter

c. Both

d. Neither

30. You should consider first whether the defendant is guilty of _____, but if you find the defendant not guilty, go on to consider _____. *1 point*

a. Second degree murder, Manslaughter

b. Manslaughter, second degree murder

c. Manslaughter, self-defense

Verdict Reasoning Protocol

*Thank You again for participating in this study. As the last step, please take a moment and answer and complete **one** of the following responses **based on your previous verdict** selection.*

1. The defendant Casey Shaw is guilty of second degree murder because: *1-6 points awarded based on amount of detail (#of elements identified). 6 points = correctly identified all elements.*

Casey Shaw is beyond a reasonable doubt guilty of second degree murder because she had the intent to kill/cause serious injury to Megan Neil with her car. (2 points)

There was no adequate provocation because name calling/slurs are not equivalent to legal provocation. There was no heat of passion because no immediate threat of violence, nor an act of violence towards the defendant (no mitigating circumstances is 1 point, but 2 points if the circumstances are correctly identified as heat of passion caused by provocation). (1-3points)

Casey Shaw did not act in self-defense based on reasonable fear of bodily harm. (1 point)

2. The defendant Casey Shaw is guilty of voluntary manslaughter because: *0 points*

3. The defendant Casey Shaw is guilty of neither second-degree murder, nor voluntary manslaughter because: *0 points*