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PERCEPTIONS OF CRIMINAL RESPONSIBILITY THROUGH THE LENS OF RACE

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Historically, Black defendants have faced more severe sentences compared to White defendants. Research investigating this phenomenon in the paradigm of the insanity defense, found that Black defendants were acquitted as “not guilty by reason of insanity” (NGRI) significantly more often than White defendants (Poulson, 1990). In the current study, we investigate the influence of race of defendant and race of victim on judgments of NGRI in a 3 (race of victim: Black v. White v. Hispanic) x 3 (race of defendant: Black v. White v. Hispanic) between-subjects design. Our results indicated that a Hispanic defendant was acquitted NGRI more frequently and perceived as least dangerous compared to Black and White defendants. Assessments of future dangerousness were greatest when the defendant was Black and the victim was White. This finding provides supporting evidence of a cross-race effect within the context of criminal responsibility (Baldus et al., 1998). In addition, our findings offer an alternative to Poulson (1990), expanding this research to include Hispanic minorities as essential in this paradigm, and contribute to the research on the cross-race victim effect with juror decision making.

Keywords: insanity defense, race, criminal responsibility, juror perceptions

JUROR PERCEPTIONS OF CRIMINAL RESPONSIBILITY THROUGH THE LENS OF RACE

One of the pillars of the American justice system is the ideal that justice is blind, and all people are treated equally under the law. Research has demonstrated however, that across a broad spectrum, minority groups have been treated more harshly by the criminal justice system compared to non-minority defendants (Harris et al., 2010; Maurer & King, 2007; Roberts, 2004). This racial and ethnic disparity exists in multiple levels of the United States justice system, including arrests, investigation, and sentencing (Baumgartner, et al., 2017; Higginbotham, 2002; Pettit & Western, 2004). As observed in The Sentencing Project’s (2013) report: “racial minorities are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are

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more likely to face stiff sentences” (p. 1). This incongruence is as distressing as it is controversial and, as a result, has been a frequent topic of social science research. An overview of the racial disparity within the American justice system is beyond the scope of this paper, however a classic example of this can be seen in sentencing of people of color, with defendants belonging to racial and ethnic minorities more likely to face harsh sentences (The Sentencing Project, 2018a).

Racial Disparity in the Criminal Justice System

Data indicate that minority groups have significantly higher rates of incarceration and longer sentences compared to non-minorities (Mauer, 2011; The Sentencing Project, 2013; United States Bureau of Justice Statistics, 2012). Spohn’s (2000) review of 30 years of American sentencing finds that minority defendants are sentenced to longer prison terms. This effect is particularly salient if the defendant is also part of a lower socioeconomic group, summarized succinctly as “The U.S. operates two distinct justice systems: one for wealthy people and another for poor people and people of color” (The Sentencing Project, 2018b, p. 19). Minorities, particularly Black Americans, constitute a disproportionate percentage of the prison population (Coker, 2003). Specifically, Black Americans represent up to 35% of incarcerated persons (Carson & Anderson, 2016). In addition, Black men are six times more likely to be incarcerated than White men in America. The incarceration rate is 2.3 times higher for Hispanic men compared to White men (The Sentencing Project, 2017). Most striking is the existence of this racial disparity in capital sentencing decisions.

Since the death penalty was reinstated in 1976 (*Gregg v. Georgia*), there has been a consistent trend of racial discrimination in capital sentencing (Baldus et al., 1998). Minority defendants constitute a disproportionate percentage of death row inmates and executions (Bowers & Pierce, 1980; Death Penalty Information Center, 2020). Numerous studies have found that Black defendants are more likely to be sentenced to death compared to White defendants (Baldus, et al., 1998; Dieter, 1998; Government Accountability Office, 1990; Snell, 2019). A frequent argument offered as support for a verdict of death is the concept of ‘future dangerousness’, a belief that the defendant will continue to be a threat to society and cannot be rehabilitated. Juries often consider future dangerousness to be the most aggravating factor in rendering a death sentence (Edmonson, 2016). The idea of a ‘violence-prone minority’ is offered as justification for the disproportionate manner in which the death penalty has historically been applied (Dunn et al., 2006; Pokorak, 1998)

Victim race also appears to have a significant influence on death penalty sentencing. When murder victims are White, the defendant is more likely to be sentenced to death compared to when the victim is Black (Baldus, et al., 1998; Government Accountability Office, 1990; Keli & Vito, 1995, 1998). Additionally, data indicate prosecutors are more likely to seek the death penalty for those who murder White victims compared to Black victims. In this vein, research also finds jurors are more likely to impose death sentences on those who murder White victims compared to Black victims. This is particularly true when the defendant is Black (Amnesty International, 2003; Baldus, et al., 1998; Death Penalty Information Center, 2020; Government Accountability Office, 1990). Importantly,

empirical research has provided consistent support for this cross-race effect on sentencing (Baldus & Woodworth, 2004; Baldus et al., 1998; Baldus et al., 1990).

A frequent explanation for racial disparities in the criminal justice system is that individuals often hold implicit, internalized racist attitudes about people of color as opposed to overt and explicit prejudice (Buckler et al., 2009; Sears & Henry, 2003; Sears, 1988; Tarman & Sears, 2005). As previously discussed, research has demonstrated that this implicit racism includes beliefs that Black people are more violent and dangerous than White people (Dunn et al., 2006; Pokorak, 1998), and that Black-Americans do not hold the same “American values” as White-Americans (Sears, 1988). These beliefs cast non-Whites as an adversarial “other,” solidifying the in-group bias of Whites (Tajfel & Turner, 1986), magnifying racial stereotypes. These stereotypes subtly influence decision-making across the gatekeepers of the justice system: police, prosecutors, and jurors (Barkan & Cohn, 2005; Baumgartner, et al., 2017; Pearson et al., 2007; Lynch & Haney, 2000; Pokorak, 1998).

Racial Disparity in Assessing Criminal Responsibility

Legal questions with respect to criminal responsibility are also affected by racial disparity within the criminal justice system (Melton et al., 2017). This disparity can be found through the assessment of criminal responsibility, most notably in cases involving the use of the insanity defense. Currently, a majority of states have some form of insanity defense, usually encompassing a variation of ‘not guilty by reason of insanity’ (NGRI) verdict or the more punitive alternative of ‘guilty but mentally ill’ (GBMI) (Callahan et al., 1992; Robinson & Williams, 2018). Although the use of the insanity defense is rare, it is an important legal protection for the truly mentally ill.

Racial minorities, particularly Black-Americans, constitute a disproportionate number of individuals successfully utilizing the insanity defense (Linhorst et al., 1998; Perry et al., 2013; Zonana et al., 1990). This is an interesting yet contradictory trend, as it would appear that minority defendants are treated *less* punitively in these cases compared to non-minority defendants. Few studies have explored this discrepancy. A possible explanation can be found in research demonstrating that Black patients are up to four times more likely to receive a serious psychiatric diagnosis compared to White patients (Blow et al., 2004). This may be accounted for by the greater percentage of Black Americans with lower social economic status, thus increasing stress and vulnerability to mental illness (Dohrenwend, 1967; Mills, 2015). This increased risk can be viewed as a function of systemic racism and after-effects of neighborhood segregation (Bresnahan et al., 2007; Williams & Jackson, 2005; Williams, 1999). There may also be a bias with mental health providers more likely to diagnosis Black patients with a serious mental health disorder (van Ryn, 2002). An increased likelihood of having a serious psychiatric diagnosis would increase the success of an insanity defense, and perhaps this could explain the discrepancy. That said, the effect of race on juror perceptions of criminal responsibility is not well understood and has been minimally explored (Perry et al., 2013).

The few studies focusing on juror-perceptions of criminal responsibility and race observe the notion that participant-jurors are more likely to find Black defendants NGRI

compared to White defendants. Research conducted by Poulson (1990) demonstrated that participant-jurors were more likely to render a verdict of NGRI to a Black defendants compared to White defendants. This effect was consistent regardless of the race of the victim. In addition, this research demonstrated that, when presented with the option of GBMI, participants were more likely to choose this option and to apply it almost equally to Black and White defendants. Poulson recommended this effect be explored further.

Since Poulson's (1990) investigation, very few studies have explored the interaction of victim and defendant race in the context of NGRI verdicts. Dunn and colleagues (2006) explored race (Black v. White), gender of the perpetrator, and method of murder on juror decision making. The researchers found that although Black defendants were sentenced more harshly, in the context of NGRI verdict, race and gender of perpetrator did not interact. Beyond Dunn, et al. (2006), little research has been conducted examining participant-juror perceptions of NGRI verdicts. To our knowledge, research has yet to explore how other ethnic minority groups may be affected by racial disparity in perceptions of criminal responsibility.

The Current Study

The purpose of the current study is to reexamine the interaction between race of defendant and race of victim on NGRI verdict. Changes in technology and the growth of social media since Poulson (1990) have greatly increased the spread of information and ideas. This has led to the legitimacy of "hashtag activism", most famously seen in the Black Lives Matter (BLM) movement (Cumberbatch & Trujillo-Pagan, 2016). BLM has served as a catalyst for renewed and widespread public debate about racial disparity in the criminal justice system (Rickford, 2016). The long-term effects of this dialogue are not currently known; however, they could have a profound impact on public perceptions of racial inequality. Therefore, contemporary participants may be more aware of racial disparity in the criminal justice system compared to Poulson's (1990) participants. Additionally, recent U.S. Census data suggests that Hispanic and Latinx groups are the largest and fastest growing minority groups in America (U.S. Census Bureau, 2015). With this in mind, research addressing criminal responsibility should include these minority groups. Thus, the current study seeks to respond to the social changes that have occurred since Poulson's research, and include other minority groups in our analysis.

The current study focuses on participant-juror perceptions of NRGI as a function of race of defendant and race of victim. The purpose of this study is to expand Poulson's (1990) findings to include an Hispanic victim and defendant. In a 3 (Race of defendant: White v. Black v. Hispanic) x 3 (Race of victim: White v. Black v. Hispanic) between-subjects factorial design we investigate whether and to what extent perceptions of NGRI apply to an Hispanic defendant and victim. In addition, we test whether a significant association exists among our research factors. Our decision to test our hypotheses as exploratory is supported by the significant increase in public dialogue about race and prejudice since Poulson's study. This dialogue can be observed particularly with the advent of social media and the growth of the Black Lives Matter movement. In addition to investigating this

important set of factors, we will also observe whether perceptions of other aspects of the case (i.e., future dangerousness) vary with our independent variables.

We propose several hypotheses in this study.

H₁: We predict a main effect of race on verdicts of NGRI such that participant-jurors will be significantly more likely to find a Black defendant NGRI compared to a White defendant. Additionally, with the inclusion of an Hispanic defendant, we believed participant-jurors will also be more likely to find the Hispanic defendant as NGRI compared to the White defendant

H₂: We predict a main effect of race (for both the defendant and victim) on perceptions of dangerousness. We believe that non-White defendants will be perceived as more dangerous compared to the White defendant. Additionally, defendants who harm White victims will be perceived as more dangerous than defendants who harm non-White victims.

H₃: Based on research demonstrating a cross-race effect on perceptions of dangerousness, we expect to observe an effect of victim race such that participant-jurors will perceive the defendant as most dangerous when the victim is White, and the defendant is non-White.

METHOD

Participants

Participants were 206 individuals (93 males, 113 females) over the age of 18, recruited via Amazon Mechanical Turk (*MTurk*). Among those recruited, 72% were between the ages of 19-45, 78% identified as White, and 16% had previously served on a jury. After screening, our sample consisted of 188 individuals who met the qualification to participate on a U.S. jury. Eligible participants received a .50 compensation for participating in this study.

Measures and Procedures

After obtaining consent, participants were given a set of materials that included the following information: *introduction*, *facts of the case*, and *lawyer arguments*. The introduction explained the charge of criminal assault and raised the question of criminal responsibility. Participant-jurors were instructed to read attorney arguments and judge's instructions explaining the legal criteria of NGRI. Participant-jurors then read a 300-word summary of facts involving charges of felony assault and battery. In all scenarios, a storeowner (victim) observed ambiguous behavior on the part of the defendant outside of his store. The defendant was observed looking into windows of parked cars. In all scenarios, the storeowner confronted the defendant, which lead to a physical attack on the victim. The victim suffered injuries and the defendant fled the scene. Police officers pursued the suspect and arrested him. The scenario, including the facts of the case and actions of the defendant during the arrest, was designed to be ambiguous as to whether the defendant was suffering from mental illness. Race of victim and race of defendant were manipulated, describing

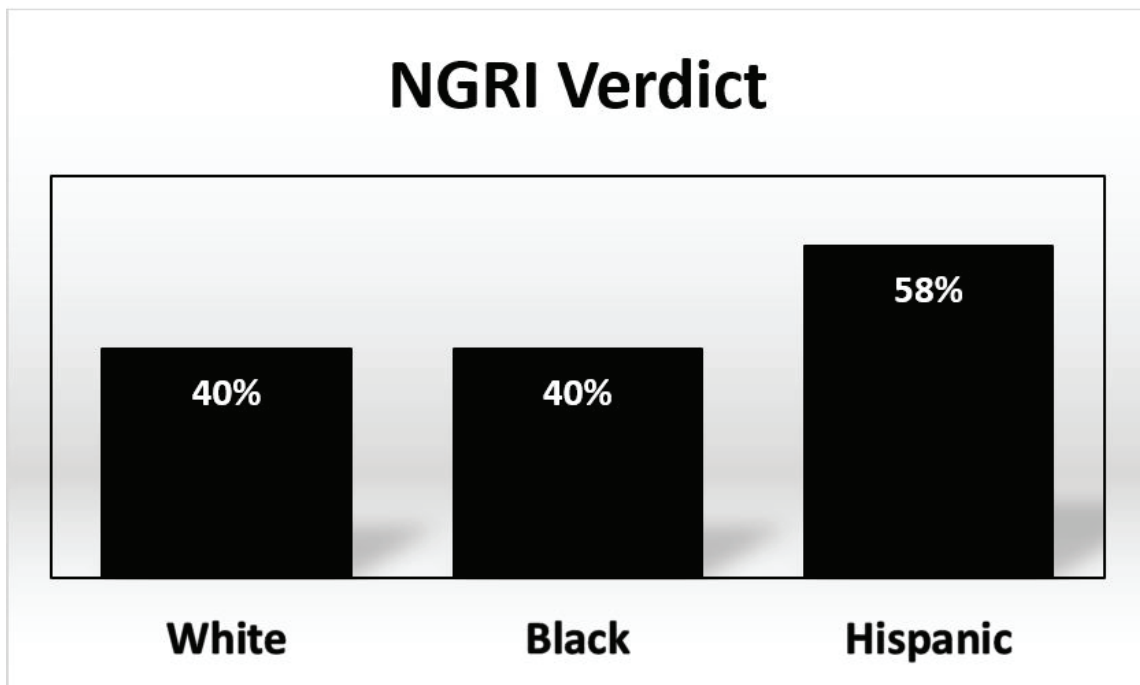
each as either White, Hispanic, or Black. This created a total of nine different scenarios, of which the participants were exposed to one.

All participants then read closing arguments focusing on criminal responsibility. The defense argued that the defendant had a history of schizophrenia, which led to the commission of the crime. Specifically, the defense argued that the defendant suffered from psychosis and did not have access to psychotropic medication. This created a situation in which the defendant became paranoid and irrational, with the defense suggesting the defendant was not criminally responsible for the assault. The prosecution stated that the defendant engaged in behavior suggesting he understood what he was doing. The prosecutor indicated that the defendant had a history of criminal activity, had recently displayed a reduction in serious mental health symptoms, and had made statements of his desire to 'break into cars'. Participant-jurors were then asked to render a verdict of NGRI or guilty. They then responded to a series of items related to the case, including an assessment of future dangerousness.

RESULTS

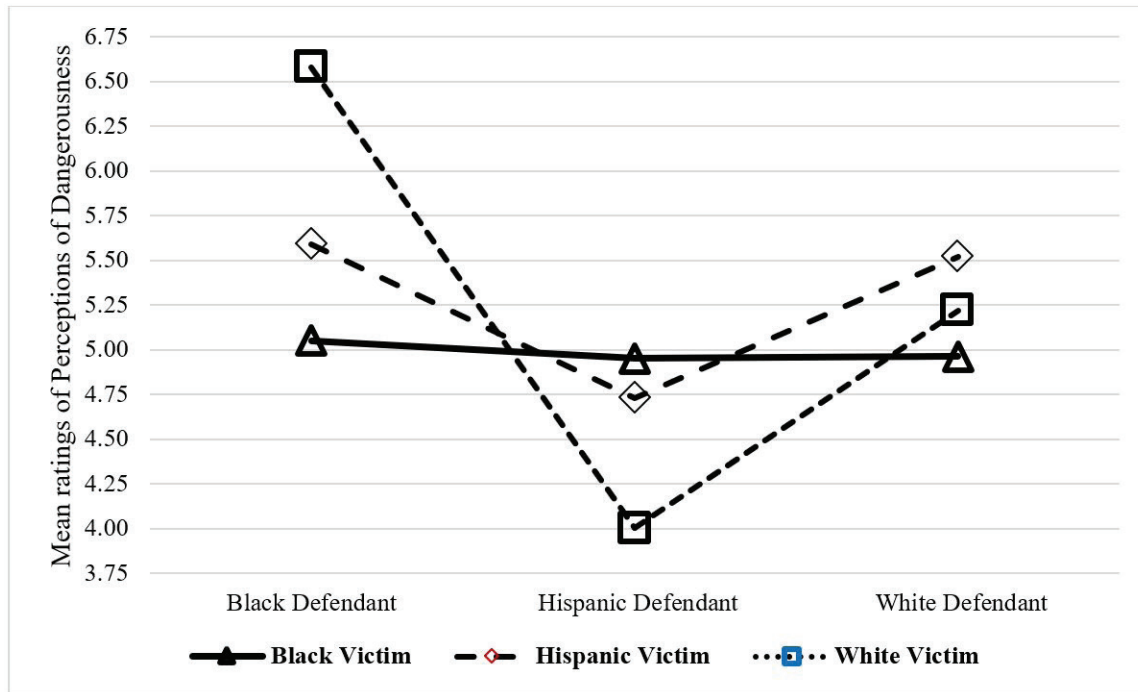
A hierarchical loglinear analysis with backward elimination was conducted to test the associations among our categorical factors including defendant and victim race and verdict. A significant defendant race * verdict association was found: $\chi^2(2) = 5.15, p = .047$. Crosstabulation post hoc analysis revealed the percentage of NGRI verdicts for Hispanic defendant differed significantly from White and Black (58% v. 40% and 40%, *adjusted residual* = 2.3). The same pattern emerged for guilt: (Hispanic - 42% v. 60% and 59%, *adjusted residual* = -2.3), $p = .021$. See Figure 1 for a display of this finding.

Figure 1. *Percentage of NGRI Verdict Based on Ethnicity*



A 3 x 3 ANOVA was conducted on perceptions of dangerousness. A defendant race * victim race interaction was observed: $F(4, 179) = 2.988, p = .02$. The defendant was perceived as most dangerous when the victim was White and the defendant was Black. See Figure 2 for a report of these findings.

Figure 2. *Cross-Race Effect on Perceptions of Dangerousness*



In addition, main effects were observed on each independent variable. With respect to race of victim, participants perceived the defendant to be more dangerous when the victim was White compared to Black or Hispanic: $F(2, 179) = 5.087, p = .007$. Scheffé's test of multiple comparisons revealed the following: $M = 5.56_{\text{White}}$ v. 4.98_{Black} and 4.89_{Hispanic} . With respect to race of defendant, the Hispanic defendant was perceived to be least dangerous compared to Black or White: $F(2, 179) = 12.272, p < .001$. Scheffé's test of multiple comparisons revealed the following: $M = 4.55_{\text{Hispanic}}$ v. 5.73_{Black} and 5.22_{White} .

Additional Analyses

An independent samples *t*-test was conducted to explore whether perceptions of dangerousness differed as a function of verdict preference. Results indicated that guilty verdicts were associated with a greater likelihood of dangerousness compared to NGRI: $t(186) = -3.84, p < .001$ ($M = 5.50$ v. 4.72). Participants connected to the mental health field were less likely to perceive the defendant as dangerous compared to those not exposed: $t(186) = 1.97, p = .051$ ($M = 4.73$ v. 5.25 , a marginally significant effect). In order to isolate defendant and victim race, separate One-way ANOVAs were conducted on our dependent measures. When the defendant was Hispanic, participants were significantly more likely to perceive his actions as a result of a mental illness compared to when the defendant was

Black ($M = 4.36$ v. 3.32). No differences were observed when the defendant was White. No additional effects were observed when isolating race of defendant.

DISCUSSION

Our findings point to significant effects of race of defendant and race of victim on our dependent measures. Our first hypothesis was partially confirmed. Contrary to Poulson, we found that Black defendants and White defendants were given NGRI or guilty verdicts at almost the same percentage. Therefore, we found no support for the finding that Black defendants are viewed as less mentally stable than White defendants.

Research in aversive racism (Gaertner & Dovidio, 2005) suggests that even when individuals hold implicit, subtle prejudices against minority groups, they are less likely to indulge in such prejudice when presented with scenarios in which such bias would be obvious (Bucolo & Cohn, 2010; Cohn et al., 2009; Gaertner & Dovidio, 2005, 1986; Sommers & Norton, 2006; Sommers & Ellsworth, 2001). Poulson (1990) offered this as an explanation for his findings of higher NGRI, suggesting that participants viewed Black defendants as less mentally stable and “accorded [them] the benefit of doubt” (p. 1609) by giving Black defendants a verdict of NGRI. A similar effect may have occurred with our study. In our vignettes, while no mention of race was made by either attorney, race of the victim and defendant was mentioned in the introduction materials. It is possible that participants focused on this element and were cautious about viewing Black defendants any differently than White defendants. Perhaps because of the recent increase in social dialogue on race and police interactions, our participants were much more mindful of “appearing racist”. In the early 1990s, the desire to avoid this appearance may have led participants to overcompensate in their attitudes in order to “help” Black defendants (Poulson, 1990). Thirty years later we may be viewing an attempt to consider fairness in a more unbiased manner.

In the current study, Hispanic defendants were more likely than White or Black defendants to be found NGRI, and thus less criminally responsible. This would suggest that our participants viewed the Hispanic defendant as more in need of treatment as opposed to punishment, or that the Hispanic defendant was less mentally stable, or some combination of the two. Our additional assessments demonstrated that participants were more likely to rate the Hispanic defendant’s actions as being caused by mental illness. This finding is consistent with Poulson’s (1990) findings with Black defendants, and confirmed our predictions. The explanation of adverse racism is troublesome in this case; perhaps the effect is not as robust with other minority groups as it is for Black persons. Certainly, the recent attention to social issues stemming from the BLM movement has also included discussion about how the criminal justice system disproportionately affects all people of color, but an argument can be made that more attention has been paid in the media to the experiences of Black-Americans than Hispanic or Latinx Americans. This may account for our participants not experiencing the adverse racism effect discussed above. Alternately, participants may have experienced the original effect of Poulson’s (1990) participants: wanting to “help” the Hispanic defendant, as opposed to wanting “to treat everyone equally”. If there

is some aversive racism effect, future research will need to explore how this aversive racism is applied to different ethnic groups.

Our second hypothesis was partially confirmed as well. Participant-jurors rated the Black defendant as more dangerous than the White or Hispanic defendants. This supports Dunn and colleagues (2006) summary that Black perpetrators are perceived as more dangerous than White perpetrators. Additionally, defendants who attacked a White victim were rated as more dangerous than defendants who attacked non-White victims. Interestingly, participant-jurors rated all defendants almost equally dangerous when the victim was Black. This offers an explanation for Baldus et al.'s (1998) finding that defendants who murdered Black victims were less likely to be sentenced to death. Our findings support the suggestion that defendants who harm Black victims are viewed as less dangerous than those who harm White victims. Contrary to our expected findings, participant-jurors also rated Hispanic defendants as the least dangerous compared to the Black or White defendant. A possible explanation for this finding can be found in our participants' assessment of mental illness. Namely, they were more likely to perceive the Hispanic defendant's actions as caused by mental illness. The effect of perceptions of dangerousness is also important, as higher ratings of dangerousness were more closely related to guilty verdicts than NGRI verdicts.

Our final hypothesis addressing the cross-race effect was confirmed. Participant-jurors presented the highest ratings of dangerousness when the defendant was Black and the victim was White. These results support previous research indicating that individuals view Black defendants as more dangerous compared to White defendants, particularly when the victim is White (Dunn et al., 2006; Pokorak, 1998). This finding supports a cross-race effect for dangerousness with criminal responsibility, extending Baldus (et al., 1998) research to this area of the criminal justice system. A cross-race effect was also observed with Hispanic defendants, however, not in the direction predicted. The lowest ratings of dangerousness were observed when the defendant was Hispanic and the victim was White. It is possible that the assessment of mental illness described with the second hypothesis resulted in this effect. Of the additional factors influencing participant decisions, participants connected to the mental health field perceived the defendant as less dangerous compared to participants that did not state a connection to the mental health field. Other participant characteristics and demographics did not reveal significant findings.

Limitations

Although we are confident in our ability to attain a high degree of both internal and external validity, we point out some limitations. First, we are aware of the limitation associated with participant-juror research, particularly in survey-based research. Vignettes and/or video-based trial materials are limited in the extent to which they can capture details of a real-life trial, particularly when examining criminal responsibility. Second, although efforts were made to screen participants for appropriate inclusion into our study, there is no means to secure complete confidence in our screening process. This concern can be raised with all studies that utilize online data collection. As our data come from a convenience sample, there are limitations with respect to its generalizability. This is especially true

considering that the majority of our participants identified as White, rendering us unable to assess the effect of participant ethnicity on our dependent measures.

Future Research and Conclusions

This study examines participant-juror perceptions of criminal responsibility, exploring the possibility of a cross-race effect. Future research should continue this examination and address these limitations. Unlike Poulson's (1990), which utilized audio records of a real murder trial with a slide show of manipulated photographs, our participants read brief vignettes. Poulson (1990) also was investigating how an additional option of Guilty but Mentally Ill (GBMI) (a relatively new judicial option at the time) influenced juror perceptions. We specifically did not explore this variable in our study because Poulson (1990) found no racial effect. Considering that our findings suggest that perceptions of dangerousness were related to guilty verdicts and not NGRI verdicts, including GBMI as an option may offer a more punitive alternative for participant-jurors. Future research should utilize mock-trial simulations and introduce GBMI verdict options to assess contemporary changes since Poulson's (1990) work. Future research should continue to introduce other racial and ethnic minority groups as well.

Our findings include Hispanic defendants as a representative group when considering NGRI in this type of paradigm. To our knowledge, much of the research examining NGRI with respect to Hispanic defendants is archival, pointing to relatively few numbers of NGRI Hispanic persons within our mental health system (Rogers & Shulman, 2000). As an exploratory set of hypotheses, our findings set the stage for studies to continue to investigate these factors in various research settings. Particularly, parceling out individual difference characteristics that may mediate the relation between racial/ethnic attitudes and perceptions of NGRI. Offering an option for GBMI may also yield results similar to Poulson's (1990). With GBMI being traditionally more punitive than NGRI (Callahan et al., 1992; Slobogin, 1985), exploring how participant-jurors apply GBMI to minority groups is worth exploring. Dunn et al. (2006) included gender of the defendant as a variable in their study. Future research exploring the effect of gender of the defendant, and victim, on perceptions of criminal responsibility may also be warranted. Future researchers should continue to explore the experiences of Hispanic and Latinx people with respect to restorative and retributive justice.

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