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Effects of Inconsistency in Jailhouse Informant Testimony on Jury Decision Making

by

Jacob Reed Davis

An Honors Capstone

submitted in partial fulfillment of the requirements

for the Honors Diploma

to

The Honors College

of

The University of Alabama in Huntsville

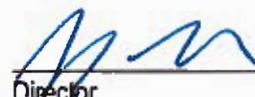
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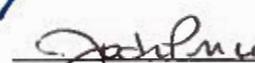
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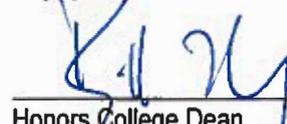
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Dedication:

I would like to dedicate my Honors Capstone Project to all the individuals who helped me along the way. I greatly appreciate the unending support my parents have given me throughout my undergraduate career and the unconditional love they have given me throughout my life. I also appreciate the much-needed distractions from my friends. I am also thankful to the many professors in the Psychology Department who have guided me through my undergraduate career, especially Dr. Jeffrey Neuschatz. Without Dr. Neuschatz's mentorship, my Honors Capstone would not be possible. I appreciate his helpful comments and guidance on my project as my Honors Capstone Director. I would also like to thank Danielle Deloach for her guidance as well, as my Honors Capstone was based on her work. I greatly appreciate all the people in my life who have encouraged and assisted me during this process.

Abstract

This study investigated inconsistencies within jailhouse informant testimony and the effects on verdict decisions. More specially two types of inconsistency were examined: Central and Peripheral. Central inconsistencies within a jailhouse informant's testimony were defined as details relevant to determine the authenticity of the jailhouse informant's testimony. Thus, inconsistent statements about the murder weapon and where the victim's body was discovered were considered central. Peripheral inconsistencies were about details considered easily confused, such as the time of day and how the secondary confession occurred. The study conformed to a 2 (Central Inconsistency: present, absent) X 2 (Peripheral Inconsistency: present, absent) between-participants design. The conditions included the presence of central inconsistencies only, peripheral inconsistencies only, both inconsistencies present, and no inconsistencies present. As expected, the results indicated that inconsistencies led to lower conviction rates, but verdicts did not vary with type of inconsistency. That is, mock jurors exposed to an inconsistent jailhouse informant were not convinced enough by the testimony to vote guilty. Although inconsistency type did not affect verdict decisions, further analysis revealed participant jurors who evaluated a jailhouse informant testimony containing central inconsistencies disbelieved the jailhouse informant more often than participant jurors exposed to other types of inconsistencies. This discrepancy between jurors' beliefs and verdict decisions has important implications for the legal system.

Effects of Inconsistency in Jailhouse Informant Testimony on Jury Decision Making

Jailhouse informants are witnesses who give testimony in court about the details of a crime; they claim to have learned these details from the defendant while they were in prison together. This type of evidence is known as secondary confession evidence (Neuschatz et al., 2008). Garrett (2011) analyzed archival data of criminal court trials that included the use of jailhouse informant witnesses in cases where the defendant was later exonerated. He found that jailhouse informants were used in 28 of 52 cases that used a cooperating witness, but this means that all of these witnesses were providing false testimony. Even though some jurors may be aware of these dangers of testimony from jailhouse informants, falsely testifying jailhouse informants have been used in 45.9% of wrongful convictions in death penalty cases since 1973 (Warden, 2004). This implies that jailhouse informants are believed by jurors, even though there is a systematic motivation to provide false testimony. The question remains why jailhouse informants are so commonly believed by jurors.

One aspect of jailhouse informants that can be studied is how the testimony affects jurors' verdict decisions. It has been shown that secondary confession evidence remains among the most persuasive forms of evidence (Neuschatz, Swanner, Meissner, & Neuschatz, 2008; Neuschatz et al., 2012; Wetmore, Neuschatz, & Gronlund, 2014; Key et al., 2018). Jailhouse informants' testimony might be so convincing to jurors because of their use of specific details about the crime (Lavis & Brewer, 2016). These details may be learned from a variety of sources, including the media, the police and prosecution, or even from information networks inside the prison (Garrett, 2011). These details provided by the jailhouse informant may contradict previous statements given, creating inconsistencies within their testimony. These inconsistencies, when

revealed to the jury, might make jurors disbelieve the other details in the jailhouse informant's testimony, therefore, decreasing the persuasiveness of the testimony evidence.

Inconsistency in Testimony and Confession Evidence

When a witness provides an inconsistent detail, the opposing attorney has the opportunity to highlight this inconsistency to the jury during cross examination. Focusing on inconsistent statements given by testifying witnesses, including jailhouse informants, is a common strategy for lawyers (Walters, 1985). When these inconsistencies are revealed to the jury, the witness loses credibility (Berman, Narby, & Cutler, 1995). Berman and colleagues (1995) examined inconsistencies between eyewitness testimony and previously made statements. This study included central and peripheral inconsistencies and defined central inconsistencies as the inconsistencies about details that were more important to the eyewitness's testimony, such as the physical description of the culprit. Peripheral inconsistencies were less relevant to the eyewitness's testimony, such as whether the culprit carried a bag or a briefcase. The researchers found that any inconsistencies led to decreased credibility of the eyewitness. Furthermore, central details led to the lowest ratings of eyewitness credibility and defendant culpability. This study shows that central inconsistencies can be more powerful in their effect on jurors' verdict decisions than peripheral inconsistencies. According to Berman and colleagues (1995), jurors are able to excuse inconsistencies about peripheral details when the eyewitness is accurate in the rest of their testimony.

Mock jurors might be able to explain away certain inconsistencies, such as attributing them to forgetfulness or nervousness (Palmer, Button, Barnett, & Brewer, 2016). Palmer et al. (2016) found that inconsistencies undermine the credibility of confession evidence. The researchers provided participants with confession evidence and information about a criminal

case. The researchers not only manipulated the confession to be consistent or inconsistent with case facts, but they also manipulated the inclusion of an ulterior motive for providing the false confession, such as confessing due to coercion or to protect another suspect. The ulterior motive provided participants with a salient explanation for why the defendant might have confessed, other than being guilty. Results indicated that inconsistent confession evidence led to more not guilty verdicts, but not when a plausible ulterior motive was given. Palmer et al. (2016) explained this finding by discussing how participants created their own ideas for why the defendant provided an inconsistent confession. These explanations were independent of the ulterior motives provided by the researcher. Participants can explain away inconsistent confession evidence as the witness being nervous or forgetful. This could mean that for inconsistencies to result in a robust effect on verdicts, the inconsistency must be difficult to explain away. When inconsistencies are perceived by the juror to be easily confused or forgotten, they can create alternate explanations for why the testimony is inconsistent.

Types of Inconsistency

Other research into inconsistent testimony has shown that certain types of inconsistencies are more powerful than others, such as if the current testimony is inconsistent with case facts or previous statements (Berman & Cutler, 1996). This study manipulated the type of inconsistencies in an eyewitness testimony. The inconsistencies included testimony details not given previously, inconsistencies between the testimony and previous statements, and inconsistencies between statements in court. The researchers found that inconsistencies in which there were discrepancies between statements resulted in fewer guilty verdicts than when new information was given during the testimony. Berman and colleagues (1996) explain that participants were able to create explanations as to why the eyewitness gave new information during the testimony. Participants

were not as easily able to explain away the inconsistent statements. This study indicates that the jurors' perception of the inconsistency can determine its effects on verdict decisions.

Inconsistency type can extend to the amount of the inconsistency within the witness's testimony. Differences in how much of the testimony is inconsistent has been shown to reduce jurors' perceptions of witness credibility and reliability (Pozzulo & Dempsey, 2009). These researchers studied the effects of partial inconsistency, which included both consistent details as well as inconsistent, as an inconsistency type within eyewitness testimony. Eyewitness who were consistent were evaluated by mock jurors to be more credible and reliable than eyewitnesses who gave partially inconsistent testimony and completely inconsistent testimony. Defendant culpability was also rated lower for eyewitnesses who were partially inconsistent, rather than completely inconsistent. According to Pozzulo and Dempsey (2009), this surprising finding indicates that when paired with consistent details, inconsistent details are amplified in terms of their effect on jurors. Jurors evaluate each detail within testimony in terms of its consistency with previous information, such that the juror can find certain types of inconsistent details to be more problematic than others. The same effects could be found in inconsistent jailhouse informant testimony, wherein a jailhouse informant's testimony may be inconsistent about a specific detail that jurors find important to the case, such as details about the murder weapon. Different types of inconsistency could lead jurors to vary their evaluation of the jailhouse informant's credibility or even affect their verdict decision. More important or central inconsistencies should lead to these effects being prevalent in jurors.

Truth Default Theory (TDT)

These effects of inconsistent testimony evidence on the jury can be examined through Truth Default Theory (TDT), a theoretical model for deception detection (Levine, 2014). TDT is

concerned with deception detection and is comprised of 14 propositions. According to Levine (2014), the central tenant of TDT is that most people are in a truth default state where they perceive the message as truthful, such that there must be a trigger event, or a salient event that causes the receiver to become suspicious of the message. The trigger event pushes the message receiver out of this default state and into a suspicion state. Once in this suspicion state, the receiver begins to search for evidence to make a decision regarding deception. There are three possible outcomes: the receiver finds enough evidence and makes an active deceptive judgment, the receiver finds exculpatory evidence and makes a non-deceptive judgment, or the receiver does not find enough evidence and reverts back to truth default state or suspicion state.

Exculpatory evidence is evidence that proves the message to be truthful. Jurors are actively making judgements on deception when evaluating testimony. This may be especially true when participants are evaluating jailhouse informant testimony, considering jailhouse informants have a history of criminal behavior. Jurors may automatically be in the suspicion state when evaluating jailhouse informant testimony because the jailhouse informant's criminal history can act as a trigger to pull jurors from the truth default state into the suspicion state. According to Levine (2014), jurors in the suspicion state must search for evidence to make the deception judgment. If a jailhouse informant is inconsistent, this evidence may lead jurors to make a deceptive judgement and disbelieve the jailhouse informant.

The Current Study

The effects of inconsistencies in witness testimony have been proven when jurors are evaluating eyewitness testimony. However, investigating the effects of inconsistent statements in jailhouse informant testimony is novel. Previous research into eyewitness inconsistency shows the potential for inconsistency to lead to disbelief of the witness, and this potential for disbelief

should also apply to jailhouse informant inconsistency (Berman et al., 1995). Furthermore, previous research which manipulated the type of inconsistency also implies there is a potential for central inconsistencies to lead to a greater disbelief of the jailhouse informant (Berman & Cutler, 1996). In the present study, the objective was to investigate the effects of inconsistent statements, both central and peripheral, on jury verdict decisions. The study also investigated how much jurors disbelieved the inconsistent testimony provided by the jailhouse informant. To explore this, the present study manipulated the presence of inconsistencies in jailhouse informant testimony. Participants listened to a trial that included jailhouse informant testimony featuring central inconsistencies, peripheral inconsistencies, no inconsistencies, or both central and peripheral inconsistencies. It was hypothesized that participants would vote guilty less often when there were inconsistencies present, and it was also hypothesized that participants would vote guilty least often when the inconsistencies present included only central inconsistencies.

Methods

Participants

The participants were undergraduate students ($N = 274$) enrolled in introductory psychology classes at the University of Alabama in Huntsville (UAH). These participants were recruited with an online database, SONA. Upon completion, each participant received three research credits. Each participant was at least 18 years or older, a native English speaker, and was not hearing impaired. The analysis excluded participants who either experienced technical issues with the computer during the study or if they reported that they wanted their data to be excluded. Participants were also excluded if they missed four of the seven of attention check questions or the manipulation check question. Excluded participants ($n = 68$), resulting in a final sample size ($N = 206$). The sample consisted of 79% Caucasian, 10% African American, 2%

Hispanic, 0.5% Native American, 1.65% Asian, 1.09% Other, and 3.85% reported two or more ethnicities. The average age in this study was $M = 20.08$ years old. Of the participants, 48.55% were women and 51.45% were men. This study was approved by the Institutional Review Board and all ethical practices were followed.

Design

The study conformed to a 2 (Central Inconsistency: present, absent) X 2 (Peripheral Inconsistency: present, absent) between-participants design. The dependent measure was verdict decision, as in guilty or not guilty verdicts. Reported disbelief, or how much the participant disbelieved the jailhouse informant due to inconsistency, was also measured.

Materials

This study was completed on the online survey platform, Qualtrics. The study included a consent form, 5 trial audio clips, a post-trial questionnaire (PTQ) containing verdict decisions and reported disbelief in the jailhouse informant, and a demographics questionnaire. The study used a five-part audio recording of an adapted murder trial from *New York v. Halstead* (see Appendix). The audio trial consisted of opening statements by both prosecution and defense, expert testimony on forensic evidence, police testimony, jailhouse informant testimony, and closing statements from prosecution and defense. The jailhouse informant testimony included central inconsistencies, peripheral inconsistencies, both, or no inconsistencies. Central inconsistencies were defined as inconsistencies about details that would be difficult to forget or confuse, so these were inconsistencies about major details of the crime. The two central inconsistencies that were used in the study included where the body was discovered and the description of the murder weapon. The two peripheral inconsistencies that were used in the study included inconsistencies about the time of day the jailhouse informant saw the victim on the day

the crime was committed and how the confession occurred. The research assistant read from a script that included instructions for the participants and a brief overview of how the study would be presented. Once a participant finished all five audio clips, a PTQ was presented on the screen. The PTQ asked for the participant's verdict decision and included manipulation check questions. The PTQ also included the following Disbelief Question: The fact that Stephen Greene's testimony was inconsistent with what he said in a previous police statement made me _____ him. Participants answered this question on a five-point Likert scale, with 1 being strongly believe and 5 being strongly disbelieve. There were seven attention check questions that questioned participants about specific details regarding the trial. Furthermore, a manipulation check was also used that questioned participants about the specific inconsistencies present in the testimony. A demographic questionnaire was given to determine participants' gender, ethnicity, highest level of education, and current year in college.

Procedure

Participants began the experiment by reading and signing an informed voluntary consent form, both on paper and electronically. After collecting the consent forms, the research assistant read instructions about the procedure of the study and instructed the participants to begin. The experimental session began with the audio recordings presented on the screen in the following order: opening statements, expert testimony, police testimony, jailhouse informant testimony, and closing statements. The participants wore headphones to listen to the audio clips individually in four-person experimental groups. Once the participants completed listening to the five-part audio trial, they were prompted to answer the PTQ, then the demographics questionnaire. The participants were then debriefed by the research assistant, thanked for their participation, and released.

Statistics

A chi-square test of independence was performed to examine the relationship between inconsistency presence and verdict decisions. Follow up chi-square tests examined relationships between verdict decisions and peripheral, central, and both inconsistencies, respectively. Odds ratios were also calculated. A one-way between-participants ANOVA for the Disbelief Question was conducted as well. A Scheffe Test was used as the post hoc test. The alpha level for all tests was set at $\alpha = .05$.

Results

It was hypothesized that any inconsistencies present would lead to less guilty verdicts. The first hypothesis was supported because the chi-square test for independence for Inconsistency Presence by Verdict Decision was found to be significant, $\chi^2(1, N = 206) = 10.617$, $p = .001$, $\phi = -.227$. Participants in the condition that included inconsistent statements ($n = 149$) were less likely to vote guilty than participants in the no inconsistency condition ($n = 57$; see *Table 1*). Specifically, participants were 67% less likely to vote guilty when any inconsistency was present, OR .33 95%CI .17-.65. Of the participants assigned to the no inconsistency condition, 75.4% voted guilty (see *Fig. 1*). Participants were 3.03 times more likely to vote guilty when no inconsistencies were present, OR 3.03 95%CI 1.53-6.0. Of the total sample size, 57.3% of participants voted guilty. These results indicate a significant effect of inconsistency presence on verdict decisions.

It was also hypothesized that central inconsistencies present would lead to the fewest guilty verdicts. Follow-up chi-square goodness of fit tests were used to test the second hypothesis. The second hypothesis was not supported by these follow-up tests, as none of the

comparisons were found to be significant. The dependent measures for all chi square tests were verdict decisions. The follow-up chi squares are reported as follows: central versus peripheral, $\chi^2(1, N = 104) = .007, p = .932$; peripheral versus both, $\chi^2(1, N = 90) = .000, p = 1.000$; central versus both $\chi^2(1, N = 104) = .007, p = .933$. These results indicate that there were no effects of inconsistency type on verdict decisions (see *Fig. 2*).

The Disbelief Question which measured disbelief in the jailhouse informant was analyzed by using a one-way between-subjects ANOVA. The ANOVA achieved significance, $F(2, 170) = 10.003, p < .001$. The Scheffe test indicated a significant difference between the peripheral and central conditions only (see *Fig. 2*). Participants in the peripheral condition reported an average disbelief of the jailhouse informant with $M = 3.84$. Participants in the central condition reported a significantly higher disbelief of the jailhouse informant with $M = 4.39$. There were no significant differences between central and both conditions or between peripheral and both conditions. Participants in the both inconsistencies condition reported an average disbelief of $M = 4.09$. These results indicate an effect of inconsistency type on belief of a jailhouse informant.

Discussion

Explanation of Key Findings

The results supported the first hypothesis, such that any inconsistencies present led jurors to vote guilty less often. This finding was expected due to many research studies finding similar results (Palmer, Button, Barnett, & Brewer, 2016; Berman, Narby, & Cutler, 1995; Berman & Cutler, 1996; Jones, Palmer, & Bandy, 2015; Pozzulo & Dempsey, 2009). Inconsistency, in any form, will lead jurors to discredit a jailhouse informant's testimony. This finding has occurred before and has been observed in this study as well. The presence of any inconsistency

undermines the credibility and weakens the credibility of the jailhouse informant. Jurors perceive the jailhouse informant as unreliable when the testimony differs from previous statements.

The inconsistencies present in the testimony led jurors to become suspicious of the jailhouse informant and the validity of their testimony which led to less guilty verdicts. This can be explained by the truth default theory (TDT). The theory states that people are constantly in a truth default state default, believing what other people say is honest (Levine, 2014). Participants must observe a trigger event that breaks them out of the truth default state and into a state of suspicion. Jurors should be in a state of suspicion when examining testimony evidence from a convicted criminal, and this could be even more plausible if the jailhouse informant has a history of dishonesty. Once in the suspicion state, jurors begin to search for evidence, which will lead to their final decision of deception or truth. This evidence can be inculpatory or not, and in this study the inconsistencies act as inculpatory evidence for the jurors. The presence of inconsistencies was sufficient enough evidence for jurors to make a deceptive judgment and vote not guilty. Jurors use the inconsistencies present within the testimony as evidence to determine they have enough evidence to make a judgment. Using TDT as a lens for understanding the findings reveals the powerful effects of inconsistency within jailhouse informant testimony on jurors' decision making processes.

The second hypothesis that participants would vote guilty least often with the presence of central inconsistencies was not supported. Participants seemed to not value whether or not the inconsistency was easily confusable or not, such that any inconsistency was enough to affect verdicts decisions. Consistency within the jailhouse informant's testimony appears to be what the participants valued most when evaluating the testimony evidence. This is supported by the findings of Berman and colleagues (1995), such that the highest ratings of defendant culpability

and witness credibility was reported by participants exposed to consistent eyewitness testimony. Furthermore, the lack of differences in verdict decisions between types of inconsistency could be due to the perceived confidence of the jailhouse informant. Confident witnesses are perceived as more credible, and lead jurors to vote guilty more often, regardless of whether the testimony is consistent or not (Brewer & Burke, 2002). If participants perceived the jailhouse informant to be confident, the effects of inconsistency type may have been attenuated.

Examining the Disbelief Question allowed for the analysis of differences between jurors' beliefs versus their actions. The results indicate that when jurors are exposed to a testimony with inconsistent details that are relevant to the crime, these inconsistencies are more effective at reducing belief in the jailhouse informant. Participants in the central inconsistency condition believed the jailhouse informant less than the participants in the peripheral condition. However, this gap between belief in the jailhouse informant does not translate into verdict decisions.

Participants are affected by the type of inconsistency, but only in their beliefs about the jailhouse informant. They still choose to vote guilty when there are inconsistencies, no matter the type.

This same effect has been found in previous research (Key et al., 2018). This survey found that mock jurors had perceived secondary confessions, such as confessions from a jailhouse informant, as less credible. However, these beliefs about the lack of credibility and the issues that are related with secondary confessions do not extend into verdict decisions. Furthermore, knowledge of the factors that lead to false secondary confessions do not affect verdict decisions in mock jurors (Key et al., 2018). Participants do seem to notice the relevance of the inconsistency, but it must not be as important as the fact that there is any kind of inconsistency present. According to TDT, the jurors are using the inconsistencies as evidence once they are in the suspicion state, and the type of inconsistency does not affect them in their search for

evidence. Both peripheral and central inconsistencies act as strong enough evidence to make a deceptive judgment (Levine, 2014). Participants only focus on the presence of inconsistency, and the type of inconsistency is not important enough to affect the verdict decisions.

Limitations and Future Research

Limitations of this study include not allowing the participants to deliberate after the trial. This is in contrast to actual trial jurors, who may deliberate for hours until a verdict is found. The participants were not allowed to take notes on the trial, which is also incongruent with real jurors, such that the mock jurors had to rely on their own memory when evaluating the evidence presented to them. Future directions can include the manipulation of the saliency of the inconsistencies. This would mean manipulating the extent to which the defense attorney emphasizes the inconsistency during cross examination. If the lawyer emphasizes the inconsistency more, the jurors may perceive the inconsistency as more important and the type of inconsistency might show effects on verdict decisions. Previous research has shown that when jurors become aware of an inconsistency within testimony, the entire testimony is perceived as less credible (Lavis & Brewer, 2016). The findings from the Disbelief Question analysis can also indicate areas for future study, such that future research can identify how much of a difference between the relevance of the types of inconsistencies can lead to a significant difference in verdict decisions. By manipulating the inconsistencies to be more or less central, one could begin to know where the boundary line of an effect lies. Some highly central details would be hard to ignore, such as the alleged crime of the defendant (sexual assault versus murder). Furthermore, this study had an abnormally high conviction rate when the jailhouse informant was consistent (75.4%) which could imply the prosecution's case was already too strong to see the effects of the jailhouse informant's testimony, such that other evidence outweighed the perceived lack of

credibility of the jailhouse informant. Future research could investigate the interactions between the jailhouse informant's testimony and other evidence used by the prosecution, such as forensic evidence. Findings from future research could illuminate any detrimental or bolstering effects on jailhouse informant testimony due to being coupled with other forms of witness testimony.

Conclusion

The goal of the study was to investigate the effects of inconsistencies in jailhouse informant testimonies on juror decision making. The present study observed the effect to which inconsistencies produced guilty or not guilty verdicts. Central and peripheral inconsistencies were manipulated in the jailhouse informant testimony to determine if central had higher impact on participants' verdict decisions. It was observed that the presence of any inconsistency, central or peripheral, lead to a decreased number of guilty verdicts. It was further observed that the type of inconsistency did not have a significant effect on verdicts. Regardless of inconsistency type the result of any inconsistency present would be a reduced number of guilty verdicts.

Implications of this study could be used by both prosecuting and defense attorneys when sharing a court room with an inconsistent jailhouse informant. Defense attorneys should focus on highlighting any inconsistencies to the jury, making them as salient as possible. Whereas the prosecution should attempt to explain away the inconsistencies and make them seem as less relevant to the case as possible. The strategy for the defense, in particular, might diminish the probability of the jurors disbelieving the jailhouse informant but voting guilty nonetheless.

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Table 1*Verdict Decision by Inconsistency Presence*

Verdict	Inconsistency Present	Inconsistency Absent	Total
Guilty	50.3% (75)	75.4% (43)	57.3% (118)
Not Guilty	49.7% (74)	24.6% (14)	42.7% (88)

** *n* for each condition is noted within parentheses **

Table 2*Verdict Decision by Inconsistency Type*

Verdict	Central	Peripheral	Both	None
Guilty	50.8% (30)	48.9% (22)	51.1% (23)	75.4% (43)
Not Guilty	49.2% (29)	51.1% (23)	48.9% (22)	24.6% (14)

** *n* for each condition is noted within parentheses **

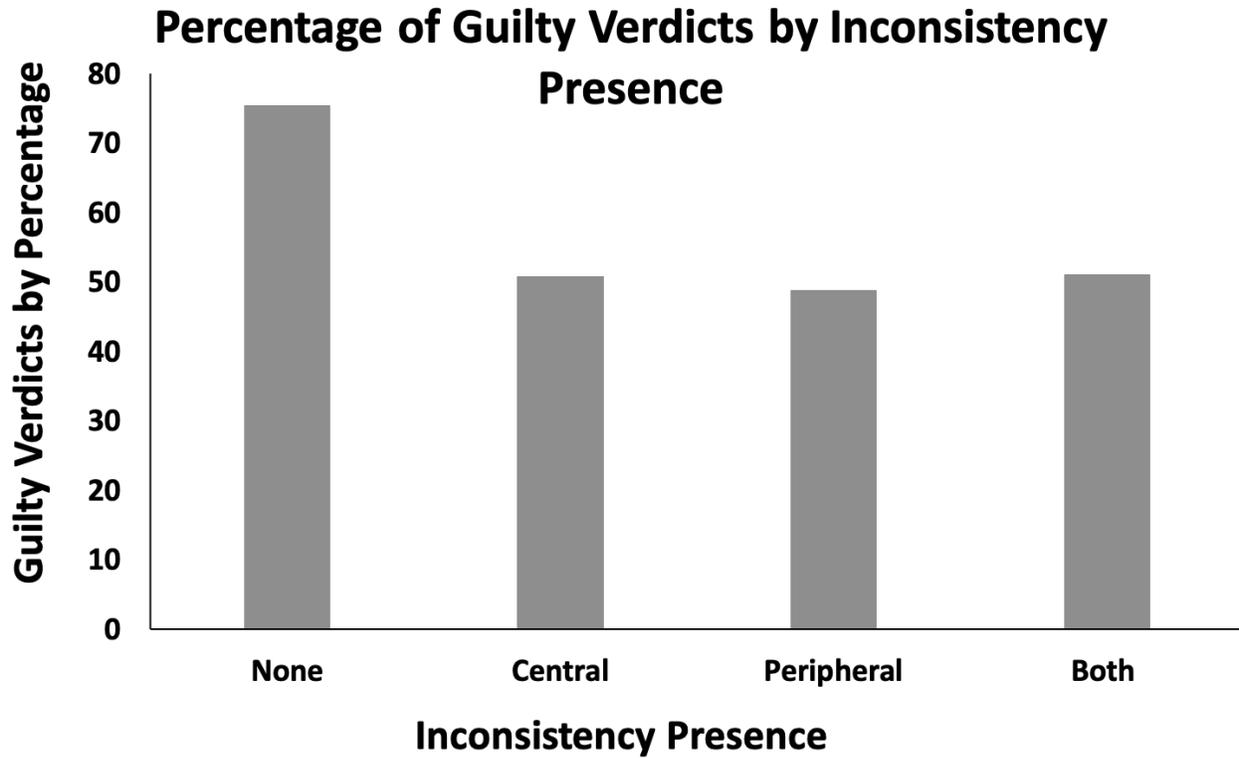


Figure 1. This bar chart indicates that the highest percentage of guilty verdicts were found when the jailhouse informant's testimony included no inconsistencies.

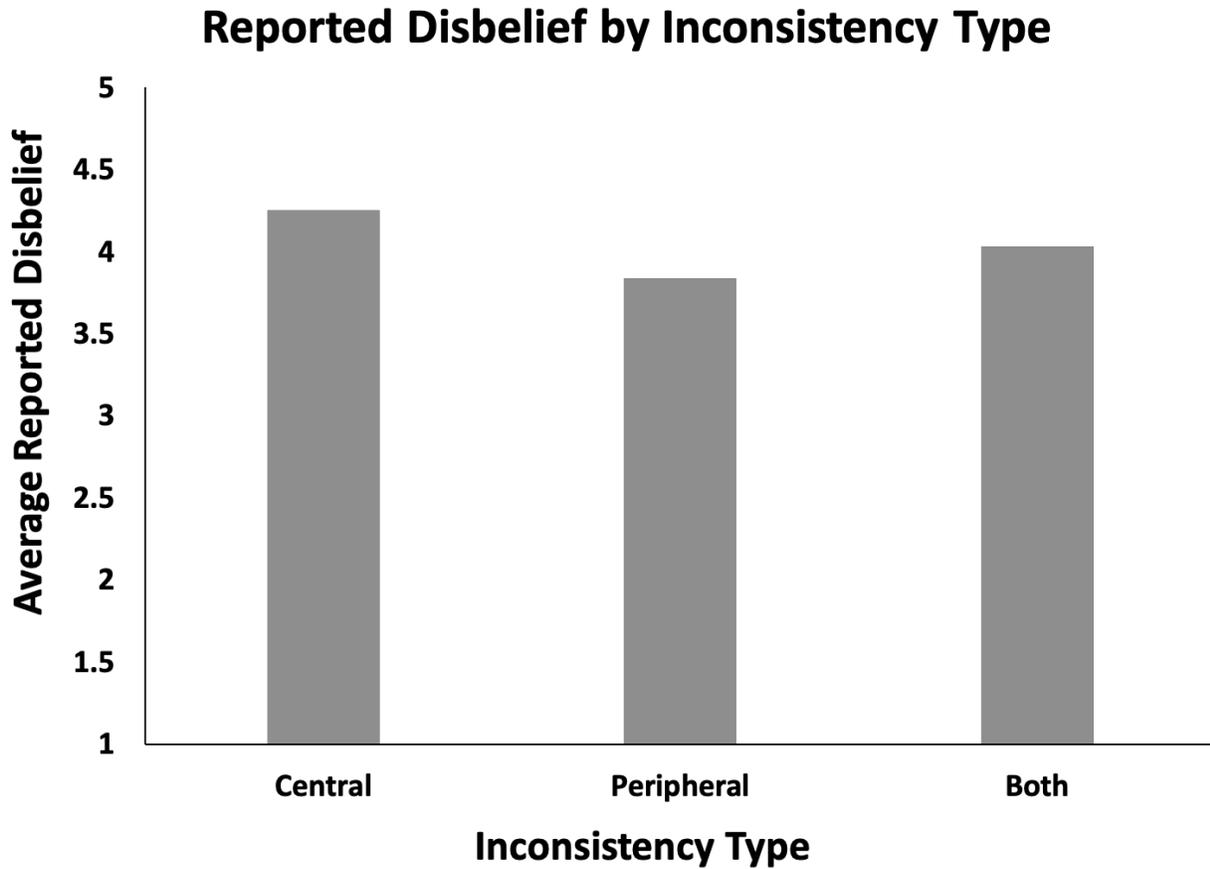


Figure 2. This bar chart indicates that when a jailhouse informant's testimony included central inconsistencies, participants disbelieved the testimony more often than when the testimony included peripheral inconsistencies.

Appendix

Trial Transcript

Opening Statements (in all versions)

The Court: Ladies and gentlemen of the jury, you've been selected as the jury to try the case of State of New York versus Frank Mastivo. This is a criminal case and the defendant Mr. Mastivo is charged with one count of murder in the first degree. It is your solemn responsibility to determine if the State has proved beyond a reasonable doubt against the defendant. Your verdict must be based solely on the evidence or lack of evidence and the law. At the beginning of the trial the attorneys will have an opportunity to make an opening statement about what evidence they believe will be presented during the trial. What the lawyers say is not evidence, and you're not to consider it as such. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be produced as evidence. After the evidence has been presented, the attorneys will have the opportunity to make their final argument. Following this, you will then retire to consider your verdict. In every criminal proceeding a defendant has the absolute right to remain silent. At no time is it the duty of a defendant to prove his innocence. From the exercise of a defendant's right to remain silent, a jury is not permitted to draw any inference of guilt, and the fact that a defendant did not take the witness stand must not influence your verdict in any manner whatsoever. Now at this time does the state wish to make an opening statement?

Prosecution: Good Morning Ladies and Gentlemen of the jury, my name is Robert Keane and I am the prosecuting attorney. The law requires that I make an opening statement to you on behalf of the people of the state of New York. This requirement gives me an opportunity to provide you with an outline of what I intend to prove it during the course of this trial. In this case, members of the jury, the people will prove beyond a reasonable doubt that on August 10th, 1984, in Franklin County, Frank Mastivo abducted a young girl by the name of Nicole Rossi who was 16 years old. After abducting her the evidence will show that he beat, raped, and murdered her. Plain and simple, this case is about the murder of Nicole Rossi. We are dealing with a young girl who was the victim of a vicious rape, a young girl who was then strangled to death by Frank Mastivo so she couldn't report the rape to the police. You will hear, ladies and gentlemen, that in August of 1984, Nicole Rossi was a 16-year-old girl who lived in the town of Brushton with her mother and two brothers. She was a junior at Oak Ridge High school. She had had a part-time job at a local roller skating rink called Skate City, which was a few blocks from there Nicole lived. You'll hear that Theresa's problems began at work on Saturday, August 10, 1984, when she was fired around 9:10 PM. She left to walk home and was never seen or heard again by family or friends. This is on her way home, she was picked up by the defendant, Frank Mastivo, in his blue Ford van. For all intents and purposes, that was the end of Nicole Rossi. You were hear that Frank Mastivo drove her to a cemetery parking lot, where he proceeded to rape her after she refused his advances. You will hear that Frank Mastivo assaulted, tied up, and ultimately strangled 16-year old Nicole to death after she told him she was going to the police. The evidence will show, ladies and gentlemen, that the after this vicious murder, Frank Mastivo drove his van down to Cannon Street, where he hid Nicole Rossi's lifeless body deep in the woods. You will hear that the body was hidden so well and that the wooded area was so untraveled and so out of the way and desolate that the body was not discovered until some four weeks later on September 5, 1984. But Frank Mastivo was not as good as covering his tracks as he thought. The evidence will show that police found hairs from Nicole Rossi in Frank Mastivo's car, along with the moving straps he had used to strangle her. Finally, ladies and gentlemen, you will hear that Frank Mastivo confessed to the murder of Nicole Rossi to an inmate named Stephen Greene that he was incarcerated with in prison. Mr. Greene will testify that yes, he has committed crimes in the past, but he has—and is still—paying for that. You will hear him recount how Frank Mastivo told him all the gory details of how he beat, raped, and killed Nicole Rossi, details that were never released to the public, details that no one but the true killer would know. And you will hear that yes, Mr. Greene indeed got a lesser sentence than he ordinarily would have for his cooperation with law enforcement in this case. But consider the fact that not only did Mr. Greene come forward before he was ever even offered a lesser sentence, he came forward despite dangers to his personal safety. This is an overview of what I intend to prove to you beyond a reasonable doubt. Namely, that the defendant, Frank Mastivo, did knowingly and purposely murder Nicole Rossi, a young girl who was just trying to go home to her family.

The Court: Does the Defense wish to make its opening statement now?

Defense: Yes, your honor. Ladies and gentlemen of the jury, good morning again, my name is James Blackwell and I am here today representing Frank Mastivo. This is an opportunity that I have on behalf of Frank Mastivo to speak to you about what I believe this case is all about. Certainly, as Mr. Keane has indicated to you, this case is about a hideous, vicious crime. It was a parents' worst nightmare. Nicole Rossi was a vibrant, beautiful young girl whose life was cut short in the cruelest of ways. There is no question about that, and because of the nature of this crime, the police of this county were under intense pressure to solve the case. Pressure was coming from all sides; media coverage was relentless, people were concerned, the residents of Brushton were frightened. At the time, Frank Mastivo was just a 21 years old guy trying to make his way in the world by keeping his head down and working hard. He had a girlfriend who he loved and had just gotten a job with a moving company. Yet still, the case remained unsolved. Police became desperate as months went by. Then, a different kind of nightmare, just as scary, just as terrible, came into view for Frank Mastivo. He has been accused of an appalling crime he did not commit. Frank Mastivo has pled not guilty and has proclaimed his innocence in this case since the beginning. You will hear testimony over the hairs and moving straps found in Frank Mastivo's van, evidence that is circumstantial at best. You will hear a ridiculous claim that Frank Mastivo confessed to a convicted criminal whom he had just met. I ask you, if you were in Frank Mastivo's case, would you talk to this person about the crime? Are you going to tell someone you barely know that you committed a murder, trust that they won't tell anyone? Do you want to put your life in that person's hands? When you have an opportunity to review the evidence in this case, keep an open mind. Don't let the nightmare of Nicole Rossi's death overshadow the nightmare that Frank Mastivo had been put through for almost 2 years in connection with this investigation.

Sam Webb Testimony (in all versions)

The Court: The prosecution may now call its first witness

Prosecution: Your Honor, the State would like to call Sam Webb, to the stand.

The Court: Mr. Webb, if you would come up to the witness stand. Please remain standing and raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Webb: I do.

The Court: Please be seated. The prosecution may now begin examining the witness.

DIRECT EXAMINATION

Q (Prosecution): Mr. Webb, would you state your name and occupation for the jury?

A (Webb): My name is Sam Webb, I work in the Scientific Investigation Bureau as a part of the Franklin County Police Department

Q: Mrs. Webb, how long have you been member of the Franklin County police department?

A: Approximately 16 and a half years.

Q: And out of those 16 and a half years, how long have you been assigned to the Scientific Investigation Bureau?

A: About 16 years.

Q: Can you describe what your present duties are with the Scientific Investigation Bureau?

A: Yes sir. My involvement with the lab involves the examination and analysis of physical evidence for biological materials such as blood, semen, other body fluids and hair.

Q: How long have your duties included the analysis of hair?

A: A little over 10 years.

Q: Can you describe the process by which you the process you use to analyze hair?

A: Yes sir. It is a microscopic examination. The hair is examined under a stereoscope, a low power microscope and then under high-power microscope, and if it's a comparison it would involve the comparison microscope, where we have to samples mounted separately on two separate microscopes which are bridged together by mirror where both samples can be viewed simultaneously in the same field.

Q: And what do you look for when examining individual hair strands?

A: There are many different characteristics of human hair that I microscopically examine and use to describe the hair strands, such as the pigmentation, cortical texture, or structure of the medulla.

Q: Now, can you describe for us to talk to, what if any separate components there are any human hair?

A: A human hair has three basic anatomical regions. The outermost portion is called the cuticle. The central portion is called the medulla. The material between the medulla and outermost portion is called the cortex.

Q: And are those are the areas that you examined with reference to a hair comparison?

A: Yes sir.

Q: Let me show you what is been marked for identification as peoples Exhibit 1. Do you recognize that item?

A: Yes, sir. Those are scalp hair samples removed from Nicole Rossi.

Q: And these scalp hair samples were taken from the victim by the medical examiner after it was brought in for examination, correct?

A: Yes, Sir.

Q: Now on February 26, 1985, did you have occasion to examine the defendant's van?

A: Yes, I did.

Q: Can you describe how you examine the van?

A: Yes, sir. I visually examined the van. I gridded the interior into roughly 8 sections and searched each gridded area one at a time. Using a tweezer or hands to pick up obvious hairs or something of that nature and then vacuuming the same area before I would move onto the next. I placed any items I found into an envelope.

Q: Let me show you what is been marked for identification as peoples Exhibit 2. Do you recognize that exhibit?

A: Yes sir.

Q: And what do you recognize this to be?

A: This is an envelope containing hairs that were removed from the right front seat floor area of the van.

Q: Now Mr. Webb, did you have occasion to examine this hair that was found in the van with the hair taken from the scalp of Nicole Rossi by the medical examiner?

A: Yes, sir.

Q: Did you do that with a microscope as he previously described?

A: Yes, sir.

Q: Did you form an opinion based on your training and experience with respect to the comparison of the hairs found in the van and the hairs taken from the victim postmortem?

A: Yes sir. My opinion was that the hairs taken from the van one microscopically alike in physical characteristics with the known sample removed from Nicole postmortem.

Q: Now, can you describe for us from of the physical characteristics in the hair that you found to be like the hair taken from the victim, microscopically alike?

A: Yes, sir, I can. Both samples were Caucasian scalp hairs. Color brown. Length, in the range of 10 to 12 inches. Both have cut tips. The diameter of those found in the van is approximately 58 microns, which fits within the range of the hair samples taken from the victim postmortem, which is 56 to 96 microns. The medulla appeared to be fragmented. Sometimes it appeared opaque and sometimes translucent. The pigment granules appear to have medium density, somewhat coarse with an oblong to long shape. The cortex cells were observed. The overall appearance was somewhat straight with a little bit of waviness to it.

Prosecution: I don't have any further questions at this time, your Honor.

The court: The defense may now have the opportunity to cross-examine the witness.

CROSS EXAMINATION

Q: Mr. Webb, how many hairs that were taken from that section of the van?

A: Four.

Q: And of those four, how many did you find to be microscopically alike with the hair of Nicole Rossi?

A: Two.

Q: Ok. I have here a diagram here, taken from the Forensic Science Handbook, marked for identification purposes as Exhibit 3. Mr. Webb, you accept that this is a fair and accurate depiction of what you understand the growing hair to look like?

A: This is a schematic. This isn't the way every hair appears. This is an overall generalized view. You don't see all this structure every time you look at a hair under the microscope.

Q: That's right. Every hair is really different, isn't that correct?

A: There are no two alike, that's correct in all respects.

Q: In fact, there are no two hairs alike on the same person's head; isn't that correct?

A: Yes.

Q: In fact, you really can't say that two hairs are identical ever, isn't that correct?

A: Yes, that's a correct statement.

Q: So, when you say the hairs taken from the victim and the hairs found in the van are alike, that's about as close a description as you can get because of the inaccuracy of this area science, isn't that correct?

A: Yes, that is correct.

Q: You cannot tell us beyond a reasonable doubt that the hairs you found in the van and the hairs taken and the victim are identical?

A: No, I cannot.

Q: Mr. Webb, you mentioned several characteristics that were similar between the hairs found in the van and those taken from the victim. Can you tell me how common these characteristics are in the general population?

A: I cannot tell you that.

Q: Why not?

A: Well, there is no database regarding hair characteristics for the population like there is for fingerprints, for example. So I cannot tell you that only a certain number of people in the population would have hair with characteristics matching those I examined in this case.

Q: To be clear, you cannot say for certain that two strands of hair that have some similar characteristics come from the same individual?

A: No, I cannot.

Q: So it is possible that the hairs found in the van could match someone else, someone with brown hair of a similar length?

A: Yes, it is possible.

Defense: Thank you, that's all. I don't have any further questions.

The Court: Thank you Mr. Webb. You may step down.

Detective Marcus Ortega Testimony (in all versions)

Prosecution: The state would not like to call Detective Marcus Ortega.

The Court: Detective Ortega, if you would come up to the witness stand. If you'll remain standing and raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Det. Ortega: I do.

The Court: Please be seated. The prosecution may now begin examining the witness.

DIRECT EXAMINATION

Q (Prosecution): Thank you, your Honor. Detective Ortega, can you tell us how long you have been a member of the Franklin County Police Department?

A (Ortega): 19 ½ years.

Q: And how long have you been assigned to the homicide squad?

A: 12 ½ years.

Q: And you were one of the lead detectives assigned to this case?

A: Yes, I was.

Q: Let me direct your attention to the 5th of September 1984. Where you present in the area where the body of Nicole Rossi was found by the police?

A: Yes, sir, I was. Two teenagers had reported seeing a human foot in a wooded area by Cannon Street. One of our uniformed officers had responded and immediately notified the Franklin County Homicide Squad. I reported to the location shortly after.

Q: Can you describe the location where the body was found?

A: Yes. It was found in a densely-wooded area that is located near Cannon Street. Cannon Street runs north to south. At the southern end of Cannon Street, there is a railroad track that runs East to West. If you were to leave Cannon Street and walk along the railroad tracks a little way, you find a dirt path that is bordered by thick woods on one side and a chain link fence on the other. At the end of this path there is a pile of wooden pallets, which was where the body was found.

Q: So would you say that the location would have been easy to find if one did not know where to go?

A: No, I would not. I had difficulty finding it myself as the dirt path itself is partially hidden by brambles and brush.

Q: Can you describe the body?

A: The body was of a Caucasian female that was lying face down, partially wrapped in a blanket and covered by several wooden pallets.

Q: This body was later identified as Nicole Rossi?

A: Yes, that is correct.

Q: And you yourself saw the blanket that the victim was wrapped in?

A: Yes, I did.

Q: Can you describe it to the court, please?

A: The blanket was blue in color and appeared to be somewhat stiff. I would say it was about 6 feet long, long enough to cover the body.

Q: Ok. Can you tell me what initially led to the defendant, Frank Mastivo, becoming a possible suspect in the case?

A: Yes. There were reports of a blue van parked near Cannon Street around the time of the murder. Our investigation then proceeded by interviewing individuals who owned vehicles matching the description, which is what initially led us to Frank Mastivo.

Q: Let me direct your attention, now, the day of March 26, 1985. Did there come a time that you searched the defendant's van?

A: Yes, on March 26, we received the search warrant for the blue Ford van in question. At approximately 5 o'clock that night I had one of my officers seize the van. It was impounded and brought over to the emergency building, in headquarters.

Q: And I believe this was the same van that was

Q: Once the vehicle was taken to headquarters, was it searched?

A: Yes, the van was searched. All items from the van were removed and placed into evidence.

Q: Detective Ortega, can you tell us what was found in Frank Mastivo's van?

A: There were several different kinds of ropes and moving straps, work gloves, some mover's blankets and furniture pads.

Q: Ok. You said there were mover's blankets. Can you describe them to the court?

A: Yes, they were all blue blankets, approximately 8 feet long and 6 feet wide. They are padded, filled with cotton batting on the inside, and the outside fabric is made of polyester. They have a tag on the side that shows they were made by the brand Pro-Max, which is a company that makes moving products.

A: Can you tell us what makes moving blankets different from, say, a throw blanket that people have on their couch?

Q: Yes, moving blankets are intended to protect furniture items that might be easily damaged or scratched during a move, so they are more padded and are much more durable.

Q: The blankets were padded. Would you describe them as stiff?

A: Yes, I would.

Q: Ok. You just testified that a blanket was found near the body of Nicole Rossi, correct?

A: Yes, that is correct.

Q: When the blanket found at the crime scene was examined, did it match the moving blankets that were found in Frank Mastivo's van?

A: Yes, it did.

Q: Now Detective Ortega, have you read the medical examiner's autopsy report?

A: I have.

Q: It states that there the ligature mark on Nicole's neck was caused by a rope, or rope-like instrument, that is between 1 and 1 ½ inches in width. It also states there was bruising on her ankles and wrists which suggests she had been tied up before her death. You stated you found a variety of ropes and straps in Mr. Mastivo's van?

A: Yes, that is correct.

Q: Did you find any that were between 1 and 1½ inches in width?

A: Yes, there were several moving straps which were within these measurements.

Q: And when the ropes and straps were forensically examined, was there any blood or bodily fluids found on them?

A: No there was not.

Q: But that was not unexpected, as the medical examiner had not found blood near the ligature marks on Nicole Rossi, correct?

A: That is correct.

Q: I have no further questions, your Honor.

The Court: The defense may now cross-examine the witness.

CROSS EXAMINATION

Q: Detective Ortega, you were one of the lead homicide detectives in this case, correct?

A: Yes, sir.

Q: So I take it you are aware of what the defendant, Frank Mastivo, did for work?

A: Yes, sir. At the time he was employed by the moving company Franklin Moving.

Q: And did you know that Franklin Moving often uses Pro-Max moving blankets for all of their moving jobs? That they often use ropes and moving straps to tie down the furniture?

A: I did.

Q: So it would not be unusual for someone who works at a moving company to have these materials in his vehicle, right?

A: Not on its own, sir.

Q: Do you know approximately how many employees work for Franklin Moving in the Brushton area?

A: I am not sure of the exact number, no.

Q: Do you know how many other moving companies are in Brushton, or how many moving companies had worked within the Brushton area around the time of Nicole Rossi's disappearance?

A: I am not sure of the exact number, no.

Q: And do you know if Franklin Moving is the only moving company that uses Pro-Max moving blankets?

A: No, sir, I do not.

Q: So do you concede that there are potentially hundreds of other individuals who would have access to blue Pro-Max moving blankets at that time?

A: Yes, I suppose so.

Q: I would like to discuss the medical examiner's report Mr. Keane just mentioned. I believe the examiner wrote that he was unable to identify the exact rope or instrument Nicole Rossi was strangled with. Did you read that?

A: Yes, sir.

Q: So just to clarify, Detective Ortega, the murder weapon could have been any rope that was between 1 and 1 ½ inches wide, not just the moving straps or ropes that were found in the defendant's van, correct?

A: Yes, sir.

Q: That is all I have, Your Honor. Thank you, Detective.

The Court: Thank you Detective Ortega. You may step down.

Jailhouse Informant Testimony (in all versions)

Prosecution: Your Honor, the State has indicated its next witness is Stephen Greene.

The Court: Mr. Greene, if you would come up to the witness stand. If you'll remain standing and raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Stephen Greene: I do.

The Court: Please be seated. The prosecution may now begin examining the witness.

DIRECT EXAMINATION

Q (Prosecutor): Thank you, your Honor. Mr. Greene, will you please state your name?

A (Greene): Stephen Greene, spelled W-A-L-S-H.

Q: Stephen, I want you to keep your voice up please and talk slowly so that the people in the back can hear you, alright? Stephen, how old are you?

A: Twenty-six.

Q: Are you married?

A: Yes

Q: How long have you been married?

A: Two and half years.

Q: Let me direct your attention to February of 1988. What were you arrested for?

A: Four robberies.

Q: Four separate robberies?

A: Yes.

Q: When did they occur?

A: January 22nd.

Q: All in one day?

A: Yes.

Q: Did you commit those four robberies?

A: Yes I did.

Q: Tell me, how did you do them?

A: I went inside the store with a toy gun and asked them for the money.

Q: You were given the money?

A: Yes.

Q: And after you were arrested, were you were able to make bail?

A: No.

Q: Where did you stay?

A: Franklin County.

Q: Franklin County Jail?

A: Yes.

Q: While you were in jail did you meet the defendant in this case, Frank Mastivo?

A: Yes.

Q: Do you see him in Court this morning?

A: Yes.

Q: Would you point him out?

A: He is sitting right there.

Prosecutor: The witness is indicating the defendant Mastivo, your Honor.

The Court: Yes, noted.

Q: When was it that you first met Frank Mastivo?

A: The end of February, on the 31st, in 1985.

Q: Where in the Franklin County Jail did you meet Mr. Mastivo?

A: On tier called C4.

Q: You say tier. What is a tier?

A: Part of the jail.

Q: What does it look like?

A: You walk in there is a row of like 20 cells all next to each other and that's about it, and a TV.

Q: How many people are in each cell?

A: One.

Q: What is directly in front of the cell?

A: There's a common area and behind that is the hallway where the guards walk.

Q: While you are in your cell are you allowed in the common area?

A: Yes.

Q: What can you do in that common area?

A: Walk around. Go in other people's cells, play cards, play scrabble, watch tv in the hallway. Whatever there is to do basically.

Q: Can you describe how you met Frank Mastivo?

A: I was moving from another floor and as I was walking in with my things, I heard somebody call out the name "Stevie." I thought they were calling to him, so I stopped by and introduced myself, saying my name is Steve and I thought his name was Steve too. But he told me his last name was Mastivo and his first name was Frank.

Q: Did you have a conversation with him after that?

A: Yes.

Q: Will you describe that, please?

A: Well, I seen he had some books so told him I will get straightened up in my cell and I said, "After I get a little situated, would it be all right if come back and looked through a few books?" And he said, "That would be all right." It was about dinner time, and in the jail you eat in your cell. So we were locked in, and after we were allowed back in the common area I went back to his cell to go through the books. I seen he had a chess set, so I asked him if he wanted to play some chess.

Q: Did you start to play chess with the defendant, Frank Mastivo?

A: We set up the board and I started telling why I am in jail and what I did.

Q: Tell us what you told Frank Mastivo.

A: I told him about the robberies that I did. That I got involved with drugs and I told him I wouldn't hurt nobody. That's why I used a toy gun. After I did those crimes, I told him I checked myself into a hospital because I knew that there was something wrong and I had a problem with drugs. We were just talking and then I asked him what he was in jail for.

Q: Before you asked him what he did, did you do anything when you told him about your crimes?

A: I got very emotional. I was like crying.

Q: And what did you ask him?

A: What he was in jail for.

Q: What did he say to you?

A: He told me his case is murder.

Q: What did he say?

A: He was telling me - -

Q: What did he tell you he did?

A: He told me he had just gotten off work and was driving around town in his blue van. It was sometime during summer, at the end of the summer. He said he was partying, doing drugs and such. And that sometime during the evening he drove past a roller-skating rink and that's where he had seen this girl. He basically told me what happened.

Q: And what did he say happened?

A: He said he was driving by and he saw her walking on the side of the road. He said he offered to give her a ride home. He told me that she said she had just been fired. He asked the girl to party and after some convincing, she had gotten into the van

Q: He said she got into the van?

A: Yes.

Q: What did he say happened then?

A: He said he had pulled into a cemetery parking lot so they could smoke and after a while he asked her to "do the right thing."

Q: And what did she do?

A: Mastivo told me she had said no, that she had refused to have sex with him. He said he got angry, that she had owed it to him because he was helping her out by giving her a ride home and letting her smoke for free. He told me that he raped her. I remember he smiled when he said that. Then he said she started screaming and saying that she was going to go to the police, and he freaked out. So he tied her hands and feet up together behind her so she couldn't get away and then hit her head against the door. She got knocked out. But then she started to wake up so he strangled her with a moving strap that was in his van.

Q: What else did he say?

A: He said he drove away looking for a place to dump her body. He ended up hiding her body in the woods, and tried to cover it up and stuff, make it hard to find.

Q: Did Mr. Mastivo say anything about the girl's name? Did you ask him anything about that?

A: He told me her name was Nicole Rossi.

Q: Did you have any further conversation at this point about the murder or the rape of that girl with Mr. Mastivo?

A: No, after he told me what they did with the body, some other people came up and it was left at that.

Q: And what did you do, Mr. Greene, after Mr. Mastivo confessed this to you?

A: Well, nothing. I didn't say anything more about it because there were other people there. But I was shocked. I told you how he smiled when he talked about assaulting her, it was like he was bragging about it and wanted to tell me.

Mr. Blackwell: Objection.

The Court: Sustained.

Q: Mr. Greene, have you ever heard about this crime before this, maybe in the news or read about it in the papers?

A: No I have not. I don't read the papers and the news usually isn't played on the TV in my cell block.

Q: And are you aware that the authorities never released the fact that the fact that Nicole Rossi suffered a severe contusion to the head? Meaning it was not known to the general public and never mentioned in any news report about the crime?

A: No I was not.

Q: And when did you contact the authorities to report what Mr. Mastivo had told you?

A: I think it was the next day that I called the homicide department

Q: And why did you decide to come forward?

A: Well at first I was scared to get more involved because it's dangerous, you know? You don't want to be labeled a snitch in jail. But I just couldn't take the guilt of not saying anything anymore. I've got a daughter, so the thought of someone hurting a young girl like that really hit home, you know?

Q: Of course. And you gave a statement to the police on March 4, 1985, I believe. But I believe the first time you met with me regarding Mr. Mastivo's confession was the following week on March 9th. During this first meeting what did we discuss?

A: Just what Mastivo had told me, about him killing and raping that poor girl. I gave a statement and then went back to the jail. And I told you how I was nervous about getting involved in the case.

Q: Ok. And during that first meeting did I promise you anything in exchange for testifying against the defendant today?

A: No, sir. We didn't make any kind of deal the first time I met you if that is what you are asking.

Q: Were you offered any kind of deal later on?

A: Yes, I was offered a sentence of four to eight years.

Q: What were you originally facing?

A: Seven to 14.

Q: So you are still going to have to serve time for the crimes you have committed, correct?

A: Yes, I am.

Q: But you had decided to testify before you were even offered this deal, right?

A: Yes, I was nervous about it but I knew it was the right thing to do. It's something I'm doing as a man.

CROSS EXAMINATION

Q: Mr. Greene, was there nobody other than you and Mastivo in the cell at the time he made the admissions?

A: No one but he and I.

Q: And you never brought this up before to anyone else other than the police and district attorney?

A: No, I didn't.

Q: So, the only thing we have here to verify what you are saying, Mr. Greene, is your word and your word alone; is that correct? There were no other witnesses to this alleged admission?

A: Correct.

Q: And at the time of the alleged admission you had just met the defendant Frank Mastivo, is that correct?

A: Yes.

Q: So you knew him about an hour. You know him an hour. And you are going to cry on his shoulder that you didn't mean to stick up these four people in these four holdups you pulled that you used only a toy gun, correct?

A: Yes

Q And after an hour, just an hour, you want this jury to believe that this man confessed a murder to you?

A: I can only tell you what he told me.

Q: Mr. Greene, you said you are serving four to eight years now, which means a minimum of four years and a maximum of eight years?

A: Yes.

Q: Now, this is the evening of February 31st, 1985, is that right?

A: Yes, sir.

Q: Between February 31st, when you say this instance occurred, until March 4th, when first gave a statement to the police officer, did you tell anybody else about it?

A: No.

Q: Did you tell your attorney about it?

No.

Q: So police officer just happen to arrive on March 4th to take your statement about Frank Mastivo?

A: I called homicide.

Q: How did you do that?

A: I call my wife and asked her to get the homicide number of Franklin.

Q: Did you tell your wife what Mr. Mastivo allegedly said?

A: No.

Q: And did your wife get you the number?

A: Yes, I called her back and she had it.

Q: You called her back soon? You were anxious, right? This is a big break. Seven to 14 was going to turn into four to eight, isn't that correct?

A: I didn't know at that time.

Q: You could hardly contain yourself, could you, Mr. Greene?

A: No sir.

Q: But, you knew you were sitting on something good, didn't you, Mr. Greene?

A: No, sir.

Q: At least you thought you were. It was the biggest break of your life when you got on the floor with Frank Mastivo because whether he told you anything or not we were going to make up a lie about it and get off?

A: Four to eight years is not getting off.

Q: Four to eight years with four armed robberies? Sticking up teenagers in ice cream parlors with a gun, sir?

A: At least I never raped and murdered.

Q: But you did terrorize innocent people, make them think their lives were at stake. So, your wife gave me the phone number and you got in touch with homicide. What did you tell them?

A: I asked them if they could get somebody down to the jail from homicide but I can talk to.

Q: So you met with the detectives a couple of days later on March 4th and gave a statement, right?

A: Yes, sir.

Q: And then the next week you meet with prosecutor Keane, and up to this point you say no deal was offered to you?

A: Yes, sir that is correct.

Q: But now you are getting four to eight instead of 7 to 14. You were offered that deal out of the goodness of the district attorney's and judge's heart? Is that correct? They gave you that reduction from seven to 14 down to four to eight?

A: Yes

Q: Just because you were a good guy?

A: No.

Q: You are right on that. You made a deal, Mr. Greene, to put the defendant Mastivo in the slammer so that you could get out of a few years of jail, didn't you?

A: No.

Q: You're just acting as a man here?

A: I'm doing what I feel is right.

Q: You are doing what you have to in order to get a better deal from the District Attorney's office, aren't you, sir?

A: No, that's not why I came forward.

Q: Ok. Lets step back a moment. You testified earlier that the defendant Frank Mastivo told you several details, yes?

A: Yes, sir.

Central Inconsistency-Present Manipulation:

Q: More specifically, you testified that Mastivo said he strangled the victim with a moving strap that was in his van and that he dumped Nicole Rossi's body in the woods. Is this correct?

A: Yes, that is correct.

Q: Ok. And you gave a police statement on March 4th?

A: Yes, sir.

Q: I have a copy of that statement here, marked for identification purposes as Exhibit 6. Can I direct your attention to the first paragraph on page two; do you see where you wrote "he said he used the girl's scarf to strangle her to death".

A: Yes, I do.

Q: And further down the page, do you also see where you wrote "Mastivo said he dumped the girl's body in the cemetery"?

A: Yes, I do.

Q: So it appears that you have given two different accounts of the story, Mr. Greene. Between when you gave this police statement you seem to have changed some important details of Mr. Mastivo's alleged confession. Were you lying then or are you lying now?

A: I wasn't lying then or now, I was just nervous when I first met with the police officer. I might have mixed a few things up but I am sure Mastivo told me he used a mover's strap and he dumped her body in the woods.

Peripheral Inconsistency-Present Manipulation:

Q: More specifically, you testified that when you first walked into Mr. Mastivo's cell you were originally looking through his books and only after that did you come across the chess board and ask him to play. You also testified that Mr. Mastivo told you that it was evening when he saw Nicole Rossi walking and the crime occurred. Is this correct?

A: Yes, that is correct.

Q: Ok. And you gave a police statement on March 4th?

A: Yes, sir.

Q: I have a copy of that statement here, marked for identification purposes as Exhibit 6. Can I direct you attention to the first paragraph on page two; do you see where you wrote "When I walked into his cell I saw he had a chessboard, and asked if he wanted to play a game."?

A: Yes, I do.

Q: And further down the page, do you also see where you wrote "Mastivo said that he was driving around in the afternoon and he spotted this girl walking on the side of the road"?

A: Yes, I do.

Q: So it appears that you have given two different accounts of the story, Mr. Greene. Between when you gave this police statement you seem to have changed some important details of Mr. Mastivo's alleged confession. Were you lying then or are you lying now?

A: I wasn't lying then or now, I was just nervous when I first met with the police officer. I might have mixed a few things up but I am sure that I saw the chessboard after I had looked at his books, and that Mastivo told me he picked up the girl in the evening, not the afternoon.

Prosecutor: I have no further questions, your honor.

The Court: Thank you Mr. Greene. You may step down.

Closing Statements (in all versions)

The Court: As there are no other witnesses, this concludes the presentation of the evidence in this case. We have now reached the point where you, the members of the jury, will hear the closing statements from both the prosecution and defense. Following the closing statements, the Court will instruct the jury as to the laws, rules, and principles that guide the jury during his deliberation and rendering its final verdict. Deserve all the defendants counsel will make its closing arguments first. The district attorney goes after. Suffice it to say in making their closing statements, Council will view the evidence heard during the course of the trial and will suggest to use certain inferences or conclusions which they in their opinion believe may be properly drawn from the evidence. That is the purpose of closing statements. If you find that a particular attorneys analysis of evidence is correct, that evidence is summed up and analyzed by that attorney is accurate and if you find the inferences and conclusions which you are asked to draw are logical, and sensible, then you are at liberty to adopt such inferences either in whole or in part. On the other hand, if you believe that either counsel's analysis of the facts or inferences or conclusions which you have been asked to draw from are logical and not warranted by the evidence, you may disregard the same either in whole or in part and draw your own conclusions from evidence that you believe to be truthful. Bear in mind, ladies and gentlemen, nothing councilman saying there closing statements as evidence in this case. You have the evidence. You and you alone are the exclusive judges of the facts in this case. We now turn to the closing statements. I will recognize Mr. Blackwell.

Defense: Your honor, ladies and gentlemen of the jury: the time has finally come where I have another opportunity to speak to you, to discuss with you some of the aspects of the case that I feel are important. The people's case in this particular trial, unfortunately, really had little substance to it in terms of solid evidence which was supposed to be designed to prove to you the guilt of Frank Mastivo beyond a reasonable doubt. Now, at the outset I want to say something. Nicole Rossi was brutally raped and strangled shortly after she left Skate City on August 10, 1984. She was a hard working a decent young lady with loving parents. Mr. Keane opened and told you that this case is about a parent's nightmare. I agree with him. I'm a parent. Frank Mastivo agrees with him. All of us who have children or who have a heart agree with him. That, as I also told you another nightmare isn't this case. Just as sinister. The nightmare was an innocent man accused of a crime he didn't commit. A crime so horrible, and it is horrible, that people wanted to believe that he committed it. But as I said previously, Frank Mastivo has maintained his innocence the entire time. As you heard at the beginning of this trial, it is the State's job to definitely prove that Mr. Mastivo has committed this crime. And at that Mr. Keane has failed. He brought up Detective Ortega on the stand. And what did he testify? That a blanket found in Mr. Mastivo's van matched one found at the crime scene, that there were ropes and straps in the van that could have been used to tie up and strangle Nicole Rossi. But the detective himself conceded that that particular blanket was used by the entire moving company and that movers often used ropes and straps to tie down furniture. There are any number of people who had access to those blankets, and the state was not able to offer any definitive proof the straps found in the van were those used during the murder of Nicole Rossi. Mr. Keane wants you to convict the defendant on the basis of nothing but circumstantial evidence and the word of the criminal, Stephen Greene. Let's consider Stephen Greene. On a tier for a few hours, wants you to believe that Mastivo made an admission to him of murder after knowing him for an hour and a half. It's incredible, ludicrous, an insult to your intelligence, to ask you to believe this, that a person would confess to a crime such as this after knowing some person in the jail for a couple hours. But he wants you to believe it. He wants you to believe that a hardened criminal like himself, someone who held up four different ice cream shops a month before, only wanted to do the right thing. No, Stephen Greene was only looking out for himself. He was going to do anything it took to get out of jail early, including lie on the stand and put an innocent man in jail. I implore you to look hard at all the evidence the prosecution has put forth. Nicole Rossi's death was tragic and I believe that everyone in this room wants to see the killer brought to justice. But convicting an innocent man is not justice; it is the opposite of justice; it is an affront to the Nicole Rossi and to her family. Frank Mastivo's life is now in your hands. I ask that you vote not guilty.

Prosecutor: May it please the court, ladies and gentlemen of the jury: the case of the people of the state of New York against Frank Mastivo is almost over at this point. I'd like to ask you to give me this last opportunity to explain to you how this evidence shows beyond a reasonable doubt that Frank Mastivo is guilty of the crime charged against him. If any of you, anyone of you things during the course of this trial that I tried to trick somebody for that I try to mislead somebody but I want you to take the defendant and walk him right out of this court because that's not what this case is all about. I suggest you do with this case is all about is what happened to that 16-year-old girl on November 10, 1984. She can't come in here and tell you what happened to her, so I have tried to do that for her. I submit to you ladies and gentlemen that if you analyze the evidence fairly and reasonably with an open mind, if you use common sense, you will conclude beyond a reasonable doubt that Masvito committed the rape and murder of Nicole Rossi. He raped her because she refused his advances. He was angry because he thought she owed him. The defendant confessed this directly to Stephen Greene, you heard his testimony. He said how Frank Mastivo smiled when he described sexually assaulting Nicole. Why would Greene make that up? Why would he make something like that up? He told us how Mastivo raped Nicole Rossi, then became scared after she threatened to go to the police so he tied her up and slammed her head so hard against the door she was knocked unconscious. But she wasn't dead yet, and Mastivo was desperate to save his own skin. He used one of the moving straps he had in his van and wrapped it around Nicole Rossi's neck until she was no more. Mastivo tried to hide the evidence of what he had done, tried to hide Nicole Rossi's body in an isolated and wooded area. Does that sound made up to you? You heard the testimony of Detective Ortega where he described the wooded area where the body was found. You heard him testify that the blanket that was wrapped around Nicole Rossi's body matched the blankets that were found in the van, along with straps that caused the ligature marks found on Nicole Rossi. The defense tried to argue the blankets and the straps were a coincidence, but I ask—is it also a coincidence that two strands of hair that matched Nicole Rossi's were found in the van as well? No, that's no coincidence. That evidence corroborates the testimony of Stephen Greene, and I urge you not to discount it just because he was offered a lesser sentence. Remember that Mr. Greene came forward even before he knew about the reduced sentence, came forward despite fearing for his personal safety and being labeled a snitch. I am not saying Mr. Greene is a model citizen. I'm not asking you to like him, he is convicted criminal. Certainly, I don't. I spend my career prosecuting criminals like him. I am just asking you to consider his testimony along with the other testimony you heard in deciding the guilt of Frank Mastivo. You may like Greene, you may not Greene. That has nothing to do with it. The issue is whether or not you believe Frank Mastivo confessed to murdering Nicole Rossi. Look at the facts. Even if Mr. Greene testified just for the sentence reduction, how do you account for the detailed knowledge he had about the crime? Or his testimony that Nicole Rossi had suffered a severe head contusion prior to death, a fact that was never released to the public? The only way he could have known this information is from the murder Frank Mastivo himself. Ladies and gentlemen, Nicole Rossi did not deserve to die. She had a family, she had friends. She had a future. The case of her brutal murder now becomes yours. You and you alone will have the power to decide What happened, you Will have the ability to decide the truth. You will have an opportunity to tell the defendant that the evidence in this case establishes the cause of this tragedy. You will have the power, ladies and gentlemen, to hold him responsible, told him accountable under the law for what he did to Nicole Rossi. Thank you very much.