Jailhouse informants & empathic cross-examination

Megan Hillgartner

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JAILHOUSE INFORMANTS & EMPATHIC CROSS-EXAMINATION

by

MEGAN HILLGARTNER

A THESIS

Submitted in partial fulfillment of the requirements for the degree of Master of Arts in The Department of Psychology to The School of Graduate Studies of The University of Alabama in Huntsville

HUNTSVILLE, ALABAMA

2019
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Megan A. Hillgartner

06/10/19
(date)
THESIS APPROVAL FORM

Submitted by Megan Hillgartner in partial fulfillment of the requirements for the degree of Master of Arts in Psychology and accepted on behalf of the Faculty of the School of Graduate Studies by the thesis committee.

We, the undersigned members of the Graduate Faculty of The University of Alabama in Huntsville, certify that we have advised and/or supervised the candidate on the work described in this thesis. We further certify that we have reviewed the thesis manuscript and approve it in partial fulfillment of the requirements for the degree of Master of Arts in Psychology.

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ABSTRACT
The School of Graduate Studies
The University of Alabama in Huntsville

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Title: Jailhouse Informants & Empathic Cross Examination

The current study aimed to evaluate the influence of jailhouse informant testimony on juror-decision making through the manipulation of cross-examination techniques as well as the presence and absence of an inconsistent statement concerning a specific crime detail. Thus, this study evaluated whether the method in which the defense attorney presented his cross-examination influenced jurors’ overall perception of the jailhouse informant. Participants listened to an audio-recording of a trial transcript in which method of cross-examination was manipulated in terms of an Aggressive, Neutral, and Empathic approach to determine if the addition of empathic understanding resulted in cross-examination serving as a more effective safeguard. Results indicated that verdict decisions were not influenced by method of cross-examination. There was a significant effect of inconsistencies on verdicts in that participants were more likely to find the defendant guilty when the inconsistency was present compared to when the inconsistency was absent.

Abstract Approval: Committee Chair
Department Chair
Graduate Dean
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# TABLE OF CONTENTS

List of Tables...........................................................................................................viii
List of Abbreviations...............................................................................................ix
List of Symbols........................................................................................................x

Chapter

1. INTRODUCTION.................................................................................................1
   1.1. Jailhouse Informants.......................................................................................2
   1.2. Safeguards to Informant Testimony...............................................................5
   1.3. Implementation of the Psychodramatic Method............................................10
   1.4. Empathic Accuracy.......................................................................................18
   1.5. Inconsistencies and the Truth-Default Theory (TDT).................................20
   1.6. Current Study..............................................................................................23
   1.7. Hypotheses..................................................................................................23

2. METHOD...............................................................................................................25
   2.1. Participants...................................................................................................25
   2.2. Design.........................................................................................................26
   2.3. Materials.....................................................................................................27
   2.4. Procedure...................................................................................................36

3. RESULTS.............................................................................................................39
   3.1. Attention & Manipulation Checks.................................................................39
   3.2. Verdicts.......................................................................................................40
   3.3. Perception of the Defense Attorney..............................................................43
3.4. Perception of the Jailhouse Informant..........................................................47
3.5. Pre-Trial Attitudes & Levels of Empathy.........................................................49
3.6. Measure of Empathic Accuracy.....................................................................52
4. DISCUSSION.....................................................................................................54
  4.1. Limitations and Future Research.................................................................57

APPENDIX A: IRB Approval Letter.................................................................61
APPENDIX B: Study Measures...........................................................................62
APPENDIX C: Trial Transcript............................................................................82
APPENDIX D: Tables..........................................................................................129
REFERENCES.....................................................................................................133
# LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>D.1</td>
<td>129</td>
</tr>
<tr>
<td>D.2</td>
<td>130</td>
</tr>
<tr>
<td>D.3</td>
<td>131</td>
</tr>
<tr>
<td>D.4</td>
<td>132</td>
</tr>
</tbody>
</table>
## LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
</tr>
</thead>
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<tr>
<td>APA</td>
<td>American Psychological Association</td>
</tr>
<tr>
<td>FAE</td>
<td>Fundamental Attribution Error</td>
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<tr>
<td>HILOG</td>
<td>Hierarchical Log-Linear Analysis</td>
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<tr>
<td>IRI</td>
<td>Interpersonal Reactivity Index</td>
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<td>MANOVA</td>
<td>Multivariate Analysis of Variance</td>
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<td>PJAQ</td>
<td>Pretrial Juror Attitude Questionnaire</td>
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<td>TDT</td>
<td>Truth-Default Theory</td>
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<tr>
<td>Symbol</td>
<td>Definition</td>
</tr>
<tr>
<td>--------</td>
<td>------------</td>
</tr>
<tr>
<td>$X^2$</td>
<td>Chi-square test statistic</td>
</tr>
<tr>
<td>CI</td>
<td>Confidence interval</td>
</tr>
<tr>
<td>$V$</td>
<td>Cramer’s V</td>
</tr>
<tr>
<td>$F$</td>
<td>F-ratio (test statistic used in ANOVA)</td>
</tr>
<tr>
<td>$M$</td>
<td>Mean (arithmetic average)</td>
</tr>
<tr>
<td>$\eta^2$</td>
<td>Partial eta-squared</td>
</tr>
<tr>
<td>$p$</td>
<td>p-value (probability statistic)</td>
</tr>
<tr>
<td>OR</td>
<td>Odds ratio</td>
</tr>
<tr>
<td>$B$</td>
<td>Regression coefficient</td>
</tr>
<tr>
<td>$N$</td>
<td>Sample size</td>
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<tr>
<td>$SD$</td>
<td>Standard deviation</td>
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<tr>
<td>$SE$</td>
<td>Standard error</td>
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<td>$t$</td>
<td>t-test statistic</td>
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CHAPTER ONE

INTRODUCTION

Research has shown that jailhouse informant testimony is extremely persuasive to jurors. Neuschatz, Lawson, Swanner, Meissner, and Neuschatz (2008) demonstrated that the presence of a secondary confession within an informant’s testimony resulted in significantly more guilty verdicts as compared to a no confession control condition; however, research has also shown that informant testimony is often fabricated and manipulated for the benefit of the prosecution (Garrett, 2011; Warden, 2005). In fact, false testimony from informant witnesses is currently the leading cause of wrongful convictions in capital cases. The Northwestern Law School Center for Wrongful Convictions has found that since the reinstatement of capital punishment in the 1970’s, 51 out of 111 death row convictions, and later exonerations, have been based in part on faulty informant testimony (Warden, 2005). Despite its significant contribution to wrongful convictions, the use of informants is still largely unregulated within the United States legal system (Natapoff, 2006; Roth, 2016). Courts maintain that existing trial mechanisms, such as discovery, juror instructions, and cross-examination allow jurors to evaluate the truthfulness of informant testimony (Giglo v. United States, 1972). It is assumed that through these safeguards jurors should be able to assess the credibility of
jailhouse informants (Natapoff, 2006). However, the increasing number of wrongful convictions linked to false informant testimony indicates that these safeguards might not be as effective as the courts presume. The study of informant testimony is important for further understanding how to better regulate this type of evidence and prevent future wrongful convictions.

The current study aimed to evaluate the influence of jailhouse informant testimony on juror decision-making through the manipulation of cross-examination techniques as well as the presence and absence of an inconsistent statement concerning a specific crime detail. Thus, this study evaluated whether the method in which the defense attorney presented his cross-examination influenced jurors’ overall perception of the jailhouse informant. The method of cross-examination was manipulated in terms of an Aggressive, Neutral, and Empathic approach to determine if the addition of empathic understanding resulted in cross-examination serving as a more effective safeguard.

1.1 Jailhouse Informants

A jailhouse informant is an individual who provides information to the prosecution or police concerning his knowledge of a crime based on information obtained while incarcerated (Neuschatz et al., 2008). Typically, the informant testifies that the defendant confessed directly to him, known as a secondary confession (Neuschatz et al., 2008). According to a recent archival study conducted by Neuschatz et al. (under review), who performed a content-analysis on the testimonies of 55 informant witnesses from 22 DNA exoneration cases, 93.94% of the jailhouse informants presented an alleged secondary confession within their testimony. This is particularly concerning considering confession evidence is known to be one of the most persuasive types of evidence.
presented in court, especially with cases that otherwise have only limited or
circumstantial evidence against the defendant (Covey, 2014). In-custody confessions are
often easy to allege and difficult to disprove. In order to generate a credible confession, a
jailhouse informant simply needs to learn a few basic details about another inmate’s case,
and then present this information to the police or prosecutor as confessionary evidence
(Covey, 2014). In actuality, an informant could discover this information by reading the
newspaper, watching a TV broadcast, or communicating with friends and relatives that
monitored preliminary hearings as well as other case proceedings (Covey, 2014).

Informants can be offered various incentives in exchange for testifying, including
the dismissal of charges or a reduced prison sentence (Covey, 2014). Unfortunately,
these incentives can also serve as a motivating factor for informants to provide false
testimony, and report whatever information the prosecution needs to support their case
(Natapoff, 2006). The Supreme Court has acknowledged that bartered testimony from
jailhouse informants is extremely unreliable and that inducements can motivate
informants to fabricate evidence (Giglo v. United States, 1972). Notably, in many cases
the incentive being provided to the informant remains undisclosed to the jury throughout
the trial (Neuschatz, Jones, Wetmore, & McClung, 2012). According to the content
analysis conducted by Neuschatz et al. (under review), 21.43% of informants admitted to
receiving an incentive when asked by either the prosecution or the defense. Thus, the
majority of informants explicitly denied receiving anything in exchange for their
testimony. This is often because an official deal is not made between the prosecutor and
informant until the trial has formally concluded. It is well understood within the prison
system that typically an informant’s reward is contingent upon the outcome of a case
(Natapoff, 2006). Compensation for informants depends solely on how useful the informant is to the prosecutor.

Research has shown that even when jurors are aware that informants are receiving an incentive, this still does not diminish the influence of their testimony (Neuschatz et al., 2008). In their study, Neuschatz and colleagues demonstrated that participants did not view the informant receiving an incentive as a reason to doubt the validity of his testimony. These results were attributed to the fundamental attribution error, the tendency for individuals to attribute the behavior of others to dispositional factors, while diminishing the contribution of situational factors. According to the fundamental attribution error (Ross, 1977), a person’s behavior can be explained through either dispositional or situational factors. Dispositional-based explanations attribute a person’s behavior to traits unique to personality. Situational-based explanations, in contrast, attribute a person’s behavior to the situation in which that person is involved. People tend to ignore situational constraints when judging the behavior of others, and instead attribute behavior entirely to the personality of the individual in question. In regard to the study conducted by Neuschatz et al. (2008), participants did not consider the informant receiving an incentive as a reason to doubt the veracity of his testimony. Jurors presumed that the jailhouse informant’s true motivation to testify was the result of dispositional motives, such as he felt bad for the victim’s family, not that he was motivated by the situational incentive to receive a sentence reduction.

Jailhouse informants have much to gain and little to risk by fabricating testimony. Perjury charges against lying informants are practically nonexistent. As noted by the Los Angeles Grand Jury Commission in their investigation of informant witnesses, when an
informant lies in court, they are rarely, if ever, prosecuted for perjury (Bloom, 2002). There is really no punishment an informant could receive for fabricating evidence that is much worse than his already existing state in prison. Thus, in many ways there is no risk and only reward for fabricating information against fellow inmates (Neuschatz et al., 2012).

1.2 Safeguards to Informant Testimony

There are few safeguards to protect innocent defendants against false informant testimony. The United States Court of Appeals for the Fourth Circuit has established certain procedures that the government must adhere to when a compensated witness is involved at trial. This includes (1) the compensation arrangement between the prosecution and the informant being disclosed to the defendant, (2) the jury being instructed to engage in heightened scrutiny of the witness, and (3) the defendant being provided the opportunity to cross-examine the witness (Natapoff, 2006). Even though the Supreme Court has acknowledged that bartered testimony from jailhouse informants is extremely unreliable, they also argue that these existing trial mechanisms of discovery, juror instructions, and cross-examination serve as sufficient safeguards in protecting the wrongly accused (Giglo v. United States, 1972). This argument rests on the prevailing assumption that jurors will be able to evaluate the truthfulness of an informant’s testimony, and discount unreliable information with the aid of these safeguards (Covey, 2014); however, this assumption is almost certainly incorrect. As previously mentioned, research on the fundamental attribution error (Neuschatz et al., 2008) demonstrates that jurors cannot properly discount informant testimony, even when they know that these witnesses have an incentive to lie (Covey, 2014). In short, these existing measures are
simply inadequate in protecting the innocent, and clearly do not prevent wrongful convictions.

Discovery cannot not solve the problem of false informant testimony. This is because in many cases, there is simply little to disclose (Covey, 2014). Most of the critical details surrounding a jailhouse informant’s testimony, including how the prosecutor selects, prepares, and evaluates such witnesses are simply “undiscoverable” (Covey, 2014). Also, the incentives that jailhouse informants receive in exchange for their cooperation are typically hidden. Prosecutors rarely negotiate explicit deals with informants prior to their testimony. Rather, prosecutors and informants work together with a shared understanding that an informant’s positive performance will eventually be rewarded with tangible benefits (Covey, 2014).

Cautionary instructions from the judge concerning jailhouse informants also cannot solve the problem of false informant testimony. The intent of cautionary juror instructions is to reduce the negative impact of fabricated testimony by specifically bringing jurors’ attention to certain factors that tend to make informant testimony unreliable (Neuschatz et al., 2012). The truth is that all jurors listen to an informant’s testimony already with the knowledge that this witness is a convicted criminal; regardless of that knowledge, these jurors routinely continue to believe the informant’s testimony (Covey, 2014). Additionally, research suggests that judicial instructions are likely to be ineffective in educating jurors because these instructions are too difficult to understand (Ogloff & Rose, 2005; Reifman, Gusick, & Ellsworth, 1992). Jurors cannot correctly apply cautionary instructions regarding the unreliable nature of jailhouse informants if they do not comprehend them (Neuschatz et al., 2012).
Currently, cross-examination is also not solving the problem of false informant testimony; however, unlike the other safeguards, it does have the potential. The procedures inherent within cross-examination are thought to be crucial for evaluating the accuracy of evidence as well as exposing unreliable or dishonest evidence obtained during direct examination (Wheatcroft, Wagstaff, & Kebbell, 2004). Thus, in theory, cross-examination is supposed to protect the accused by allowing the jury to consider the true motivations of the witness who is testifying (Wheatcroft, Wagstaff, & Kebbell, 2004). As the Supreme Court noted in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking unreliable, but admissible evidence. Thus, cross-examination is intended to serve as a means for jurors to evaluate the overall credibility of a witness’s testimony. Unfortunately, in regard to jailhouse informants, cross-examination can be very challenging for the defense, especially when the informant’s testimony has been previously coached and prepared by the prosecution. The alleged confession within an informant’s testimony can be difficult to corroborate or contradict which makes this evidence difficult to cross-examine because these statements can be neither confirmed nor disproved (Natapoff, 2006).

During cross-examination, opposing counsel is allowed to use specific techniques such as leading and suppositional forms of questioning to discredit witnesses brought to the stand. This is intended to reveal signs of prejudice, incompetence, or dishonesty within a witness’s testimony (Kassin, Williams, & Saunders, 1990). Thus, in theory, cross-examination should enhance the credibility of witnesses who are accurate and honest, and diminish the credibility of those who are inaccurate and dishonest. Overall, it
is the lawyers who set the topic and agenda in the courtroom in an attempt to elicit information that is strategically valuable to their case (Archer, 2011). This behavior can actually be viewed as a form of systematic aggression. The lawyer uses questions to not only request information and clarification from witnesses, but to also undermine their opposition.

The use of systematic aggression can actually be counterproductive to the efforts of the defense lawyer. This is because systematic aggression contradicts the theory developed by Erving Goffman (1967) that states all members of a group are expected to sustain a certain standard of considerateness when interacting with one another. In his research on facework, Goffman considered mutual acceptance to be the basic structural foundation of any interaction. Also, most importantly, an individual’s actions should always be focused on counteracting events that threaten face. Face is defined as the positive social value a person claims for himself during contact with others (Goffman, 1967). Thus, Goffman identified self-respect and considerateness to be the essential constructs needed to maintain one’s own face as well as the face of others. When using systematic aggression in the courtroom, a lawyer may claim that these actions are necessary in eliciting evidence from a witness (Archer, 2011). The lawyer’s main motivation is not necessarily to damage face, but rather to engage in face-threatening activities as part of a strategic process in presenting evidence. The issue with this is that jurors may not hold the same viewpoint. Witnesses who have their morality, competence, and trustworthiness called into question during cross-examination are likely to feel some level of indignation and irritation (Archer, 2011). These feelings can be
easily perceived and transferred to the jury, who may also begin to feel irritation on behalf of the witness.

Research has shown that presumptuous cross-examination questions can actually bias juror perceptions of a witness. Kassin, Williams, and Saunders (1990) revealed that impolite questions varied in their effect on jurors depending on the type of witness (psychological expert or victim) being examined. When the recipient of a damaging, presumptuous question was a psychological expert, mock jurors significantly lowered their ratings of credibility, competence, believability, and persuasiveness for the expert. This occurred whenever the expert’s professional reputation was called into question, regardless of whether or not the charge was corroborated with other evidence. When the recipient of a damaging, presumptuous question was a victim, mock jurors’ evaluation of the witness’s credibility was unaffected. Thus, only the expert’s reputation was harmed by the suggestive questioning, not the victim. In regard to informant testimony, this is an interesting concept to consider in the case that jurors are perceiving the jailhouse informant to be a victim on the witness stand. Based on how the informant is being treated by the defense lawyer, jurors may view the informant as a victim of aggressive questioning and in this situation their perception of his character and reputation will remain undamaged.

Research has also shown that even the personal characteristics of lawyers can impact jurors sentencing outcomes. Trahan and Stewart (2011) conducted a content analysis that analyzed former capital jurors and their impression of both the prosecuting and defense attorney, as well as whether these impressions had an impact on sentencing decisions. Their findings revealed that jurors’ impression of the prosecuting and defense
attorney were focused primarily on the lawyer’s physical appearance and personality. Ultimately, the jurors’ perceptions of the defense attorney were significantly more negative than their impressions of the prosecutor. Less than one-third (30.9%) of the jurors developed a positive impression of the defense attorney’s character. In particular, the jurors focused on the defense attorneys’ level of self-esteem, often describing them as arrogant, egomaniacal individuals, whose sense of self was unfounded and counterproductive to their efforts. Conversely, prosecutors who demonstrated high levels of self-esteem were often praised by the jurors as having outstanding confidence. The only exception is when the prosecuting attorneys were perceived as treating other individuals discourteously, then these prosecutors were also viewed negatively similar to the defense attorneys; however, these perceptions of the prosecution were not found to be related to sentencing outcomes. Contrarily, there was a significant relationship between jurors’ negative impressions of the defense attorney and the severity of sentencing outcomes. In particular, jurors with unfavorable perceptions of the defense attorney were more likely to sentence the defendant to death rather than to life in prison.

1.3 Implementation of the Psychodramatic Method

The effectiveness of cross-examination could potentially be enhanced if lawyers started to apply a humanistic perspective to their work. The psychodramatic method is a form of therapy that creates a life-like situation for individuals to interact within, yet at the same time presents a flexible learning environment that allows alternate behavioral responses to be addressed (Blatner, 1973). There are times in life when people begin to stop viewing others as fellow human beings, and instead as numbers in a game. This is problematic because what society needs is for individuals to be able to relate themselves
directly to others in such a way that allows them to recognize the indistinguishable value of their fellow human beings (Moreno, 1969). Psychodramatic enactment enables people to move beyond the normal roles they assume in their daily existence. It permits them to explore the problems associated with human relationships and discover alternate solutions in dealing with these problems (Greenberg, 1974). The use of psychodrama can increase the development of emerging qualities within an individual that have been present all along, yet have laid dormant while he plays only one role in life. Social change is directly related to individual progress, growth, and attainment, but can only occur when an individual chooses to react to a familiar situation by initiating new ideas and concepts (Greenberg, 1974).

The techniques associated with the psychodramatic method are action-oriented. They require an individual to explore the psychological dimensions of his problems through the physical enactment of a conflict situation (Moreno, 1969). This is because Moreno, the founder of psychodrama, thought that acting served as a beneficial aid to the traditional verbal techniques frequently employed in therapy. He believed that the additional effort of acting out a situation was necessary in order to facilitate the development of personal awareness and interpersonal sensitivity (Blatner, 1973). The enactment of a conflict situation, in which one meaningfully confronts one’s problems on the psychodramatic stage, is known as an encounter (Greenberg, 1974). One important aspect of the encounter is that it always occurs in the “here and now” regardless of whether it depicts a situation that occurred in the past or a situation that is expected to occur in the future (Greenberg, 1974). The purpose of the encounter is to take an event and expand it in a multitude of dimensions, including those of time, space, and emotion.
This is to ensure that the individual creating the enactment is provided the opportunity to experience the event in a variety of novel and insightful ways. The expansion of an encounter often involves an individual taking a variety of roles that allow for that person to experiment with several different responses and reactions to a specific situation. Furthermore, individuals’ roles can change from moment to moment as they redefine their characters according to the needs of the enactment, or as overall growth and development occur. In fact, a simple verbal exchange that in reality may last no more than two minutes could be expanded in a psychodramatic session to fill a half-hour time period of exploration (Greenberg, 1974).

The foundation of the psychodramatic method rests upon the constructs of spontaneity and creativity. Moreno considered spontaneity to be a form of non-conservable energy that emerges and spends itself within the moment. Thus, spontaneity always operates in the present, or hic et nunc. Furthermore, it is spontaneity that leads an individual to produce novel responses to a familiar situation (Greenberg, 1974). In terms of the psychodramatic session, spontaneity refers to the creative, uninhibited action that occurs on stage. In fact, Moreno referred to spontaneity as being the arch catalyst of creativity coming from within an individual (Greenberg, 1974). The involvement of spontaneity within the psychodramatic method has two main purposes. The first is to allow individuals to liberate themselves from the clichés of past stereotyped behavior. The second is to allow individuals to gain new personality dimensions through their ability to perceive and respond to new situations. When working together, spontaneity and creativity can create perceptual restructuring within an individual as well as newfound psychological insight (Greenberg, 1974).
There are specific roles that must be filled within every psychodramatic session. First, there is the protagonist, who is the subject of the psychodramatic enactment. The session focuses specifically on the problem that the protagonist wants to address (Greenberg, 1974). Second, there is the auxiliary ego, who is an actor that also takes part in the psychodrama in order to help the protagonist explore his problem. Typically, the auxiliary ego portrays the person with which the protagonist is currently experiencing a conflict. The performance of the auxiliary ego must be similar in essence to the behavior of the actual person being represented, however the character does not need to be exact. Additionally, a small amount of unexpected behavior on behalf of the auxiliary ego often serves a beneficial purpose in that it increases the protagonist’s spontaneity in coping with a particular challenge (Greenberg, 1974). Next, there is the director, who is the chief therapist and producer of the psychodramatic event. The director serves as a guide in helping the protagonist use the psychodramatic method to explore his problem. Additionally, the director is responsible for everything that takes place on the stage, such as presenting manipulations that bring about an increase or decrease of emotion from the actors, changing the scene as new insights are gained, and protecting the protagonist from generating too much emotion at one time (Greenberg, 1974). Finally, there is the audience, this refers to any individual present during the psychodramatic session besides the protagonist, auxiliary ego, and director. There does not need to be an audience present during a psychodramatic session, but if one is present then these members can aid the protagonist by providing support, discussing similar problems, and empathizing with his situation (Greenberg, 1974).
The psychodramatic method can be divided into two general categories based on the focus of the protagonist's conflict situation. First, there is traditional psychodrama that is intended to help individuals with specific personal problems (Blatner, 1973). Second, there is contemporary sociodrama that is intended to help individuals with general societal problems (Blatner, 1973). Thus, psychodrama promotes an individual to react specifically to others who are meaningful to him, whereas sociodrama promotes an individual to react generally to others that represent various group symbols or stereotypes. While psychodrama is extremely useful in terms of individual therapy, sociodrama presents a method that is effective in addressing attitudes toward certain occupational groups or populations (Greenberg, 1974). For example, sociodrama has proven to be effective in the training of clinical nurses in that this technique has been used to explore the challenges associated in dealing with different kinds of patients (Blatner, 1973). In regard to the current study, sociodrama could also be applied to the training of trial lawyers in which they practice examining different types of witnesses, including jailhouse informants. During the psychodramatic session, the lawyer could fill the role of the protagonist, while an auxiliary ego could fill the role of the jailhouse informant. Furthermore, it is possible that a professionally trained auxiliary ego could be established for an ongoing program of sociodrama (Blatner, 1973).

In the courtroom, a story can be believed or disbelieved, powerful or powerless, and meaningful or meaningless all depending on how it is told. Lawyers are not only presented the task of relaying their client’s story to the jury, but also examining witnesses’ stories as they are called to testify. Traditional methods focus on revealing facts by simply describing what happened. This focuses solely on intellectual truth, or
strictly the facts of a situation (Cole, 2001). If sociodrama was implemented, then this would not only promote the unveiling of evidence, but also how these facts or events were experienced. Thus, this allows intellectual truth to be presented alongside emotional truth, or the feelings associated with these facts (Cole, 2001). Additionally, lawyers have been taught to behave according to convention, but the problem with convention is that every trial is different. This means that spontaneity and creativity could be used as powerful tools in the courtroom. The psychodramatic method could teach lawyers how to adapt and create new solutions to problems that arise during trial (Leach, Nolte, & Larimer, 1999).

The task of cross-examination is to produce a counternarrative telling jurors a different story than what they heard on direct examination. As the name suggests, cross-examination is typically interrogation that is “cross,” or as Merriam-Webster defines the term, “showing annoyance.” Often, a lawyer’s strategy during cross-examination is to challenge a witness’s credibility by verbally attacking the individual in a harsh and demeaning tone (Cole, 2001). The problem with this approach is that jurors are simply searching for the truth; and the truth cannot effectively be revealed when a witness is attacked simply because they were called to trial by an opposing party (Cole, 2001). Through a psychodramatic enactment of cross-examination, a lawyer could learn that a jailhouse informant does not need to be treated as an enemy to be destroyed, but rather as a human being whose true motivation needs to be revealed (Cole, 2001). In order to accomplish this, a lawyer does not need to like the jailhouse informant or support the actions that he has done. The lawyer must simply explore the jailhouse informant’s emotional truth, or how the jailhouse informant is thinking and feeling at the time he
testifies at trial. This is because once a lawyer explores a witness’s emotional truth, it becomes easier for him to acknowledge the witness’s true motivation for testifying and present this information to the jury (Cole, 2001).

A jury that understands a jailhouse informant’s true motivation for testifying should also be able to understand that this witness cannot be considered a credible source of information. One way in which to promote jurors’ understanding of an informant’s motive to testify is to promote empathy (Leach et al., 1999). While psychologists define empathy in a variety of ways, the general definition suggests that empathy is an emotion that becomes activated by imagining or observing another person’s particular situation (Batson, 1991; Davis, 1996; Hoffman, 1981). Empathic understanding can be achieved once the jury is able to view the world through the informant’s eyes instead of their own (Leach et al., 1999). The jurors can understand and relate to the witness on an emotional level through the act of perspective-taking. While the jurors may not have ever experienced the jailhouse informant’s present situation, they have experienced similar emotions from situations in their own life (Cole, 2001). Most importantly, jurors that empathize with an informant will actually be able to conclude more decisively that this witness cannot be trusted. In revealing the informant’s true motivation to testify, to earn a situational incentive, the jurors would be able to see that this witness has either too much to gain or too much to lose to be considered a credible source of information (Cole, 2001). The testimony of the informant would be discredited as the jurors realize that there is no way this witness could be objective or unbiased (Leach et al., 1999).

A lawyer would need to first experience empathic understanding himself before this could be related to a jury. One way to promote empathy is to participate in role
reversal, a common technique used during psychodrama (Greenberg, 1974). In role reversal, the protagonist and auxiliary ego switch roles (Moreno, 1969). Thus, the auxiliary ego acts in the role of the protagonist and the protagonist acts in the role of the auxiliary ego. Most lawyers have never stepped into the role of a jailhouse informant; however, this could be a very insightful experience. In order for the lawyer to view the informant as a fellow human being, he must experience the world as the informant experiences the world. Under the guidance of a director, a lawyer could begin to understand what it is like to be in prison. Furthermore, once the lawyer starts to view the world through the informant’s eyes, this allows the lawyer’s understanding and empathy for the informant to significantly increase (Leach et al., 1999). The lawyer begins to understand the informant’s humanity. Thus, the lawyer has viewed the situation from the informant’s vantage point and has felt what it is like to be him (Cole, 2001). This allows the lawyer to become a more sensitive and effective communicator as he uncovers the human realities of the jailhouse informant.

The mirror technique is another common method used during psychodrama (Moreno, 1969). This allows the lawyer to gain an alternate understanding of how the jurors may view him and react to his behavior. When the director feels that this technique is required, then the lawyer will sit in the audience and watch as an alternate auxiliary ego assumes his role and interacts with the actor representing the jailhouse informant in the psychodramatic enactment. The lawyer is now able to see himself from a new point of view, and interpret how others are perceiving the actions being displayed on stage (Moreno, 1969).
The future-projection technique can serve as preparation for an important upcoming life situation (Moreno, 1969). In this method, the protagonist is instructed to articulate his objectives in the situation as well as clarify his role within the situation in relation to others. Additionally, the director with the assistance of the auxiliary egos can produce many different angles to a situation for the protagonist to explore. In reality, many of these situations will likely never occur, however this prepares the protagonist for many different potential responses (Greenberg, 1974).

1.4 Empathic Accuracy

In everyday social encounters, it is a beneficial skill to be able to accurately infer the thoughts and feelings of other people. Empathic inference combines observation, memory, knowledge, and reasoning in order to yield insight into the thoughts and feelings of others. This type of inference can produce astonishingly accurate insights; however, it is also so much a part of daily life that it is often taken for granted. When used correctly, empathic inference can lend helpful insight into the true motivations and intentions of others (Ickes, 1997).

Empathic accuracy is the measure of one’s skill in empathic inference. In other words, empathic accuracy is the measure of one’s ability to accurately infer the specific content of another person’s thoughts and feelings. All else being equal, emphatically accurate individuals are those that are likely to be the most tactful advisors, effective negotiators, productive salespersons, and insightful therapists (Ickes, 1997). In regard to the current study, perhaps also the most successful lawyers. Empathic accuracy is the most recent area of study within the field of interpersonal research (Ickes, 2001). Carl Rogers brought attention to the importance of empathic accuracy in 1957 within the
therapist-client setting. Throughout the next four decades, researchers worked on developing an accurate method to measure empathic understanding. William Ickes (1997) introduced a measurement approach known as the standard stimulus paradigm in which participants served solely as perceivers of a recorded set of interactions between two individuals. Their role as perceivers was to infer the thoughts and feelings of the target person in the recording. Thus, the participants did not report their own thoughts and feelings throughout the interaction, but rather what they believed someone else was thinking or feeling during the interaction. The basic assumption underlying the empathic accuracy measure is that the degree to which the perceiver “understands” the target person is a function of the degree to which the content of the perceiver’s thought-feeling inferences match the content of the target’s actual thoughts and feelings (Ickes, 2001).

Empathy has been shown to have a significant impact on decision-making. An archival analysis conducted by Weinberg and Nielson (2012) investigated whether and to what extent empathy played a role in how federal district court judges decided employment civil rights cases. Specifically, the researchers examined whether federal judges with different social backgrounds made systematically different decisions that affected case outcomes. In particular, the summary judgment phase of the case was focused on, which is when both parties call upon the judge to assess the merits of the plaintiff's claim and determine whether the case should proceed to trial. A dataset of employment civil rights cases were selected because the determination of discrimination in this context depends largely on the judge’s perception of an employer’s actions against a plaintiff. Also, considering illegal discrimination can often operate through implicit bias rather than overt harassment, the facts and evidence in these cases tend to be
ambiguous and open to interpretation. The researchers predicted that if the judges had been targets of past discrimination, then their experiences would shape their perception about the current case of discrimination being presented to them. The results showed variation across judges in that white judges tended to dismiss cases for summary judgment at a higher rate than minority judges. Additionally, white judges were more likely to dismiss cases involving minority plaintiffs, while minority judges were less likely to dismiss cases involving white plaintiffs. These findings showed no political party effects, suggesting that judicial decision-making was influenced more by empathetic decision-making than political ideology. Considering empathy involves understanding the emotional states of others, it might be that minority judges were more open to the feelings and perspectives of subordinated group members.

1.5 Inconsistencies and the Truth-Default Theory (TDT)

Along with empathic cross-examination, lawyers can also discredit informant witnesses by revealing inconsistencies within the informant’s testimony. Frequently, witnesses are repeatedly questioned by multiple sources concerning their statements against a defendant. This includes interviews with detectives, depositions with attorneys, and finally the presentation of testimony on the witness stand (Berman, Narby, & Cutler, 1995). Repeated questioning presents many opportunities for the informants to contradict themselves on a variety of dimensions. Berman et al. (1995) examined the effectiveness of cross-examination in discrediting inconsistent eyewitness testimony. They also examined whether the details provided in the testimony (central or peripheral) impacted jurors’ reactions to the eyewitness. In particular, central details focused on the perpetrator’s appearance, while peripheral details referred to objects in the eyewitness’s
environment. The results revealed that mock jurors exposed to inconsistent eyewitness testimony perceived the eyewitness as less credible and the defendant as less culpable; thus, they were less likely to convict. Additionally, inconsistent central details led to fewer convictions than inconsistent peripheral details. The results demonstrated that cross-examination could serve as an effective strategy in revealing inconsistent testimony.

Research has also evaluated the effect of inconsistencies on jurors’ perception of confessionary evidence. In a study by Palmer, Button, Barnett, and Brewer (2016), confessionary evidence was manipulated in terms of whether it was consistent or inconsistent with verifiable crime facts as well as whether or not there was a salient alternative explanation made present for the confession. The results revealed that inconsistencies influenced participants’ verdict decisions regardless of whether or not an alternative explanation was made salient. Thus, inconsistent confessionary evidence resulted in fewer guilty verdicts compared to consistent confessionary evidence. The researchers attributed this to participants generating and considering their own alternative explanations, other than guilt, for the confessionary evidence when confronted with inconsistencies within the testimony. These findings revealed that the presence of inconsistencies within confessionary evidence could undermine the credibility of this type of evidence.

The Truth-Default Theory (TDT) provides a framework for understanding how jurors may be able to generate their own alternative explanations for false testimony. TDT (Levine, 2014) proposes that individuals remain naturally in a truth-default state until something noticeably suspicious triggers their need to detect deception. Most
individuals assume that the messages they receive are honest by default unless something in particular causes them to suspect a message is deceptive. These triggers that cause suspicion are necessary in order for a person to abandon the truth-default state and enter into a state of suspicion. Once individuals enter into a state of suspicion, they start actively searching for evidence that confirms or denies their suspicious beliefs. If an individual’s suspicions are confirmed, then he will make a judgement of deception. If an individual’s suspicions are disconfirmed, then he will either make of judgement of no deception, return to a state of suspicion, or return to the truth-default state.

Thus, there are two thresholds that need to be crossed in order to make a deceptive judgment. The first threshold involves someone entering into a state of suspicion and can be measured through participants perception of the informant’s motivation to testify. Acknowledgment of a situational motivation would indicate that the participant has entered into a state of suspicion, whereas a dispositional motivation would indicate that the participant has returned to a truth-default state. Thus, the fundamental attribution error can be used to determine if participants have crossed over this threshold. The second threshold involves someone entering into a judgment of deception and can be determined by participants’ reaction to the presence of inconsistencies within an informant’s testimony. For the participants that have already entered into a state of suspicion, when they begin to actively search for evidence then the presence of inconsistencies can serve as confirmation of their suspicions. At this point, if participants do attribute the inconsistencies to be indicative of deception, then they can cross over the second threshold into a deceptive judgment decision. If participants
attribute the inconsistencies to nervousness or another innocent reason, then they will not cross over this threshold.

1.6 Current Study

The current study evaluated the influence of jailhouse informant testimony on juror decision-making through the manipulation of cross-examination techniques. Specifically, an empathic approach to cross-examination was introduced to determine if this resulted in cross-examination serving as a more effective safeguard to informant testimony. Participants listened to an audio-recording of a trial transcript that presented a jailhouse informant as a witness. Cross-examination by the defense attorney was presented as either Aggressive, Neutral, or Empathic depending on the condition. Participants were asked to make a verdict decision as well as complete a measure of empathic accuracy regarding statements made by the jailhouse informant during his testimony. This study also evaluated the influence of inconsistencies within the informant’s testimony on juror decision-making. During cross-examination, an inconsistent statement concerning a specific crime detail was either present or absent within the informant’s testimony.

1.7 Hypotheses

It was predicted that empathic cross-examination with the jailhouse informant would result in more not-guilty verdicts. Additionally, it was predicted that the implementation of empathic cross-examination would result in lower ratings of trustworthiness, confidence, and believability of the jailhouse informant. In regard to the presence of inconsistencies within the jailhouse informant’s testimony, it was predicted that the presence of an inconsistent statement would result in more not-guilty
verdicts. Additionally, it was predicted that the presence of an inconsistent statement would result in lower ratings of trustworthiness, consistency, and believability of the jailhouse informant. Lastly, it was predicted that empathic cross-examination alongside the presence of an inconsistent statement would result in the most not-guilty verdicts compared to all other conditions.
CHAPTER TWO

METHOD

2.1 Participants

The current study recruited undergraduate psychology students \( N = 273 \) from the University of Alabama in Huntsville (UAH), who received course credit in exchange for their participation. Of these students, 11 selected to have their data excluded from analysis and 16 experienced technical issues or some form of error during the experimental session; therefore, the final sample consisted of 246 participants. Demographic data was collected; however, some participants chose to not provide this information. The average age of the participants was 20.54 \( (N = 245) \) and ranged from 18 to 46. There were 152 women and 93 men of those who reported gender. Of the 237 participants that reported race, the majority self-identified as White (80.5%), though participants also identified as Black (9.3%), Asian (5.3%), American Indian (0.8%), and Native Hawaiian (0.4%).

Participants were selected through convenience sampling. Recruitment and sign-up were conducted with the online participant management system, SONA. Students were able to select and sign-up for experimental sessions from the posted available time-slots. Participants were tested individually, and each participant was randomly assigned
to one of the seven experimental conditions. Participants were required to be at least 18 years of age or older. Additionally, participants needed to be able to demonstrate the ability to read and comprehend English. All participants were treated according to the ethical guidelines of the American Psychological Association (APA). The current study received IRB approval (see Appendix A).

2.2 Design

The study conformed to a 3 (Cross-Examination: Aggressive, Neutral, Empathic) x 2 (Inconsistencies: Present, Absent) between-subjects design. A No-Informant Control Condition was also included for comparison purposes. Cross-Examination (Aggressive, Neutral, Empathic) was operationally defined as the method of questioning employed by the defense attorney toward the jailhouse informant. The manner in which these questions were presented by the defense attorney was manipulated based on experimental condition. Inconsistencies (Present, Absent) was operationally defined as the inclusion or exclusion of an inconsistent crime detail provided by the jailhouse informant in his testimony. Participants’ verdict decision (Guilty, Not Guilty) for the defendant served as the major dependent measure of interest. There were also several other dependent measures including participants’ perception of the defense attorney during cross-examination (hostile, neutral, or accepting) as well as participants’ perception of the jailhouse informant’s truthfulness, confidence, believability, consistency, and motivation to testify. Participants’ pre-trial attitudes and level of empathic accuracy toward the jailhouse informant were also collected.
2.3 Materials

Pre-Trial Questionnaire. Participants completed the Pre-trial Juror Attitudes Questionnaire (PJAQ) developed by Lecci and Myers (2008). The PJAQ is a 29-item self-report questionnaire consisting of six subscales that measure the opinions and beliefs jurors hold before being presented information at trial (see Appendix B). The subscales measure preconceived attitudes toward the judicial system in terms of System Confidence (CON), Conviction Proneness (CP), Cynicism toward the Defense (CYN), Racial Bias (RB), Social Justice (SJ), and Innate Criminality (INNCR). Respondents indicated their level of agreement with each item on a 5-point scale ranging from 1 (strongly disagree) to 5 (strongly agree). Total possible scores ranged from 29 to 145 with higher scores being indicative of a pro-prosecution bias.

Lecci and Myers (2008) evaluated the predictive validity of the PJAQ and demonstrated the relative stability of the correlation coefficients for the PJAQ across three trial scenarios (murder, sexual assault, and armed robbery) as well as for two versions of evidence (overwhelmingly strong or weak). When examining overall verdict tendencies, five of the six PJAQ subscales (CP, CON, CYN, RB, and INNCR) yielded significant correlations despite the fact that the trials did not directly address constructs that corresponded to the subscales of the PJAQ. Furthermore, all of the subscales of the PJAQ are significantly intercorrelated; however, no two scales share more than approximately 25% of their variance. This provides additional justification for considering the scales as separate yet related entities, as opposed to conceptualizing pretrial attitudes as a single construct.
In terms of convergent validity, the PJAQ is shown to share significant variance with the Juror Bias Scale (JBS) developed by Kassin and Wrightsman (1983). In particular, the PJAQ subscale of Conviction Proneness and the JBS subscale of Reasonable Doubt share 64% of their variance. Also, the PJAQ subscales of System Confidence and Cynicism toward the Defense and the JBS subscale of Probability of Commission each share approximately 36% of their variance. This overlap is expected because all of these PJAQ subscales converge with their JBS counterparts both theoretically and with regard to shared item content. The magnitude of the correlations between the remaining PJAQ subscales (Racial Bias, Social Justice, and Innate Criminality) and both the JBS and Revised Legal Attitudes Questionnaire-23 (R-LAQ-23) (Kravitz, Cutler, & Brock, 1993) is smaller, which suggests that the remaining PJAQ subscales are relatively independent and contribute new information to the assessment of juror attitudes (Lecci & Myers, 2008).

Participants also completed the Interpersonal Reactivity Index (IRI) developed by Davis (1980). The IRI is a 28-item self-report questionnaire consisting of four subscales to measure four distinct aspects of empathy: Perspective Taking, Fantasy, Empathic Concern, and Personal Distress (see Appendix B). Thus, the four subscales should be examined separately in analysis since the instrument is not intended to measure overall empathy. Respondents answered each item on a 5-point scale ranging from 1 (does not describe me well) to 5 (describes me very well). Total possible scores for each subscale ranged from 7 to 35; however, the IRI does not provide a set of norms or cut-off scores. Rather, it is intended to be used as a continuous measure of empathy-related dimensions rather than a categorical measure indicative of either high empathy or low empathy.
The Perspective Taking (PT) scale assesses the tendency of respondents to spontaneously adopt the psychological viewpoint of others in everyday life. A sample item from the PT scale is “Before criticizing somebody, I try to imagine how I would feel if I were in their place.” The Fantasy (FS) scale assesses the tendency of respondents to transpose themselves imaginatively into the feelings and actions of fictitious characters in books, movies, and plays. A sample item from the FS scale is “When I am reading an interesting story or novel, I imagine how I would feel if the events in the story were happening to me.” The Empathic Concern (EC) scale assesses the tendency of respondents to experience feelings of warmth, compassion, and concern for others in unfortunate situations. A sample item from the EC scale is “I often have tender, concerned feelings for people less fortunate than me.” The Personal Distress (PD) scale assesses the tendency of respondents to experience feelings of personal unease and discomfort in tense interpersonal settings. A sample item from the PD scale is “I sometimes feel helpless when I am in the middle of a very emotional situation.” Davis (1980) reported the psychometric properties of the IRI questionnaire. All four subscales demonstrated satisfactory internal reliability (ranging from .71 to .77) as well as test-retest reliability (ranging from .62 to .71). Also, similar to most empathy measures, there were significant sex differences for each subscale with females consistently scoring higher than males.

Trial Transcript. The trial transcript (see Appendix C) was adapted from an actual trial transcript titled State of Indiana v. David R. Camm (2006). It was presented to participants in the form of an audio recording. A meta-analysis conducted by Bornstein et al. (2017) revealed that mock trial presentation format served as a consistent
moderator in verdict outcomes. Furthermore, it was shown that more naturalistic, non-written trial materials produced more ecologically valid results. There were seven versions of the trial transcript to which the participants were randomly assigned that included six experimental conditions and one control condition. The control transcript contained opening and closing statements as well as the testimony of two expert witnesses. Specifically, the first expert witness served as a bloodstain pattern analyst and presented blood spatter evidence. The second expert witness served as a firearms examiner and presented information concerning the weapon used during the crime. The control transcript did not include the testimony of a jailhouse informant. The experimental versions of the transcript contained opening and closing statements, the testimony of the two expert witnesses, and the testimony of a jailhouse informant. All experimental versions of the transcript had the same direct-examination of the jailhouse informant presented by the prosecution, however the cross-examination of the jailhouse informant presented by the defense differed depending on the experimental manipulation.

Aggressive cross-examination was characterized as the defense attorney questioning the jailhouse informant in a purposefully offensive and demeaning manner. This included the use of insults, repeated questioning, and attacks of the informant’s character. Neutral cross-examination was characterized as the defense attorney questioning the jailhouse informant in a factual and straight-forward manner. This included the absence of any emotionally-charged language. Empathic cross-examination was characterized as the defense attorney questioning the jailhouse informant in a manner that promoted compassion, perspective-taking, and awareness of the informant’s experience in prison. This included greater exploration of the issues brought forth at trial.
as well as questions not targeted at attacking the informant, but rather understanding his true thoughts and feelings.


The trial transcripts were analyzed with a linguistic software program, LIWC2015 (Pennebaker, Boyd, Jordan, & Blackburn, 2015). The program’s summary variable concerning authenticity was evaluated amongst the cross-examination conditions. This variable was calculated from an algorithm based in previous language research and developed from multiple LIWC variables combined together. The authenticity variable measures the extent to which people reveal themselves in a genuine and honest way. It is a dimension that captures the degree to which a person is considered to be personal, humble, and vulnerable. LIWC calculated the Empathic cross-examination presented by the defense attorney to be more authentic than both the Aggressive and Neutral cross-examination. In the inconsistencies present condition, Empathic cross-examination was calculated as being the most authentic (44.74%) compared to Aggressive (27.56%) and Neutral (32.21%) cross-examination. In the inconsistencies absent condition, Empathic
cross-examination was also calculated as being the most authentic (47.44%) compared to Aggressive (30.17%) and Neutral (36.12%) cross-examination.

**Mid-Trial Questionnaire.** Participants were asked questions from the Mid-Trial Questionnaire (see Appendix B) throughout the trial. Specifically, these questions were presented after each expert witness provided his testimony to determine how influential this evidence was in determining participants’ verdict decisions.

**Measure of Empathic Accuracy.** Participants completed a measure of empathic accuracy (see Appendix B) based on the Empathic Accuracy Standard Stimulus Paradigm (EA-SSP) of Marangoni, Garcia, Ickes, and Teng (1995). The EA-SSP was developed in a clinical setting based on Ickes (1993) preliminary research of empathic accuracy within interpersonal judgment decisions. In Marangoni and colleagues’ study (1995), participants viewed three videotaped interactions depicting a female client discussing a real-life personal problem with a male therapist. Afterward, the participants attempted to infer the thoughts and feelings of the client during specific segments of the video-recorded interaction that the experimenter pre-selected and presented to them for a second time. The responses of the participants were compared to the actual thoughts and feelings that the female clients reported to the researchers after their initial therapy session. This comparison was performed by four judges’ that demonstrated an internal consistency (Cronbach’s alpha) of .85 for the ratings of empathic accuracy.

The current study required participants to make independent judgment decisions concerning what they inferred the jailhouse informant to be thinking and feeling at the time of making a particular statement within his testimony. Thus, the stimulus material consisted of an audio-recorded interaction between the jailhouse informant and the
defense lawyer. Gesn and Ickes (1999) demonstrated that perceivers’ empathic accuracy was more dependent on a target’s verbal behavior than nonverbal behavior, which provided additional support to the use of an audio recording in this current study. Participants served only as perceivers to the interaction, meaning they only reported what they inferred the target person, in this case the jailhouse informant, to be thinking and feeling. The verbatim instruction for the empathic accuracy task was presented as such, “For each statement that you hear, write down what you think [the target person] was thinking and feeling at that moment.” Thus, the participants were asked to make a straightforward inference concerning the target’s actual thoughts and feelings at each of those exact points. Participants were asked to present their responses in the form of a sentence beginning with one of two sentence stems: “[The target] was thinking” or “[The target] was feeling.”

The basic assumption underlying the EA-SSP is that the degree to which the perceiver understands the target person is a function of the degree to which the content of the perceiver’s thought-feeling inferences match the content of the target’s actual thoughts and feelings (Gesn & Ickes, 1999; Marangoni, Garcia, Ickes, & Teng, 1995). Thus, empathic accuracy scores were computed by independent coders that rated the similarity of each thought and feeling to its corresponding inference on a 3-point scale, where 0 indicated essentially different content, 1 indicated similar, but not the same content, and 2 indicated essentially the same content. These similarity ratings were then aggregated to create an overall measure of empathic accuracy that was scaled like a percentage to range from 0 (no accuracy) to 100 (perfect accuracy). Interrater reliability in the empathic accuracy studies conducted by Ickes’ and colleagues at the University of
Texas at Arlington have consistently been quite high ranging from a low of .85 in a study with 4 raters to a high of .98 in two studies in which 7 or 8 raters were used. Across all of the studies Ickes et al. has conducted to date, the average interrater reliability has been approximately .90.

Ickes, Stinson, Bissonnette, and Garcia (1990) demonstrated that the content accuracy of this empathic measure could be measured reliably ($\alpha = .94$) with the procedure previously described. Additionally, Gesn and Ickes (1999) revealed that individual differences in empathic accuracy could be measured very reliably using this assessment. In particular, the results demonstrated a high cross-target correlation, which revealed that participants were consistent in the levels of empathic ability they displayed across all three videotapes. For example, participants that displayed high empathic accuracy on one tape displayed comparably high empathic accuracy on the other two tapes. Also, participants that displayed low empathic accuracy on one tape displayed comparably low empathic accuracy on the other two tapes. The average cross-tape correlation was .84, and the intraclass correlation of the empathic accuracy scores for all three tapes was .91, comparable to the .86 coefficient reported by Marangoni et al (1995). Overall, this suggests that empathic accuracy reflects a stable and reliably measured social skill.

The predictive validity of this empathic measure has been established in several studies. In the studies conducted by Stinson and Ickes (1992) as well as Graham (1994), it was revealed that close friends displayed higher levels of empathic accuracy compared to strangers when inferring the content of each other’s thoughts and feelings. The mean accuracy score for close friends was 36.0% whereas the mean accuracy score for
strangers was 24.1%. In another study by Kelleher (1998), it was shown that perceivers who had been given an accurate frame for interpreting the nature of an interaction between a confederate and target person were more accurate in inferring the target’s frame-relevant thoughts and feelings than perceivers who had been given either an inaccurate frame or no frame.

*Post-Trial Questionnaire.* Participants were asked to make a series of judgement decisions, including a verdict decision, at the end of the experiment. After selecting a verdict decision (guilty, not guilty), participants were presented a series of nine attention check questions and two manipulation check questions to ensure they were being attentive during the experiment. The nine attention check questions covered topics concerning the evidence revealed by the expert witnesses and the jailhouse informant. In regard to the jailhouse informant, the questions included whether or not the informant was receiving a reduction in his sentence for testifying, who contacted the prosecutor for the informant, and what television program the informant watched concerning the defendant. The first manipulation check question clarified if the presence or absence of the inconsistent statement was noticed by the participants. The second manipulation check question assessed participants’ perception of the method of cross-examination employed by the defense attorney. Similar to the nine attention check questions, the inconsistencies manipulation check consisted of a true/false question with the correct answer corresponding to the participants’ experimental condition. The nine attention checks and the inconsistencies manipulation check were able to produce responses with a definitive right or wrong answer. The cross-examination manipulation check was a more subjective form of measurement in that it asked participants to describe the attitude and
behavior of the defense attorney with the provided response options of Hostile, Neutral, Accepting, and Other.

Participants provided ratings of trustworthiness, confidence, consistency, and believability for the jailhouse informant on a 10-point Likert-scale. Participants also answered an open-ended question that asked why they believed the jailhouse informant decided to testify. Responses provided insight into participants’ motive attributions attributed to the jailhouse informant and were coded as Situational, Dispositional, Both, or Not Applicable. For the current study, Dispositional attributions reflected positive, pro-social motivations, such as desire to do the right thing. Situational attributions reflected motives that were centered around desire to get an incentive, such as a sentence reduction.

Participants also provided ratings concerning the attitude and behavior of the defense attorney on a 10-point Likert-scale. Participants answered another open-ended question that asked how they would describe the attitude and behavior of the defense attorney when he was questioning the jailhouse informant. Responses provided insight into participants’ perception of the defense and were coded as Aggressive, Neutral, Empathic, Multiple, or Not Applicable. Lastly, participants were asked about their prior knowledge of jailhouse informants and provided demographic information (see Appendix B).

2.4 Procedure

Participants were selected through convenience sampling from UAH’s introductory psychology courses. Recruitment and sign-up were conducted with the online participant management system, SONA, which allows students to select and sign-
up for experimental sessions from posted available time-slots. Upon arrival to the experiment, participants provided identification to verify that they were at least 18 years of age or older. Participants then provided consent to participate in the study. The consent form (see Appendix B) was presented as a paper document that participants were instructed to sign and return to the research assistant before the experimental session could begin. The consent form was also presented on the computer and linked to the initiation of the Qualtrics survey. Participants were required to acknowledge that they understood the consent form and provided a typed signature. Once participants provided electronic consent, this activated the beginning of the survey. If participants did not provide consent, then they were directed to the end of the survey and released from the experiment. Instructions lasted approximately 5 min as participants were informed to review a trial transcript keeping in mind that at the end they would need to make certain judgement decisions concerning the court case, including a verdict decision, as if they were a real-life juror. Verbatim instructions provided by the research assistant were as follows: “This study will take approximately 1 hour to complete. The study will be completed online. You will first answer two brief questionnaires and then listen to a trial transcript. Please read all of the instructions and pay close attention when listening to the audio. You are not allowed to go back and re-listen to any part of the trial. During the trial as well as after the trial, you will be asked to answer a variety of questions, including a verdict decision. Please read the questions carefully and answer them as honestly as you can.”

Participants completed the Pre-Trial Questionnaire that consisted of the PJAQ and the IRI, which lasted approximately 10 min. Next, participants listened to an audio
version of the trial transcript for approximately 30 min. Throughout the trial, participants were asked questions from the Mid-Trial Questionnaire. Specifically, these questions were presented after each expert witness provided his testimony. Additionally, participants completed the Measure of Empathic Accuracy during the jailhouse informant’s testimony. This required participants to make independent judgement decisions concerning what they inferred the jailhouse informant to be thinking and feeling at the time of making a particular statement within his testimony.

Afterward, participants completed the Post-Trial Questionnaire in which they made a series of judgement decisions, including a verdict decision for the defendant. These judgment decisions also included ratings of trustworthiness, confidence, believability, and consistency for the jailhouse informant as well as perceptions of the attitude and behavior of the defense attorney. Participants also completed a series of manipulation checks and demographic inquiries that resulted in completion of the Post-Trial Questionnaire lasting approximately 10 min. Finally, participants were debriefed (see Appendix B) and released from the experiment.
CHAPTER THREE

RESULTS

It was predicted that empathic cross-examination with the jailhouse informant would result in more not-guilty verdicts. It was also predicted that empathic cross-examination alongside the presence of an inconsistent statement would result in the most not-guilty verdicts compared to all other conditions. It was predicted that the implementation of empathic cross-examination would result in lower ratings of trustworthiness, confidence, and believability of the jailhouse informant. In regard to inconsistencies within the jailhouse informant’s testimony, it was predicted that the presence of an inconsistent statement would result in more not-guilty verdicts. It was predicted that the presence of an inconsistent statement would result in lower ratings of trustworthiness, consistency, and believability of the jailhouse informant.

3.1 Attention & Manipulation Checks

A series of 10 questions were asked to ensure that participants were attentive during the experimental session. The average number of questions answered correctly for each condition was above nine, with the lowest condition average equal to 9.66 ($SD = .58$). Across all conditions, the mean number of questions answered correctly was
9.76 (SD = .49). This was significantly greater than chance, or 5 out of 10 questions answered correctly, \( t(211) = 289.80, p < .001 \).

**Cross-Examination Manipulation Check.** Due to the subjective nature of this question, the responses to this manipulation check were evaluated separately from the other 10 questions. Participants in the Aggressive cross-examination condition were more likely to describe the attitude and behavior of the defense attorney as Hostile compared to the other response options: Hostile (79.2%), Neutral (12.5%), Accepting (1.4%), Other (6.9%). Participants in the Neutral cross-examination condition were more likely to describe the attitude and behavior of the defense attorney as Neutral compared to the other response options: Hostile (30.3%), Neutral (56.1%), Accepting (4.5%), Other (9.1%). Participants in the Empathic cross-examination condition were also more likely to describe the attitude and behavior of the defense attorney as Neutral compared to the other response options: Hostile (17.6%), Neutral (41.9%), Accepting (23.0%), Other (17.6%). The frequency counts for these percentages can be seen in Table D.1.

### 3.2 Verdicts

It was revealed that verdict decisions were not influenced by Cross-Examination and Inconsistencies. A 3 (Cross-Examination: Aggressive, Neutral, Empathic) x 2 (Inconsistencies: Present, Absent) x 2 (Verdict: Guilty, Not Guilty) Hierarchical Loglinear Analysis (HILOG) confirmed this conclusion, \( \chi^2(2, N = 212) = .46, p > .05 \) indicating no interaction between Cross-Examination and Inconsistencies. Method of Cross-Examination was not significantly related to verdicts, \( \chi^2(2, N = 212) = 2.38, p > .05 \) indicating no main effect of Cross-Examination. There was a significant main effect of Inconsistencies on verdicts, \( \chi^2(1, N = 212) = 5.20, p < .05, V = .16, OR = 1.96 \).
Participants were more likely to find the defendant guilty when the inconsistency was present (62%) compared to when the inconsistency was absent (38%). However, this effect disappeared after the removal of participants who failed to correctly answer the inconsistencies manipulation check, \(X^2(1, N = 193) = 3.43, p > .05\). A summary of verdict decision by condition can be seen in Table D.2.

*Prior Knowledge of Jailhouse Informants.* Previous research on jailhouse informants (Neuschatz et al., 2008; Neuschatz et al., 2012) has shown that the presence of informant testimony results in significantly more guilty verdicts compared to a no-informant control condition. The current study replicated this finding, \(X^2(1, N = 246) = 4.84, p < .05, \nu = .14, OR = 2.92\). In the control condition, participants were more likely to find the defendant not guilty (85.3% vs. 14.7%). However, in the experimental conditions, there was still a large percentage of participants that voted not-guilty (66.5%) rather than guilty (33.5%) despite the presence of informant testimony. This percentage of not-guilty verdicts was much higher than what has been found in previous jailhouse informant experiments. One explanation could be that jailhouse informants are becoming more well-known and this prior knowledge is influencing verdict decisions.

To further explore this effect, the influence of prior knowledge of jailhouse informants on verdict decisions was examined with a 3 (Cross-Examination: Aggressive, Neutral, Empathic) x 2 (Inconsistencies: Present, Absent) x 2 (Prior Knowledge: Present, Absent) x 2 (Verdict: Guilty, Not Guilty) HILOG. The results revealed a significant main effect of Prior Knowledge on verdicts, \(X^2(1, N = 209) = 4.72, p < .05, \nu = .16, OR = .49\). Participants were more likely to find the defendant not-guilty if they had prior
knowledge of jailhouse informants (68.8%) compared to if they did not have prior knowledge (31.2%). The results also revealed a significant main effect of Inconsistencies on verdicts, $X^2 (1, N = 209) = 5.73, p < .05, V = .17, OR = 2.06$. This significant effect still remained after the removal of participants who failed to correctly answer the inconsistencies manipulation check, $X^2 (1, N = 191) = 3.98, p < .05, V = .14, OR = 1.86$. Once again, participants were more likely to find the defendant guilty when the inconsistency was present (59.4%) compared to when the inconsistency was absent (40.6%).

To follow-up this finding, a Bivariate Logistic Regression was conducted to determine if participants’ prior knowledge of jailhouse informants was predicting verdict decisions. Verdict (Guilty, Not Guilty) was regressed onto Prior Knowledge (10-point scale with 1 “not at all knowledgeable” and 10 “very knowledgeable”) and the analysis revealed that prior knowledge of jailhouse informants served as a significant predictor of verdicts, $B = .12, SE = .06, \text{Wald } X^2(1) = 4.44, p < .05, \text{Exp}(B) = 1.12$, 95% CI (1.01, 1.25). This indicates that as prior knowledge of jailhouse informants increased, participants’ likelihood to find the defendant not-guilty also increased.

*Usefulness of the Jailhouse Informant.* Participants’ ratings of the three expert witnesses (10-point scale with 1 “not at all useful” and 10 “very useful”) were examined to determine if the confessionary evidence provided by the jailhouse informant was serving as a significant predictor of verdicts. A Bivariate Logistic Regression was conducted with Verdict (Guilty, Not Guilty) regressed onto the usefulness of the bloodstain pattern analyst, firearms examiner, and jailhouse informant. The analysis revealed that participants’ ratings for the usefulness of the jailhouse informant served as a
significant predictor of verdicts, $B = -0.34$, $SE = 0.09$, Wald $X^2(1) = 15.08$, $p < .001$, $Exp(B) = 0.71$, 95% CI (.60, .85). This indicates that as participants’ ratings concerning the usefulness of the jailhouse informant increased, their likelihood to find the defendant not-guilty decreased. Participants’ ratings in regard to the bloodstain pattern analyst, $B = -0.06$, $SE = 0.09$, Wald $X^2(1) = 0.54$, $p > .05$, $Exp(B) = 0.94$, 95% CI (.79, 1.11) and firearms examiner, $B = 0.02$, $SE = 0.07$, Wald $X^2(1) = 0.07$, $p > .05$, $Exp(B) = 1.02$, 95% CI (.89, 1.17) were both revealed to be non-significant, indicating that the evidence presented by these expert witnesses was not predicting verdicts.

### 3.3 Perception of the Defense Attorney

As previously mentioned, the Cross-Examination manipulation check indicated there were discrepancies between participants’ perception of the defense attorney and actual experimental condition. It was revealed that participants in the Empathic cross-examination condition were more likely to describe the attitude and behavior of the defense attorney as Neutral (41.9%) compared to Accepting (23.0%). In order to further assess participants’ actual perception of the defense attorney regardless of assigned experimental condition, a new variable titled *Perception of Defense* was created for further analyses. Conceptually this was justified considering the original intent underlying the design of the Cross-Examination manipulation was to examine if the attitude and behavior of the defense attorney influenced verdict decisions and perceptions of the jailhouse informant. If participants were not perceiving the defense attorney as intended with assigned experimental condition, then method of Cross-Examination was not serving as an effective manipulation. In order to more accurately evaluate if participants’ perception of the defense attorney was influencing judgment decisions, it
was necessary to create a new variable that reflected participants’ actual perception of the
defense attorney.

Similar to the Cross-Examination manipulation check, participants completed an
open-ended response that asked them to describe the attitude and behavior of the defense
attorney when questioning the jailhouse informant. The responses from this open-ended
question were used to establish the variable *Perception of Defense* rather than answers
from the Cross-Examination manipulation check. This is because the open-ended
responses provided greater detail in regard to participants’ opinion of the defense
attorney. Responses to the open-ended question were evaluated and coded by three
independent raters as either Aggressive, Neutral, Empathic, Multiple, or Not Applicable.
Inter-rater reliability was calculated to be .69 indicating acceptable internal reliability.
Raters were blind to experimental condition when coding and discrepancies were
resolved by the principle investigator. In order to conserve statistical power due to low
expected cell frequencies, responses that were coded as “Multiple” and “Not Applicable”
were excluded from further analyses. The frequency counts for the coding provided by
each independent rater as well as the final coding established for *Perception of Defense*
can be seen in Table D.3.

The following post hoc tests were conducted using a Bonferroni adjusted alpha
level of .0125 per test (.05/4). A 3 (Perception of Defense: Aggressive, Neutral,
Empathic) x 2 (Inconsistencies: Present, Absent) x 2 (Verdict: Guilty, Not Guilty)
HILOG was conducted to assess if participants’ perception of the defense attorney
influenced verdict decisions. The results revealed there was a significant main effect of
*Perception of Defense* on verdicts, $X^2 (1, N = 187) = 16.66, p < .01, V = .27$. Participants
were more likely to find the defendant guilty when they perceived the defense attorney to be Aggressive (44.7%) compared to Neutral (20.7%) and Empathic (15.4%). In closer examination of the participants that voted guilty ($N = 62$), participants were more likely to find the defendant guilty when they perceived the defense attorney to be Aggressive (74.2%) compared to Neutral (19.4%) and Empathic (6.5%). In order to calculate the odds ratio, the Neutral and Empathic perceptions were combined to create a new variable titled Not Aggressive. The odds ratio was then calculated by comparing the Aggressive perception to the Not Aggressive perception. This revealed that the odds of a participant finding the defendant guilty was 3.43 times higher when the defense attorney was perceived to be Aggressive. There was also a significant main effect of Inconsistencies on verdicts, $X^2 (1, N = 187) = 7.16, p < .01, V = .16, OR = 2.02$. Similar to the results previously presented, participants were more likely to find the defendant guilty when the inconsistency was present (62.9%) compared to when the inconsistency was absent (37.1%). There was no significant interaction between Perception of Defense and Inconsistencies, $X^2 (2, N = 187) = 3.49, p > .01$.

**Influence of the Defense on Verdict Decisions.** To follow-up this finding, a 3 (Perception of Defense: Aggressive, Neutral, Empathic) x 2 (Inconsistencies: Present, Absent) Factorial Multivariate Analysis of Variance (MANOVA) was conducted to assess how much participants considered their verdict decision to be influenced by the attitude and behavior of the defense attorney as well as their ratings of the defense attorney in regard to his effectiveness in revealing the truth. The results of this analysis revealed a significant multivariate main effect of Perception of Defense, $F (4, 362) = 5.03, p < .01, \eta^2_p = .05$. Univariate tests confirmed a main effect of
Perception of Defense, $F(2, 181) = 10.26, p < .01, \eta^2 = .10$ on participants ratings of the defense attorney in regard to his effectiveness in revealing the truth. Closer examination revealed that the defense attorney was rated as less effective in revealing the truth when participants perceived him to be Aggressive ($M = 5.43, SD = 2.34$) compared to Neutral ($M = 6.91, SD = 2.06$) and Empathic ($M = 6.88, SD = 1.97$). Perception of Defense was not significantly related to participants’ ratings of verdict influence, $F(2, 181) = 1.28, p > .01, \eta^2 = .01$.

*Motive Attributions.* Previous research (Neuschatz et al., 2008; Neuschatz et al., 2012) has suggested that the motive attributions jurors provide for a jailhouse informant significantly impact their perceptions of the informant’s testimony. The current study aimed to expand on these findings by determining if there was a relationship between jurors’ perception of the defense attorney and the motive that was attributed to the jailhouse informant for testifying. Participants’ motive attributions were assessed with an open-ended response asking them to describe why they believed the jailhouse informant decided to testify. Responses to the open-ended question were evaluated and coded by three independent raters as Situational, Dispositional, Both, or Not Applicable. For the current study, Dispositional attributions reflected positive, pro-social motivations, such as desire to do the right thing. Situational attributions reflected motives that were centered around desire to get an incentive, such as a sentence reduction. Inter-rater reliability was calculated to be .90 indicating high internal reliability. Raters were blind to experimental condition when coding and discrepancies were resolved by the principle investigator. In order to conserve statistical power due to low expected cell frequencies, the responses that were coded as “Not Applicable” were excluded from further analyses. The
frequency counts for the coding provided by each independent rater as well as the final coding established for *Motive Attribution* can be seen in Table D.4.

A 3 (Perception of Defense: Aggressive, Neutral, Empathic) x 2 Inconsistencies (Present, Absent) x 3 (Motive Attribution: Situational, Dispositional, Both) HILOG was conducted to assess if participants’ perception of the defense attorney influenced the motive that was attributed to the jailhouse informant for testifying. The results revealed a significant main effect of Perception of Defense on motive attribution, $\chi^2 (4, N = 180) = 30.71, p < .01, V = .28$. A follow-up Chi-Square Test of Independence indicated that participants were more likely to provide a dispositional motive to the jailhouse informant when they perceived the defense attorney to be Aggressive (82.7%) compared to Neutral (13.5%) and Empathic (3.8%).

### 3.4 Perception of the Jailhouse Informant

The next analysis was conducted to determine if method of Cross-Examination influenced participants’ perception of the jailhouse informant. A 3 (Cross-Examination: Aggressive, Neutral, Empathic) x 2 (Inconsistencies: Present, Absent) Factorial MANOVA was conducted to assess participants’ ratings of the jailhouse informant’s truthfulness, confidence, believability, and consistency ($10$-point scales ranging from $1$ “not at all” to $10$ “extremely”). The results of this analysis revealed a significant multivariate main effect of Cross-Examination, $F (8, 408) = 2.61, p < .01, \eta^2 = .05$. Univariate tests confirmed a main effect of Cross-Examination on participants’ ratings of the jailhouse informant’s confidence, $F (2, 206) = 7.14, p < .01, \eta^2 = .07$, as well as participants’ ratings of the jailhouse informant’s consistency, $F (2, 206) = 3.15, p < .05, \eta^2 = .03$. Tukey’s HSD follow-up tests revealed that participants rated the jailhouse
informant as significantly more confident in the Empathic condition ($M = 6.72, SD = 2.4$) compared to the Aggressive ($M = 5.33, SD = 2.01$) and Neutral ($M = 5.77, SD = 2.34$) conditions. Participants rated the jailhouse informant as significantly more consistent in the Empathic condition ($M = 6.24, SD = 2.2$) compared to the Aggressive condition ($M = 5.31, SD = 2.4$).

The results of this analysis also revealed a significant multivariate main effect of Inconsistencies, $F(4, 203) = 6.72, p < .01, \eta^2 = .12$. Univariate tests confirmed a main effect of Inconsistencies on participants’ ratings of the jailhouse informant’s consistency, $F(1, 206) = 7.58, p < .01, \eta^2 = .04$. Participants rated the jailhouse informant as significantly more consistent in his testimony when the inconsistent statement was absent ($M = 6.2, SD = 2.43$) compared to when the inconsistent statement was present ($M = 5.37, SD = 2.29$).

An additional analysis was conducted to determine if participants’ perception of the defense attorney influenced their perception of the jailhouse informant. As previously mentioned, this post hoc test was conducted using the Bonferroni adjusted alpha level of .0125. A 3 (Perception of Defense: Aggressive, Neutral, Empathic) x 2 (Inconsistencies: Present, Absent) Factorial MANOVA was conducted to assess participants’ ratings of the jailhouse informant’s truthfulness, confidence, believability, and consistency (10-point scales ranging from 1 “not at all” to 10 “extremely”). The results of this analysis revealed a significant multivariate main effect of Perception of Defense, $F(8, 358) = 5.09, p < .01, \eta^2 = .10$. Univariate tests confirmed a main effect of Perception of Defense on participants’ ratings of the jailhouse informant’s truthfulness, $F(2, 181) = 15.17, p < .01, \eta^2 = .14$, as well as participants’ ratings of the jailhouse
informant’s believability, $F(2, 181) = 7.59, p < .01, \eta^2 = .08$. Tukey’s HSD follow-up tests revealed that participants rated the jailhouse informant as significantly more truthful when they perceived the defense attorney to be Aggressive ($M = 6.18, SD = 2.39$) compared to Neutral ($M = 4.71, SD = 1.97$) and Empathic ($M = 4.08, SD = 2.1$).

Participants rated the jailhouse informant as significantly more believable when they perceived the defense attorney to be Aggressive ($M = 6.25, SD = 2.16$) compared to Neutral ($M = 5.29, SD = 1.94$) and Empathic ($M = 4.85, SD = 2.22$).

Once again, the results of this analysis also revealed a significant multivariate main effect of Inconsistencies, $F(4, 178) = 5.93, p < .01, \eta^2 = .12$. However, univariate tests indicated that Inconsistencies was not significantly related to participants’ ratings of the jailhouse informant’s consistency, $F(1, 181) = 4.17, p = .04, \eta^2 = .02$.

3.5 Pre-trial Attitudes & Levels of Empathy

PJAQ. The internal reliability of the PJAQ was examined before analyses were conducted. Cronbach’s alpha was calculated to be .73 indicating acceptable internal reliability. A Bivariate Logistic Regression was then conducted to determine if pre-trial attitudes and biases concerning the justice system would predict verdicts. Verdict (Guilty, Not Guilty) was regressed onto the total score acquired from the PJAQ, Perception of Defense, and Inconsistencies. The analysis revealed that participants’ total score from the PJAQ served as a significant predictor of verdicts, $B = -.05, SE = .02$, Wald $X^2(1) = 11.7, p < .01$, Exp(B) = .95, 95% CI (.922, .978). This indicates that as participants’ ratings on the PJAQ increased, their likelihood to find the defendant not-guilty decreased. Perception of Defense also served as a significant predictor of verdicts. Participants that perceived the defense attorney to be Neutral were more likely to find the
defendant not-guilty compared to participants that perceived the defense attorney to be Aggressive, $B = 1.24, SE = .40, \text{ Wald } \chi^2(1) = 9.50, p < .01, \text{ Exp}(B) = 3.45, 95\% \text{ CI (1.57, 7.57).}$ Similarly, participants that perceived the defense attorney to be Empathic were more likely to find the defendant not-guilty compared to participants that perceived the defense attorney to be Aggressive, $B = 1.76, SE = .62, \text{ Wald } \chi^2(1) = 8.06, p < .01, \text{ Exp}(B) = 5.81, 95\% \text{ CI (1.72, 19.56).}$ Inconsistencies also served as significant predictor of verdicts, $B = -.82, SE = .35, \text{ Wald } \chi^2(1) = 5.51, p < .05, \text{ Exp}(B) = .44, 95\% \text{ CI (.22, .87).}$ This indicates that participants likelihood to find the defendant not-guilty decreased when an inconsistent statement was present.

To follow-up this finding, a Bivariate Logistic Regression was conducted with the six subscales of the PJAQ (System Confidence, Conviction Proneness, Cynicism toward the Defense, Racial Bias, Social Justice, and Innate Criminality). Verdict (Guilty, Not Guilty) was regressed onto the six total scores acquired from the PJAQ subscales. The analysis revealed that Conviction Proneness was the only subscale that served as a significant predictor of verdicts, $B = -.13, SE = .06, \text{ Wald } \chi^2(1) = 5.1, p < .05, \text{ Exp}(B) = .88, 95\% \text{ CI (.79, .98).}$ This indicates that as participants’ ratings on the Conviction Proneness scale increased, their likelihood to find the defendant not-guilty decreased.

A Bivariate Logistic Regression was also conducted to determine if pre-trial attitudes and biases toward the defense would predict participants’ perception of the defense attorney. For this analysis, the Neutral and Empathic perceptions were combined to create a new variable titled Not Aggressive. Perception of Defense (Aggressive, Not Aggressive) was then regressed onto the PJAQ subscale of Cynicism toward the Defense
(5-point scale with 1 “strongly disagree” and 5 “strongly agree”). The analysis revealed that Cynicism toward the Defense was non-significant in predicting participants’ perception of the defense attorney, $B = -.01$, $SE = .03$, Wald $X^2(1) = .07$, $p > .05$, $\text{Exp}(B) = .99$, 95% CI (.93, 1.1). This suggests that participants’ perception of the defense attorney was not influenced by pre-trial biases and cynicism for the defense.

IRI. The sample means were calculated for the four subscales of the IRI:
Perspective-Taking ($M = 27.18$, $SD = 4.21$), Fantasy ($M = 24.68$, $SD = 5.67$), Empathic Concern ($M = 27.06$, $SD = 4.7$), and Personal Distress ($M = 18.28$, $SD = 5.06$). This range of sample means was consistent across experimental condition. A Bivariate Logistic Regression was conducted to determine if pre-trial levels of empathy would predict verdicts. Verdict (Guilty, Not Guilty) was regressed onto the four subscales of the IRI (Perspective Taking, Fantasy, Empathic Concern, and Personal Distress). The analysis revealed that all four subscales of the IRI were non-significant in predicting verdicts ($p > .05$).

A Bivariate Logistic Regression was also conducted to determine if pre-trial levels of empathy would predict participants’ perception of the defense attorney. Once again, the Neutral and Empathic perceptions were combined to create a new variable titled Not Aggressive. Perception of Defense (Aggressive, Not Aggressive) was then regressed onto the four subscales of the IRI (Perspective Taking, Fantasy, Empathic Concern, and Personal Distress). The analysis revealed that all four subscales of the IRI were non-significant in predicting participants’ perception of the defense attorney ($p > .05$).
3.6 Measure of Empathic Accuracy

Responses to the empathic accuracy Thinking and Feeling statements were evaluated and coded by three independent raters on a 3-point scale, where 0 indicated essentially different content, 1 indicated similar, but not the same content, and 2 indicated essentially the same content. Raters were blind to experimental condition when coding and discrepancies were resolved by averaging the independent ratings together to create a mean score. For the Thinking statements, internal reliability was calculated for all time-points ranging from .61 to .81. For the Feeling statements, internal reliability was also calculated for all time-points ranging from .55 to .83. Due to the design of this measure, scores had to be calculated separately for the Inconsistencies Present and Inconsistencies Absent conditions. This is because Inconsistencies Present had five time-points, while Inconsistencies Absent had only four time-points. Similarity ratings for all time-points (five or four depending on condition) were aggregated to create an overall measure of empathic accuracy that was scaled like a percentage to range from 0 (no accuracy) to 100 (perfect accuracy).

Thinking statements had to be evaluated separately from Feeling statements. Previous research on dyadic interactions (Stinson & Ickes, 1992) indicated that the mean accuracy score for close friends was 36.0% whereas the mean accuracy score for strangers was 24.1%. For the Thinking statements, total scores of empathic accuracy for Inconsistencies Present ($N = 108$) ranged from 0 to 67 with a mean accuracy score of 29.9%. Total scores of empathy accuracy for Inconsistencies Absent ($N = 104$) also ranged from 0 to 67 with a mean accuracy score of 21.5%. A One-Way ANOVA was conducted to determine if empathic accuracy scores were influenced by Cross-
Examination condition. The results revealed that method of Cross-Examination was non-significant in determining participants’ scores of empathic accuracy in both the Inconsistencies Present condition, $F (2, 105) = .67, p > .05, \eta^2 = .01$ and the Inconsistencies Absent condition, $F (2, 101) = .78, p > .05, \eta^2 = .02$.

For the Feeling statements, total scores of empathic accuracy for Inconsistencies Present ($N = 108$) ranged from 0 to 67 with a mean accuracy score of 35.5%. Total scores of empathy accuracy for Inconsistencies Absent ($N = 104$) ranged from 0 to 75 with a mean accuracy score of 34.0%. Further statistical analysis could not be conducted with the Feeling statements due to issues with error variance.
CHAPTER FOUR

DISCUSSION

There were several important findings discovered within the current study even though the major hypothesis regarding empathic cross-examination was not supported. Participants’ perception of the defense attorney did not always correspond with actual Cross-Examination condition. According to the Cross-Examination manipulation check, 77.03% of participants assigned to the Empathic condition did not select Accepting when asked to describe the attitude and behavior of the defense lawyer. Fortunately, the open-ended responses were able to provide additional insight in regard to participants’ actual perception of the defense attorney. One participant from the Empathic Cross-Examination condition stated, “The attitude of David Clark was very hostile towards Mr. Jones. You could tell by the tone in Mr. Clark’s voice that he looked down upon Ryan and thought he was not credible. Clark thought that Jones was a waste of time.” Another participant from the same Empathic condition stated, “When questioning Ryan Jones, Clark was very calm and docile in that he was not attacking Ryan in anyway or trying to intimidate him. When an objection was called for, Clark stayed calm and carried on asking his questions.” These participants listened to the same audio recording, yet arrived at very different conclusions concerning the attitude and behavior of the defense
attorney. Similar to these responses, there were participants in the Empathic condition that stated they considered the defense attorney to be sarcastic, condescending, and disrespectful; whereas, other participants stated they considered the defense attorney to be polite, fair, and reasonable. These inconsistencies indicate that participants were likely allowing their own personal biases to influence their perception of the defense attorney. There are forms of aggressive behavior, such as dismissive behavior or passive aggressive behavior, that participants could have been recognizing in the Empathic Cross-Examination condition. For example, certain participants interpreted the defense attorney speaking in a slow and steady pace as a way of acting superior to the jailhouse informant; however, there were other participants that interpreted this slower speech as being representative of a relaxed and non-threatening demeanor. Overall, these discrepancies in participants’ perception of the defense attorney could explain why the Cross-Examination manipulation was found to be non-significant in many of the analyses.

Rather than view this failed manipulation as a limitation of the current study, this disconnect between participants’ perception of the defense and experimental condition served as important focal point for further analyses. Participants were more likely to find the defendant guilty when they perceived the attitude and behavior of the defense attorney to be Aggressive (44.7%). Participants that perceived the defense attorney to be Aggressive stated in their open-ended responses that they considered the defense attorney to be intimidating, hostile, insulting, dismissive, attacking, pompous, and antagonistic. One participant in the Aggressive Cross-Examination condition stated, “He was kind of a jerk to him. I understand that he was just doing his job, but he could have treated him
with some respect. He is a human being after all.” These responses contribute to previous research (Trahan & Stewart, 2011) that has shown negative impressions of the defense attorney can significantly impact juror sentencing decisions. In their content analysis, Trahan and Stewart revealed that jurors with unfavorable perceptions of the defense attorney were more likely to sentence the defendant to death rather than to life in prison. In the current study, the results indicate that participants with negative impressions of the defense attorney were more likely to find the defendant guilty compared to participants with favorable impressions of the defense attorney.

This finding was further explored by examining the motive attribution participants’ provided to the jailhouse informant concerning why he decided to testify. Participants were more likely to provide a dispositional motive to the jailhouse informant when they perceived the attitude and behavior of the defense attorney to be Aggressive (82.7%). This result supports previous research (Neuschatz et al., 2008; Neuschatz et al., 2012) that has suggested jurors are more likely to find a defendant guilty when they provide a dispositional motive to the jailhouse informant. As to the reason why jurors are providing a dispositional motive, this could be the result of Aggressive cross-examination directing jurors’ attention to focus more on the individual rather than the situation. As previously mentioned, Erving Goffman (1967) defined “face” as the positive social value a person claims for himself during contact with others. An individual’s actions should always be focused on counteracting events that threaten face, including one’s own face as well as the face of others. If an individual violates this basic standard of considerateness when interacting with another, this often results in other members of the group developing irritation and disapproval for the violating individual. During
cross-examination lawyers tend to use systematic aggression under the premise that these actions are necessary in eliciting evidence from a witness (Archer, 2011); however, systematic aggression contradicts Goffman’s theory of “face.” The results from the current study revealed that participants rated the jailhouse informant as significantly more truthful and believable when they perceived the defense attorney to be Aggressive. Therefore, it is possible that in this situation participants considered the “face” of the jailhouse informant to be violated by the defense attorney. This promoted the participants to disapprove with the actions of the defense attorney and consequently enlist more trust in the testimony of the jailhouse informant. This increase in trust coincides with a similar increase in dispositional motivations attributed to the informant.

4.1 Limitations and Future Research

There were several limitations that may have restricted the current study. First, there were many individuals who participated in the experiment that had prior knowledge of jailhouse informants. Of the participants that were assigned to an experimental condition ($N = 212$), 62.3% stated they had prior knowledge of informants. This could be the reason why compared to prior research (Neuschatz et al, 2008, Neuschatz et al., 2012) the current study obtained significantly more not-guilty verdicts (66.5% vs. 33.5%) despite the presence of informant testimony. Unfortunately, the current study only asked participants whether or not they had prior knowledge of jailhouse informants as well as their level of prior knowledge if it did exist. Therefore, the source of this prior knowledge is ultimately unknown as well as whether this trend exists outside of the university where the study was conducted. On their own volition, several participants included in their open-ended responses comments that were indicative of external prior
knowledge of jailhouse informants. These participants stated that the jailhouse informant was testifying in order to be “moved to a new prison,” to receive “more preferential treatment in prison,” or as “a way to get attention.” The current study never mentioned any of these situational incentives. The trial referenced that the informant might receive a potential sentence reduction; however, these other situational motives were novel responses produced by the participants. Future research should focus on the establishment of a scale that measures participants pre-trial knowledge of jailhouse informants. This could assist in determining the source and extent of participants’ prior knowledge.

Another reason this study could have obtained more not-guilty verdicts compared to previous research (Neuschatz et al, 2008, Neuschatz et al., 2012) is that it utilized a different trial transcript. The trial transcript used in the current study was adapted from an actual trial transcript titled State of Indiana v. David R. Camm (2006). David Camm spent 11 years in prison after being twice wrongfully convicted for the murder of his wife and two children. According to the Innocence Project, informant testimony was a major contributing factor that led to his conviction. However, the evidence presented against David Camm might have become less convincing once the trial was adapted to accommodate the shortened duration of an experimental session.

As previously mentioned, it first appeared that another limitation of the current study was that participants’ perception of the defense attorney did not always correspond with actual Cross-Examination condition. However, this was found to be less of a limitation and more of an important discovery when it comes to future research concerning cross-examination. When this study was developed, it was predicted that the
solution to systematic aggression during cross-examination was the implementation of empathic understanding. Intuitively, the opposite of hostile behavior is accepting behavior. However, the open-ended responses indicated that the most favorable view of the defense attorney occurred when participants simply perceived him to be respectful, polite, and professional. As one participant eloquently stated, “He did not believe the prisoner, but treated him fairly.” The results revealed that Empathic Cross-Examination could be misconstrued as dismissive or passive aggressive behavior by certain individuals. It would be detrimental for a defense attorney to conduct himself in a manner that he considers to be understanding; however, jurors are actually perceiving him to be dismissive or unconcerned. Therefore, future research should further examine different methods of cross-examination that manipulate all forms of aggressive behavior. There could be alternate levels of severity as well as various negative consequences associated with different types of aggression.
APPENDICES
APPENDIX A

IRB APPROVAL LETTER

The UAH Institutional Review Board of Human Subjects Committee has reviewed your proposal, *Influence of Cross Examination and Inconsistencies on Juror Decision-Making*, and found it meets the necessary criteria for approval. Your proposal seems to be in compliance with this institution's Federal Wide Assurance (FWA) 00019908 and the DHHS Regulations for the Protection of Human Subjects (45 CFR 46).

Please note that this approval is good for one year from the date on this letter. If data collection continues past this period, you are responsible for processing a renewal application a minimum of 60 days prior to the expiration date.

No changes are to be made to the approved protocol without prior review and approval from the UAH IRB. All changes (e.g., a change in procedure, number of subjects, personnel, study locations, new recruitment materials, study instruments, etc.) must be prospectively reviewed and approved by the IRB before they are implemented. You should report any unanticipated problems involving risks to the participants or others to the IRB Chair.

If you have any questions regarding the IRB's decision, please contact me.

Sincerely,

Bruce Stallsmith
IRB Chair
Professor, Biological Sciences
APPENDIX B

STUDY MEASURES

Pre-Trial Juror Attitudes Questionnaire (PJAQ)

1. If a suspect runs from the police, then he probably committed the crime.  
   Strongly Disagree | Strongly Agree
   1 2 3 4 5

2. A defendant should be found guilty if 11 out of 12 jurors vote guilty.  
   1 2 3 4 5

3. Too often jurors hesitate to convict someone who is guilty out of pure sympathy.  
   1 2 3 4 5

4. In most cases where the accused presents a strong defense, it is only because of a good lawyer.  
   1 2 3 4 5

5. Out of every 100 people brought to trial, at least 75 are guilty of the crime with which they are charged.  
   1 2 3 4 5

6. For serious crimes like murder, a defendant should be found guilty so long as there is a 90% chance that he committed the crime.  
   1 2 3 4 5

7. Defense lawyers don’t really care about guilt or innocence; they are just in business to make money.  
   1 2 3 4 5

8. Generally, the police make an arrest only when they are sure about who committed the crime.  
   1 2 3 4 5
9. Many accident claims filed against insurance companies are phony.

10. The defendant is often a victim of his own bad reputation.

11. Extenuating circumstances should not be considered; if a person commits a crime, then that person should be punished.

12. If the defendant committed a victimless crime, like gambling or possession of marijuana, he should never be convicted.

13. Defense lawyers are too willing to defend individuals they know are guilty.

14. Police routinely lie to protect other police officers.

15. Once a criminal, always a criminal.

16. Lawyers will do whatever is takes, even lie, to win a case.

17. Criminals should be caught and convicted by “any means necessary.”

18. A prior record of conviction is the best indicator of a person’s guilty in the present case.

19. Rich individuals are almost never convicted of their crimes.

20. If a defendant is a member of a gang, he/she is definitely guilty of the crime.

21. Minorities use the “race issue” only when they are guilty.

22. When it is the suspect’s word against the police officer’s, I believe the police.

23. Men are more likely to be guilty of crimes than women.
24. The large number of African Americans currently in prison is an example of the innate criminality of that subgroup.  

25. A Black man on trial with a predominantly White jury will always be found guilty.  

26. Minority suspects are likely to be guilty, more often than not.  

27. If a witness refuses to take a lie detector test, it is because he/she is hiding something.  

28. Defendant who change their story are almost always guilty.  

29. Famous people are often considered to be “above the law.”
### Interpersonal Reactivity Index (IRI)

<table>
<thead>
<tr>
<th>Item</th>
<th>Strongly Disagree</th>
<th>Strongly Agree</th>
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</thead>
<tbody>
<tr>
<td>1. I daydream and fantasize, with some regularity, about things that might happen to me.</td>
<td>1 2 3 4 5</td>
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<tr>
<td>2. I often have tender, concerned feelings for people less fortunate than me.</td>
<td>1 2 3 4 5</td>
<td></td>
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<tr>
<td>3. I sometimes find it difficult to see things from the “other guy’s” point of view.</td>
<td>1 2 3 4 5</td>
<td></td>
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<tr>
<td>4. Sometimes I don’t feel very sorry for other people when they are having problems.</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>5. I really get involved with the feelings of the characters in a novel.</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>6. In emergency situations, I feel apprehensive and ill-at-ease.</td>
<td>1 2 3 4 5</td>
<td></td>
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<tr>
<td>7. I am usually objective when I watch a movie or play, and I don’t often get completely caught up in it.</td>
<td>1 2 3 4 5</td>
<td></td>
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<tr>
<td>8. I try to look at everybody’s side of a disagreement before I make a decision.</td>
<td>1 2 3 4 5</td>
<td></td>
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<tr>
<td>9. When I see someone being taken advantage of, I feel kind of protective towards them.</td>
<td>1 2 3 4 5</td>
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<tr>
<td>10. I sometimes feel helpless when I am in the middle of a very emotional situation.</td>
<td>1 2 3 4 5</td>
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</tr>
<tr>
<td>11. I sometimes try to understand my friends better by imagining how things looks from their perspective.</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>12. Becoming extremely involved in a good book or movie is somewhat rare for me.</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>13. When I see someone get hurt, I tend to remain calm.</td>
<td>1 2 3 4 5</td>
<td></td>
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</tbody>
</table>
14. Other people’s misfortunes do not usually disturb me a great deal.  
1  2  3  4  5

15. If I’m sure I’m right about something, I don’t waste much time listening to other people’s arguments.  
1  2  3  4  5

16. After seeing a play or movie, I have felt as though I were one of the characters.  
1  2  3  4  5

17. Being in a tense emotional situation scares me.  
1  2  3  4  5

18. When I see someone being treated unfairly, I sometimes don’t feel very much pity for them.  
1  2  3  4  5

19. I am usually pretty effective in dealing with emergencies.  
1  2  3  4  5

20. I am often quite touched by things that I see happen.  
1  2  3  4  5

21. I believe that there are two sides to every question and try to look at them both.  
1  2  3  4  5

22. I would describe myself as a pretty soft-hearted person.  
1  2  3  4  5

23. When I watch a good movie, I can very easily put myself in the place of a leading character.  
1  2  3  4  5

24. I tend to lose control during emergencies.  
1  2  3  4  5

25. When I’m upset at someone, I usually try to “put myself in his shoes” for a while.  
1  2  3  4  5

26. When I am reading an interesting story or novel, I imagine how I would feel if the events in the story were happening to me.  
1  2  3  4  5

27. When I see someone who badly needs help in an emergency, I go to pieces.  
1  2  3  4  5
28. Before criticizing somebody, I try to imagine how I would feel if I were in their place.

**Mid-Trial Questionnaire**

1. How useful was William Evans’s testimony concerning blood spatter evidence in determining your verdict decision?

   1  2  3  4  5  6  7  8  9  10
   Not at all useful  Very useful

2. How useful was Joseph Moore’s testimony concerning firearm evidence in determining your verdict decision?

   1  2  3  4  5  6  7  8  9  10
   Not at all useful  Very useful

3. How useful was Ryan Jones’s testimony concerning confession evidence in determining your verdict decision?

   1  2  3  4  5  6  7  8  9  10
   Not at all useful  Very useful
Measure of Empathic Accuracy

At each time-point, participants will be provided the following instructions:

“Please write down what you think Ryan Jones is thinking or feeling at this exact moment.”

I think Ryan Jones is thinking __________

I think Ryan Jones is feeling __________

<table>
<thead>
<tr>
<th>Time-Point #1</th>
<th>Neutral</th>
<th>Aggressive</th>
<th>Empathic</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Defense:</strong> Are you currently interested in a reduction of the sentence you have now?</td>
<td><strong>Defense:</strong> Are you currently interested in a reduction of the sentence you have now?</td>
<td><strong>Defense:</strong> Would you be interested in a reduction of your sentence?</td>
<td></td>
</tr>
<tr>
<td><strong>Ryan Jones:</strong> No.</td>
<td><strong>Ryan Jones:</strong> No.</td>
<td><strong>Ryan Jones:</strong> ... No.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Time-Point #2</th>
<th>Neutral</th>
<th>Aggressive</th>
<th>Empathic</th>
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</thead>
<tbody>
<tr>
<td><strong>Defense:</strong> After the information about Michael Smith was shown on TV though, your mother was no longer concerned for your safety?</td>
<td><strong>Defense:</strong> See I just don’t understand that because it seems to me that what you are saying -- is that after the information about Michael Smith was shown on TV, your mother decided she was just no longer concerned for your safety?</td>
<td><strong>Defense:</strong> Ok, I can understand that. After the information about Michael Smith was shown on TV though, what happened that changed your mother’s mind? Why did she decide to finally contact the prosecutor?</td>
<td></td>
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<tr>
<td><strong>Ryan Jones:</strong> I mean she was still scared, but she finally did what I asked.</td>
<td><strong>Ryan Jones:</strong> No, that’s not what I’m saying.</td>
<td><strong>Ryan Jones:</strong> I mean she was still scared, but she finally did what I asked.</td>
<td></td>
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<tr>
<td><strong>Defense:</strong> Then what exactly are you saying, Mr. Jones?</td>
<td><strong>Ryan Jones:</strong> I mean she was still scared, but she finally did what I asked.</td>
<td><strong>Defense:</strong> Then what exactly are you saying, Mr. Jones?</td>
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<thead>
<tr>
<th>Time-Point #3</th>
<th>Inconsistencies Present</th>
<th>Neutral</th>
<th>Aggressive</th>
<th>Empathic</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Defense:</strong> So, your testimony today is that Michael Smith shot his family in the garage and not in the driveway?</td>
<td><strong>Defense:</strong> So, your testimony as of right now is that Michael Smith shot his family in the garage and not in the driveway?</td>
<td><strong>Defense:</strong> Ok, so your testimony today is that Michael shot his family in the garage and not the driveway?</td>
<td></td>
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<tr>
<td><strong>Ryan Jones:</strong> Yes, I misspoke. He shot his family in the garage.</td>
<td><strong>Ryan Jones:</strong> Yes, I misspoke. He shot his family in the garage.</td>
<td><strong>Ryan Jones:</strong> Yes, I misspoke. He shot his family in the garage.</td>
<td></td>
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</table>
### Time-Point #4

**Defense:** Since pickup basketball typically doesn’t have a schedule -- did Michael tell you how he would have known when he would have been able to slip out of the basketball game?

**Ryan Jones:** I don’t know, I didn’t ask about that.

**Defense:** Alright, well my question now is how exactly would Mr. Smith have known what time he needed to slip out of the basketball game to murder his family? I’m assuming that since you’ve spent your entire adult life locked up in prison -- that you really haven’t had the opportunity to play a pick-up basketball game with some nice folks who aren’t convicted felons. See, often pick-up basketball games don’t have a schedule. So, how exactly did Michael Smith explain how he would have known when he would have been able to leave the game and then come back?

**Ryan Jones:** I don’t know, I didn’t ask about that.

### Time-Point #5

**Defense:** Did you hear on TV that the firearm used was a Lorcin .380? And therefore you were able to put two-and-two together and informed the prosecutor that the weapon used was a hammerless handgun?

**Ryan Jones:** No, that’s not what happened.

**Defense:** Did you hear on TV that the firearm used was a Lorcin .380. And therefore, being the intelligent young man that you are -- you were able to put two-and-two together and informed the prosecutor that the weapon was a hammerless handgun?

**Ryan Jones:** No, that’s not what happened.

**Defense:** Did you hear on TV that the firearm used was a Lorcin .380? And therefore you were able to put two-and-two together and informed the prosecutor that the weapon used was a hammerless handgun?

**Ryan Jones:** No, that’s not what happened.
Attention and Manipulation Checks

1. The defendant was Michael Smith. TRUE FALSE
2. The defendant was accused of murdering his wife and children. TRUE FALSE
3. There were blood-stains found on the defendant’s t-shirt. TRUE FALSE
4. The weapon used was a hammerless Lorcin .380. TRUE FALSE
5. The witness that provided confession evidence was Ryan Jones. TRUE FALSE
6. Ryan Jones was a prison inmate. TRUE FALSE
7. Ryan Jones was receiving a reduction in his sentence in exchange for testifying. TRUE FALSE
8. Ryan Jones had his father contact the prosecutor for him. TRUE FALSE
9. Ryan Jones was questioned about what was shown on 48 Hours. TRUE FALSE
10. Ryan Jones originally stated that the defendant shot his family in the driveway, then altered his testimony to the garage. TRUE FALSE

11. How would you describe the attitude and behavior of David Clark (the defense attorney) when he was questioning Ryan Jones (the prison inmate)?
   a. Hostile
   b. Neutral
   c. Accepting
   d. Other: ________
Post-Trial Questionnaire

1. As a member of the jury, please provide your verdict decision below:

   GUILTY     NOT GUILTY

2. How confident are you in your verdict decision?

   1  2  3  4  5  6  7  8  9  10
   Not at all confident        Very confident

3. Please rate how much you agree or disagree with the following statements:

   The prosecution’s case was strong.
   1  2  3  4  5  6  7  8  9  10
   Completely Disagree        Completely Agree
                                Disagree
                                Agree

   The defense’s case was strong.
   1  2  3  4  5  6  7  8  9  10
   Completely Disagree        Completely Agree
                                Disagree
                                Agree

   The evidence against the defendant in this case was weak.
   1  2  3  4  5  6  7  8  9  10
   Completely Disagree        Completely Agree
                                Disagree
                                Agree

4. Why do you think Ryan Jones (the prison inmate) decided to testify?
5. Please rate how much you agree or disagree with the following statements:

Ryan Jones (the prison inmate) was motivated to testify because he wanted to do the right thing.

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<tr>
<td>Completely Disagree</td>
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<td>Completely Agree</td>
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Ryan Jones (the prison inmate) was motivated to testify because he wanted to serve his own interests.

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<td>Completely Disagree</td>
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<td>Completely Agree</td>
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Ryan Jones (the prison inmate) testified because the defendant truly confessed to him.

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<tr>
<td>Completely Disagree</td>
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<td></td>
<td>Completely Agree</td>
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6. Please rate the testimony of Ryan Jones (the prison inmate) on the following scales:

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<tr>
<td>Not at all Truthful</td>
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<td>Extremely Truthful</td>
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<tr>
<td>Not at all Confident</td>
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<td></td>
<td></td>
<td>Extremely Confident</td>
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<tr>
<td>Not at all Believable</td>
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<td></td>
<td></td>
<td>Extremely Believable</td>
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</tbody>
</table>
7. How would you describe the attitude and behavior of David Clark (the defense attorney) when he was questioning Ryan Jones (the prison inmate)?

8. How much was your verdict decision influenced by the attitude and behavior of David Clark (the defense attorney)?

9. Please rate how much you agree or disagree with the following statements:

David Clark (the defense attorney) did an excellent job at representing his defendant (Michael Smith).

David Clark (the defense attorney) did a terrible job at representing his defendant (Michael Smith).

David Clark (the defense attorney) was professional in his questioning of Ryan Jones (the prison inmate).
David Clark (the defense attorney) was hostile in his questioning of Ryan Jones (the prison inmate).

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<tr>
<td>Completely</td>
<td>Disagree</td>
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<td>Completely</td>
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David Clark (the defense attorney) was empathetic in his questioning of Ryan Jones (the prison inmate).

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<tr>
<td>Completely</td>
<td>Disagree</td>
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David Clark (the defense attorney) should have been more assertive when questioning Ryan Jones (the prison inmate).

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<tr>
<td>Completely</td>
<td>Disagree</td>
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<td>Completely</td>
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David Clark (the defense attorney) should have been nicer when questioning Ryan Jones (the prison inmate).

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<tr>
<td>Completely</td>
<td>Disagree</td>
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David Clark (the defense attorney) asked too many questions during his cross-examination of Ryan Jones (the prison inmate).

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<tr>
<td>Completely</td>
<td>Disagree</td>
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<td>Completely</td>
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</table>
David Clark (the defense attorney) was effective in revealing the truth in with his questioning of Ryan Jones (the prison inmate).

1 2 3 4 5 6 7 8 9 10
Completely Disagree
Completely Agree

10. Before today, have you heard of the term “jailhouse informant” (or “jailhouse snitch”?)

YES       NO

11. Before today, how knowledgeable were you about jailhouse informants?

1 2 3 4 5 6 7 8 9 10
Not at all knowledgeable  Very knowledgeable

Demographics

Please indicate your gender.

- Male
- Female
- Prefer to not answer

Please type your age in years: _____ If you prefer not to answer, type ? into the box.

Please indicate the highest level of education you have completed.

- High school or GED
- College graduate
- Professional degree (e.g. PhD or JD)
- Technical school
- Other
- Prefer to not answer
If you are currently in college, please indicate what year you are in.
   o Freshmen
   o Sophomore
   o Junior
   o Senior
   o Other
   o I am not currently in college

Please indicate your race.
   o Black
   o White
   o Native Hawaiian or Pacific Islander
   o Asian
   o American Indian or Alaskan Native
   o Prefer to not answer

What is your political orientation?
   o Very conservative
   o Conservative
   o Moderate
   o Liberal
   o Very liberal
   o Other
   o I do not know
   o Prefer to not answer

Have you ever been arrested?
   o Yes
   o No
Have you ever served on a jury?
   o Yes
   o No

Do you know anyone who has been arrested or is currently in jail?
   o Yes, and if yes then how do you know him/her? _____ If you prefer to not answer, type ? into the box.
   o No
   o Prefer to not answer
You are invited to participate in a research study about juror decision-making. This study is designed to help us to better understand how jurors evaluate evidence in a criminal court case.

The primary investigator is Megan Hillgartner, a graduate student supervised by Dr. Jeffrey Neuschatz in the Psychology Department at the University of Alabama in Huntsville (UAH). You may contact either researcher in regards to this experiment at mah0019@uah.edu or neuschaj@uah.edu. Please be advised that this experiment is only open for those who are 18 years of age or older. Please be prepared to present a form of ID that confirms your age at the time of your session.

PROCEDURE TO BE FOLLOWED IN THE STUDY: Participation in this study is completely voluntary. Once written consent is given; you will be asked to individually listen to a court trial transcript presented on the computer and then answer some questions. These questions will include determining a verdict decision from the presented information as well as general judgement decisions about various aspects of the trial. This session will take approximately 1 hour to complete.

DISCOMFORTS AND RISKS FROM PARTICIPATING IN THIS STUDY: There are no expected risks associated with your participation. The trial transcript does contain a brief description of a murder, which could create minimal discomfort. However, the details provided would be similar to what could be found in popular media.

EXPECTED BENEFITS: Participants could benefit from this study by gaining first-hand experience in psychological research. Additionally, the results from this study could benefit society in its contribution to the area of knowledge concerning psychology and law. Please see the section below for incentives and compensation for participation in this study.

INCENTIVES AND COMPENSATION FOR PARTICIPATION: Participants will receive 2 research credit activity points for their participation in this experiment.

CONFIDENTIALITY OF RESULTS: Participant numbers will be used to record your data, and these numbers will be made available only to those researchers directly involved with this study, thereby ensuring strict confidentiality. This consent form will be destroyed after 3 years. The data from your session will only be released to those individuals who are directly involved in the research and only using your participant number.

FREEDOM TO WITHDRAW: You are free to withdraw from the study at any time. You will not be penalized because of withdrawal in any form. Investigators reserve the right to remove any participant from the session without regard to the participant’s consent.
CONTACT INFORMATION: If you have any questions, please ask them now. If you have questions later on, you may contact the primary investigator, Megan Hillgartner in CTC 100A at mah0019@uah.edu, or the faculty supervisor, Dr. Jeffrey Neuschatz in CTC 200D at 256.824.2321 or neuschaj@uah.edu. If you have questions about your rights as a research participant, or concerns or complaints about the research, you may contact the Office of the IRB (IRB) at 256.824.6992 or email the IRB chair Dr. Bruce Stallsmith at irb@uah.edu.

If you agree to participate in our research please sign and date below.

This study was approved by the Institutional Review Board at UAH and will expire in one year from September 26th, 2018.

________________________________  ______________________________
Name (Please Print)     Signature  Date
Debriefing

Thank you for participating in our study. The primary purpose of this study was to investigate how various methods of cross-examination with a jailhouse informant could impact jury decision-making.

Our research had two main objectives. The first objective was to determine if different methods of cross-examination influenced jury decision-making. The second objective was to determine if inconsistencies within the jailhouse informant’s testimony influenced jury decision-making.

We randomly assigned you to cross-examination condition that was either aggressive, neutral, or empathic as well as a condition that either had inconsistencies present or absent. We will use your responses to determine if different methods of cross-examination are associated with guilty or not-guilty verdict decisions. We will also use your responses to determine if the presence or absence of inconsistencies within the jailhouse informant’s testimony are associated with opinions of truthfulness and believability of the jailhouse informant. The demographic information will be used to provide the researchers with an estimate of the age range, proportion of males to females, and average education level of the people who participated in this study.

When people know exactly what a researcher is studying, they often change their behavior. This makes their responses unusable for drawing conclusions about human experiences and decision-making. For this reason, we ask that you please not discuss this study with other individuals who might participate in this study any time in the next year. Thank you for your cooperation.

The information you provided in this experiment will be completely anonymous. It cannot be linked back to you as an individual. However, you may withdraw your data if you want. If you withdraw, then we will not analyze your data. Please remember, though, that only the researchers directly involved in this study will have access to your data. Additionally, if you are troubled by the fact that we concealed the true purpose of this study, you may withdraw your data. This will have no effect on the activity points you were offered for completing this study.

If you would like your data to be INCLUDED in our study, please check this box: □

If you would like your data to be EXCLUDED from our study, please check this box: □

If this study had led you to feel any discomfort, please visit the UAH Counseling Center located in Wilson Hall 329. They can also be contacted at 256.824.6203.

If this study had led you to feel any concerns in regards to your participation, please contact the IRB Chair, Dr. Bruce Stallsmith at 256.824.6992 or irb@uah.edu.
If you have any questions concerning this study, please ask the primary investigator, Megan Hillgartner at mah0019@uah.edu. You may also contact the faculty supervisor, Dr. Jeffrey Neuschatz at neuschaj@uah.edu.

Thank you for your help today.
The Court: Ladies and Gentlemen of the jury, you have been selected to try the case of the State of Missouri against Michael Smith. The defendant, Michael Smith, is charged with three counts of murder in the first degree. It is your responsibility to determine if the State has proven beyond a reasonable doubt the guilt of the defendant through the evidence presented at trial. Your verdict must be based solely on the evidence or lack of evidence presented. At the beginning of the trial, the prosecuting and defending attorneys will have the opportunity to make an opening statement. This is where they will provide their theories about the case. These statements are not to be considered evidence. They are only meant to help you understand how each side views the case. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. It is your responsibility as jurors to determine the credibility of each witness, and to evaluate the evidence presented in their testimonies. After the evidence has been presented, the attorneys will have the opportunity to make a final argument. Similar to the opening statements, these statements are not to be considered evidence. Following this, you will need to make a verdict decision. In every criminal proceeding, a defendant has the right to remain silent. At no time is it the duty of the defendant to prove his innocence. A jury is not permitted to draw any inference of guilt from a defendant’s right to remain silent, and the fact that a defendant did not take the witness stand must not influence your verdict decision in any manner whatsoever. Those are my instructions, Ladies and Gentlemen. I will now ask the prosecuting attorney, James Miller, to begin with his opening statement.

Prosecution: Thank you, Your Honor. Ladies and Gentlemen of the jury, my name is James Miller, and I am the prosecuting attorney that will be representing the State of Missouri. It is my intention throughout this trial to show you that the defendant, Michael Smith, committed the act of murder on one count of Elizabeth Smith, on another count of Matthew Smith, and on a third count of Natalie Smith. On the night of June 18th, 2015,
Mr. Smith called the police and reported finding the bodies of his wife, Elizabeth, and their two young children, Matthew and Natalie, in the family’s garage. They had been shot to death. Now, the police have determined that the shootings must have occurred sometime after 7:30 pm when Elizabeth would have arrived home with the kids after Matthew’s swim practice. Mr. Smith claims to have arrived home around 9 pm after playing basketball with his friends at church. He claims to have found his wife outside the family vehicle on the floor of the garage, and to have looked inside the car to find his own children. According to Mr. Smith, he states to have thought that Matthew, his 7 year old son, might still be alive, so he reached over Natalie, his 4 year old daughter, took out his son, put him on the floor, and began performing CPR. When Matthew did not respond, Mr. Smith then decided to call the police. The evidence the prosecution intends to show the jury today will reveal that this is not a true account of the events that took place on that fateful night. No, I suggest to you that the defendant, Mr. Smith, was there around 7:30 pm the night of June 18th waiting for his family to return home; and it was that night that the defendant shot to death his own wife and two children.

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

Defense: Yes, Your Honor. Ladies and Gentlemen of the jury, my name is David Clark, and I am here to represent the defendant, Michael Smith. Now, I would like to take a few minutes to explain what I believe the evidence will show in this case. I believe the evidence will reveal that Michael Smith is a 34 year old husband and father, who after experiencing the tragic loss of his own wife and children was then arrested and charged for the murder of his own family. On June 18th, a tragedy occurred, there is no question about that. And believe me when I say, no one here today understands the pain of that tragedy better than Michael. That being said, the purpose of this trial is not to determine whether or not a tragedy occurred, but whether or not Michael committed this act of violence toward his own family. I assert to you that he did not. When the police started to investigate this case, there was no solid evidence pointing to anyone. However, pressure began to build, and an arrest needed to be made. Several weeks into this investigation, the police still had no answers -- but it was at this point that the investigators suddenly decided to ignore Michael Smith’s alibi and arrest him for the murder of his own family. There is absolutely no substantiating evidence linking Mr. Smith to this crime. I assert to you, Michael Smith, was a loving husband and father to his two children, and he did not do this.

Expert Witness #1 - Bloodstain Pattern Analyst

The Court: The prosecution may now call its first witness.

Prosecution: Your Honor, the State would like to call William Evans to the stand.
The Court: Mr. Evans, if you would come to the witness stand and please raise your right hand. Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth?

William Evans: Yes, Your Honor, I do.

The Court: Thank you, please be seated. The prosecution may now begin examining the witness.

Prosecution: Mr. Evans, would you state your name and occupation for the jury?

William Evans: William Evans, I am a bloodstain pattern analyst at the Camden County Medical Examiner’s Office.

Prosecution: Could you tell the jury a little bit about your educational background? How did you become a bloodstain pattern analyst?

William Evans: Sure, I have a Bachelor of Science Degree from St. Louis University. I actually became interested in bloodstain pattern analysis when I first started working in a research lab at the university. Since then, I’ve taken several courses specifically in bloodstain pattern analysis. And I have also earned my Master’s Degree in Medical Technology.

Prosecution: How long have you worked with the Medical Examiner’s Office?

William Evans: I have been there for 11 years.

Prosecution: Alright, could you explain to the jury what exactly is bloodstain pattern analysis?

William Evans: During violent crimes, there is often a lot of bloodshed, and there is also a lot of information that can be gained by the close examination of this bloodstain evidence. When you look at the size of the stains, the shape of the stains, or the way the stains are distributed in a pattern -- it can all be very useful information in reconstructing the events that took place during a crime.

Prosecution: How did you get involved in the Michael Smith case?

William Evans: I was asked to perform a review of the bloodstain evidence found on Michael Smith’s t-shirt. I was sent a set of photographs by the investigators of the case with the basic question of whether or not these stains were the result of impact spatter.

Prosecution: So, the photographs you were sent to examine were just of Mr. Smith’s t-shirt?

William Evans: Yes, that is correct.
Prosecution: How many photographs did he send you?

William Evans: 87.

Prosecution: And once you received these photographs, what did you do?

William Evans: First, I examined them visually, and then using a microscope, magnification, and lighting -- I spent about a day and a half examining these photographs the best that I could.

Prosecution: Were you able to reach an opinion based on the photographs that you examined?

William Evans: Yes, sir, I was.

Prosecution: And what was your opinion?

William Evans: Well, each of the bloodstains were smaller than one millimeter in size, which is consistent with the characteristics of impact spatter.

Prosecution: Now, impact spatter can be the result of a gunshot wound, correct?

William Evans: Yes, typically this type of bloodstain pattern is created by the high velocity impact of an object to a blood source, which could include a gunshot wound.

Prosecution: Thank you, Mr. Evans. 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.

Defense: Thank you, Your Honor. I just have a couple of questions for Mr. Evans. Now, when you looked at the photographs provided to you of Michael Smith’s t-shirt -- how many bloodstains total did you examine?

William Evans: I examined 8 bloodstains from a specific area of the shirt.

Defense: Isn’t it highly unusual that only 8 high velocity impact blood stains made it to Michael Smith’s shirt? Generally, you would see hundreds of impact spatter, right?

William Evans: Well, there could be several reasons why only 8 stains made it to the shirt. They could have been blocked by some intermediate surface between the shirt and the gunshot wound. Violent crimes are typically very chaotic. There’s a lot of action and a lot of movement. Something could have blocked the blood spatter to the shirt.

Defense: Were you asked to look at any other articles of clothing other than the t-shirt in order to render your opinion?
Williams Evans: No, I was not.

Defense: So, you did not examine Michael Smith’s pants?

Williams Evans: No, I did not.

Defense: You did not examine Michael Smith’s shoes?

Williams Evans: No, I did not.

Defense: Were you asked to look at the interior of the vehicle in order to render your opinion?

William Evans: No, I was not.

Defense: Mr. Evans, you indicated in your report that the blood stains appeared as if they might have been brushed or smeared. Could you explain to the jury what this means?

Williams Evans: Well, brushing or smearing can occur once a blood stain has already developed on an object, but the blood has not yet completely dried. If the blood comes into contact with something else while it is still wet, then this can disrupt its original pattern.

Defense: Ok, now after you performed your initial evaluation of the blood stains -- were you able to learn which victim’s blood was present on Michael Smith’s shirt?

William Evans: Yes, I was. I received the results from DNA testing.

Defense: And whose blood was it?

William Evans: I learned that it was the daughter’s blood, um Natalie.

Defense: Alright, now Michael Smith stated that he had to reach over his daughter, Natalie, to pull his son out of the car when he thought that Matthew might still be alive. Is it possible then that the stains on Michael Smith’s shirt could actually be transfer stains?

William Evans: Well, it is possible. However, my opinion that it was impact spatter was based on the overall small size of the stains.

Defense: Can transfer stains not be small?

William Evans: Well, it depends on what is producing the stain.

Defense: Could hair that has blood on it be the cause of very small transfer stains?
**William Evans:** Yes, it is possible.

**Defense:** Is it possible then that Natalie’s hair could have caused the blood stains on Michael Smith’s t-shirt?

**William Evans:** It is possible.

**Defense:** Is it also possible that the stains were never brushed or smeared, but actually transferred when Michael reached over his daughter?

**William Evans:** It is possible.

**Defense:** Thank you, Mr. Evans, that is all. I do not have any further questions, Your Honor.

**The Court:** Thank you, Mr. Evans. You may step down now, and I will have the prosecution call their next witness.

________________________________________________________________________

**Expert Witness #2 - Firearms Expert**

________________________________________________________________________

**Prosecution:** The State would now like to call Joseph Moore.

**The Court:** Mr. Moore, if you would come to the witness stand and please raise your right hand. Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth?

**Joseph Moore:** Yes, Your Honor, I do.

**The Court:** Thank you, please be seated. The prosecution may now begin examining the witness.

**Prosecution:** Mr. Moore, would you state your name and occupation?

**Joseph Moore:** Joseph Moore, I am a Missouri State Police Officer assigned to work in the laboratory division. I work at the Camden County Laboratory.

**Prosecution:** Ok, and how long have you worked for the Missouri State Police?

**Joseph Moore:** 17 years.

**Prosecution:** Alright, now within the Camden County Laboratory, what is your area of expertise?

**Joseph Moore:** I perform firearms and toolmark examinations.
Prosecution: Have you received any specialized training in this field?

Joseph Moore: Yes, I attended the FBI gunshot and primer residue school as well as completed a twelve month internship within the firearms and toolmark discipline for the Missouri State Police. We also have continuing in-service training and proficiency testing, which is a part of our laboratory quality assurance program.

Prosecution: And could you describe for the jury what happens during a firearms examination?

Joseph Moore: Sure, we perform four different evaluations. Number one being bullet and casing comparisons to determine if a bullet or casing has been fired from a specific firearm. Next is function testing, which is the examination of a specific weapon to see if it functions as it is intended to function, or if there is some sort of defect with the weapon that could have caused it to accidentally discharge. Third, a muzzle to garment determination is made, which approximates the distance from which the firearm was discharged. And finally, there are ammunition component characterizations that are made that determine specific characteristics of the firearm, such as the type of firearm that was used as well as the manufacturer of the firearm.

Prosecution: Ok, thank you. How did you become involved in the Michael Smith case?

Joseph Moore: I was provided three bullets and three casings from the investigators of the case; and I was asked if I could examine the components of these bullets and casings to determine the overall class characteristics. In other words, the investigators were looking for a lead as to what type of firearm was used in this crime. They wanted to know what type of model or make of firearm that they should be looking for.

Prosecution: Now, there may be some jurors that don’t understand the relationship between bullets and casings. Could you explain the relationship between the two?

Joseph Moore: Sure, so firearms have something called a cartridge, which is the complete package. A cartridge has an exterior casing, which contains a primer, some propellant powder, and a projectile, or bullet, inside. And when the primer is struck by a gun’s firing pin, it creates a spark. This spark ignites the propellant powder, which forces the bullet out of the casing and into the barrel of the gun.

Prosecution: So, what you’re saying is that at one point -- the bullets that were found at the crime scene would have once been inside the casings that were also found at the crime scene?

Joseph Moore: Yes, that is correct.

Prosecution: So, during your examination of the bullets and casings -- what exactly is it that you were looking for?
Joseph Moore: Well, firearms have inherent class characteristics that are determined by the manufacturer. And these characteristics include things such as the caliber, the number of lands and grooves within the barrel, the position and shape of the extractor or ejector, and the position and shape of the firing pin. You can actually determine the overall class characteristics of a particular firearm by examining the bullets and casings that were discharged from that weapon.

Prosecution: Now, these are microscopic details, correct?

Joseph Moore: Yes, that is correct. I had to analyze the bullets and casings under the microscope.

Prosecution: After your examination, were you able to determine what type of firearm produced the discharged bullets and casings found at the crime scene?

Joseph Moore: Yes, I looked specifically at the firing pin impressions, breech face marks, and extractor marks to determine what type of firearm was used. I observed that on the head of all three casings -- there was a specific indentation just below the firing pin impression that looked almost like an upside-down smile. These are what we refer to as frown lines, and they are indicative of firearms produced by the Lorcin Engineering Company. Additionally, there were specific breech face marks that I observed on the casings as well as lands and grooves on the bullets that allowed me to determine the firearm used was a Lorcin .380.

Prosecution: What can you tell us about the Lorcin .380?

Joseph Moore: Well, it’s a hammerless semi-automatic pistol. It’s a fairly small handgun.

Prosecution: What does that mean that it is hammerless?

Joseph Moore: The Lorcin .380 has an internal striker system, which means it doesn’t use an external hammer. So, the hammer of a gun is typically located towards the rear of a firearm, and when it is used -- it is cocked back and then moved forward to strike a firing pin, which fires the weapon. A Lorcin .380 is hammerless, meaning that it does not have an external hammer. In other words, the back of the gun is flat.

Prosecution: So, the Lorcin .380 does not have an external hammer. Does Lorcin make a gun with a hammer?

Joseph Moore: No.

Prosecution: So, all Lorcin’s are hammerless?

Joseph Moore: Yes.
Prosecution: Mr. Moore, you said that the Lorcin .380 was a fairly small handgun. How small would you say?

Joseph Moore: It would likely be able to fit inside a pants pocket.

Prosecution: So, this is the type of gun that could easily be bought for, let’s say, defensive purposes?

Joseph Moore: Yes, this gun could reasonably be purchased for self-defense.

Prosecution: Thank you, Mr. Moore. No further questions, Your Honor.

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

Defense: Thank you, Your Honor. Just a few questions, Mr. Moore. There was no firearm found at the crime scene, correct?

Joseph Moore: That is correct.

Defense: And that’s not really unusual, is it?

Joseph Moore: No, not really.

Defense: It was actually just from the bullets and casings alone that you were able to determine the firearm used was a Lorcin .380?

Joseph Moore: Yes.

Defense: Does Michael Smith own a Lorcin .380?

Joseph Moore: I don’t know the answer to that question.

Defense: Sorry, let me rephrase. Has there been any evidence produced that connects Michael Smith to the possession of a Lorcin .380?

Joseph Moore: No, I do not believe so.

Defense: So, we know that a Lorcin .380 was the firearm used that night, however since the weapon was never recovered -- Is there any evidence that actually connects Michael Smith to this particular gun?

Joseph Moore: No.

Defense: Mr. Moore, you said that the investigators wanted to know what type of firearm they should be looking for -- Is the Lorcin Engineering Company still in business?

Defense: Why so?

Joseph Moore: Bankruptcy.

Defense: Before they filed for bankruptcy, would it be fair to say that Lorcin was a company known to produce fairly inexpensive handguns?

Joseph Moore: Yes, that would be fair.

Defense: So, this particular type of gun could easily be, let’s say, bought or sold at a pawn shop?

Joseph Moore: Sure.

Defense: I suppose what my question actually is -- could anyone have purchased and used this handgun?

Joseph Moore: Yes.

Defense: Thank you, Mr. Moore. Those are all of the questions I have, Your Honor.

The Court: Thank you, Mr. Moore. You may step down now.

This is the end of the Control Trial Transcript.

The Experimental Trial Transcripts will continue on to the testimony of the jailhouse informant.

Jailhouse Informant (Direct Examination)

Prosecution: Your Honor, the State would like to call another witness, Ryan Jones.

The Court: Mr. Jones, if you would come to the witness stand and please raise your right hand. Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth?

Ryan Jones: Yes, Your Honor, I do.

The Court: Thank you, please be seated. The prosecution may now begin examining the witness.

Prosecution: Would you please state your name for the record?
Ryan Jones: Ryan Jones.

Prosecution: How old are you, Ryan?

Ryan Jones: I’m 28.

Prosecution: And where do you currently reside?

Ryan Jones: Camden County Prison.

Prosecution: Alright, and how long have you been in prison?

Ryan Jones: 12 years.

Prosecution: So, how old were you when you went to prison?

Ryan Jones: I was 16.

Prosecution: Is it fair to say then that you have spent your entire adult life in prison?

Ryan Jones: Yeah.

Prosecution: Alright, and what are you serving a sentence for?

Ryan Jones: Armed robbery and aggravated assault.

Prosecution: Ok, thank you. And that is aggravated assault with a deadly weapon, correct?

Ryan Jones: Yes.

Prosecution: And could you please describe for the jury the circumstances surrounding your conviction? Who did you rob?

Ryan Jones: Me and my buddy, Steve, hit the apartment of a couple of guys we knew had some cash and drugs.

Prosecution: And you brought a firearm with you and threatened the men inside the apartment?

Ryan Jones: Yeah.

Prosecution: Did you physically harm anyone during the commission of this crime?

Ryan Jones: Not really. I threw a couple punches. I fired the gun, but into the wall.
Prosecution: Ok, now how long is your sentence?

Ryan Jones: 40 years.

Prosecution: And how about Steve? What was his sentence?

Ryan Jones: 10 years.

Prosecution: So, Steve is already out of prison?

Ryan Jones: Yeah.

Prosecution: How did that happen?

Ryan Jones: He made a deal and ended up testifying against me at trial.

Prosecution: So, Steve made a deal to implicate you for a majority of the criminal charges, and this resulted in him getting a sentence of 10 years and you a sentence of 40 years.

Ryan Jones: Yeah.

Prosecution: Ok, now do you have any relatives?

Ryan Jones: I do.

Prosecution: Who would you say are your closest relatives?

Ryan Jones: My mom and dad.

Prosecution: Do you see them often?

Ryan Jones: Oh yeah, every two weeks they come and see me.

Prosecution: How long has that been going on?

Ryan Jones: My entire incarceration.

Prosecution: Is that the maximum amount of time that they are allowed to see you?

Ryan Jones: Yeah, they have to wait at least 14 days.

Prosecution: Are you able to talk more often on the phone?

Ryan Jones: Yeah, I talk to my mom a lot on the phone.
Prosecution: Do you know Michael Smith?

Ryan Jones: Yes, I do.

Prosecution: How do you know him?

Ryan Jones: We were both in Camden County Prison together.

Prosecution: And is there any specific way that you became acquainted with him?

Ryan Jones: I did a tattoo on his arm.

Prosecution: What type of tattoo did Mr. Smith want?

Ryan Jones: He asked for a cross.

Prosecution: How long have you been doing tattoos?

Ryan Jones: Pretty much since I got to prison.

Prosecution: So would you say then, that you have done a lot of tattoos over the years?

Ryan Jones: Yeah, I have.

Prosecution: With the tattoo that you did for Michael Smith, how long would something like that take?

Ryan Jones: You know, the way we’ve got to get around everything -- it takes a while. And on top of that, Michael wanted a lot of specific detailing, you know, like wood grain and stuff. So, it probably took about three weeks or so just, you know, a few hours at a time.

Prosecution: Do you talk a lot when you’re giving a tattoo?

Ryan Jones: Yeah, people seem to get a little bit nervous about the whole thing. They seem to talk a lot when they get tattoos done.

Prosecution: Would you say it is a painful process?

Ryan Jones: I mean, it just depends on your tolerance level. I don’t think so, not really. But Michael, you know, it was his first one. So, he didn’t really know what to expect.

Prosecution: Would you say that this was first time you had any significant type of conversation with Mr. Smith?
**Ryan Jones:** Umm, significant yeah. We were in the same area together for a while, but you know you usually just try to stick to a few guys and that’s it. So, I mean, we had a day-to-day type conversation going on, but drawing a tattoo is a lot more one-on-one. We were in a small area together for a lot of time.

**Prosecution:** Did the defendant ever tell you anything related to the murder of his wife and children?

**Ryan Jones:** Yeah. I learned that’s the reason he was in prison. And he talked to me about it.

**Prosecution:** Would you say that Mr. Smith talked to you about it over the period of a day, or was this more like over a period of several weeks while he was getting the tattoo done?

**Ryan Jones:** Umm, a couple weeks. Just here and there, you know, like the conversation progressed over the time we spent together.

**Prosecution:** And did he tell you that he was involved with the murder?

**Ryan Jones:** Yeah, he mentioned, you know, how the marriage was not going well. He thought his wife was having an affair. And I think there were some financial issues. There were, um, there were issues.

**Prosecution:** So, Michael Smith told you that he thought his wife, Elizabeth, was having an affair?

**Ryan Jones:** Yeah, yeah.

**Prosecution:** Was there any mention of a divorce?

**Ryan Jones:** Oh yeah, umm, Michael said that, um, his wife was planning on getting a divorce and she was going to, um, clean him out with the kids.

**Prosecution:** So, the financial issues were with the children if Michael was to get a divorce?

**Ryan Jones:** Yeah, yeah.

**Prosecution:** Ok, now did you ever have a conversation with Mr. Smith concerning possible alibi witnesses?

**Ryan Jones:** Yeah, we had talked about how he had this alibi planned out where he would be playing basketball at a church with a bunch of the guys. And he said that, umm, the basketball games were every Thursday night always with the same guys. So, he planned it to go down on that specific night so that he could have an alibi.
Prosecution: So, Mr. Smith planned to kill his family the night of the basketball games so that he would have an alibi. How does that work?

Ryan Jones: You know, it’s been a couple of years since we had the conversation, but basically since Michael goes to the same game every Thursday, he said that he planned to just, you know, leave for whatever reason and then come back to the game. And then later when the guys were asked if Michael was there that night, they’d be like yeah Michael was with us Thursday. He plays with us every Thursday.

Prosecution: Alright, now after you had these conversations with Mr. Smith -- what did you do with this information?

Ryan Jones: Well, I contacted my mom. I just -- you know, I tell my mom everything. And I told her she needed to contact the prosecutor’s office for me because I had some things to say. But my mom was really concerned about my safety, so it took her awhile to get around to actually doing it.

Prosecution: Is it fair to say that your mother didn’t contact the prosecutor’s office for quite awhile?

Ryan Jones: Yeah. She was real concerned about my safety.

Prosecution: And are you concerned about your safety?

Ryan Jones: Absolutely. I’ve had to deal with this thing for about a year now.

Prosecution: Was testifying today a hard thing for you to do?

Ryan Jones: Definitely.

Prosecution: Then why did you do it?

Ryan Jones: I felt like it was something I needed to do. That stuff he told me wasn’t right. Especially with the kids.

Prosecution: Ryan, did you ever have a conversation with Mr. Smith about a gun?

Ryan Jones: Yeah. He told me he wanted to make sure that he used a clean gun.

Prosecution: And for the jury, what exactly is a clean gun?

Ryan Jones: Just a gun that couldn’t be traced to him.

Prosecution: Did he mention anything else concerning the gun?
**Ryan Jones:** Well, umm, he talked quite a bit about the gun. He said it was a hammerless .380.

**Prosecution:** And you remember him specifically saying that it was a hammerless .380?

**Ryan Jones:** Yeah, it’s more than just words to me you know -- like when he told me, I saw a picture in my head. A .380 is real small like a pocket pistol. And I remember him saying it was hammerless, which means it doesn’t have a spur on the rear to cock back.

**Prosecution:** So, Mr. Smith told you that he used a hammerless .380 to kill his wife and children?

**Ryan Jones:** Yeah, that’s what he said.

**Prosecution:** Now, have you asked me for anything in exchange for your testimony today?

**Ryan Jones:** No.

**Prosecution:** Have you asked anyone in authority for anything in exchange for your testimony?

**Ryan Jones:** No.

**Prosecution:** That being said -- do you fully expect to serve out the remainder of your sentence?

**Ryan Jones:** Yeah, I do.

**Prosecution:** Thank you, Ryan. No further questions, Your Honor.

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

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This is the start of my experimental manipulations:

1. Neutral Cross-Examination, Inconsistencies Present
2. Neutral Cross-Examination, Inconsistencies Absent
3. Aggressive Cross-Examination, Inconsistencies Present
4. Aggressive Cross-Examination, Inconsistencies Absent
5. Empathic Cross-Examination, Inconsistencies Present
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Defensive: Thank you, Your Honor. Now, Mr. Miller brought out that you were only 16 years old when you were convicted of armed robbery and aggravated assault, correct?

Ryan Jones: Yes, I was.

Defense: And you received a 40 year sentence?

Ryan Jones: Yes, I did.

Defense: And the reason you received a 40 year sentence is because you pled guilty, correct?

Ryan Jones: Yes, that’s correct.

Defense: However, you mentioned that Steve worked with the system and received a 10 year sentence instead?

Ryan Jones: Yeah, you could say that.

Defense: Are you currently working with the system today in order to now get a reduction in your own sentence?

Ryan Jones: No, I’m not.

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Ryan Jones: No.

Defense: Are you currently interested in a reduction of the sentence you have now?

Ryan Jones: No.

Defense: Ok, let’s talk about Michael Smith. Now, you told the jury that you did a tattoo on Mr. Smith’s arm?

Ryan Jones: Yes, I did.

Defense: After you worked on his tattoo, isn’t it true that you watched the national TV program, 48 Hours, which talked about the murder of Michael Smith’s family?
**Ryan Jones:** Yeah, I watched it. Michael watched it too. The whole cell block watched it actually.

**Defense:** And then it was after you watched the 48 Hours special that you told your mom to contact the prosecutor because you had some information to say about Michael Smith?

**Ryan Jones:** I told my mom to contact the prosecutor after I did Michael’s tattoo.

**Defense:** And did you work on Michael’s tattoo before or after the 48 Hours special aired on TV?

**Ryan Jones:** It was before.

**Defense:** Then why did your mother not come forward with this information until after the 48 Hours special was shown on TV?

**Ryan Jones:** She was worried about my safety. It took her awhile to contact the prosecutor for me.

**Defense:** After the information about Michael Smith was shown on TV though, your mother was no longer concerned for your safety?

**Ryan Jones:** I mean she was still scared, but she finally did what I asked.

**Defense:** Ok, let’s move on -- in your initial report provided to the prosecutor, where did you say that Michael Smith told you the murder took place?

**Ryan Jones:** He said he shot his family in the driveway.

**Defense:** The driveway?

**Ryan Jones:** Yeah.

**Defense:** Actually, it says here that you stated Michael Smith told you that he shot his family in the garage. Is that not correct?

**Ryan Jones:** Oh, no. That’s correct. He shot his family in the garage.

**Defense:** So, your testimony today is that Michael Smith shot his family in the garage and not in the driveway?

**Ryan Jones:** Yes, I misspoke. He shot his family in the garage.

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Ryan Jones: Well, he said that he was going to go to the church, play a couple of games of basketball, make an impression in their minds that he was there, then leave and come back. And then when he got back, he would make sure that he would establish his presence by, you know, playing bad or something to make sure they knew he was there.

Defense: Since pickup basketball typically doesn’t have a schedule -- did Michael tell you how he would have known when he would have been able to slip out of the basketball game?

Ryan Jones: I don’t know, I didn’t ask about that.

Defense: You mentioned that you are close to your parents. Were you also close to your grandparents growing up?

Ryan Jones: Yes, I was.

Defense: And your grandfather was a licensed gun dealer, correct?

Ryan Jones: Yes.

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Defense: Is that how you know the difference between a hammerless and not hammerless firearm?

Ryan Jones: Yeah.

Defense: Were you able to tell the prosecutor that Michael Smith used a hammerless handgun to kill his family based on the information you heard on 48 Hours?

Ryan Jones: No, Michael told me that he used a hammerless gun.

Defense: Did you hear on 48 Hours that the handgun used in this crime was a Lorcin .380?

Ryan Jones: No.

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Ryan Jones: You know -- I can’t remember, I watched that almost 2 years ago.

Defense: You can’t remember what was shown on 48 Hours?

Ryan Jones: No, I can’t.
Defense: Did you know from conversations with your grandfather that all Lorcin .380’s are hammerless?

Prosecution: Objection.

The Court: Overruled. Please answer.

Ryan Jones: No.

Defense: Did you hear on TV that the firearm used was a Lorcin .380? And therefore you were able to put two-and-two together and informed the prosecutor that the weapon used was a hammerless handgun?

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Jailhouse Informant (Neutral Cross-Examination, Inconsistencies Absent)

Defense: Thank you, Your Honor. Now, Mr. Miller brought out that you were only 16 years old when you were convicted of armed robbery and aggravated assault, correct?

Ryan Jones: Yes, I was.

Defense: And you received a 40 year sentence?

Ryan Jones: Yes, I did.

Defense: And the reason you received a 40 year sentence is because you pled guilty, correct?

Ryan Jones: Yes, that’s correct.

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**Ryan Jones:** No.

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**Ryan Jones:** Yeah.

**Defense:** Do you enjoy being locked up?

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**Defense:** Would you say that your mother is an honest woman?

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**Ryan Jones:** Yes.

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**Defense:** Let me rephrase, keeping in mind that you are a convicted felon -- would you say that the people of this jury would consider your mother to be an honest woman?

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**Ryan Jones:** He said he shot his family in the driveway.

**Defense:** Really, is that so? Because it actually says right here that you stated Michael Smith told you he shot his family in the garage. So, which one is your story today?

**Ryan Jones:** Oh, no. That’s correct. He shot his family in the garage.

**Defense:** Are you sure?

**Ryan Jones:** I’m sure.

**Defense:** I don’t think the jury would mind giving you a minute to make sure you’re able to get your story straight. Would you like to see the prosecutor’s report to refresh your memory?
Ryan Jones: No.

Defense: So, your testimony as of right now is that Michael Smith shot his family in the garage and not in the driveway?

Ryan Jones: Yes, I misspoke. He shot his family in the garage.

Defense: You also mentioned earlier that Michael set up this big alibi with his basketball team, right? Where he said he was going to run home sometime in the middle of the games, murder his whole family, and then get back to the basketball game so he could fool everyone into thinking he was really there the whole time -- that was his big plan, right?

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Jailhouse Informant (Empathic Cross-Examination, Inconsistencies Present)

Defense: Thank you, Your Honor. Now, Mr. Miller brought out that you were only 16 years old when you first entered prison?

Ryan Jones: Yes, I was.

Defense: And that was not in a juvenile detention center was it?

Ryan Jones: No, it was not.

Defense: You mentioned earlier that you were concerned for your safety. And that your mother was concerned for your safety as well. That must have been scary entering into a correctional environment with men much older than you?

Ryan Jones: I mean, I learned how to look out for myself.

Defense: There’s not a lot of privacy in prison is there?

Ryan Jones: No, not really.

Defense: You sleep in the same room with other inmates?

Ryan Jones: Yes.

Defense: And shower with other inmates?

Ryan Jones: Yes.

Defense: And when you were 16, you were starting a 40 year sentence?

Ryan Jones: Yes, I was.

Defense: And you are 28 now, so you’ve served 12 years so far?

Ryan Jones: Yes, that’s correct.

Defense: Since you entered prison at such a young age -- I suppose that’s prevented you from experiencing some of the advantages of adulthood?

Ryan Jones: You could say that.

Defense: Guards tell you when to eat?

Ryan Jones: Yeah.
Defense: When to sleep?

Ryan Jones: Yeah.

Defense: When to take a shower?

Ryan Jones: Yeah.

Defense: The reason you received a 40 year sentence though is because you pled guilty, correct?

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Ryan Jones: No.

Defense: Ok, thank you. So, you intend to serve out the remainder of your sentence. That’s -- another 28 years. So, you’ll be -- let’s see, 28 plus 28. 56. Is that around the age your parents are now?

Ryan Jones: Yeah, that’s about right.

Prosecution: Objection. Relevance.

The Court: Sustained.

Defense: You mentioned earlier that your parents come visit you every 2 weeks. In prison, you can only have visitors on certain days, is that correct?

Ryan Jones: Yes.

Defense: And at specified times?
Ryan Jones: Yes.

Defense: I’m presuming in a large and noisy room?

Ryan Jones: Yeah.

Defense: But your mom and dad always come to visit you, though, when they are allowed. Is that right?

Ryan Jones: Yeah, that’s right.

Defense: Do you count down the days until you are able to go home?

Prosecution: Objection.

The Court: Sustained.

Defense: Is it true that the prosecutor could recommend to the court that some years be taken off your sentence since you’ve agreed to testify here today?

Ryan Jones: I mean, he could, but I didn’t ask for that.

Defense: No, of course not. It is possible though that in the future a judge could look favorably upon a testimony like this?

Ryan Jones: I guess.

Defense: Would you be interested in a reduction of your sentence?

Ryan Jones: ...No.

Defense: Ok, let’s talk about Michael Smith. You told the jury that you did a tattoo on Michael’s arm?

Ryan Jones: Yes, I did.

Defense: After you worked on his tattoo, did you watch the national TV program, 48 Hours, which talked about the murder of Michael Smith’s family?

Ryan Jones: Yeah, I watched it. Michael watched it too. The whole cell block watched it actually.

Defense: And then it was after you watched the 48 Hours special that you told your mom to contact the prosecutor because you had some information to say about Michael Smith?

Ryan Jones: I told my mom to contact the prosecutor after I did Michael’s tattoo.
Defense: And did you work on Michael’s tattoo before or after the 48 Hours special aired on TV?

Ryan Jones: It was before.

Defense: Then why did your mother not come forward with this information until after the 48 Hours special was shown on TV?

Ryan Jones: She was worried about my safety. It took her awhile to contact the prosecutor for me.

Defense: Ok, I can understand that. After the information about Michael Smith was shown on TV though, what happened that changed your mother’s mind? Why did she decide to finally contact the prosecutor?

Ryan Jones: I mean she was still scared, but she finally did what I asked.

Defense: Ok, let’s move on -- in your initial report provided to the prosecutor, where did you say that Michael Smith told you the murder took place?

Ryan Jones: He said he shot his family in the driveway.

Defense: The driveway?

Ryan Jones: Yeah.

Defense: In your initial interview, you actually said that Michael told you he shot his family in the garage?

Ryan Jones: Oh, no. That’s correct. He shot his family in the garage.

Defense: Ok, so your testimony today is that Michael shot his family in the garage and not the driveway?

Ryan Jones: Yes, I misspoke. He shot his family in the garage.

Defense: Now, can you review for the jury once again Michael’s plan to create an alibi?

Ryan Jones: Well, he said that he was going to go to the church, play a couple of games of basketball, make an impression in their minds that he was there, then leave and come back. And then when he got back, he would make sure that he would establish his presence by, you know, playing bad or something to make sure they knew he was there.

Defense: Since pickup basketball typically doesn’t have a schedule, did Michael tell you how he would have known when he would have been able to leave the game and then come back?
Ryan Jones: I don’t know, I didn’t ask about that.

Defense: You mentioned that you are close to your parents and we’ve talked about your mom quite a bit. Were you also close to your grandparents growing up?

Ryan Jones: Yes, I was.

Defense: And your grandfather’s profession -- he was a licensed gun dealer, correct?

Ryan Jones: Yes.

Defense: So, is it fair to say that you grew up with all sorts of knowledge about guns?

Ryan Jones: I mean, yeah, we would talk about guns.

Defense: Is that the reason why you know the difference between a hammerless and not hammerless firearm?

Ryan Jones: Yeah.

Defense: Were you able to tell the prosecutor that Michael Smith used a hammerless handgun to kill his family based on the information you heard on 48 Hours?

Ryan Jones: No, Michael told me that he used a hammerless gun.

Defense: Did you hear on 48 Hours that the handgun used in this crime was a Lorcin .380?

Ryan Jones: No.

Defense: Are you sure?

Ryan Jones: You know -- I can’t remember, I watched that almost 2 years ago.

Defense: You can’t remember what was shown on 48 Hours?

Ryan Jones: No, I can’t.

Defense: Did you know from conversations with your grandfather that all Lorcin .380’s are hammerless?

Prosecution: Objection.

The Court: Overruled. Please answer.

Ryan Jones: No.
**Defense:** Did you hear on TV that the firearm used was a Lorcin .380? And therefore you were able to put two-and-two together and informed the prosecutor that the weapon used was a hammerless handgun?

**Ryan Jones:** No, that’s not what happened.

**Defense:** Alright, thank you. No further questions, Your Honor.

**The Court:** Thank you, Mr. Jones. You may step down now.

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**Jailhouse Informant (Empathic Cross-Examination, Inconsistencies Absent)**

**Defense:** Thank you, Your Honor. Now, Mr. Miller brought out that you were only 16 years old when you first entered prison?

**Ryan Jones:** Yes, I was.

**Defense:** And that was not in a juvenile detention center was it?

**Ryan Jones:** No, it was not.

**Defense:** You mentioned earlier that you were concerned for your safety. And that your mother was concerned for your safety as well. That must have been scary entering into a correctional environment with men much older than you?

**Ryan Jones:** I mean, I learned how to look out for myself.

**Defense:** There’s not a lot of privacy in prison is there?

**Ryan Jones:** No, not really.

**Defense:** You sleep in the same room with other inmates?

**Ryan Jones:** Yes.

**Defense:** And shower with other inmates?

**Ryan Jones:** Yes.

**Defense:** And when you were 16, you were starting a 40 year sentence?

**Ryan Jones:** Yes, I was.

**Defense:** And you are 28 now, so you’ve served 12 years so far?
Ryan Jones: Yes, that’s correct.

Defense: Since you entered prison at such a young age -- I suppose that’s prevented you from experiencing some of the advantages of adulthood?

Ryan Jones: You could say that.

Defense: Guards tell you when to eat?

Ryan Jones: Yeah.

Defense: When to sleep?

Ryan Jones: Yeah.

Defense: When to take a shower?

Ryan Jones: Yeah.

Defense: The reason you received a 40 year sentence though is because you pled guilty, correct?

Ryan Jones: Yes, that’s correct.

Defense: However, you mentioned that Steve worked with the system and received a 10 year sentence instead?

Ryan Jones: Yeah, you could say that.

Defense: Are you currently working with the system today in order to now get a reduction in your own sentence?

Ryan Jones: No, I’m not.

Defense: When you were first convicted, Steve was able to cut a significant amount of time off his sentence by making a deal with the prosecution and testifying against you at your trial. And as Mr. Miller brought out, Steve’s not even in prison anymore. Did you learn from this experience that if you make a deal with the prosecution and testify against someone else that you too could get some time off your sentence?

Ryan Jones: No.

Defense: Ok, thank you. And you mentioned earlier that you intend to serve out the remainder of your sentence. That’s -- another 28 years. So, you’ll be -- let’s see, 28 plus 28. 56. Is that around the age your parents are now?
Ryan Jones: Yeah, that’s about right.

Prosecution: Objection. Relevance.

The Court: Sustained.

Defense: You mentioned earlier that your parents come visit you every 2 weeks. In prison, you can only have visitors on certain days, is that correct?

Ryan Jones: Yes.

Defense: And at specified times?

Ryan Jones: Yes.

Defense: I’m presuming in a large and noisy room?

Ryan Jones: Yeah.

Defense: But your mom and dad always come to visit you, though, when they are allowed. Is that right?

Ryan Jones: Yeah, that’s right.

Defense: Do you count down the days until you are able to go home?

Prosecution: Objection.

The Court: Sustained.

Defense: Is it true that the prosecutor could recommend to the court hat some years be taken off your sentence since you’ve agreed to testify here today?

Ryan Jones: I mean, he could, but I didn’t ask for that.

Defense: No, of course not. It is possible though that in the future a judge could look favorably on a testimony like this?

Ryan Jones: I guess.

Defense: Would you be interested in a reduction of your sentence?

Ryan Jones: ...No.

Defense: Ok, let’s talk about Michael Smith. You told the jury that you did a tattoo on Michael’s arm?
Ryan Jones: Yes, I did.

Defense: After you worked on his tattoo, did you watch the national TV program, 48 Hours, which talked about the murder of Michael Smith’s family?

Ryan Jones: Yeah, I watched it. Michael watched it too. The whole cell block watched it actually.

Defense: And then it was after you watched the 48 Hours special that you told your mom to contact the prosecutor because you had some information to say about Michael Smith?

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Defense: And did you work on Michael’s tattoo before or after the 48 Hours special aired on TV?

Ryan Jones: It was before.

Defense: Then why did your mother not come forward with this information until after the 48 Hours special was shown on TV?

Ryan Jones: She was worried about my safety. It took her awhile to contact the prosecutor for me.

Defense: Ok, I can understand that. After the information about Michael Smith was shown on TV though, what happened that changed your mother’s mind? Why did she decide to finally contact the prosecutor?

Ryan Jones: I mean she was still scared, but she finally did what I asked.

Defense: Ok, let’s move on -- in your initial report provided to the prosecutor, where did you say that Michael Smith told you the murder took place?

Ryan Jones: He said he shot his family in the garage.

Defense: The garage?

Ryan Jones: Yeah.

Defense: Now, can you review for the jury once again Michael’s plan to create an alibi?

Ryan Jones: Well, he said that he was going to go to the church, play a couple of games of basketball, make an impression in their minds that he was there, then leave and come back. And then when he got back, he would make sure that he would establish his presence by, you know, playing bad or something to make sure they knew he was there.
**Defense:** Since pickup basketball typically doesn’t have a schedule, did Michael tell you how he would have known when he would have been able to leave the game and then come back?

**Ryan Jones:** I don’t know, I didn’t ask about that.

**Defense:** You mentioned that you are close to your parents and we’ve talked about your mom quite a bit. Were you also close to your grandparents growing up?

**Ryan Jones:** Yes, I was.

**Defense:** And your grandfather’s profession -- he was a licensed gun dealer, correct?

**Ryan Jones:** Yes.

**Defense:** So, is it fair to say that you grew up with all sorts of knowledge about guns?

**Ryan Jones:** I mean, yeah, we would talk about guns.

**Defense:** Is that the reason why you know the difference between a hammerless and not hammerless firearm?

**Ryan Jones:** Yeah.

**Defense:** Were you able to tell the prosecutor that Michael Smith used a hammerless handgun to kill his family based on the information you heard on 48 Hours?

**Ryan Jones:** No, Michael told me that he used a hammerless gun.

**Defense:** Did you hear on 48 Hours that the handgun used in this crime was a Lorcin .380?

**Ryan Jones:** No.

**Defense:** Are you sure?

**Ryan Jones:** You know -- I can’t remember, I watched that almost 2 years ago.

**Defense:** You can’t remember what was shown on 48 Hours?

**Ryan Jones:** No, I can’t.

**Defense:** Did you know from conversations with your grandfather that all Lorcin .380’s are hammerless?

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Ryan Jones: No.

Defense: Did you hear on TV that the firearm used was a Lorcin .380? And therefore you were able to put two-and-two together and informed the prosecutor that the weapon used was a hammerless handgun?

Ryan Jones: No, that’s not what happened.

Defense: Alright, thank you. No further questions, Your Honor.

The Court: Thank you, Mr. Jones. You may step down now.

Final Arguments for the Control Trial Transcript (No Jailhouse Informant)

The Court: As there are no other witnesses, I will now ask the prosecution and the defense to make their final arguments. Let’s start with the prosecution. Mr. Miller, you may now present your closing statement.

Prosecution: Ladies and Gentlemen of the jury, what exactly is it that the State has to prove? The State has to prove that Michael Smith caused the death of his wife, Elizabeth Smith, and his two children, Matthew Smith and Natalie Smith. And I believe we have done just that. What I want to do now is review the evidence. First, we had Mr. William Evans, the bloodstain pattern analyst, tell us that it was in his opinion that the bloodstains found on Michael Smith’s t-shirt were the result of impact spatter from a gunshot wound. This means that when the defendant shot his family, there was blood moving at a very high velocity that hit his t-shirt causing it to stain. And we know this because the stains on Michael Smith’s t-shirt were very small -- less than one millimeter in size -- a characteristic that is consistent with impact spatter. Now, Mr. Evans also told us that it appeared as if this impact spatter could have been brushed or smeared after it developed on Michael Smith’s shirt. What this means is that while the blood was still wet on Mr. Smith’s shirt, he could have come into contact with something that brushed or smeared the blood that was already present. Therefore, when Mr. Smith reached over his daughter, this could have resulted in blood -- that was already present on his shirt -- to become brushed or smeared. Next, we had Mr. Joseph Moore, the firearms examiner, tell us that after analyzing the bullets and casings retrieved from the crime scene, he was able to determine that the firearm used to murder Elizabeth, Matthew, and Natalie was a hammerless Lorcin .380. Now, the defense will tell you that a Lorcin .380 was never found in connection to Michael Smith, but as Mr. Moore told us earlier -- rarely are weapons left behind at the scene of the crime. The Lorcin .380 is a common firearm purchased for self-defense that could very easily have been bought and sold in cash. As easily as that gun came into Michael Smith’s possession, it could also just as easily have left. Michael Smith killed his wife. And then he killed his two young children. The
evidence shows this plain and clear. Ladies and Gentlemen, I ask that you consider all of this when you make your decision.

The Court: Mr. Clark, the defense may now present its closing statement.

Defense: Ladies and Gentlemen of the jury, today you are called upon to make a very serious decision. The fate of a 34 year old man is in your hands. The fate of Michael Smith. Let’s review the testimony we’ve heard throughout this trial. Mr. William Evans, the bloodstain pattern analyst, stated it was his initial opinion that the bloodstains found on Michael Smith’s t-shirt were the result of impact spatter. However, the truth is that he only analyzed 8 stains. 8 very small stains. Typically, high velocity impact spatter from a gunshot wound results in hundreds of stains. Mr. Smith’s clothes should have been covered in blood. However, we don’t know the condition of Mr. Smith’s other clothes because the investigators did not provide any of this evidence to be examined. Why did the investigators of this case not give Mr. Evans the pants or shoes of Michael Smith? Was it perhaps because there was no blood on these to be examined? Michael Smith, himself, stated that he had to reach over his daughter, Natalie, in order to pull his son, Matthew, out of the car. And it was Natalie’s blood that was found on his t-shirt. The bloodstains on Michael Smith’s shirt were transfer stains that resulted from him reaching over his daughter. They were not impact spatter. Next, Mr. Joseph Moore, the firearms examiner, was able to tell us that the weapon used to kill Michael Smith’s family was a hammerless Lorcin .380. While this was definitely useful information to provide to the police in terms of what type of firearm they should be looking for during the investigation -- it does not tell us anything about Michael Smith. There has been no actual evidence produced to connect Mr. Smith to a Lorcin .380. The prosecution wants you to know that this is a common firearm that could easily be purchased for self-defense. To that I agree -- with the additional insight that anyone could have purchased this gun. Anyone could have used this firearm to kill Michael Smith’s family. Ladies and Gentlemen, the prosecution’s evidence in this case is weak and it does not prove beyond a reasonable doubt that Michael Smith killed his family. Please consider this when you make your decision.

The Court: Ladies and Gentlemen of the jury, it is now time for you to make a verdict decision. Remember, the opening statements and closing arguments of the attorneys are not meant to be considered evidence. They are only meant to help you understand how each side views the case. The testimony presented by the witnesses throughout this trial are to be considered the evidence. It your responsibility as jurors to determine the weight of this evidence as well as the credibility of the witnesses that testified. Your verdict must be based solely on the evidence or lack of evidence presented to you throughout this trial.
The Court: As there are no other witnesses, I will now ask the prosecution and the defense to make their final arguments. Let’s start with the prosecution. Mr. Miller, you may now present your closing statement.

Prosecution: Ladies and Gentlemen of the jury, what exactly is it that the State has to prove? The State has to prove that Michael Smith caused the death of his wife, Elizabeth Smith, and his two children, Matthew Smith and Natalie Smith. And I believe we have done just that. What I want to do now is review the evidence. First, we had Mr. William Evans, the bloodstain pattern analyst, tell us that it was in his opinion that the bloodstains found on Michael Smith’s t-shirt were the result of impact spatter from a gunshot wound. This means that when the defendant shot his family, there was blood moving at a very high velocity that hit his t-shirt causing it to stain. And we know this because the stains on Michael Smith’s t-shirt were very small -- less than one millimeter in size -- a characteristic that is consistent with impact spatter. Now, Mr. Evans also told us that it appeared as if this impact spatter could have been brushed or smeared after it developed on Michael Smith’s shirt. What this means is that while the blood was still wet on Mr. Smith’s shirt, he could have come into contact with something that brushed or smeared the blood that was already present. Therefore, when Mr. Smith reached over his daughter, this could have resulted in blood -- that was already present on his shirt -- to become brushed or smeared. Next, we had Mr. Joseph Moore, the firearms examiner, tell us that after analyzing the bullets and casings retrieved from the crime scene, he was able to determine that the firearm used to murder Elizabeth, Matthew, and Natalie was a hammerless Lorcin .380. Now, the defense will tell you that a Lorcin .380 was never found in connection to Michael Smith, but as Mr. Moore told us earlier -- rarely are weapons left behind at the scene of the crime. The Lorcin .380 is a common firearm purchased for self-defense that could very easily have been bought and sold in cash. As easily as that gun came into Michael Smith’s possession, it could also just as easily have left. Not to mention, we had Mr. Ryan Jones tell us point blank that Michael Smith confessed to him that he killed his family using a hammerless .380. Is it a coincidence that Ryan Jones knew this very specific piece of information without Michael Smith telling him? No, it is not. Ryan Jones was able to tell us how Michael Smith’s alibi was an elaborate scheme created to distract the police. He was able to tell us where the shootings took place -- the weapon that was used. Michael Smith’s confession to Ryan Jones tells this jury everything it needs to hear. Michael Smith killed his wife. And then he killed his two young children. The evidence shows this plain and clear. Ladies and Gentlemen, I ask that you consider all of this when you make your decision.

The Court: Mr. Clark, the defense may now present its closing statement.

Defense: Ladies and Gentlemen of the jury, today you are called upon to make a very serious decision. The fate of a 34 year old man rests in your hands. The fate of Michael Smith. Let’s review the testimony we’ve heard throughout this trial. Mr. William Evans,
the bloodstain pattern analyst, stated it was his initial opinion that the bloodstains found on Michael Smith’s t-shirt were the result of impact spatter. However, the truth is that he only analyzed 8 bloodstains. 8 very small stains. Typically, high velocity impact spatter from a gunshot wound results in hundreds of stains. Mr. Smith’s clothes should have been covered in blood. However, we don’t know the condition of Mr. Smith’s other clothes because the investigators did not provide any of this evidence to be examined. Why did the investigators of this case not give Mr. Evans the pants or shoes of Michael Smith? Was it perhaps because there was no blood on these to be examined? Michael Smith, himself, stated that he had to reach over his daughter, Natalie, in order to pull his son, Matthew, out of the car. And it was Natalie’s blood that was found on his t-shirt. The bloodstains on Michael Smith’s shirt were transfer stains that resulted from him reaching over his daughter. They were not impact spatter. Next, Mr. Joseph Moore, the firearms examiner, was able to tell us that the weapon used to kill Michael Smith’s family was a hammerless Lorcin .380. While this was definitely useful information to provide to the police in terms of what type of firearm they should be looking for during the investigation -- it does not tell us anything about Michael Smith. There has been no actual evidence produced to connect Mr. Smith to a Lorcin .380. The prosecution wants you to know that this is a common firearm that could easily be purchased for self-defense. To that I agree -- with the additional insight that anyone could have purchased this gun. Anyone could have used this firearm to kill Michael Smith’s family. Then we have Ryan Jones, who claims to have heard from the defendant that he used a hammerless .380 to kill his family. But what I ask of you now is to really assess the credibility of this witness. Mr. Jones has been incarcerated since he was 16 years old. He has spent the entirety of his adult life in prison. He is currently 28 years old and he still has another 28 years to go before he will even be released. That is unless he receives some sort of deal. He claims he does not want any time off his sentence. He claims he wants to serve out the remainder of his sentence. Well I propose to you, the members of the jury, that this is not true. Ryan Jones heard on 48 Hours that the firearm used in this crime was a Lorcin .380 and then being able to put two-and-two together -- he told the prosecutor that Michael Smith confessed to him that he used a hammerless .380 to kill his family. I propose to you that Ryan Jones was able to use a lot of information he heard on 48 Hours to create a story about Michael Smith. Overall, his testimony is not reliable and it does not prove anything. Ladies and Gentlemen, the prosecution’s evidence in this case is weak and it does not prove beyond a reasonable doubt that Michael Smith killed his family. Please consider this when you make your decision.

The Court: Ladies and Gentlemen of the jury, it is now time for you to make a verdict decision. Remember, the opening statements and closing arguments of the attorneys are not meant to be considered evidence. They are only meant to help you understand how each side views the case. The testimony presented by the witnesses throughout this trial are to be considered the evidence. It your responsibility as jurors to determine the weight of this evidence as well as the credibility of the witnesses that testified. Your verdict must be based solely on the evidence or lack of evidence presented to you throughout this trial.
Table 1.  

_Data for Cross-Examination Manipulation Check_

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*Data for Jailhouse Informant Motive Attribution Coding*

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REFERENCES

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defendant culpability and verdicts. Law and Human Behavior, 19, 79-88.


