Title: Double jeopardy: The effects of retrial knowledge on juror decisions

Abstract

Since the passage of the Double Jeopardy (Scotland) Act 2011, mirroring changes in other jurisdictions, a person who has been acquitted in Scotland can, under certain circumstances, be retried for that offence. Jurors could have knowledge of the previous acquittal verdict (whether not guilty or not proven) through media sources, potentially biasing the new jury in their decision-making. The current study invited 253 participants to give a verdict to a mock murder trial after either receiving pretrial information about the original verdict or no information about the case being a retrial. Significantly more acquittal verdicts were given when the participants were told that it was a retrial, compared to the control condition, irrespective of whether the prior verdict was not guilty or not proven. Findings are discussed in light of jurors' knowledge of legal concepts and acquittal verdicts, and the increasing exposure of the general Scottish public to the not proven verdict due to increased media coverage.

Keywords: Pretrial Publicity; Double Jeopardy; Juror decision-making; Not Proven Verdict; Scottish Legal System

Introduction

The aim of this study is to examine whether having information about a prior acquittal influences juror decisions in a retrial for the same offence. Since the passage of the Double Jeopardy (Scotland) Act 2011, it has been possible for a person who has been acquitted of an offence to be charged with and prosecuted anew for that original offence in a range of circumstances, including certain cases of new evidence indicating that the person committed the original offence (s4). Retrial following the Double Jeopardy (Scotland) Act 2011 is only possible with the permission of the High Court, on the application of the Lord Advocate, Scotland's chief prosecutor. In cases where permission is sought on the basis of new evidence the court must, in addition to other criteria, be satisfied that the case against the person is strengthened substantially by the new evidence.

Similar provisions exist in England and Wales under Part 10 of the Criminal Justice Act 2003. Such statutory provisions provide a substantial exception to the principle of "double jeopardy". This concept states that a person should not be tried for the same crime twice. Exact statistics on the number of applications made under either Act are not available, but the number is certainly relatively low. Our own research of Scottish law reports identified four applications under the 2011 Act heard in the High Court of Judiciary between 2011 and 2023.

One concern raised in the context of permitting retrials after the emergence of new evidence has been the effect on a jury of knowing that senior judges, as part of the retrial application, have decided that the evidence "strengthened substantially" from the original case (in Scotland) or was "compelling" (in England and Wales, s78 Criminal Justice Act 2003). Baroness Kennedy QC (Parliament, 2003) raised exactly this point during the House of Lords debate on the 2003 legislation, stating "We are introducing the presumption of guilt and attacking the fundaments of our legal system". Similar concerns were raised by other high profile criminal lawyers, including Michael Mansfield QC (2001). The objection was noted, but subsequently dismissed, by the Law Commission in their report on the matter (Law Commission, 2001) on the basis that any danger of prejudicing the jury could be dealt with by instructions to disregard the previous trial.

Juries are not typically informed that they are hearing a retrial, although there may be instances in which the judge will speak with the jury about this (e.g. in high-profile cases in which the jury may be more likely to have discovered the retrial themselves through media).

There are other circumstances in which jurors might know they are hearing a retried case. For instance, if a witness is questioned at retrial about statements which they made in the first trial, or jurors encountered media reports that new evidence had come to light, they would know they are hearing a retried case. It is worth noting that a retrial without a previous verdict can also occur, such as where the case collapsed mid-trial the first time it was heard or (in some jurisdictions) where the jury in the first trial was unable to reach a verdict (a 'hung jury'). In such cases, of course, jurors in the retrial cannot be influenced by knowledge of the prior acquittal verdict, because no verdict was reached. Whilst those cases are also of interest, the focus in this paper is retrials where jurors might have information about a prior acquittal.

Jurors are susceptible to many types of bias that influence their evaluation of evidence and choice of verdict (Curley, Munro and Dror, 2022). Of particular interest in the context of retrials is the influence of pretrial publicity (PTP) on juror decision making. News covering crimes and cases is typically overwhelmingly negative in content and often contains sensationalised accounts of details, a reliance on pro-prosecution sources, and legally excludable material (Bakhshay & Haney, 2018). Exposure to negative PTP significantly increases the chances that a juror will return a conviction verdict (Steblay et al., 1999; Ruva et al., 2011; Hope, Memon & McGeorge, 2004). It is very possible that in a situation where a retrial takes place, jurors will obtain knowledge about the initial trial and/or the application to overturn the acquittal (Bakhshay & Haney, 2018).

Pretrial publicity could come from a range of sources, some of which would be operating within the safety mechanisms of a legal framework and some of which would not. For example, in England and Wales, the Crown Prosecution Service guidance states that reporting restrictions *may* be needed but they are not mandatory (CPS, 2022), so retrial information could legitimately appear in the mainstream media. News consumption in the UK has changed significantly in recent years with an increase in the use of social media (Ofcom, 2022). It is far harder to control the spread of information over social media than it is to limit reporting in traditional media, which reduces the effectiveness of reporting restrictions that responsible journalists will respect. Where there are no reporting restrictions, of course, both traditional and social media provide avenues for jurors to encounter PTP.

It is also plausible that jurors will become aware that the case they are hearing is a retrial due to independent investigation, for example by looking up the defendant's name on the internet. A juror doing so would not only discover that the case is a retrial but also would likely find

reference to the legal requirement for 'sufficiently strong evidence'. Since 2013, jurors are explicitly and strongly instructed by judges not to conduct their own web searches (Judicial Institute of Scotland, 2021), which is consistent with the recommendations of the Law Commission (2001) but does not necessarily prevent juror exposure to PTP. Even when instructions are given, jurors may be unlikely to heed them (Brickman et al., 2008). For example, Gardiner (2023) reported on a case of a juror who was prosecuted for having 'made his own investigations outside the courtroom'. As jurors are unlikely to voluntarily admit to committing contempt of court, it is difficult to collect reliable data on how often jurors do disregard this type of instruction.

Although the general issue of PTP and retrials applies anywhere that retrials are permitted, the legal landscape in Scotland is unique in one important way. In Scotland, juries may return a guilty verdict (a conviction), a not guilty verdict (an acquittal) or a not proven verdict (an acquittal, with the same legal implications as a not guilty verdict. For more information on the origins of the not proven verdict, see Curley, Munro, Frumkin and Turner, 2021; and Curley and Neuhaus, 2024). Although there is legislation currently in progress to eliminate the not proven verdict (Victims, Witnesses, and Justice Reform Bill, 2023), there remain many cases that originally went to trial under the three-verdict system that could go to retrial in the future. Retrials in Scotland therefore have two potential 'starting points': an acquittal by not guilty or an acquittal by not proven. In England and Wales, the knowledge that the accused was previously acquitted necessarily means they were given a not guilty verdict, while in Scotland it could have been either a not proven or not guilty verdict. The not proven verdict has very different social implications from not guilty so might reasonably be expected to mediate any importance of retrial knowledge on juror decision-making (Hope et al., 2008).

The nature of a retrial under double jeopardy means that there are two potential risks for biasing jurors, which operate in opposing directions. On the one hand, jurors would know that the defendant (called the accused in Scottish trials) had previously been acquitted, which could produce a bias towards acquittal in the retrial (i.e. confirming the original verdict). Alternatively, jurors might know or assume that the cause of the retrial was the discovery of compelling new evidence against the defendant (one of the grounds for retrial under the Act), which could cause a bias towards conviction. Whether either of these risks is realised is currently an open question, which this paper aims to shed light on, although the latter has been the main concern of legal professionals (Law Commission, 2001). The two starting points may also have different effects on the retrial jurors. For example, if an acquittal by not

guilty is perceived as more certain than an acquittal by not proven, this may cause an increased bias towards an acquittal verdict. This study therefore included both not guilty and not proven prior acquittal conditions for jurors who were informed that the trial was a retrial, as well as a non-retrial control condition.

Jurors have consistently been shown to have a poor understanding of the not proven verdict, with some participants reporting that it means 'close to guilty' while others believe it means 'close to innocent' and a range of other definitions (Curley et al., 2021; 2022; Ormston et al., 2019; Hope et al., 2008). Jurors might then credibly interpret a previous trial ending in a not proven verdict as something akin to 'they almost got them!' or the 'no smoke without fire verdict' (Curley, MacLean, Murray, Laybourn, & Brown, 2019). This study therefore seeks to test two hypotheses:

1) Knowledge of a retrial will influence conviction rates compared to no knowledge about a previous trial.

2) Jurors will be more likely to convict the accused if the previous trial verdict was 'not proven' than 'not guilty'.

Materials & Methods

Design

An experimental design with the between-participants factor of retrial condition was used to test the hypotheses. Retrial condition had three levels: 1) Pretrial information with a previous not guilty verdict (not guilty); 2) Pretrial information with a previous not proven verdict (not proven); and 3) Control with no mention of a previous trial (no retrial). In the control condition, participants still received a mock newspaper article about the upcoming trial, so as to avoid confounding the presence of pretrial information (of any kind) with the specific retrial information. Notably, participants in the retrial conditions were shown the relevant information regarding the law surrounding double jeopardy in Scotland on the same page as the pretrial information: "There must be new evidence, that strengthens substantially the case against the accused and it must be highly likely that a reasonable jury properly instructed would have convicted the accused of the original offence if this evidence had been produced at the original trial.".

Dependent measures, collected using the online questionnaire tool Qualtrics, were: 1) verdict; 2) confidence in verdict; 3) perception of the accused's guilt; and 4) decision difficulty. Conviction/acquittal rates were calculated from individual jurors' verdicts. These measures, additional questions and the stimulus video are detailed in the Materials section below. The study received ethical approval from [redacted for review]. British Psychological Society guidelines were followed. Our key ethical considerations included: collecting, disseminating and storing anonymised data securely; witholding from participants only the particular variables that were being studies in the information sheet and providing this information in the debrief, and identifying that participants may have become upset if the video trial reminded them of a negative experience. We provided contact details for the research team, an unrelated third party and the Samaritans.

Participants

Inclusion/Exclusion criteria corresponded to the requirements for jury eligibility in Scotland:1) participants had to be over 18 years old; 2) participants had to be registered as a parliamentary or local government elector in the United Kingdom (i.e. on the electoral roll); and 3) participants must have lived in the United Kingdom, Channel Islands or Isle of Man for any period of at least five years since they were 13 years old.

Data from 253 eligible participants using the online platforms Prolific (recruitment) and Qualtrics (surveying) were collected. The mean age of the participants was 40.42 (SD = 13.17; min = 19, max = 76). 162 participants reported their gender identity as female, 87 as male, 2 as non-binary, 1 as demiwoman and 1 as non-specified other. 182 participants reported they were working, 36 stated they were not working, 14 were students, 18 were homemakers and 3 did not specify.

206 participants identified as white Scottish, 32 white from elsewhere in the UK, 3 white from outside the UK, 6 Asian, Asian Scottish or Asian British, 5 of mixed ethnicity and 1 Arab. The ethnicity of our sample (95.26% white, 2.37% Asian, Asian Scottish or Asian British) nearly matches the distribution of demographics in Scotland (Statista, 2018).

Materials

Video Trial

The video used in the current study was developed by the Modern Studies Association of Scotland in association with members of the Faculty of Advocates and Bloody Scotland, and

has been used in previous research (Curley *et al.*, 2022). It was inspired by the real case of Peter Queen, who was accused and ultimately convicted of murdering his lover in 1932. The approximate 53-minute video shows the judge's instructions to the jury, followed by evidence from an eyewitness, a police officer, a forensic pathologist, and a forensic scientist, then closing statements from the defence and Crown (i.e. prosecution). After viewing the video, participants were directed to the post-trial section of the questionnaire (see below).

Questionnaire

There were two parts to the questionnaire: demographics and post-trial questions about the trial (including operationalisation of the dependent variables). In the demographics section, participants were asked questions relating to their ethnicity, gender identity and occupation.

In the post-trial section, participants were first asked to indicate the verdict they would give. They were then given some attention check questions for screening (see Procedure sub-section). Participants who passed screening were then asked additional questions relating to the main objectives of the study, using a combination of forced-choice, free text entry and 11-point Likert-type scale responses. An example of a forced-choice question was: 'Which verdict of the following is the most appropriate given the evidence?'. The available answers were guilty, not guilty and not proven. As in a real trial, there was no 'don't know' option. An example of a Likert-type question was: 'How confident are you in the verdict you gave?', with 10 indicating certainty and zero showing that the participant was not confident at all. All closed-answer questions regarding participants' perceptions of the case were measured on the 11 point Likert scale. Finally, an example of an open-ended question was: 'What aspects of the trial led you to give this verdict? (Please specify)'. A full copy of the questionnaire is available from the corresponding author on request.

Participants in the retrial conditions were also asked to what extent they may have been influenced by the pretrial information they were given. Participants were asked (each question to be responded to using an 11-point Likert-type scale: 1) the extent to which knowing it was a retrial influenced their initial views of the case (before watching the trial video); 2) their views after watching the video; and 3) their final decisions as to the guilt of the accused.

All participants were also asked at which point in the trial they believed they had enough information to make a decision regarding verdict. To answer this, participants could select a

point in the trial associated with images from the video to aid memory, e.g. "Second Witness" with a picture of the second witness' face beside the text.

Procedure

Participants read the online information sheet and consented to participate. After consenting, they answered the demographic questions. Participants were then randomly sorted into one of three conditions: not guilty retrial, not proven retrial, or no retrial. Regardless of group, participants saw a mock newspaper article containing an image of the accused and three columns of text. In both retrial conditions the text was identical but for the second sentence of the text 'Darren was tried for murder in March 2019. After a two-week trial, the jury returned a verdict of [not guilty or not proven depending on the condition]'. Participants in the no retrial group had a very similar newspaper article, but the previous trial text was replaced by with the following: "The court had recently been refurbished after structural damage." On the same page, separately, participants were given information regarding the law surrounding double jeopardy in Scotland.

Participants then watched the video footage which provided them with a realistic (albeit shortened) experience of proceedings in court. Jurors were presented with the indictment from the clerk of court, instructions from the judge, evidence from an eyewitness, a police officer, and two expert witnesses. Throughout the trial, participants viewed questioning of the witnesses by the prosecution and defence advocates, as well as the advocates' closing statements. Once the trial had finished, participants were asked to give a verdict of either guilty, not guilty or not proven. After giving their verdict, participants were asked six questions to ensure that they had watched and understood the video footage. If they answered more than three of the questions incorrectly, their data were excluded from analyses. The screening questions were asked after the verdict question to avoid biasing the verdict response (e.g. if a participant found that they could not remember some of the information asked about in the screening questions, this might have influenced their verdict choice).

Participants who passed the screening stage were then asked further questions about the case and (for those in the retrial conditions) questions about the influence that knowledge of a retrial might have had on their responses. Once this section had been completed, participants were provided with the debrief.

Results

The results are divided into two sets of dependent variables: first, verdict decisions and second, variables explaining participants' subjective impressions of their verdict decisions (i.e. when they felt they could make a decision, confidence in verdict, ease of decision, guilt likelihood).

Verdict decision

Verdict Given	Retrial Condition			
	Retrial	%	No Retrial	%
Convict	55	32.0	37	45.7
Acquit	117	68.0	44	54.3

Table 1. Observed frequencies of verdicts by retrial condition. Source: Authors' own creation

After exclusions, there were 87 participants in the 'not guilty retrial PTP' condition, 85 participants in the 'not proven retrial PTP' condition, and 81 participants in the 'no retrial PTP' condition, totalling 253 participants. Table 1 presents the frequency of each verdict type given in the retrial conditions. A Pearson chi-square test of independence revealed no significant association between retrial condition and verdict given [$\chi 2$ (4) = 5.95, p = .20, V = .108].

Verdict Given	Retrial Condition					
	Not Guilty	*%*	Not Proven	*%*	No Retrial	*%*
Guilty	26	*29.9*	29	*34.1*	37	*45.7*
Not Proven	53	*60.9*	45	*52.9*	38	*46.9*
Not Guilty	8	*9.2*	11	*12.9*	6	*7.4*

Table 2. Observed frequencies of convictions and acquittals by retrial condition. Source: Authors' own creation

Table 2 presents the frequency of conviction verdicts (the same value as the 'guilty' verdicts shown in Table 1) versus acquittal verdicts (not proven and not guilty verdicts combined) across each of the retrial conditions. A second chi-square test again revealed no significant association between retrial condition and frequency of convictions and acquittals [$\chi 2$ (2) = 4.80, p = .09, V = .138].

The frequencies presented in Tables 1 and 2 indicate that participants in the 'no retrial' control condition seemed more likely to convict than in either of the retrial conditions, although this difference was not statistically significant. Further analysis was conducted to assess whether the two 'retrial' conditions were masking a significant association. Table 3 presents the frequency of conviction and acquittal rates for any retrial (a combination of the not guilty and not proven retrial conditions) and no retrial. A third Pearson chi-square test established a significant association between retrial and verdict type [$\chi 2$ (1) = 4.47, p = .035, V = .133].

Verdict Given	Retrial Condition					
	Not Guilty	*%*	Not Proven	*%*	No Retrial	*%*
Convict	26	*29.9*	29	*34.1*	37	*45.7*
Acquit	61	*70.1*	56	*65.9*	44	*54.3*

Table 3. Observed frequencies of convictions and acquittals by retrial condition (retrial and no retrial). Source: Authors' own creation

Participants who had pretrial information that the accused had been acquitted of the same crime in a previous trial were significantly more likely to acquit than to convict, compared to participants who believed it was the first trial. A not proven verdict was given more frequently than a not guilty verdict (Table 1), regardless of retrial condition.

Subjective impressions of verdict decisions

After viewing the trial, participants were asked at which point in the trial they felt they had enough information to decide on a verdict. The responses to this question are shown in Table 4. the most common decision point was at the close of the trial after the judge's instructions. However, the second most common decision point was after the evidence given by the fourth (and final) witness but before the advocates' closing statements and judge's instructions. The third most common decision point was after hearing all of the evidence and both closing arguments, but before the judge's instructions. This pattern did not differ between the three

PTP conditions. It is interesting to note that between 61.73% and 64.71% of participants decided on their verdict before the end of the trial.

	Not Guilty		Not Proven		No Retrial	
	%	*Cumulative %*	%	*Cumulative %*	%	*Cumulative %*
First Witness	2.30	*2.30*	1.18	*1.18*	1.23	*1.23*
Second Witness	3.45	*5.75*	1.18	*2.35*	-	*1.20*
Third Witness	12.64	*18.39*	11.76	*14.12*	18.52	*19.75*
***Fourth Witness**	**22.99**	***41.38***	**25.88**	***40.00***	**24.69**	***44.44***
Prosecution Closing	3.45	*44.83*	5.88	*45.88*	6.17	*50.62*
Defence Closing	19.54	*64.37*	18.82	*64.71*	11.11	*61.73*
Judge Instructions	35.63	*100.00*	32.94	*97.65*	35.80	*97.53*
Other	-	*100.00*	2.35	*100.00*	2.47	*100.00*

Table 4. Observed percentage frequencies and cumulative frequencies of answers to the question *'Was there a particular point in the trial where you felt you had enough information to give a decision?'* The witness presenting the evidence described by the pretrial information as 'new' for the retrial is highlighted. *Represents the point at which the participants saw the evidence that the pretrial publicity claimed was new. Source: Authors' own creation

An additional 3-way independent samples ANOVA was carried out to test the effect of retrial condition (Not Guilty, Not Proven, No Retrial) for each of three variables that might explain participants' verdict choices. These were confidence in the verdict given, belief in the likelihood that the accused was guilty and the ease in reaching their verdict choice. Retrial condition had no significant effect on any of these variables [$p > .3$ in all cases].

Discussion

The study tested two hypotheses. Hypothesis 1, that mere knowledge of a retrial would influence conviction rates, was rejected, although when collapsing the 'not proven' and 'not guilty' previous verdicts together there was a significance difference between retrial and non-retrial verdicts. Jurors who were informed about the retrial status of someone previously acquitted resulted in more acquittal verdicts than those without that information. This suggests that jurors were not influenced by an expectation that the retrial was due to new, and strong, prosecution evidence that called into question the previous acquittal. Participants were given the statement that: "There must be new evidence, that strengthens substantially the case against the accused and it must be highly likely that a reasonable jury properly instructed

would have convicted the accused of the original offence if this evidence had been produced at the original trial." Rather than being convinced by the strengthened case, one possibility is that our mock jurors in the retrial conditions came in with the prior belief that the defendant was innocent, due to the previous acquittal. Perhaps the mock jurors believed that retrials following acquittals were illegitimate, or that the case of the crown was not significantly strengthened despite the expectation that a retrial would involve compelling new evidence. Either of the above explanations may have lowered their *a priori* expectation of the defendant's guilt, making them more attentive to exculpatory evidence and less attentive to incriminating evidence. This would be consistent with prior research into confirmation bias and pre-decisional distortion of juror decisions (e.g. Curley, Murray, MacLean, Laybourn, & Brown, 2018). For example, Carlson and Russo (2001) and Hope et al. (2004) found that mock jurors commonly favour a particular verdict and it is feasible that this bias might be informed by knowledge of a retrial. This bias can then cause jurors to interpret confirming evidence strongly, neutral evidence as confirming, and disconfirming evidence negatively . On some occasions jurors can even distort the disconfirming evidence to suit their current preferred verdict, a process known as pre-decisional distortion. This may be what influenced our participants to favour an acquittal verdict having learned of a previous acquittal verdict.

An alternative, yet complementary, explanation for the observed findings relates to the Diffusion Threshold Model of juror decision making (Lee & Cummins, 2004; Smith & Ratcliff, 2004). In this model, jurors have varying starting points across a guilt continuum (zero = definitely not guilty; 100 = definitely guilty) and integrate information appropriately, moving up and down the continuum of guilt, until all of the evidence has been provided. In this model there are decision thresholds corresponding to specific verdicts, for example jurors must reach a threshold of belief in the accused person's guilt to give a conviction verdict. In the binary verdict system (guilty and not guilty), jurors should begin with a prior assumption of innocence. Jurors who are beyond the reasonable doubt threshold at the end of the trial should give a guilty verdict, whilst those below it should give a not guilty verdict. Curley et al. (2019) found that in the Scottish verdict system, there were two thresholds: a guilty and a not guilty threshold. Jurors on average started somewhere near the middle of the guilt continuum, rather than beginning with a not guilty presumption. Jurors who drift but remain in this middling zone throughout the trial are likely to give a not proven verdict. Jurors who drift downwards, crossing over the not guilty threshold, are likely to give a not guilty verdict

and jurors who drift upwards beyond the reasonable doubt threshold are likely to give a guilty verdict.

The Diffusion Threshold Model of juror decision making may explain the current findings. In the retrial conditions, jurors who knew that the previous trial had led to an acquittal may have started closer to not guilty on the continuum, influencing how they perceived the evidence (potentially leading to confirmation bias and pre-decisional distortion). This may have decreased the chances of jurors reaching the beyond reasonable doubt threshold point, when compared to participants in the no-retrial condition. In simple terms, they would have had further to travel to the conviction threshold and were therefore less likely to reach it.

While the Diffusion Threshold Model may explain the decision-making of jurors within the trial, it raises the question of why jurors in the retrial condition began the trial closer to not guilty. The results suggest that, contrary to the first hypothesis and the criticisms of permitting retrials cited above, knowledge that the accused has already been tried and acquitted for the same offence increases the likelihood of another acquittal. Thus, retrial knowledge does not increase the chance of conviction, but it does appear to positively influence the chance of acquittal.

Two further reasons can be proffered in an attempt to further explain why retrial knowledge led to more acquittals. Firstly, rather than a retrial showing that the state was sufficiently convinced of the accused's guilt, or that the new evidence was strong enough to justify it, jurors may be wary of a possible abuse of power by the state. Even though the risk of government oppression through repeated prosecution seems small in modern Scottish (or indeed British) society, it is a risk nonetheless (Roberts, 2002). Historically, juries were considered a bulwark against judicial abuse, a point Qasim (2021) makes in justifying the initial presumption against double jeopardy. Are modern jurors subconsciously inclined to play a similar role in retrial cases, considering themselves as protectors of an accused who has already played the game and won? A follow-up study exploring jurors' qualitative reasons for their verdicts would allow for an exploration of this aspect of how jurors see their role within the criminal justice system.

A second argument is that jurors are essentially showing faith in the legitimacy of the original trial. While legally speaking the original verdict has no relevance in retrials, jurors may well be loath to depart from what others have already concluded. This could be for a multitude of reasons, ranging from the perceived legitimacy of jury trials, which is engrained in much of

the common law world (Smith, 1996), to explanations independent of the legal system, such as existence bias (i.e. an assumption that the way things are is the way they should be; Eidelman, & Crandall, 2012) and psychological inertia (where individuals do not decrease confidence in prior decisions, despite contradictory evidence; Litvin, 2016). To decide to deprive someone of their liberty, potentially for many years, is an extremely heavy responsibility. This responsibility might make the reluctance to contradict the original jury particularly pronounced.

The second hypothesis, that jurors are more likely to convict the accused with a previous trial verdict of not proven compared to not guilty, tested if perceptions of not proven verdicts in retrials influence jurors' decision making. The results showed no significant difference in the frequency of convictions by jurors with knowledge of a not proven vs. not guilty verdict. One explanation for this is that jurors in this sample saw not proven and not guilty equally, as acquittal verdicts, since both lead to the same consequences.

This finding does run contrary to previous not proven verdict studies, with most research suggesting that jurors view it as a 'they almost got them!' or the 'no smoke without fire verdict' (Curley et al., 2019). The different findings about the not proven verdict in the current study may result from the recent media attention, public and political debate about it. Since the publicity and debate regarding the verdict has grown, jury-eligible members of the public may have become more accustomed to the verdict and that it has the same legal consequences as the not guilty verdict, meaning that our sample may have perceived both the not guilty and not proven verdicts as indistinguishable from one another. If this was the case, it is unclear why the sample chose not proven more frequently than not guilty across all retrial conditions. It is possible the participants interpreted the additional 'smoke' of two trials as being suggestive of guilt, but still not reaching the beyond reasonable doubt threshold for a guilty verdict.

Limitations

The main limitation of the current study is that experimental jury research faces issues of consequentiality and ecological validity (Curley & Peddie, 2024). The participants knew that their decisions would not lead to real-world consequences, whereas real-life jurors are aware that their decisions will substantially affect people's lives. Like all juror and jury studies, this research cannot answer questions relating to consequentiality fully but did address issues relating to ecological validity, as it used a realistic mock trial, filmed in a courtroom in

Scotland, with professional actors and legal professionals participating in the film. Legal professionals also advised on the script to ensure legal accuracy.

A second limitation of the current study is that our jurors did not participate in jury deliberations. This is something we had planned to do but could not ethically or practically do, due to protective restrictions during the Covid-19 pandemic. In future research, we aim to replicate the current study and include jury verdicts after deliberation in addition to individual juror judgements.

A third limitation is that our study provided mock jurors in the retrial conditions with the relevant pre-trial information *and* information regarding the requirements for a case going to retrial on the same page. This combination of information is unlikely to occur in real-world cases, and a relevant avenue of future research might involve testing the influence of pre-trial information about a retrial on participants who do not know the requirements for a retrial. It could also be of interest to test participants' understanding and/or recall of the requirements for a retrial when told the requirements.

Conclusion

In conclusion, knowledge of a retrial led to a significantly higher proportion of acquittals than convictions compared to verdicts given by those who were uninformed about a previous trial, but only when previous not guilty and not proven verdicts were collapsed into 'acquittal'. This shows that access to pretrial publicity regarding retrials may make retrials under the Double Jeopardy (Scotland) Act (2011) vulnerable to juror bias, specifically a pro-defence bias. The relative increase in acquittal (rather than conviction) frequency is interesting, considering previous research showing increases in convictions following exposure to negative pre-trial publicity. It is also counter-intuitive given our inclusion of a clear statement, alongside the pre-trial information, of the legal test of strengthened evidence needing to be satisfied for a retrial to take place. It may be that exposure to knowledge of a previous acquittal biases jurors towards a pro-defence position (i.e. the PTP might be taken to imply innocence, rather than guilt).

The specific acquittal verdict returned in the fictional previous trial did not significantly influence the acquittal verdicts given in the current trial. This finding is at odds with the limited previous research evidence exploring the Scottish not proven verdict, which has demonstrated a consistent lack of understanding of the verdict and how it should be used. It is possible that increases in mainstream publicity regarding the not proven verdict in the years

since the publication of those papers may have resulted in a more informed sample. An important ‘next step’ is to expand the work of the current study from individual juror decision making to collective jury decision making.

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