

Mock Jurors' Perceptions of Eyewitness Evidence: The Role of Familiarity with the Defendant,
Race of the Defendant, and Eyewitness Confidence

by

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Abstract

Almost exclusively, eyewitness research in the context of juror decision-making has examined the situation where the eyewitness and defendant are strangers. The purpose of the current study was to examine how prior familiarity with the defendant together with eyewitness confidence and defendant race influence mock jurors' perceptions of the eyewitness evidence and the defendant's guilt. Mock jurors ($N = 427$) read a trial transcript from a mock robbery case that involved eyewitness identification evidence. Both defendant race and eyewitness confidence were found to influence jurors' judgments with more positive perceptions of the eyewitness and higher perceptions of the defendant's guilt when the eyewitness identified the same-race defendant and when he expressed high identification confidence, respectively. Although familiarity was not influential in their legal judgments, mock jurors' subjective perceptions of the eyewitness-defendant familiarity were associated with their judgments and verdict decisions. The implications of these findings and future directions are discussed.

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Mock Jurors' Perceptions of Eyewitness Evidence: The Role of Familiarity with the Defendant,
Race of the Defendant, and Eyewitness Confidence

On June 25, 1986, Walter Snyder was sentenced to 45 years in prison for rape and burglary that he did not commit. Key evidence against him was provided by the victim-eyewitness, a Caucasian female, who lived across the street from Snyder. When presented with a showup identification procedure (i.e., a single photo of the police suspect), she positively identified Snyder as the African American assailant who broke into her home and raped her. Seven years into his prison sentence, Snyder was exonerated based on DNA evidence and released from prison (Innocence Project, 2020). The unfortunate story of Walter Snyder is not unique. To date, the Innocence Project has exonerated 365 wrongfully convicted individuals, and counting (Innocence Project, 2020). Just like Walter Snyder, 69% of these innocent individuals were convicted based on mistaken eyewitness identification (Innocence Project, 2020). Note that this rate of mistaken identifications reflects merely cases in which DNA evidence was available. In the absence of DNA evidence, eyewitness identification evidence becomes especially essential to finding the perpetrator (Pezdek & Stolzenberg, 2014). However, stories like that of Walter Snyder inform us that eyewitnesses make mistakes. In fact, decades of research have demonstrated that eyewitness error plays a major role in wrongful convictions of innocent persons (e.g., Connors et al., 1996; Gross et al., 2005).

The fallibility of eyewitness memory is a well-grounded concept in psychological research (e.g., Wells, 1978). However, as is evident from the number of wrongful convictions caused by eyewitness misidentification, jurors tend to believe eyewitnesses (e.g., Boyce et al., 2007; Semmler et al., 2012). In fact, eyewitness identification evidence is considered to be the most convincing type of evidence in the eyes of jurors (Pezdek, 2012). Accordingly, numerous

aspects of the eyewitness evidence may influence jurors' perceptions of the eyewitness' testimony and their judgments of the defendant's guilt. The current study looks at a combination of three such factors, first of which is the *familiarity* shared between the eyewitness and the defendant prior to the crime. It is likely that because Walter Snyder and the victim-eyewitness shared a familiar relationship (i.e., neighbours), the jurors might have perceived the eyewitness' identification of Snyder as more likely to be accurate and therefore, Snyder as more likely to be guilty. Because familiar identification cases commonly occur in real life (Flowe et al., 2011), the current study seeks to understand how prior familiarity between the eyewitness and the defendant affects juror decision-making. Another factor shown to influence mock jurors' judgments is *eyewitness confidence*. Existent research suggests that jurors tend to believe confident eyewitnesses regardless of their testimonial accuracy (e.g., Brewer & Burke, 2002). Given that a majority of research on the role of eyewitness confidence in juror decision-making is confined to stranger identification cases, the current study aims to examine whether the established effect of eyewitness confidence on jurors' judgments extends to cases in which the eyewitness and the defendant share a familiar relationship. Finally, *the race of the defendant* – especially in relation to the race of the eyewitness – is another factor that might have played a role in Walter Snyder's misidentification. The cross-race effect is a well-established concept in the eyewitness literature, describing the tendency of eyewitnesses to identify perpetrators of their own race more accurately than perpetrators of other races (e.g., Sporer, 2001). Given that cross-race identifications might diminish eyewitness identification accuracy, it is important to investigate how such identifications affect jurors' verdict decisions. The purpose of the current study was to examine the influence of eyewitness-defendant familiarity, eyewitness confidence and defendant race on juror decision-making using the mock-juror study paradigm.

Familiarity with the Defendant

Mock-juror studies are frequently used to examine the role of factors related to eyewitness evidence in juror decision-making. In these studies, participants first view a recording of a mock trial or read a mock trial transcript in which such factors are manipulated and subsequently render their verdict decisions. However, the vast majority of mock-juror research focuses on cases in which the eyewitness and the defendant are strangers. Although few studies to date have examined juror decision-making in familiar identification cases, cases such as that of Walter Snyder, in which the eyewitness is familiar with the alleged perpetrator prior to the crime are rather common. Indeed, Flowe and colleagues (2011) looked at 725 randomly sampled felony cases and found that in 65% of these cases, the defendant was familiar with at least one eyewitness. Moreover, 85% of exonerees who were wrongfully convicted of murder between 1989 and 2003 knew the victim or at least one eyewitness to the crime (Gross et al., 2005). In fact, eyewitnesses are more likely to positively identify a police suspect if the suspect is someone who they know (Valentine et al., 2003); and cases which include a positive identification of a familiar suspect are more likely to be prosecuted (Flowe et al., 2011). Accordingly, it is reasonable to assume that cases in which an eyewitness is familiar with the defendant are frequently judged by juries. And yet, little is known about how jurors evaluate eyewitness evidence in such cases. Therefore, it is important to examine jurors' perceptions of familiar eyewitnesses as well as the role familiarity plays in their verdicts.

Definition of Person Familiarity

Despite the common occurrence of familiar identifications, person familiarity in the forensic context lacks a formal definition. Multiple definitions have been proposed, reflecting the familiarity continuum (Pezdek & Stolzenberg, 2014); i.e., starting at a mere belief of prior

exposure to the defendant regardless of whether it actually occurred (Vallano et al., 2018), moving onto any prior contact with the defendant before the crime occurred (e.g., Sheahan et al., 2017), and ending with a prior relationship with the defendant (Pica et al., 2018). The absence of a single official definition of familiarity can be attributed to its numerous characteristics (e.g., duration, magnitude, frequency, quality, recency). Indeed, familiarity between any two people (e.g., an eyewitness and a defendant) starts with exposure, which can vary in duration (e.g., I saw him for 30 seconds/five minutes/an hour), magnitude (e.g., I've seen him once/10 times/many times), frequency (e.g., I see him once in a while/regularly), quality (e.g., We didn't interact/We said 'hi' to each other/We shared personal information), and recency (e.g., I saw him yesterday/last week/two years ago). Unlike a mere exposure, relationship sits on the higher end of the familiarity spectrum. However, even relationship between an eyewitness and a defendant can vary in quality (e.g., He is my neighbour/friend/family member), duration (e.g., We've been friends for a few weeks/months/years), frequency (e.g., We see each other every day/once a week/few times a year), and recency (e.g., We are currently friends/We were friends three years ago). These various aspects of familiarity can be combined to create many different levels of familiar exposures or relationships. For instance, the eyewitness and the defendant might share a relationship that is low in quality (e.g., He is my neighbour), high in recency (e.g., He is currently my neighbour), low in duration (e.g., He moved next door three weeks ago), and high in frequency (e.g., I talk to him several times a week). Although person familiarity does not have an agreed upon definition to date, it has been conceptualized in three common ways throughout existent mock-juror research; i.e., exposure, relationship, and recency.

Familiarity as Prior Exposure

Past studies have most commonly operationalized familiarity in terms of the amount of exposure that existed between the witness and the defendant prior to the crime (e.g., Lindsay et al., 1986; Pica et al., 2018; Pozzulo et al., 2014; Sheahan et al., 2017; Vallano et al., 2018) with longer durations of exposure or greater number of exposures describing higher levels of familiarity. It is only logical that researchers have been inclined to define familiarity in this way. Indeed, the well-known mere exposure effect describes a phenomenon in which individuals prefer persons who, through repeated exposure, become more familiar to them (Moreland & Zajonc, 1982). As such, in the context of the current study, familiarity between the eyewitness and the defendant should grow with increasing exposure. Accordingly, the first known study that examined the effect of familiarity on jurors' judgments of the defendant's guilt defined familiarity in terms of the eyewitness' exposure to the defendant. In Experiment 4, Lindsay and colleagues (1986) manipulated the durations of the witness' exposure to the criminal. Participants listened to an audiotape of a mock burglary trial, which included testimony of an eyewitness who, depending on the condition, (1) briefly saw the criminal in passing for at most 5 seconds, (2) watched the criminal for 30 minutes, or (3) watched the criminal for 30 minutes and engaged in a conversation for an additional half an hour. Accordingly, Lindsay et al. manipulated two aspects of a familiar exposure – duration (i.e., 5 seconds vs. 30 minutes), and quality (i.e., saw vs. interacted). Although mock jurors in this study believed that the short exposure in the 5-second condition negatively impacted the eyewitness' view of the criminal, this belief did not influence their verdicts. Accordingly, findings by Lindsay and colleagues suggest that mock jurors might be aware of the association between exposure duration and the eyewitness' ability to

see the perpetrator – which plays an important role in the witness' ability to later describe and identify the perpetrator – but might not consider this in their judgments of the defendant's guilt.

The first study to vary the number of exposures to the defendant rather than the duration of a single exposure was conducted by Pozzulo et al. (2014) almost three decades later. Mock jurors read one version of a trial transcript, in which the eyewitness had (1) never seen the defendant prior to the crime, (2) seen him three times before, or (3) seen him six times before the crime occurred. Mock jurors' assessments of the defendant's guilt as well as their perceptions of the eyewitness' testimony in terms of reliability, accuracy, and credibility then were collected. Although the majority of participants indicated that three exposures to a person would be enough to correctly identify that person, participants' verdicts and perceptions of the eyewitness evidence did not change as a function of familiarity. Both studies thus far (Lindsay et al., 1986; Pozzulo et al., 2014) demonstrated that mock jurors might recognize the influence of familiarity, defined as prior exposure, on eyewitness' ability to identify the criminal but might not take familiarity into account when rendering their verdict decisions.

Sheahan et al. (2017) conducted another study that examined the influence of familiarity on jurors' decision-making in which familiarity was defined by the number of times the eyewitness was exposed to the defendant. Participants read a trial transcript from a mock motor theft case, in which the eyewitness was said to have been exposed to the defendant either zero times (unfamiliar condition) or eight times (familiar condition) before the crime occurred. This was the first study to find that familiarity influenced mock-jurors' verdict decisions with participants assigning higher guilt ratings and reaching more guilty verdicts when the eyewitness was familiar with the defendant than when they were strangers. It would be reasonable to suggest that the effect of familiarity on jurors' assessments of guilt might have been influenced by their

perceptions of the eyewitness evidence. As such, higher perceptions of defendant guilt could be more likely if jurors perceived eyewitnesses who have been exposed to the defendant on multiple occasions prior to the crime to be more credible, reliable, and accurate in their testimonies. Interestingly, in the study conducted by Sheahan et al., the level of familiarity between the eyewitness and the defendant did not influence participants' perceptions of the eyewitness' testimony despite its influence on their perceptions of the defendant's guilt. More specifically, the testimony of the eyewitness who was familiar with the defendant was rated approximately equally in terms of believability, credibility, reliability, accuracy, and honesty as the testimony of the eyewitness who was unfamiliar with the defendant.

More recently, Vallano and colleagues (2018) also defined familiarity in terms of the number of exposures between the eyewitness and the defendant but used a less specific wording; the eyewitness was described as having (1) never seen the defendant before the crime occurred, (2) seen him once before, or (3) seen the defendant *many times* prior to the crime. Although 57% of participants in Study 1 believed that familiar identifications are more accurate than stranger identifications and 72% agreed that familiar identifications following many exposures between the eyewitness and the defendant are more accurate than familiar identifications following a single exposure, the familiarity manipulation did not influence mock jurors' judgments of eyewitness accuracy and defendant guilt. Pica and colleagues (2018) replicated the study conducted by Vallano et al. (2018) with a Canadian sample (Study 1). They predicted that seeing the defendant many times prior to the crime (as opposed to once or never) would result in more guilty verdicts. Contrary to their prediction, no effect of familiarity on jurors' verdict decisions was found.

The studies discussed above manipulated only one aspect of familiarity – the number of prior exposures (e.g., Pica et al., 2018, Study 1; Pozzulo et al., 2014; Sheahan et al., 2017; Vallano et al., 2018, Study 1). In their second study, Pica and colleagues (2018) decided to strengthen the familiarity manipulation (i.e., seen never, once, or many times before) by increasing quality of the exposure (i.e., including an interaction between the defendant and the eyewitness prior to the crime). This time, the eyewitness had not only seen the defendant, but also interacted with him many times, once, or had never seen or interacted with him before the commission of the crime. The researchers predicted that participants would render more guilty verdicts for a defendant who has interacted with the eyewitness many times (vs. never) prior to the crime. Similar to Study 1, the enhanced familiarity manipulation also did not affect mock jurors' verdicts. These results provide insufficient evidence that mock jurors utilize familiarity (defined as number of exposures or interactions) in their verdict decisions. It is possible that vaguely defining high familiarity as having seen or interacted with someone 'many times' forced mock jurors to come up with their own subjective (and perhaps very different) definitions of what 'many times' means. Accordingly, this lack of specificity could have diminished the influence of familiarity on mock jurors' verdict decisions.

Thus far, studies manipulating the number of eyewitness' exposures or interactions with the defendant prior to the crime found little evidence of jurors' sensitivity to familiarity in their decision-making. Defining high familiarity as 'many' exposures or interactions (Vallano et al., 2018; Pica et al., 2018), or six exposures (Pozzulo et al., 2014) was not enough to influence jurors' decisions. However, seeing the defendant eight times prior to the crime (Sheahan et al., 2017) might have come across as more indicative of familiarity, thereby resulting in stronger perceptions of the defendant's guilt. In their third study, Pica and colleagues (2018) increased the

number of exposures even further and examined mock jurors' perceptions of a testimony from a witness who has seen and interacted with the defendant on 20 different occasions (compared to 10 different interactions, or no interactions at all). Although over half of mock jurors associated greater familiarity between the witness and defendant with higher identification accuracy, their verdicts were unaffected by the familiarity manipulation. Given the inconsistent findings regarding the influence of familiarity, described as the number of exposures (regardless of whether interaction occurred), on jurors' decision-making, Pica and colleagues concluded that jurors might perceive familiarity in terms of the relationship between the eyewitness and the defendant, as opposed to the number of times they saw each other or interacted.

Familiarity as Prior Relationship

When eyewitnesses testify in familiar identification cases, their familiarity to the defendant will most likely be described in terms of their prior relationship (e.g., family member, neighbour, friend). Therefore, jurors are most likely to encounter familiarity operationalized in terms of the relationship shared between the eyewitness and the defendant prior to the crime. Only one study to date has examined if prior relationship between the defendant and the eyewitness affected mock jurors' judgments. Pica and colleagues (2017) conducted three experiments in which prior relationship between the eyewitness and the defendant was manipulated. In all three experiments, participants read a trial transcript of a mock murder case in which the relationship shared between the eyewitness and the defendant was varied. In Study 1, the defendant was described as the witness' former teacher (i.e., familiar with the witness), lunch monitor (i.e., an acquaintance of the witness), or a stranger. Study 2 used a similar manipulation, but the defendant who shared a familiar relationship with the witness was said to be the witness' uncle. Lastly, in Study 3, the eyewitness and the defendant were said to be

neighbours (i.e., a familiar relationship) or strangers. Across all three experiments, mock jurors' verdicts were not affected by the type of relationship the eyewitness and the defendant shared prior to the crime. While the familiarity manipulation did not affect jurors' verdicts, it did influence their subjective ratings of the defendant's guilt in the first two experiments. More specifically, the defendant was assigned higher guilt ratings when he shared a familiar relationship (i.e., former teacher in Study 1, uncle in Study 2) with the eyewitness than if they were strangers. These findings suggest that jurors might use prior familiarity (defined as prior relationship held between the eyewitness and the defendant) when evaluating the defendant's guilt (using a continuous scale), but familiarity does not seem to be the deciding factor in their guilty/not guilty verdicts.

Familiarity Recency

In addition to defining familiarity in terms of prior exposure or prior relationship, it might be useful to establish the point in time at which the exposure or relationship took place. For instance, is the relationship finished (e.g., He is my former neighbour) or ongoing (e.g., He is currently my neighbour)? Has the last exposure occurred in the distant past (e.g., I saw him 4 years ago) or more recently (e.g., I saw him last week)? Jurors might realize that memory worsens with increasing time delay, and thus might take recency of the familiar relationship or exposure into account when making their judgments. Accordingly, a witness who shares a more recent relationship with the defendant or who has seen the defendant more recently might be seen as having a better memory for the defendant, which could increase the perceived accuracy and credibility of his/her testimony as well as the likelihood of a guilty verdict. Only two studies to date have examined the role of familiarity recency in juror decision-making.

As discussed above, Vallano et al. (2018) examined the effect of the amount of prior exposure (i.e., never seen, seen once, seen many times prior to the crime) on jurors' judgments of eyewitness accuracy and defendant guilt in Study 1; however, in Study 2, they aimed to strengthen the familiarity manipulation with contextual details concerning the recency of that exposure. The eyewitness was described as having seen the perpetrator a few hours (i.e., recent exposure) or a few months (i.e., past exposure) before the crime occurred. Vallano and colleagues predicted that the more recent exposure between the witness and the defendant will result in more favorable perceptions of the eyewitness (i.e., higher accuracy) and less favorable perceptions of the defendant (i.e., higher likelihood of guilt). Although familiarity recency did not independently affect jurors' judgments, the addition of recency to the amount of the eyewitness' exposure to the defendant strengthened the familiarity manipulation. Indeed, Vallano et al. (2018) collapsed across the familiarity conditions (i.e., seen once, seen many times, seen a few hours ago, seen a few months ago) and found that compared to a stranger identification (i.e., the never seen before condition), the enhanced familiar identification was rated as more accurate and the familiar defendant as more likely to be guilty.

Thompson et al. (2019) examined how recency of a familiar relationship on its own (i.e., independently of the extent of prior exposure) affects mock jurors' decision-making. A mock trial transcript described the eyewitness and the defendant as former neighbours who knew each other before the defendant moved away one year, five years, or 10 years ago. Consistent with Vallano et al. (2018), mock jurors' perceptions of the eyewitness or the defendant did not change as a function of how recent the familiar relationship between the witness and the defendant was. However, mock jurors' subjective perceptions of the eyewitness' familiarity with the defendant influenced their judgments. Specifically, higher perceived familiarity corresponded with more

positive perceptions of the eyewitness, more negative perceptions of the defendant, and a higher likelihood of a guilty verdict. The results of this study suggest that although recency of a familiar relationship does not play a role in mock jurors' verdict decisions, mock jurors' subjective perceptions of familiarity between the witness and the defendant impact their decision-making.

Familiarity Manipulation in the Current Study

When cases in which the alleged criminal and the eyewitness to the crime are familiar with each other are tried by a jury, jurors are likely to hear a number of details regarding the nature of their familiarity. It is likely that one of the first matters the eyewitness will be asked to testify to is his/her relationship, if any, to the defendant. A vast majority of the discussed research has conceptualized familiarity in terms of the number of exposures (e.g., Pica et al., 2018; Pozzulo et al., 2014; Vallano et al., 2018) or interactions (e.g., Pica et al., 2018; Study 2 and 3) or in terms of the duration of a single exposure (e.g., Lindsay et al., 1986). However, seeing or interacting with someone several times or talking to someone for 30 minutes does not necessarily guarantee perception of familiarity. Indeed, think about one of the following scenarios: Have you ever (1) sat on a plane, bus, or a train for a few hours, talked briefly with your neighbour, or (2) lived in an apartment building, seen the mailman in passing a few times and greeted him occasionally, or (3) incidentally taken the elevator with the same person on multiple occasions? Now, how familiar would you consider yourself to be with these people? Familiar enough to positively identify them after a stressful, possibly dangerous and traumatic, criminal incident committed by an individual who may have worn a disguise, may have used a weapon, and whom you might not have seen properly due to poor lighting or great distance? Probably not. This is one possibility as to why defining familiarity solely in terms of the number of prior exposures/interactions might not be strong enough to influence jurors' verdict decisions.

Jurors might not perceive individuals who saw each other or briefly interacted a few times to be familiar. Accordingly, following the questions that might arise in legal proceedings, the current study defined familiarity between the witness and the defendant primarily in terms of the ongoing relationship they share (i.e., neighbours). Note that the quality of their relationship (i.e., neighbours) remained the same across the two familiarity conditions (i.e., high, low).

A follow-up question that an eyewitness who has a prior relationship with the defendant (e.g., is his neighbour) could be asked might start with “how long” (i.e., How long have you been the defendant’s neighbour?) with longer relationships providing more opportunities for the eyewitness and the defendant to meet or interact than shorter relationships. Accordingly, the eyewitness in the high-familiarity condition testified that he has been the defendant’s neighbour for three years (high duration), while the eyewitness in the low-familiarity condition testified that he has moved into the neighbourhood three months ago (low duration).

Finally, it is quite unlikely that an eyewitness would be asked to state the total number of times he/she interacted with his/her neighbour (i.e., the defendant). As such, similar to Vallano et al. (2018), instead of stating the exact number of interactions that occurred between them, some more contextual details about the familiar relationship (i.e., frequency and quality of exposure) were introduced to strengthen the familiarity manipulation. Participants in the high-familiarity condition read that the eyewitness has had a frequent contact with his neighbour as they are part of the same running group that meets on regular basis (high frequency of exposure) and that they “started talking soon after he moved in” (high quality of exposure). On the other hand, participants in the low-familiarity condition were told that the eyewitness has seen the defendant from time to time around the neighborhood (low frequency of exposure) and that they “haven’t talked much other than saying ‘hi’ to each other“ (low quality of exposure). In summary, the

current study defined familiarity as it would likely be introduced to the jury throughout legal proceedings (i.e., using a number of its characteristics).

Eyewitness Confidence

Eyewitness confidence has been the most-researched indicator of eyewitness identification accuracy for decades (e.g., Sporer et al., 1995). Being under constant research scrutiny (for review see Wixted & Wells, 2017), the eyewitness research community has learned much about the confidence-accuracy relationship over the years. Early studies led to the conclusion that the relation between eyewitness confidence and identification accuracy was weak at best (e.g., Bothwell et al., 1987) and hence, judges and juries should not rely on a witness' confidence for his/her testimonial accuracy. However, studies that reached such conclusion estimated the confidence-accuracy relationship based on all possible identification decisions (i.e., suspect identifications, filler identifications, and rejections/non-identifications). As jurors are most likely presented with eyewitnesses who positively identified someone from an identification procedure, some researchers argued that the confidence-accuracy relationship should be estimated based on the performance of "choosers" only (e.g., Brigham, 1988). This restriction has led to an increase in the strength of the confidence-accuracy relationship. Furthermore, more recently, Wixted and Wells (2017) demonstrated that high-confidence identifications made under pristine conditions (e.g., when only one suspect is included in a lineup, the suspect does not stand out in the lineup, the eyewitness is cautioned that the culprit might not be present in the lineup, a double-blind procedure is used) are highly indicative of eyewitness accuracy, and thus also of defendant guilt. However, when these pristine conditions are violated, the confidence-accuracy relationship is diminished.

One of the pristine identification procedures outlined by Wixted and Wells is the collection of a confidence statement immediately following an identification (i.e., immediately after the witness' memory for the culprit is tested). Basic memory literature informs us that with the passage of time, memory not only worsens but is also prone to contamination or alteration (e.g., Loftus, 2003). This also applies to the eyewitness' memory for his/her confidence in the identification of the police suspect. Accordingly, as time goes on, a witness' retrospective report of his/her identification confidence (such as at the time of trial) can change. This non-constant nature of eyewitness confidence provides one possible reason for the complexity of the confidence-accuracy relationship.

Malleability of Eyewitness Confidence

Following a positive identification of the police suspect (i.e., the defendant), eyewitnesses are commonly asked to express how confident they are in their identification decisions. While this initial confidence rating, taken immediately following an identification, is most indicative of accuracy (Wixted & Wells, 2017), this might not be what is presented to the jury at the time of trial. By the time eyewitness evidence is brought in front of the jury, an identification made by a hesitant eyewitness who struggled to make a decision can turn into convincing testimony of an eyewitness who is beaming with confidence. In fact, in the majority of wrongful-conviction cases resulting from mistaken eyewitness identification, the eyewitnesses have initially reported low confidence in their choice at the time of the identification, but later reported high confidence at the time of trial (Wixted & Wells, 2017). An eyewitness' confidence in his/her memory for the perpetrator thus is not constant, but rather malleable.

A number of factors can inflate an eyewitness' confidence in his/her identification without improving accuracy of that identification. One such factor is post-identification

feedback. After an eyewitness identifies the suspect, a simple confirmation of the identification decision (such as “that’s the guy” or “good, you identified the suspect”) from the lineup administrator can artificially inflate eyewitness confidence as well as distort the eyewitness’ report of the crime itself (e.g., claiming to have had a better view, paid more attention, or made the identification more easily than he/she actually did; Wells & Bradfield, 1998). Unfortunately, jurors might frequently come across the product of such confidence inflation – a highly confident, but inaccurate witness claiming to have had a good view of the perpetrator, paid attention to the culprit’s appearance, and easily identified the defendant as the individual who committed the crime, for instance.

Jurors’ Perceptions of Confident Eyewitnesses

Although high confidence may not always be a reliable indicator of accuracy, Wixted and Wells (2017) pointed out that low-confidence identifications on the initial test, made under any conditions (pristine or not), are always indicative of low accuracy. Take the inaccurate identification of Walter Snyder, for instance. Although the victim-eyewitness described her assailant as a Black man who wore red shorts, she could not describe the attacker’s face because of poor lighting conditions at the time of the assault (*Snyder v. City of Alexandria*, 1994). Accordingly, during the victims’ initial identification attempt, she rejected a lineup that included Snyder, stating she was not certain that her assailant was present. However, after her third exposure to Snyder, she positively identified him as her assailant from a police showup. Such low-confidence identifications on the initial test are also at higher risk of confidence inflation because low identification confidence at the outset of an investigation has more room to grow as a result of suggestive legal procedures (Wells et al., 1981). Accordingly, if confidence of an inaccurate witness is artificially inflated, eyewitness confidence becomes a poor indicator of

identification accuracy. In fact, some research shows that confidence inflation that occurs during some legal procedures can cause inaccurate witnesses to exhibit similar levels of confidence to accurate witnesses (e.g., Wells et al., 1981). And yet, jurors find confident eyewitnesses extremely convincing. Identifications made by confident eyewitnesses are perceived to be more accurate and the identified defendants more guilty (e.g., Brewer & Burke, 2002; Cutler et al., 1988; Cutler et al., 1990; Fox & Walters, 1986). However, because jurors overly rely on the eyewitness' confidence at the time of trial for identification accuracy, they are just as likely to believe accurate as inaccurate witnesses (e.g., Lindsay et al., 1989). In fact, Brewer and Burke (2002) found that mock jurors were more likely to find the defendant guilty when the testimony was delivered by a confident witness (vs. unconfident witness), regardless of whether the testimony included clear indicators of low accuracy (i.e., inconsistencies).

While jurors put too much emphasis on eyewitness confidence, they neglect other factors that affect the accuracy of eyewitness identification. Cutler and colleagues (1988, 1990) examined mock jurors' sensitivity to ten identification factors (e.g., weapon visibility, violence, retention interval, lineup size and instructions, witness confidence) when evaluating eyewitness evidence. Only one factor, eyewitness confidence, affected mock jurors' judgments. Participants who saw the videotaped testimony of a highly confident witness (vs. less confident witness) were more likely to convict the defendant and to judge the eyewitness' identification of the defendant as accurate. Accordingly, eyewitness confidence seems to be a major factor used by jurors to reach their verdicts.

There are a few possible explanations as to why eyewitness confidence exerts so much influence over legal decision-makers. As previously discussed, jurors are relatively insensitive to factors that influence the accuracy of eyewitness memory, which is why they tend to estimate

accuracy of the eyewitness' testimony by relying on the eyewitness' expressed level of confidence at the time of trial. The reliance on the eyewitness' identification confidence for accuracy of his/her testimony might lead jurors astray as they frequently lack knowledge about the malleability of eyewitness confidence. Not knowing that eyewitness confidence can be inflated after the fact, it is not surprising that jurors perceive a witness who is confident in his/her identification of the defendant more favorably than a witness who is not certain that the defendant is the criminal. Indeed, Whitley and Greenberg (1986) found that mock jurors perceived confident witnesses to have more expertise (defined as greater ability to have seen what he/she claimed to have seen), which in turn resulted in higher belief of the eyewitness' accuracy.

Further encouragement to use eyewitness confidence as an indicator of identification accuracy comes from the United States judicial system in the form of the Biggers criteria (*Neil v. Biggers*, 1972). The five criteria, which include the eyewitness' expressed confidence in the accuracy of his/her identification, were introduced to assess the reliability of eyewitness identification and are still used for this purpose today (Bradfield & Wells, 2000). If the criteria (e.g., the witness is certain that he/she identified the culprit) are met, then the eyewitness identification is considered to be accurate regardless of the manner (suggestive, non-pristine, or other) in which the identification decision was collected. The effectiveness of the Biggers criteria is often challenged as suggestive legal procedures compromise at least three of the five criteria by inflating eyewitness' confidence and distorting their recollection of the amount of attention they paid to the criminal and the quality of view they had at the time of the criminal incident. Accordingly, an eyewitness can confidently identify the alleged perpetrator, claim to have had a good view of the criminal and have paid attention during the crime, but still not be accurate in

his/her identification. The U.S. justice system's endorsement of the Biggers criteria, especially eyewitness confidence, for evaluating identification accuracy encourages the triers of fact (e.g., jurors) to rely heavily on eyewitness confidence in their decision-making. However, because improper legal procedures can easily inflate eyewitness confidence, its ability to indicate whether the eyewitness correctly identified the perpetrator is questionable. Accordingly, jurors, overly relying on eyewitness identification evidence and specifically eyewitness identification confidence when reaching their verdicts, help turn eyewitness misidentifications into wrongful convictions.

Eyewitness Confidence and Other Variables

Because eyewitness confidence plays a major role in jurors' verdicts, it is important to examine how eyewitness confidence affects juror decision-making when combined with other variables. If jurors are presented with a number of factors that affect eyewitness accuracy, including eyewitness confidence, do they take all factors into account when assessing eyewitness accuracy, or base their decisions primarily on eyewitness confidence alone? Attempting to answer this question, Bradfield and Wells (2000) decided to examine the extent to which each of the Biggers criteria contribute to the jurors' impressions of eyewitness accuracy. In addition to the witness' confidence in his/her identification, the Biggers criteria include the amount of attention paid to the culprit, the quality of view of the culprit, the extent of the match between the witness' description of the culprit and the defendant's appearance, and the length of time that passed between the criminal event and the identification. Bradfield and Wells hypothesized that eyewitness confidence will interact with the remaining Biggers variables in a so-called "certainty-trumps" pattern. That is, the researchers predicted that the other variables would be used in the jurors' assessment of eyewitness accuracy only when the witness' confidence is low;

and when eyewitness confidence is high, perceptions of eyewitness accuracy would be based primarily on the eyewitness' confidence in his/her identification. This certainty-trumps hypothesis assumes that eyewitness confidence is inherently different from the remaining Biggers criteria. In fact, when Cutler et al. (1988, 1990) examined the effect of 10 factors that influence eyewitness accuracy (including the following Biggers variables – view, retention interval, and confidence) on jurors' perceptions of eyewitness accuracy and defendant guilt, they found that confidence was the only factor that affected mock jurors' judgments, suggesting that eyewitness confidence might have a different influence on jurors' decisions from all other factors. However, Bradfield and Wells (2000) failed to find support for the certainty-trumps hypothesis. Instead, they found that participants used other Biggers criteria when assessing eyewitness accuracy regardless of the level of the witness' confidence, suggesting that the effect of confidence with other variables on jurors' judgments might be additive or summative, not interactive. According to the summative hypothesis, eyewitness confidence works together with the other four Biggers criteria to shape jurors' overall perceptions of eyewitness accuracy. However, given the findings of Cutler and colleagues (1988, 1990), further examination of the certainty-trumps and summative hypotheses is needed, especially with factors other than the Biggers criteria (e.g., familiarity, race of the defendant).

In addition to possible interactive and additive effects of eyewitness confidence with other eyewitness variables, some studies suggest that confidence might have nullifying effects on other variables. Brewer and Burke (2002) tested the effect of eyewitness confidence and testimonial consistency on jurors' decision-making and, like Cutler and colleagues (1988, 1990), found that only confidence affected mock jurors' verdicts. Because inconsistencies alone have been shown to affect jurors' perceptions of eyewitness accuracy and defendant guilt in past

research (e.g., Berman & Cutler, 1996), Brewer and Burke (2002) concluded that confidence might have potentially nullifying effects: "it is possible that inconsistencies may have much less impact when they come from a confident, rather than an unconfident, witness, and that consistent testimony is not so convincing when the witness lacks rather than exudes confidence" (p. 361). In summary, whether the combined effect of confidence with other variables on jurors' judgments is interactive, additive, or nullifying is still unclear. The current study examined the combined influence of eyewitness confidence with two other factors, race of the defendant and familiarity with the defendant, on juror decision-making.

Eyewitness Confidence and Familiarity

The discussed research, examining the influence of eyewitness confidence on mock jurors' decision-making, has focused exclusively on cases in which the eyewitness and the defendant were strangers. Only three studies to date have looked at how mock jurors utilize eyewitness confidence in their evaluations of familiar identifications. All three studies have been previously discussed in the context of different conceptualizations of familiarity. Although Lindsay and colleagues (1986; Experiment 4) did not manipulate confidence per se, the eyewitness evidence presented to their juror-participants consisted of a confident witness who had been exposed to the perpetrator for varying durations of time (i.e., familiarity manipulation). Having found that familiarity among other factors was not influential in jurors' guilt judgments, Lindsay et al. speculated that high eyewitness confidence might have impacted jurors' perceptions of the eyewitness evidence to a greater extent than the manipulated factors (e.g., familiarity, viewing conditions), which might affect jurors' verdicts only when eyewitness confidence is low. Similar to Lindsay et al.'s study, it is likely that studies which manipulate familiarity, but not confidence, present mock jurors with a testimony of a relatively confident

eyewitness. Accordingly, if Lindsay et al.'s theory is correct, high eyewitness confidence might have muted the importance of familiarity in jurors' decision-making in these studies, thereby providing a possible explanation as to why the intuitive effect of familiarity on juror decision-making has been so difficult to find.

Vallano and colleagues (2018; Study 1) tested this theory by manipulating both the eyewitness' confidence in the identification of the defendant (high vs. low) and the eyewitness' prior exposure to the defendant (never, once, many times before the criminal event). The researchers did not find interactive effects of confidence with familiarity that would support Lindsay et al.'s (1986) theory. However, similarly to Cutler et al. (1988, 1990), only eyewitness confidence affected mock jurors' judgments of defendant guilt and identification accuracy. When the defendant was identified by a highly confident witness (vs. less confident witness), mock jurors perceived the identification of the defendant as more accurate, and the defendant as more likely to be guilty. Just like Vallano et al., in Studies 1 and 2, Pica and colleagues (2018) also found a significant effect of eyewitness confidence on jurors' judgments of eyewitness identification accuracy and defendant guilt, but no effect of familiarity or the confidence-familiarity interaction. The results of these studies thus might point towards the superiority of eyewitness confidence over other factors in mock jurors' judgments.

In Study 3, Pica and colleagues (2018) manipulated eyewitness confidence (confident vs. not confident) and prior familiarity with the defendant (high – 20 interactions, moderate – 10 interactions, none – strangers) and found individual effects of eyewitness confidence and familiarity on jurors' perceptions of eyewitness identification accuracy. As such, juror-participants were more likely to believe that the eyewitness' identification was accurate when the eyewitness was (1) confident in her identification of the defendant (vs. not confident), and (2)

moderately familiar with the defendant (vs. not familiar at all). Moreover, the results of this study also suggested that the combined effect of familiarity and confidence on jurors' perceptions of the eyewitness' identification accuracy was interactive. When the eyewitness and the defendant were said to be strangers, the eyewitness' testimony was viewed as more accurate when the eyewitness was confident (vs. not confident) in her identification of the defendant. It is not surprising that when an eyewitness makes an identification of someone who he/she has never seen prior to the witnessed, possibly traumatic, event (e.g., a murder), jurors are more likely to believe that such identification is accurate if the eyewitness expresses high confidence (vs. low confidence). Moreover, when the eyewitness was highly familiar with the defendant, her identification of the defendant was believed to be more accurate when she was confident, rather than not confident, that the defendant was the criminal. And thus, it is possible that when an eyewitness claims to be highly familiar with the defendant, high identification confidence seems to support his/her claim; however, mock jurors might perceive low identification confidence to be at odds with high familiarity, resulting in lower perceptions of eyewitness accuracy. Interestingly, no such effects emerged in the moderately-familiar condition. It should also be noted that mock jurors' perceptions of defendant guilt were only affected by eyewitness confidence.

In summary, research investigating the combined effect of eyewitness confidence and familiarity on juror decision-making reached inconsistent conclusions. Some studies have concluded that confidence overshadows the importance of familiarity in jurors' judgments (e.g., Lindsay et al., 1986; Vallano et al., 2018). However, since there is scarce evidence suggesting that jurors utilize familiarity in their judgments, it remains unclear whether confidence truly overpowered familiarity in jurors' decisions. It is possible that mock jurors in these studies

would not have utilized familiarity in their decision-making regardless of whether they were presented with information about eyewitness confidence. Other studies have found possible interactive effects of familiarity and confidence on jurors' judgments of eyewitness accuracy (e.g., Pica et al., 2018). However, further investigation of the confidence-familiarity interaction is needed to gain proper understanding of its influence on jurors' decision-making.

Confidence Manipulation in the Current Study

The current study explored the combined influence of confidence with other factors (i.e., familiarity, defendant race) on mock jurors' judgments of the eyewitness' testimony and the defendant's guilt. Past studies have varied in how they operationalized eyewitness confidence. Some studies have used a numerical expression of confidence (e.g., 80% or 100%, Cutler et al., 1990) while others preferred descriptive statements (e.g., 'I'm not really positive that he's the shooter' or 'I'm positive that he's the shooter', Vallano et al., 2018). A number of studies (e.g., Fox & Walters, 1986; Brewer & Burke, 2002) also described the eyewitness' behavior at the time of the identification that might be indicative of low accuracy (e.g., hesitated, used rising intonation, took a long time) or high accuracy (e.g., immediate identification, no hesitation, straightforward answers to questions). The current study decided to strengthen the confidence manipulation by combining all of the above-mentioned approaches. It is likely that jurors encounter information regarding eyewitness confidence presented in more than one format. For instance, an eyewitness might use descriptive statements to testify about his/her confidence that the defendant committed the crime while a detective might testify to how the eyewitness rated his/her confidence using a numerical scale at the time of the identification or about the behaviors that led up to the identification of the defendant. In the current study, the eyewitness in the high-confidence condition was said to (1) have been "very confident that the man he identified was

the robber”, (2) have rated his confidence at 90%, and (3) have identified the defendant immediately and without hesitation. On the other hand, the eyewitness in the low-confidence condition was said to (1) have been “somewhat confident that the man he identified was the robber”, (2) have rated his confidence at 40% , and (3) have taken a long time to identify the defendant and expressed some hesitation. Both the detective and the eyewitness testified to the eyewitness' confidence at the time of the identification.

Race of the Defendant

Data on three-decades of DNA exonerations show that 69% of the 365 wrongful convictions overturned by DNA evidence involved eyewitness identification error (Innocence Project, 2020). Of these 252 mistaken eyewitness identifications, 42% (106) were cases in which the criminal was a member of a different ethnic or racial group than the eyewitness, one of which was the case of Walter Snyder. Gross and colleagues (2005) examined the first 340 exonerations that occurred in the United States between 1989 and 2003 and found that although the majority of convicted rapists in prison at the time were White, the majority of the exonerated individuals wrongfully convicted of rape were Black. Gross et al. point to the race of the victims for an explanation as in all of the rape exoneration cases, in which the race of the victim is known (75%), the victims were White and the defendants were Black. And thus, it should come as no surprise that over the past few decades, an abundance of research has examined the relationship between the race of the defendant and the race of the eyewitness and its effect on eyewitness identification accuracy (for a meta-analytic review see e.g., Meissner & Brigham, 2001; Sporer, 2001). Conclusions of such studies consistently point to what is known as the cross-race effect, also referred to as the own-race bias.

The Cross-Race Effect

The cross-race effect describes a tendency to better recognize members of one's own race than members of different racial groups (e.g., Sporer, 2001). It is a well-researched psychological phenomenon, reliability of which has been demonstrated across different ethnic or racial groups in both laboratory and field settings (e.g., Sporer, 2001). However, the cross-race effect has been most frequently studied in connection to eyewitness identification accuracy. Eyewitness studies, examining the cross-race effect, find that same-race identifications tend to be more accurate than cross-race identifications. For example, Meissner and Brigham (2001) conducted a meta-analytic review of the cross-race effect, examining the effect across 39 research articles, 91 samples, and almost 5,000 eyewitness-participants. The results of this meta-analysis indicated a mirror pattern for identifications of individuals belonging to a different racial or ethnic group: these individuals were correctly identified less often (i.e., less hits) and mistakenly identified more often (i.e., more false alarms) than own-race individuals. More specifically, correct identifications of own-race individuals were 1.4 times more likely than correct identifications of different-race individuals and eyewitness misidentifications were 1.56 times more likely in cases in which the eyewitness and the suspect were from different, rather than the same, racial background. Some studies have found that the cross-race effect manifests largely through an increased false alarm rate for different-race individuals rather than a decreased hit rate (e.g., Horry & Wright, 2008). Others have also found that these false alarms tend to increase with limited viewing time (Meissner & Brigham, 2001). These results have serious implications for real-life crimes in which exposure to the criminal's face is likely to be brief. In such circumstances, the likelihood that cross-race identifications will result in an eyewitness identification error, the known leading cause of wrongful convictions, increases.

To understand just how much the cross-race effect influences accuracy of eyewitness memory, it is important to mention findings suggesting that the cross-race effect extends beyond facial recognition to other aspects of eyewitness memory. Horry and Wright (2008) hypothesized that the cross-race effect would extend to one such aspect, memory for context (or source memory). Did the eyewitness see the defendant at the crime scene, or somewhere else? Was the defendant a bystander, or the criminal? In the encoding stage of this study, White participants saw Black and White faces presented on different backgrounds (e.g., classroom, basketball court, prison), each of which represented a different context. In the testing stage, participants completed an old-new recognition task, in which they were presented with previously seen as well as novel faces on a white background and were asked to indicate whether they recognized the face from earlier in the experimental session. If participants recognized a face, they were asked to identify the context in which the face was originally presented. The researchers found that their sample of White eyewitness-participants demonstrated better context memory performance for White targets than Black targets (Horry & Wright, 2008). In summary, eyewitnesses are not only worse at identifying faces of individuals that belong to a different racial group than own-race individuals but are also worse at remembering the circumstances in which they encountered them, both of which increase the chances of eyewitness misidentification, and possibly wrongful conviction.

Eyewitness Confidence in Cross-Race Identifications

If eyewitness identification accuracy is lower for cross-race than same-race identifications, does the most-studied indicator of identification accuracy, eyewitness confidence, reflect this? Are cross-race identifications made with lower confidence than same-race identifications? Some studies suggest that this might not be the case. Dodson and Dobolyi (2016)

used a lineup recognition paradigm to present Black and White participants with Black and White faces at the encoding stage of the experiment, followed by a series of lineup tasks, some of which included the previously seen faces. Participants were asked to identify faces that they recognized from earlier in the experimental session or select the “not present” option if they did not recognize any. Following each lineup decision, participants rated their confidence in the accuracy of their response. Dodson and Dobolyi found that participants were overconfident (i.e., showed higher confidence than accuracy) when making cross-race identifications. Because participants in the cross-race conditions tended to be more confident than accurate in their identification decisions, their confidence was not indicative of their identification accuracy. On the other hand, higher confidence was indicative of higher accuracy and similarly, lower confidence was indicative of lower accuracy when participants picked an own-race individual from a lineup.

Similarly, Smith and colleagues (2001) examined the ability of eyewitness confidence to postdict eyewitness accuracy of same-race and cross-race identifications. Postdictor variables (e.g., eyewitness confidence) are used to estimate eyewitness identification accuracy after the identification has been made. The results of a study conducted by Smith et al. (2001) revealed that when eyewitness-participants made an identification out of a lineup, their confidence in that identification was a useful predictor of their accuracy if the lineup members were of the same race as the eyewitness, but not if they were of a different racial background (i.e., when the identification was cross-race). Smith and colleagues (2001) concluded that “the *Neil v. Biggers* (1972) criteria, which rely heavily on eyewitness confidence in determining eyewitness accuracy, may be inapplicable to other-race situations” (p. 165). This is problematic because jurors tend to overly rely on eyewitness confidence for their judgments of eyewitness accuracy,

but the confidence-accuracy relationship does not seem to hold up in cross-race identification scenarios.

Juror Sensitivity to the Cross-Race Effect

Although cross-race identifications tend not to be as reliable as same-race identifications, are jurors aware of the detrimental effect of cross-race identifications on eyewitness identification accuracy? Numerous survey studies examined juror commonsense knowledge about factors that influence accuracy of eyewitness memory, including the cross-race effect (for review, see e.g., Devenport et al., 1997; Desmarais & Read, 2011). Several of these studies used the Knowledge of Eyewitness Behavior Questionnaire (KEBQ), developed by Deffenbacher and Loftus (1982), which contains 14 eyewitness identification scenarios, two of which pertain to cross-race identification. The KEBQ has been administered to undergraduates, law students, community members in the United States (e.g., Deffenbacher & Loftus, 1982), United Kingdom (e.g., Noon & Hollin, 1987) and Australia (e.g., McConkey & Roche, 1989). Although results were generally quite similar across countries, these studies demonstrated some differences among the surveyed samples, such that college students showed some awareness of the cross-race effect, but community samples did not (e.g., Deffenbacher & Loftus, 1982; Desmarais & Read, 2011). Since it is unlikely for juries to be composed merely of undergraduates, real-world jurors might have little to no awareness of the cross-race effect. In fact, attorneys of the Public Defender Service (PDS) for District of Columbia worked with the renowned memory expert Elizabeth Loftus to survey a more realistic sample of approximately one thousand potential jurors in the District of Columbia on their understanding of eyewitness identification factors (Schmechel et al., 2006). The results of the PDS poll revealed that the majority of the surveyed respondents lacked proper understanding of the cross-race effect with many believing that same-

race and cross-race identifications are either equally reliable or that cross-race identifications might be more reliable than same-race identifications. Other studies have found large discrepancies in the knowledge of the cross-race effect between eyewitness experts and jurors, but not judges or attorneys (e.g., Benton et al., 2006).

Although potential jurors drawn from community samples in the United States, United Kingdom, and Australia seem to be relatively unaware of how cross-race identifications affect eyewitness accuracy, the current study expects some awareness of the cross-race effect in our sample of Canadian University students. Indeed, college students were found to outperform community samples (55.5% correct vs. 26.5% correct, respectively; Deffenbacher, & Loftus, 1982) on items relating to cross-race identification and so did Canadian compared to American samples (63.3% correct vs. 42.7% correct, respectively; Desmarais & Read, 2011). Participants' knowledge of the cross-race effect was tested towards the end of the experimental session using an Eyewitness Memory Questionnaire (see Appendix K), which is a shortened version of the Knowledge of Eyewitness Behavior Questionnaire (KEBQ), developed by Deffenbacher and Loftus (1982) to survey general knowledge of variables that affect the reliability of an eyewitness account. The generalizability of our findings beyond Canadian University students is discussed in the discussion section of this thesis.

Role of the Cross-Race Effect in Jurors' Judgments

Although potential jurors might show limited awareness when directly or indirectly (i.e., through a hypothetical scenario) asked about the reliability of cross-race identifications on a survey questionnaire, not many studies have looked at how mock jurors make verdict decisions when presented with cross-race identification evidence. In 2003, Abshire and Bornstein examined sensitivity of Black and White mock jurors to the cross-race effect. The researchers

manipulated the race of an eyewitness (Black vs. White) who testified against a Black defendant in a murder trial and collected mock jurors' ratings of the witness' credibility and the defendant's guilt. Abshire and Bornstein hypothesized that the race of the eyewitness would not affect mock jurors' judgments of the eyewitness' credibility and the defendant's guilt. This prediction was based on the findings of Cutler et al. (1990) which suggested that mock jurors might be sensitive to only one eyewitness factor – eyewitness confidence. Contrary to their hypothesis, mock jurors in this study perceived the Black eyewitness (i.e., same-race eyewitness) to be significantly more credible than the White eyewitness (i.e., cross-race eyewitness), suggesting a possible influence of the cross-race effect on jurors' perceptions of eyewitness credibility. However, no effect of the eyewitness' race on mock jurors' verdict decisions was found, which the researchers attributed to strong incriminating evidence (i.e., presence of the murder weapon at his home) against the defendant. Moreover, the researchers predicted an interaction between participants' cross-race beliefs and the eyewitness' race. Verdicts and ratings of the eyewitness' credibility of participants who expressed some awareness of the cross-race effect were expected to be affected by the eyewitness' race to a greater extent than judgments of participants who had no knowledge of the cross-race effect. This hypothesis was not supported as Abshire and Bornstein found that “participants who were explicitly aware of the CRE [cross-race effect] were no more sensitive to variation in the race of the eyewitness than those who were unaware of the phenomenon” (p. 479), suggesting that perhaps mock jurors' awareness of the cross-race effect is not strong enough to carry over to their decision-making.

More recently, Maeder and Ewanation (2018) also examined whether mock jurors consider the cross-race effect in their evaluations of eyewitness identification evidence. Black and White participants in their study read a trial transcript of a second-degree murder case

involving either a same-race identification (i.e., White eyewitness-White defendant or Black eyewitness-Black defendant) or a cross-race identification (i.e., White eyewitness-Black defendant or Black eyewitness-White defendant). The analysis of the four-way interaction between mock jurors' race (Black vs. White), the eyewitness' race (Black vs. White), the defendant's race (Black vs. White) and the verdict (guilty vs. not guilty) did not produce significant results, suggesting that mock jurors' verdicts did not differ between the cross-race and same-race identifications. Although the discussed mock juror studies provide weak evidence for jurors' utilization of the cross-race effect in their verdict decisions, the goal of the present study was to further the research on the role of the cross-race effect in juror decision-making, particularly when combined with eyewitness confidence and familiarity.

Jurors' Perceptions of Eyewitness Confidence in Cross-Race Identifications

Although there is extensive research examining how eyewitness confidence affects juror decision-making in cases where the eyewitness and the defendant are of the same race, very little is known about the role of eyewitness confidence in jurors' evaluations of cross-race identification evidence. Although Dodson and Dobolyi (2017) investigated whether different justifications of high confidence (e.g., featural justification – “I remember his nose”; unobservable justification – “I would never forget him”; or no justification) influenced jurors' judgments of defendant guilt and eyewitness identification accuracy differently, some of their conclusions are relevant. In addition to two confidence justification conditions, the researchers included a confidence statement only condition (i.e., no justification condition), which is of interest to the current research. Participants in this condition were presented with a confidence statement of an eyewitness who was either highly confident or moderately confident in the identification of either a Black or White suspect from a lineup procedure. Based on this

confidence statement, participants were asked to rate the likelihood that the identified individual was guilty (Experiment 1, and 2) and that the eyewitness' identification was accurate (Experiment 3, and 4). Experiments 2, 3, and 4 produced a significant interaction between the suspect's race and strength of eyewitness confidence. When the eyewitness expressed high identification confidence, participants rated the Black and White suspects as similarly guilty (Experiment 2) and the eyewitnesses who identified either the Black or White suspect as similarly accurate (Experiment 3). However, when the eyewitness expressed moderate identification confidence, the eyewitness who identified the White suspect was perceived as more accurate than the eyewitness who identified the Black suspect and the White suspect was viewed as more likely to be guilty than the Black suspect. It should be noted that the race of the eyewitness was not manipulated and was unknown to the participants, so whether the eyewitness identification was same-race or cross-race was unclear. Nevertheless, Dodson and Dobolyi concluded that participants may have assumed that the eyewitness was White, and thus viewed the moderately confident identification of the White suspect (same-race ID) as more accurate and the identified suspect as more likely to be guilty. This explanation suggests that the cross-race effect might have no influence when eyewitness confidence is high but might affect jurors' judgments when the eyewitness is only moderately confident in his/her identification. However, these speculations cannot be confirmed without first establishing the race of the eyewitness. The current study properly tested Dodson and Dobolyi's explanation for the observed interaction between suspect race and the expressed level of eyewitness confidence.

Jurors' Perceptions of Familiar Cross-Race Identifications

The limited research that has examined jurors' perceptions of cross-race identification evidence focuses exclusively on cases in which the eyewitness and the defendant are strangers.

The current study is the first to examine whether judgments of jurors in familiar identification cases are influenced by the cross-race effect. Accordingly, to predict how mock jurors might evaluate cross-race identifications of familiar individuals, one can turn to the most popular explanation for why the cross-race effect occurs – the contact hypothesis.¹ According to the contact hypothesis, the extent of an individual's prior contact with other-race individuals determines how well the individual recognizes members of the given racial group (e.g., Cross et al., 1971). Because most individuals have more exposure to members of their own race, the hypothesis holds that they should be better at recognizing members of their own racial group. Similarly, lesser exposure to individuals of other racial backgrounds should lead to a worse ability to discriminate between other-race faces and thus poorer cross-race recognition. In fact, several facial recognition studies (e.g., Slone et al., 2000; Wright et al., 2003) found a positive relationship between participants' amount of inter-racial contact and their ability to recognize or identify other-race faces. Consistent with the contact hypothesis, the results of some studies (e.g., Lavrakas et al., 1976; McKone et al., 2007) even suggest that the cross-race effect can be decreased or entirely eliminated by training that provides individuals with greater exposure to other-race faces. As such, if an eyewitness is highly familiar with an other-race defendant, and thus has had frequent contact with the defendant, his/her ability to recognize the cross-race defendant might be similar to his/her ability to recognize a same-race defendant. Although mock jurors might not be aware of the contact hypothesis, they might have similar preconceived beliefs

¹ Alternative explanations for why the cross-race effect occurs include the *racial attitudes account* (e.g., Ferguson et al., 2001) according to which high levels of prejudice/negative attitudes toward other-race individuals lead to poorer recognition of other-race faces; the *holistic processing account* (e.g. Michel et al., 2006) according to which own-race faces are processed more holistically than other-race faces and thus lead to better recognition performance; and the *race as a feature account* (e.g., Levin, 2000) according to which individuals encode race as a feature when presented with other-race individuals which leaves less space to encode more distinctive features, thus resulting in poorer recognition of other-race faces. The contact hypothesis is the only explanation of the cross-race effect directly relevant to the current study.

about their ability to recognize other-race individuals with whom they share a familiar relationship. Accordingly, it is possible that mock jurors' judgments in the current study might not be influenced by the defendant's race if the eyewitness and the defendant share a highly familiar relationship.

Race Manipulation in the Current Study

The vast majority of mock-juror studies that manipulate race of the defendant has focused on the relationship between the race of mock jurors and the defendant's race and its impact on verdict decisions. Studies examining how jurors of different ethnic or racial backgrounds render verdicts in cases where the defendant is either Black or White generally find (1) White juror racial bias (i.e., White jurors are more likely to find Black defendants guilty than White defendants) when race is not made salient during the trial (e.g., Sommers & Ellesworth, 2000) and (2) reduction in this bias with increased race salience through opening or closing statements (e.g., Bucolo & Cohn, 2010), or through witness testimony (e.g., Cohn et al., 2009). Although the current study examines the relationship between the defendant's race and the race of the eyewitness, not the mock juror, the studies discussed above have important implications for the current study. Some research suggests that cross-race identification on its own does not increase race salience (e.g., Maeder & Ewanation, 2018), and thus juror race might act as a possible confounding variable in the current study. To account for the influence of juror race, the current study collected demographic information from each participant as well as included a racial bias scale for participants to complete and then used this information in the analyses. The possible interaction between juror and defendant race was examined in exploratory analyses, however, no prediction concerning this interaction was made.

Moreover, just like in Dodson and Dobolyi's (2017) study, the eyewitness' race in the present study is held constant but is known to our participants. The eyewitness was described as a White male who happened to be sitting in a driver's seat of his car that was parked in front of the convenience store where the crime took place. To establish whether the identification was same-race or cross-race, we manipulated the race of the defendant who was identified by the White eyewitness. Accordingly, participants in the cross-race condition read that the eyewitness, "a White man sitting in the driver's seat [of a car]", saw a "Black man leave the Quick-Way store." Participants in the same-race condition were told that the same eyewitness saw a "White man leave the Quick-Way store."

Finally, as already discussed, participants completed an Eyewitness Memory Questionnaire towards the end of the experimental session. The questionnaire presented participants with four eyewitness identification scenarios, each including four possible response options, but only one correct response. One of these scenarios (item #3) pertained to the cross-race effect (see Appendix K). Participants' responses to this item determined their awareness of the cross-race effect (or lack thereof). This information was then used in an analysis to determine whether defendant race affected mock jurors' judgments and whether this effect was dependent on mock jurors' awareness of the cross-race effect.

Current Study

How jurors make decisions in familiar identification cases is still unclear, especially when other variables are also involved. The current study examined the role of familiarity combined with the race of the defendant and eyewitness confidence in jurors' judgments of the eyewitness' testimony and the defendant's guilt. We know that 1) familiar identifications are common, 2) confident eyewitnesses are highly convincing in the eyes of jurors, and that 3) cross-

race identifications are more likely to result in an eyewitness error than same-race identifications. The combination of these variables might occur more frequently than one would expect, Walter Snyder (as described earlier) is just one example. It is therefore important to understand how jurors make verdict decisions when presented with a very confident/somewhat confident eyewitness who identified a very familiar/somewhat familiar, same-race/cross-race individual as the alleged perpetrator.

Researchers have long tried to understand how jurors make their final decisions, giving rise to several models of juror decision-making. One such model was proposed by Pennington and Hastie (1986) to understand how jurors comprehend and evaluate evidence that is available to them and use it to render verdict decisions. The Story Model suggests that juror decision-making involves three components: (1) jurors first process trial evidence by incorporating it in one or more plausible stories about what happened at the time of the crime, (2) jurors then identify all of the verdict alternatives that are available to them, and (3) reach a verdict decision by determining which verdict category matches the accepted story the most. While multiple stories may be developed, Pennington and Hastie (1992) suggest that a number of factors – coherence (i.e., how plausible, consistent and complete the story is), coverage (i.e., how well the story accounts for the evidence presented at trial), uniqueness, and goodness of fit (i.e., how well the story fits the best-matching verdict category) – determine which story will be accepted and hence which decision will be reached. Accordingly, the Story Model of juror decision-making is built on the claim that a juror's constructed story determines his/her verdict decision; and therefore, different stories should result in different decisions. The Story Model was used to help develop the hypotheses for the current study that examines the combined effect of familiarity, defendant race, and eyewitness confidence on mock jurors' decision-making.

Hypotheses

The following are the main hypotheses of the current study:

1. Mock jurors will **a)** perceive the testimony of an eyewitness who is highly familiar with the defendant more positively than the testimony of an eyewitness who is somewhat familiar with the defendant, and **b)** perceive the highly familiar defendant as more guilty than the somewhat familiar defendant.
2. I expect the well-founded effect of eyewitness confidence on mock jurors' evaluations of stranger identifications to extend to familiar identifications. That is, mock jurors will **a)** perceive the testimony of an eyewitness who identified the defendant with high confidence more positively than the testimony of an eyewitness who expressed low identification confidence, and **b)** perceive the defendant who was identified with high confidence as more guilty than the defendant who was identified with low confidence.
3. Mock jurors will **a)** perceive the testimony of an eyewitness who identified the same-race defendant more positively than the testimony of an eyewitness who identified the cross-race defendant, **b)** perceive the same-race defendant as more guilty than the cross-race defendant, and **c)** these effects will depend on mock jurors' awareness of the cross-race effect.
4. Testing Dodson and Dobolyi's (2017) theory, I expect an interaction between eyewitness confidence and defendant race. When the eyewitness is highly confident in his identification of the defendant, mock jurors' judgments will be unaffected by defendant race. However, when the eyewitness identification confidence is low, mock jurors will **a)** perceive the testimony of an eyewitness who identified the same-race defendant more

positively than the testimony of an eyewitness who identified the cross-race defendant, and **b**) perceive the same-race defendant as more guilty than the cross-race defendant.

5. Although not much is known regarding how familiarity, eyewitness confidence, and defendant race might interact, I predict a three-way interaction among the three factors. In line with the certainty-trumps hypothesis, if eyewitness identified the defendant with high confidence, mock jurors' judgments are expected to be unaffected by familiarity and defendant race. However, if the eyewitness identified the defendant with low confidence, I expect familiarity and defendant race to interact. Inspired by the contact hypothesis, I expect defendant race to influence mock jurors' perceptions of **a**) the eyewitness' testimony, and **b**) the defendant' guilt, but only when the eyewitness and the defendant are less familiar with each other.

Method

Participants

Undergraduate students ($N = 632$) enrolled in lower-level psychology courses at Carleton University were recruited online using the Psychology Department's SONA system. This sample consisted of individuals who met jury-eligibility criteria in Ontario, Canada (i.e., Canadian citizens who were at least 18 years of age and who have not committed a serious criminal offense under the Criminal Code). In total, 205 participants were excluded because they failed at least one of the three manipulation checks ($n = 71$), at least one of the two attention checks ($n = 43$), or both (i.e., at least one manipulation check and at least one attention check, $n = 91$). These checks were meant to ensure high quality of the collected responses. Thus, the final sample used for analyses included 427 participants. Of the 425 participants who identified their gender, 62.4% ($n = 265$) were female, 37.4% ($n = 159$) were male, and one participant identified as

transgender. Participant age ranged from 18 to 56 years old ($M = 20.19$, $SD = 4.97$).

Additionally, of the 424 participants who identified their racial or ethnic background, majority were White (63.9%, $n = 271$), 18.2% ($n = 77$) were Asian, 8.7% ($n = 37$) were Black, 5.9% ($n = 25$) were of mixed racial background, 1.9% ($n = 8$) were Indigenous Canadian, and 1.4% ($n = 6$) were Latin American. On average, the study took 55.58 minutes to complete (median = 23 minutes) and was conducted online in exchange for 0.50% towards research participation credits.

Design

Each participant was randomly assigned to one of eight conditions in a 2 (familiarity with the defendant: high vs. low) x 2 (eyewitness confidence: high vs. low) x 2 (defendant race: same-race vs. cross-race) between-participants factorial design. Each condition contained between 50 and 58 participants (see Table 1 for participant breakdown). I examined the effect of the three variables primarily on participants' dichotomous verdicts (i.e., guilty/not guilty), continuous ratings of the defendant's guilt, and ratings of the eyewitness' testimony (i.e., reliability, accuracy, credibility, truthfulness, and believability). Additionally, ratings of the defendant's testimony (i.e., reliability, accuracy, credibility, truthfulness, and believability), subjective ratings of the eyewitness' familiarity with the defendant, participant's racial attitudes toward Black individuals as well as responses to statements regarding factors that might influence eyewitness memory also were examined.

Table 1*Number of Participants per Condition*

Familiarity	Defendant Race	Eyewitness Confidence	
		Low Confidence	High Confidence
Low Familiarity	Same-Race	58	55
	Cross-Race	54	50
High Familiarity	Same-Race	56	51
	Cross-Race	53	50

Materials***Informed Consent Form***

Prior to completing the study, each participant completed an online informed consent form (Appendix A) on the survey tool Qualtrics. The consent form specified that participants who agreed to participate in the study would be asked to read a trial transcript from a robbery case and answer some questions about what they read.

Demographics Questionnaire

Participants who chose to participate in the study were asked to provide some demographic information (Appendix B) including their age and citizenship, gender, ethnic background, and were asked whether they were convicted of a serious criminal offence in the past. Note that information regarding participants' age, citizenship, and criminal background was used to establish jury eligibility in Ontario.

Trial Transcript

Each participant was randomly assigned to read one of eight versions of a seven-page trial transcript from a mock robbery case (Appendix C). Every transcript described an armed robbery of a convenience store that was witnessed by a man sitting in his car outside the store. The eyewitness saw the robber's face briefly while he was taking off his mask and escaping the crime scene. The eyewitness testified that the robber looked like his neighbour. All transcripts began with opening statements from the Judge, the Crown and the Defence, respectively. The Crown introduced three witnesses (i.e., the store clerk, the detective, and the eyewitness) as did the Defence (i.e., the defendant's best friend, the defendant's girlfriend, and the defendant himself). Each version of the transcript manipulated three variables. First, familiarity was manipulated by varying how long the defendant and the eyewitness knew each other before the crime occurred. Participants assigned to the *high-familiarity* condition read that the eyewitness is "very familiar" with the defendant who is his "neighbour who has lived in the neighbourhood for about 3 years now" and with whom the eyewitness has frequent contact because they are part of the same running group. On the other hand, participants assigned to the *low-familiarity* condition read that the eyewitness is "somewhat familiar" with the defendant who is his "new neighbour who has moved into the neighbourhood about 3 months ago" and with whom he has not "talked much other than saying 'hi' to each other". Second, all transcripts included testimony of the detective who administered a lineup to the eyewitness who ended up identifying the defendant as the robber. Participants in the *high-confidence* condition read that the eyewitness identified the defendant "immediately and without hesitation", that he was "very confident that the man he identified was the robber", and that he was "90% confident" that the robber was his neighbour. Participants in the *low-confidence* condition read that the eyewitness identified the defendant

after a while and “expressed some hesitation”, that he was “somewhat confident that the man he identified was the robber”, and that he was about “40% confident” that the robber was his neighbour. Lastly, I manipulated the race of the defendant who was identified by the White eyewitness. Accordingly, participants in the *cross-race* condition read that the eyewitness, “a White man sitting in the driver’s seat [of a car]”, saw a “Black man leave the Quick-Way store.” Participants in the *same-race* condition read that the same eyewitness saw a “White man leave the Quick-Way store.” All transcripts ended with closing statements from both the Crown and the Defence as well as with the Judge providing the jury with instructions on how to apply the law.

Pilot Testing of Trial Transcript. To ensure that the created transcript was not biased against the defendant before the manipulations were added, the transcript was pilot tested prior to starting data collection. Undergraduate students ($N = 56$) who met jury-eligibility criteria in Ontario read the transcript with the manipulations removed (Appendix D), and provided dichotomous verdicts (i.e., guilty/not guilty) and continuous guilt ratings (i.e., 0 = definitely not guilty to 10 = definitely guilty) for the defendant. Not surprisingly, the majority of participants (73%, $n = 41$) voted ‘Not Guilty’. Past studies (e.g., Thompson et al., 2019) have found that dichotomous verdicts tend to be a less sensitive measure of guilt than continuous guilt ratings as participants’ threshold to move from ‘not guilty’ to ‘guilty’ might be quite high. Accordingly, I examined participants’ continuous ratings of the defendant’s guilt and found that the average guilt rating for the defendant was 4.23 on a scale from 0-10. Therefore, participants’ guilt ratings were not drastically leaning towards either side, and especially not towards ‘definitely guilty’.

Verdict Form

All participants were asked to rate the degree to which they felt the defendant was guilty or not guilty using a scale ranging from 0 (definitely not guilty) to 10 (definitely guilty) as well as state whether they found the defendant guilty or not guilty based on the trial transcript they read (Appendix E). Additionally, participants were given the opportunity to describe how they reached the guilty/not guilty verdict and explain what factors (if any) they considered in reaching their verdict.

Verdict Sentencing Form

Participants who reached a guilty verdict were asked questions regarding sentence recommendations for the armed robbery (Appendix F). Participants were asked to indicate an appropriate sentence for the defendant (from a list of following choices and their definitions: absolute discharge, conditional discharge, conditional sentence of imprisonment, probation, fine, imprisonment) as well as indicate the length of the sentence (if applicable).

Eyewitness Rating Form

All participants then rated the testimony of “Peter Green”, the eyewitness to the crime, on his reliability, accuracy, credibility, truthfulness, and believability using a 7-point Likert-type scale (e.g., 1 = not believable, 7 = absolutely believable; see Appendix G).

Defendant Rating Form

Similarly, each participant also rated the testimony of “Michael Jones”, the defendant, on his reliability, accuracy, credibility, truthfulness, and believability using a 7-point Likert-type scale (e.g., 1 = not reliable, 7 = absolutely reliable; see Appendix H).

Manipulation Check

Participants were asked a series of multiple-choice questions to determine whether they read the contents of the transcript thoroughly and paid attention to the manipulated variables (Appendix I). Participants answered three questions that pertained to the variables of interest (e.g., What is the relationship shared between the defendant and the eyewitness?) and three control questions (e.g., What weapon was used during the commission of the crime?).

Familiarity Rating Form

Following the manipulation check, participants were asked to indicate their impressions of how familiar the eyewitness was with the defendant based on the transcript they have read (0 = not familiar to 10 = very familiar; see Appendix J). Additionally, they were asked to classify the relationship between the defendant and the eyewitness to the crime on a scale from 0 = strangers to 10 = friends. Participants also expressed their level of agreement/disagreement with statements pertaining to how familiarity with someone may influence memory for that individual (e.g., A person's memory for another person lasts longer the more familiar they are with him/her). The familiarity form included one question that acted as an attention check to ensure that participants were paying attention.

Eyewitness Memory Questionnaire

Following the familiarity rating, participants were presented with four scenarios regarding factors that might influence eyewitness identification performance (see Appendix K) and asked to identify the correct response. These scenarios are taken out of the KEBQ that was developed by Deffenbacher and Loftus (1982). Specifically, responses to the item pertaining to the cross-race effect (item #3) were of particular interest in the current study while items

regarding the confidence-accuracy relationship (item #2), weapon focus (item #4), and stress (item #1) were control items.

Racial Bias Scale

All participants completed Henry and Sears' (2002) Symbolic Racism scale (Cronbach's $\alpha = 0.79$) which included 8 items assessing racial attitudes toward Black individuals (see Appendix L). Seven items were measured using 4-point scales consisting of either Likert-type items (items 1, 2, 6, 7, 8: 1 = strongly agree - 4 = strongly disagree) or non-Likert options (item 4: 1 = all of it, 2 = most, 3 = some, 4 = not much at all; item 5: 1 = a lot, 2 = some, 3 = just a little, 4 = none at all). Item 3 was measured using a 3-point non-Likert scale (1 = trying to push too fast, 2 = going too slowly, 3 = moving at about the right speed). Two questions were adjusted to fit the Canadian sample used in the current study by changing "the United States" to "Canada" (e.g., "the racial tension that exists in the United States today" was changed to "the racial tension that exists in Canada today"). The racial bias scale included one question that acted as an attention check to ensure that participants were paying attention.

Debriefing Form

Finally, all participants were fully debriefed at the end of the study (Appendix M). The debriefing form specified the purpose of the study including predictions and contact information.

Procedure

Participants signed up for the study online using the SONA system. After signing up, they accessed the survey online on Qualtrics using an anonymous link. Prior to completing the survey, all participants were asked to read an electronic informed consent form (Appendix A). Those who chose to participate in the study then provided some demographic information (Appendix B) before being randomly assigned to read one of the eight versions of a trial

transcript from an armed robbery case (Appendix C). After reading the trial transcript, all participants were asked to reach a verdict and rate the degree to which they find the defendant guilty/not guilty (Appendix E). Those who reached a “guilty” verdict subsequently indicated their sentencing recommendations for the defendant on the verdict sentencing form (Appendix F). Afterwards, participants’ perceptions of the eyewitness’ testimony (Appendix G) as well as the defendant’s testimony (Appendix H) were collected. Next, participants completed a manipulation check (Appendix I) before answering questions about familiarity between the eyewitness and the defendant (Appendix J) and answering questions on factors that may influence eyewitness accuracy (Appendix K). Finally, after completion of the racial bias scale (Appendix L), all participants were fully debriefed (Appendix M) and compensated with a 0.50% towards their research participation credits.

Results

Primary Analyses

The current study outlined five multi-part hypotheses regarding the influence of familiarity (high vs. low), and/or eyewitness confidence (high vs. low), and/or defendant race (same-race vs. cross-race) on mock jurors’ perceptions of the eyewitness’ testimony (specified in part a) of each hypothesis) and their perceptions of the defendant’s guilt (specified in part b) of each hypothesis). Two different measures of mock jurors’ perceptions of defendant guilt (i.e., dichotomous verdicts, continuous guilt ratings) were used, and thus three primary analyses were conducted to test the current hypotheses. Because each of the five hypotheses was tested using the same three analyses (as all main effects and interactions were entered into each analysis), this section of the thesis will first provide a brief overview of each analysis and then break down the results by hypothesis.

To measure mock jurors' perceptions of the defendant's guilt, dichotomous verdicts (guilty/not guilty) were collected. Accordingly, a hierarchical binary logistic regression was conducted to determine if familiarity (low familiarity was used as the reference group), eyewitness confidence (low confidence was used as the reference group), and defendant race (cross-race was used as the reference group) predicted mock jurors' dichotomous verdicts (0 = Not guilty, 1 = Guilty). All main effects were entered in Block 1, all two-way interactions were added in Block 2, and the three-way interaction was added in Block 3. Percentages of guilty verdicts for each condition appear in Table 2. This analysis was used to test hypotheses 1b, 2b, 3b, 4b, and 5b.

Table 2

Percentages of Guilty Verdicts based on Familiarity, Defendant Race, and Eyewitness

Confidence

Familiarity	Defendant Race	Eyewitness Confidence	
		Low Confidence	High Confidence
Low Familiarity	Same-Race	12.07	34.55
	Cross-Race	5.56	18.00
High Familiarity	Same-Race	26.79	25.49
	Cross-Race	3.77	22.00

Moreover, mock jurors' perceptions of the defendant's guilt also were measured using a continuous scale (0 = definitely not guilty - 10 = definitely guilty). A three-way analysis of variance (ANOVA) was used to examine the effect of familiarity, eyewitness confidence,

defendant race and the product terms representing the two-way and three-way interactions on mock jurors' continuous ratings of the defendant's guilt. Levene's test showed significant differences in the variances of the continuous guilt scores, $F(7, 415) = 2.70, p = .01$. However, ANOVA is robust to minor violations of homoscedasticity when sample sizes are (nearly) equal and when the largest variance is less than four times greater than the smallest variance (Howell, 2013), as is the case in the current study (see Table 3 for descriptive statistics). This analysis was also used to test hypotheses 1b, 2b, 3b, 4b, and 5b.

Table 3

Descriptive Statistics Summarizing Mock Jurors' Continuous Guilt Ratings by Familiarity, Defendant Race, and Eyewitness Confidence

Familiarity	Defendant Race	Eyewitness Confidence							
		Low Confidence				High Confidence			
		<i>n</i>	<i>M</i>	<i>SD</i>	<i>s</i> ²	<i>n</i>	<i>M</i>	<i>SD</i>	<i>s</i> ²
Low Familiarity	Same-Race	57	3.49	2.12	4.50	55	4.56	2.64	6.95
	Cross-Race	52	2.71	1.74	3.03	50	3.52	2.43	5.93
High Familiarity	Same-Race	56	4.05	2.27	5.14	51	4.51	2.79	7.77
	Cross-Race	52	2.60	1.89	3.58	50	3.78	2.46	6.05

Note. $N = 423$. $s^2 =$ variance.

Additionally, mock jurors in the current study rated the reliability, accuracy, credibility, truthfulness, and believability of the eyewitness' testimony on a 7-point Likert-type scale (e.g., 1 = not accurate - 7 = absolutely accurate). Because all five questions were significantly correlated ($p < .001$), a composite score was created for each participant by summing each participant's

responses to all five questions (Cronbach's $\alpha = 0.89$). Participants ($n = 4$) who did not respond to all five questions did not receive a composite score. A higher composite score represents more positive perceptions of the eyewitness' testimony (see Table 4 for means and standard deviations). Accordingly, a three-way ANOVA was conducted to examine whether familiarity, eyewitness confidence, defendant race, and the product terms representing the two-way and three-way interactions influenced mock jurors' perceptions of the eyewitness' testimony. This analysis was used to test hypotheses 1a, 2a, 3a, 4a, and 5a.

Table 4

Descriptive Statistics Summarizing Mock Jurors' Ratings of the Eyewitness' Testimony by Familiarity, Defendant Race, and Eyewitness Confidence

Familiarity	Defendant Race	Eyewitness Confidence			
		Low Confidence		High Confidence	
		<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Low Familiarity	Same-Race	17.53	5.54	20.68	6.70
	Cross-Race	16.06	5.33	17.04	7.26
High Familiarity	Same-Race	17.84	6.16	19.56	6.84
	Cross-Race	14.96	5.86	18.94	6.22

Note. $N = 423$.

Familiarity with the Defendant (Hypothesis 1).

It was hypothesized that the testimony of an eyewitness who is highly familiar with the defendant would be perceived more positively than the testimony of an eyewitness who is less familiar with the defendant (hypothesis 1a). Results of the three-way ANOVA revealed a non-

significant main effect of familiarity on mock jurors' ratings of the eyewitness' testimony, $F(1, 415) = 0.001$, $p = .99$. In addition, it was hypothesized that mock jurors would perceive the highly familiar defendant as more guilty than the somewhat familiar defendant (hypothesis 1b). Familiarity was not a significant predictor of mock jurors' guilty verdicts, $b = 0.16$, $SE = 0.26$, Wald's $\chi^2(1) = 0.37$, $p = .54$, $e^b = 1.17$ (95% CI [0.71, 1.93]). Moreover, the main effect of familiarity on mock jurors' continuous ratings of the defendant's guilt was also not significant, $F(1, 415) = 0.53$, $p = .47$. These results suggest that, contrary to my hypothesis, prior familiarity between the eyewitness and the defendant did not influence mock jurors' perceptions of the eyewitness' testimony or the defendant's guilt.

Eyewitness Confidence (Hypothesis 2).

It was predicted that mock jurors would perceive the testimony of an eyewitness who identified the defendant with high confidence more positively than the testimony of an eyewitness who expressed low identification confidence (hypothesis 2a). Eyewitness confidence significantly influenced mock jurors' perceptions of the eyewitness' testimony, $F(1, 415) = 16.34$, $p < .001$, $\eta_p^2 = .04$, with the eyewitness who expressed high identification confidence ($M = 19.08$, $SD = 6.85$) being perceived more positively than the eyewitness who expressed low identification confidence ($M = 16.63$, $SD = 5.81$). It also was predicted that mock jurors would perceive the defendant who was identified with high confidence as more guilty than the defendant who was identified with low confidence (hypothesis 2b). Eyewitness identification confidence significantly predicted mock jurors' guilty verdicts, $b = 0.91$, $SE = 0.26$, Wald's $\chi^2(1) = 11.93$, $p = .001$, $e^b = 2.49$ (95% CI [1.48, 4.19]). The estimated odds of a guilty verdict were 2.49 times greater when the defendant was identified by a highly confident eyewitness than when he was identified by an eyewitness whose identification confidence was low. Moreover, the main

effect of eyewitness confidence on mock jurors' continuous guilt ratings also was significant, $F(1, 415) = 15.26, p < .001, \eta_p^2 = .04$. Mock jurors assigned significantly higher guilt ratings to the defendant when he was identified by a highly confident eyewitness ($M = 4.11, SD = 2.61$) than a somewhat confident eyewitness ($M = 3.24, SD = 2.10$). As predicted, these results suggest that eyewitness confidence plays a role in mock jurors' assessments of the eyewitness' testimony and the defendant's guilt.

Defendant Race (Hypothesis 3).

It was predicted that mock jurors would perceive the testimony of an eyewitness who identified the same-race defendant more positively than the testimony of an eyewitness who identified the cross-race defendant (hypothesis 3a). Results of the three-way ANOVA revealed a significant main effect of defendant race on mock jurors' ratings of the eyewitness' testimony, $F(1, 415) = 12.51, p < .001, \eta_p^2 = .03$. Mock jurors perceived the eyewitness more positively when he identified the same-race defendant ($M = 18.85, SD = 6.40$) than when he identified the cross-race defendant ($M = 16.71, SD = 6.31$). In addition, it was predicted that mock jurors' perceptions of the defendant's guilt would be higher for the same-race defendant than the cross-race defendant (hypothesis 3b). Defendant race was a significant predictor of mock jurors' dichotomous verdicts, $b = 0.89, SE = 0.27, \text{Wald's } \chi^2(1) = 11.00, p = .001, e^b = 2.44$ (95% CI [1.44, 4.13]). The estimated odds of a guilty verdict were 2.44 times greater when the eyewitness identified the same-race defendant than when he identified the cross-race defendant. Similarly, mock jurors assigned significantly higher guilt ratings to the defendant when he was of the same race as the eyewitness ($M = 4.14, SD = 2.48$) than when he was of a different racial background ($M = 3.14, SD = 2.19$), $F(1, 415) = 19.80, p < .001, \eta_p^2 = .05$. As predicted, these results suggest

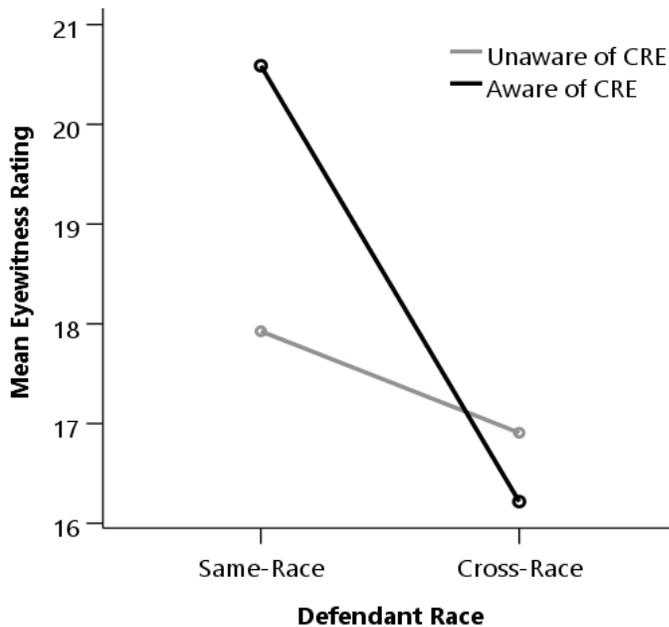
that defendant race played a role in mock jurors' perceptions of the eyewitness' testimony and the defendant's guilt.

However, it was also predicted that the effect of defendant race on mock jurors' perceptions of the eyewitness' testimony and the defendant's guilt would depend on mock jurors' awareness of the cross-race effect (hypothesis 3c). Participants in the current study were asked to read an eyewitness identification scenario that included a cross-race identification and were asked to choose the correct response out of four possible options. This question tested their awareness of the cross-race effect (CRE). Participants' responses were coded as correct if they chose the one correct answer or incorrect if they chose any of the remaining three answer choices. A correct response was taken to represent awareness of the cross-race effect. Thirty-four percent ($n = 145$) of juror-participants in the current study demonstrated awareness of the cross-race effect. Accordingly, because the effect of defendant race on mock jurors' perceptions of the eyewitness' testimony and their perceptions of the defendant's guilt was significant, I examined whether this effect depended on mock jurors' awareness of the cross-race effect. I followed-up each of the three main analyses by adding CRE awareness as the fourth factor and examined the interaction between defendant race and CRE awareness. First, the interaction between defendant race and CRE awareness on mock jurors' ratings of the eyewitness' testimony was significant, $F(1, 407) = 6.70, p = .01, \eta_p^2 = .02$. I followed up this significant two-way interaction by examining the effect of defendant race on eyewitness ratings at both levels of CRE awareness (see Figure 1). When mock jurors were not aware of the cross-race effect, the eyewitness who identified the same-race defendant ($M = 17.93, SE = 0.54$) was rated approximately equally as the eyewitness who identified the cross-race defendant ($M = 16.91, SE = 0.52$), $F(1, 407) = 1.85, p = .17$. However, mock jurors who demonstrated awareness of the cross-race effect rated the

eyewitness who identified the same-race defendant ($M = 20.59$, $SE = 0.70$) significantly more positively than the eyewitness who identified the cross-race defendant ($M = 16.22$, $SE = 0.80$), $F(1, 407) = 17.08$, $p < .001$, $\eta_p^2 = .04$. Second, the interaction between defendant race and CRE awareness did not significantly predict mock jurors' dichotomous verdicts, $b = 1.15$, $SE = 0.67$, Wald's $\chi^2(1) = 2.94$, $p = .09$, $e^b = 3.17$ (95% CI [0.85, 11.85]). Lastly, the interaction between defendant race and CRE awareness did not significantly affect participants' continuous ratings of the defendant's guilt, $F(1, 407) = 1.99$, $p = .16$. Accordingly, the effect of defendant race on mock jurors' perceptions of the eyewitness' testimony, but not their perceptions of the defendant's guilt, depended on their awareness of the cross-race effect.

Figure 1

Eyewitness Ratings by Defendant Race, and Participants' Awareness of the Cross-Race Effect



Note. Mean eyewitness ratings are shown for an eyewitness who identified a same-race defendant or a cross-race defendant given by mock jurors who were either aware or unaware of the cross-race effect. Higher rating represents more positive perceptions of the eyewitness' testimony.

Eyewitness Confidence and Defendant Race (Hypothesis 4).

Testing Dodson and Dobolyi's (2017) theory, it was hypothesized that defendant race would influence mock jurors' perceptions of the eyewitness' testimony only when the eyewitness identified the defendant with low confidence. More specifically, mock jurors in the low-confidence condition would perceive the testimony of an eyewitness who identified the same-race defendant more positively than the testimony of an eyewitness who identified the cross-race defendant (hypothesis 4a). Results of the three-way ANOVA revealed that the interaction between eyewitness confidence and defendant race on mock jurors' ratings of the eyewitness' testimony was not significant, $F(1, 415) = 0.001$, $p = .97$. Additionally, the same interaction pattern was predicted for mock jurors' perceptions of the defendant's guilt, that is, mock jurors would perceive the same-race defendant as more guilty than the cross-race defendant, but only if he was identified by a less confident eyewitness (hypothesis 4b). Results of the binary logistic regression revealed a non-significant interaction between eyewitness confidence and defendant race on mock jurors' dichotomous verdicts, $b = -1.08$, $SE = 0.62$, Wald's $\chi^2(1) = 3.00$, $p = .08$, $e^b = 0.34$ (95% CI [0.10, 1.15]). Similarly, the interaction between eyewitness confidence and defendant race did not significantly influence mock jurors' continuous ratings of the defendant's guilt, $F(1, 415) = 0.27$, $p = .61$. Contrary to my hypothesis, the effect of defendant race on mock jurors' perceptions of the eyewitness' testimony and the defendant's guilt did not vary by eyewitness confidence.

Familiarity with the Defendant, Defendant Race, and Eyewitness Confidence (Hypothesis 5).

Finally, I predicted a three-way interaction between familiarity, defendant race, and eyewitness confidence. Testing the certainty-trumps hypothesis (Bradfield & Wells, 2000), it was predicted that familiarity and defendant race would affect mock jurors' perceptions of the

eyewitness' testimony only when eyewitness confidence was low (hypothesis 5a). More specifically, it was predicted that mock jurors in the low-confidence condition would perceive the testimony of an eyewitness who identified the same-race defendant more positively than the testimony of an eyewitness who identified the cross-race defendant, but only when the eyewitness and the defendant were less familiar with each other. The three-way interaction between familiarity, eyewitness confidence, and defendant race did not significantly affect mock jurors' ratings of the eyewitness' testimony, $F(1, 415) = 3.31, p = .07$. The same interaction pattern was predicted for mock jurors' perceptions of the defendant's guilt, that is, mock jurors in the low-confidence condition would perceive the same-race defendant as more guilty than the cross-race defendant, but only if the eyewitness and the defendant shared a less familiar relationship (hypothesis 5b). The three-way interaction between familiarity, eyewitness confidence, and defendant race did not significantly predict mock jurors' verdicts, $b = -2.07, SE = 1.25, \text{Wald's } \chi^2(1) = 2.74, p = .10, e^b = 0.13$ (95% CI [0.01, 1.46]). Similarly, the three-way interaction between familiarity, eyewitness confidence, and defendant race did not significantly affect mock jurors' continuous guilt ratings, $F(1, 415) = 1.21, p = .27$.

Exploratory Analyses

Defendant Ratings

Participants also were asked a series of questions regarding their perceptions of the reliability, accuracy, credibility, truthfulness, and believability of the defendant's testimony. Each of these questions was measured on a 7-point Likert-type scale (e.g., 1 = not believable - 7 = absolutely believable). All five questions were significantly correlated ($p < .001$), therefore, a composite score was created (Cronbach's $\alpha = 0.93$). Higher composite score indicates more positive perceptions of the defendant's testimony (see Table 5 for means and standard

deviations). Participants ($n = 4$) who did not respond to *all* five questions did not receive a composite score. A three-way ANOVA was conducted to examine whether familiarity, eyewitness confidence, defendant race, and the product terms representing the two-way and three-way interactions influenced mock jurors' perceptions of the defendant's testimony. The results revealed a non-significant main effect of familiarity on mock jurors' perceptions of the defendant's testimony, $F(1, 415) = 1.24, p = .27$. However, the defendant's testimony was perceived significantly more positively when he was identified by a somewhat confident eyewitness ($M = 22.96, SD = 5.17$) than when he was identified by a highly confident eyewitness ($M = 21.82, SD = 5.92$), $F(1, 415) = 4.53, p = .03, \eta_p^2 = .01$. In addition, mock jurors perceived the testimony of the cross-race defendant ($M = 23.17, SD = 5.16$) significantly more positively than the testimony of the same-race defendant ($M = 21.69, SD = 5.86$), $F(1, 415) = 7.54, p = .006, \eta_p^2 = .02$. The two-way interaction between eyewitness confidence and defendant race ($F(1, 415) = 1.03, p = .31$), and the three-way interaction between familiarity, eyewitness confidence and defendant race ($F(1, 415) = 2.46, p = .12$) were not significant. Similar to mock jurors' perceptions of the defendant's guilt, only eyewitness confidence and defendant race influenced their perceptions of the defendant's testimony.

Because defendant race significantly influenced mock jurors' perceptions of the defendant's testimony, CRE awareness was added as the fourth factor and the interaction between defendant race and CRE awareness was examined. However, the results revealed a non-significant interaction between defendant race and CRE awareness, $F(1, 407) = 1.72, p = .19$.

Table 5

Descriptive Statistics Summarizing Mock Jurors' Ratings of the Defendant's Testimony by Familiarity, Defendant Race, and Eyewitness Confidence

Familiarity	Defendant Race	Eyewitness Confidence			
		Low Confidence		High Confidence	
		<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Low Familiarity	Same-Race	23.12	5.61	20.94	5.87
	Cross-Race	24.17	4.86	22.58	6.36
High Familiarity	Same-Race	20.82	5.18	21.80	6.60
	Cross-Race	23.79	4.38	22.02	4.70

Note. $N = 423$.

Subjective Familiarity Rating

Participants provided their subjective ratings of the familiarity between the eyewitness and the defendant on a scale from 0 = not familiar to 10 = very familiar. I conducted an independent-samples t-test to examine whether participants' perceived familiarity between the eyewitness and the defendant differed between the two familiarity conditions. The results of the independent-samples t-test indicated that participants in the high-familiarity condition ($M = 7.33$, $SD = 1.97$) rated the familiarity between the eyewitness and the defendant significantly higher than participants in the low-familiarity condition ($M = 3.79$, $SD = 1.83$), $t(424) = -19.21$, $p < .001$, $d = 1.86$.

Accordingly, I conducted four regression analyses to determine whether participants' subjective familiarity ratings could predict their dichotomous verdicts, continuous ratings of the

defendant's guilt, ratings of the eyewitness' testimony, and ratings of the defendant's testimony. I used a Bonferroni correction for multiple comparisons to keep the familywise error rate at .05, resulting in a per-comparison error rate of .0125. First, results of a binary logistic regression indicated that perceived familiarity was a significant predictor of mock jurors' dichotomous verdicts, $b = 0.28$, $SE = 0.05$, Wald's $\chi^2(1) = 27.75$, $p < .001$, $e^b = 1.33$ (95% CI [1.19, 1.47]). For each one-point increase in perceived familiarity, the estimated odds of a guilty verdict increased 1.33 times. Second, I conducted a simple linear regression analysis to determine whether participants' subjective familiarity ratings predicted their continuous ratings of the defendant's guilt. Perceived familiarity was a significant predictor of participants' guilt ratings, $b = 0.24$, 95% BCa CI [0.15, 0.32], $SE = 0.04$, $t(420) = 5.44$, $p < .001$. With each one-point increase in perceived familiarity, participants' continuous guilt ratings were predicted to increase by 0.24 points. However, subjective familiarity ratings explained only 6.59% of the variation in participants' ratings of the defendant's guilt. Third, results of a simple linear regression analysis indicated that participants' perceived familiarity between the eyewitness and the defendant significantly predicted their perceptions of the eyewitness' testimony, $b = 0.54$, 95% BCa CI [0.31, 0.77], $SE = 0.12$, $t(420) = 4.58$, $p < .001$. With each one-point increase in perceived familiarity, participants' eyewitness ratings increased by 0.54 points. Therefore, as participants' perceptions of familiarity between the eyewitness and the defendant increased, they tended to rate the eyewitness' testimony more positively. However, perceived familiarity explained only 4.75% of variation in participants' ratings of the eyewitness' testimony. Lastly, I conducted a simple linear regression to determine whether subjective familiarity ratings predicted participants' perceptions of the defendant's testimony. Perceived familiarity was a significant predictor of defendant ratings, $b = -0.45$, 95% BCa CI [-0.67, -0.23], $SE = 0.10$, $t(420) = -4.35$,

$p < .001$. With every one-point increase in perceived familiarity, participants' ratings of the defendant's testimony decreased by 0.45 points. Therefore, as participants' perceptions of familiarity between the eyewitness and the defendant increased, they tended to rate the defendant's testimony more negatively. However, it is important to say that perceived familiarity accounted for only 4.31% of variation in participants' ratings of the defendant's testimony. These results together suggest that higher perceived familiarity between the eyewitness and the defendant was associated with more favorable perceptions of the eyewitness and less favorable perceptions of the defendant.

Racial Bias

To account for the possible influence of participant race on their verdicts towards a Black or a White defendant, participants provided demographic information regarding their racial/ethnic background as well as completed the Henry and Sears' (2002) Symbolic Racism scale. Three items on the racial bias scale were reverse-coded and a racial bias score was calculated for each participant by summing each participant's responses to all eight questions on the racial bias scale. Higher score indicates higher levels of racial bias/animosity towards Black individuals. Participants ($n = 12$) who did not respond to *all* questions on the scale did not receive a racial bias score.

Moreover, for the purpose of this analysis, participant race was grouped into three categories (i.e., White, Black, Other). These groups were chosen based on past research and sufficient number of participants in each category. Past research has demonstrated that White jurors are more likely to find Black defendants guilty than White defendants and that Black jurors tend to be more lenient towards same-race defendants (Sommers & Ellsworth, 2000). Although the current study contained a sufficient number of Asian participants, existent mock-

juror research does not indicate that jurors of Asian background demonstrate bias towards either White or Black defendants. Therefore, participant race was grouped into the following three categories: White, Black, and Other (i.e., participants who did not identify as either White or Black).

Accordingly, I conducted a hierarchical binary logistic regression analysis to determine if participant race (White was used as the reference group), defendant race (cross-race/Black was used as the reference group), and racial bias score predicted participants' dichotomous verdicts. The main effects were entered in Block 1, the two-way interactions were added in Block 2, and the three-way interaction was added in Block 3. Participant race did not significantly predict mock jurors' verdicts, Wald's $\chi^2(2) = 1.10, p = .58$, and its ability to do so was not dependent on mock jurors' racial bias score (i.e., the interaction between participant race and racial bias was not significant), Wald's $\chi^2(2) = 0.06, p = .97$. Moreover, the three-way interaction between defendant race, participant race, and racial bias was also not significant, Wald's $\chi^2(2) = 2.56, p = .28$. These results suggest that participant race did not predict participants' verdict decisions for either the Black (cross-race) or the White (same-race) defendant and that its ability to do so was not dependent on their racial bias score.

Discussion

As described earlier, Walter Snyder was wrongfully convicted of rape and burglary based on the mistaken identification of the victim-eyewitness, a *Caucasian* female who was his *neighbour* at the time. When presented with an initial lineup identification procedure that included Snyder, the victim-eyewitness was *uncertain* that her assailant was present and chose not to make an identification. However, after her third exposure to Snyder, she *confidently* identified him as the *African American* assailant who broke into her home and raped her

(Innocence Project, 2020). Accordingly, the current study was designed to examine how the three eyewitness factors (i.e., eyewitness-defendant familiarity, eyewitness confidence, defendant race) that may have contributed to the wrongful conviction of Walter Snyder, influence mock jurors' perceptions of the eyewitness evidence and their judgments of the defendant's guilt.

There is an abundance of research examining how various factors involved in an eyewitness testimony might influence the outcome of criminal cases (i.e., verdict decision). One of the most-researched factors, consistently shown to influence mock jurors' judgments, is eyewitness identification confidence. Past studies indicate that jurors find confident eyewitnesses extremely convincing. In fact, mock jurors are more likely to find the defendant guilty when the testimony is delivered by a confident witness (e.g., Cutler et al., 1988; Cutler et al., 1990; Fox & Walters, 1986) regardless of whether the testimony is accurate (Brewer & Burke, 2002). Moreover, some researchers have suggested that other eyewitness factors might have a lesser impact on mock jurors' judgments when coming from a highly confident eyewitness (e.g., Bradfield & Wells, 2000; Brewer & Burke, 2002). One such factor is the race of the defendant. While some researchers have found (e.g., Abshire & Bornstein, 2003) that mock jurors perceive a same-race identification to be more credible than a cross-race identification, others have suggested that the effect of defendant race might vary depending on the strength of eyewitness confidence (Dodson & Dobolyi, 2017). As such, defendant race might influence mock jurors' judgments when eyewitness confidence is moderate, but not high.

However, the vast majority of these studies focus exclusively on cases in which the eyewitness and the defendant are strangers. Although archival studies (e.g., Flowe et al., 2011) suggest that most real-life cases involve a suspect who was familiar with at least one eyewitness

in the case and that cases which include a positive identification of a familiar suspect are more likely to be prosecuted, mock jurors' perceptions of familiar identifications are rarely studied. Accordingly, whether these eyewitness factors exert the same effect on mock jurors' judgments in familiar identification cases as they do in stranger identification cases is still unknown. The present study contributes to the limited literature on juror decision-making in familiar identification cases and is the first to manipulate familiarity in combination with eyewitness confidence and defendant race.

Familiarity with the Defendant

The familiarity between any two individuals (e.g., an eyewitness and a defendant) is a multidimensional concept, involving several aspects such as duration, frequency, quality, and recency of the familiar exposure or relationship. Because of its numerous characteristics, person familiarity lacks an agreed-upon definition in the juror decision-making literature. Although research examining the role of familiarity in mock juror decision-making is very limited, past studies have almost exclusively varied only one aspect of familiarity – *magnitude* of exposures (e.g., Pozzulo et al., 2014), or *quality* of a relationship (e.g., Pica et al., 2017), or *recency* of a familiar relationship (e.g., Thompson et al., 2019). The current study aimed to define familiarity in a more realistic way by using several of its characteristics. Therefore, a highly familiar relationship was described as higher in duration (neighbours for three years vs. three months), higher in frequency (see each other weekly vs. from time to time), and higher in quality (talk a lot vs. say 'hi' to each other) than a less familiar relationship. Familiarity, defined in this more complex way, was expected to influence mock jurors' judgments such that a highly familiar relationship between the eyewitness and the defendant would result in more positive perceptions of the eyewitness' testimony and higher perceptions of the defendant's guilt than a somewhat

familiar relationship (Hypothesis 1). The current study did not find support for this prediction as familiarity did not significantly influence mock jurors' perceptions of the eyewitness' testimony, perceptions of the defendant's guilt, or their verdict decisions. This finding is consistent with past research examining the impact of familiarity on mock jurors' judgments (e.g., Lindsay et al., 1986; Pica et al., 2018; Pozzulo et al., 2014; Vallano et al., 2018, Study 1; Thompson et al., 2018). However, contrary to the conclusions of Vallano et al. (2018, Study 2), strengthening the current familiarity manipulation by providing mock jurors with several contextual details of the familiar relationship did not result in significant findings.

One possible explanation for the lack of significant findings comes down to the choice of a comparison group. The familiarity manipulation in the current study varied the strength of a familiar relationship (i.e., compared a highly familiar relationship to a somewhat familiar relationship), not the presence or absence of a familiar relationship. The few studies that found familiarity to play a role in mock jurors' decision-making (e.g., Pica et al., 2017; Sheahan et al., 2017; Vallano et al., 2018, Study 2) used an unfamiliar condition as the comparison group. For example, Sheahan et al. (2017) found that mock jurors assigned higher guilt ratings and reached more guilty verdicts when the eyewitness was *familiar* with the defendant than when they were *strangers*. Therefore, it is possible that the presence or absence of familiarity between the eyewitness and the defendant affects mock jurors' judgments, but the strength of the familiar relationship does not. Perhaps, if the eyewitness-defendant relationship is deemed 'familiar', mock jurors' judgments become similar regardless of the strength of the familiar relationship. Accordingly, even though mock jurors in the current study regarded the highly familiar relationship as more familiar than the somewhat familiar relationship, they might have perceived both familiarity conditions to have overcome the 'familiar' threshold, thereby resulting in similar

judgments of the eyewitness' testimony as well as similar judgments of the defendant's guilt. More research is needed to better understand whether the strength of a familiar eyewitness-defendant relationship affects juror decision-making.

An alternative explanation for the current results is simply that mock jurors do not find mid-level familiarity between an eyewitness and a defendant to play an important role in legal decision-making. The number of studies that failed to find the influence of familiarity on mock jurors' judgments greatly outweighs the number of studies that found familiarity to be influential. Moreover, the results of studies that found the familiarity effect are rather inconsistent. For instance, Sheahan and colleagues (2017) found that familiarity impacted mock jurors' judgments of the defendant's guilt (both continuous and dichotomous), but not their judgments of the eyewitness' testimony. The study conducted by Pica et al. (2017) found familiarity to influence mock jurors' continuous ratings of the defendant's guilt, but not their verdict decisions or perceptions of the eyewitness' testimony. Lastly, the familiarity manipulation in the study conducted by Vallano et al. (2018, Study 2) influenced mock jurors' perceptions of the defendant's guilt as well as their perceptions of the eyewitness' accuracy. Additionally, these effects, although statistically significant, tend to be quite weak ($\eta_p^2 = .01 - .04$). Regardless of findings, the existent research on the role of familiarity in mock juror decision-making aims to better understand how jurors make decisions in cases in which the eyewitness and the defendant saw each other, interacted, or knew each other before the crime occurred. All of these studies are thus interested in the middle range of the familiarity continuum (i.e., acquaintances, familiar strangers). However, it is possible that mock jurors consider prior familiarity between the eyewitness and the defendant to be important only if their relationship is at either end of the continuum (i.e., strangers vs. family members/close friends/individuals who have daily contact).

Indeed, Pica and colleagues (2017) found that the defendant was assigned higher guilt ratings when he shared a familiar relationship with the eyewitness than if they were strangers, but this was only true if the defendant was described as the eyewitness' former teacher (Study 1) or the eyewitness' uncle (Study 2), but not when he was described as the eyewitness' neighbour (Study 3). The current study defined the familiarity between the eyewitness and the defendant primarily in terms of their relationship as neighbours and also found familiarity not to impact mock jurors' judgments.

Finally, it is possible that familiarity really does affect mock juror decision-making, but the effect has not been properly tested. Past studies have chosen arbitrary definitions of familiarity between an eyewitness and a defendant. For instance, researchers have deemed an eyewitness to be 'familiar' with the defendant if they met six times (Pozzulo et al., 2014), eight times (Sheahan et al., 2017), or 'many' times (Vallano et al., 2018) prior to the crime. Others considered 20 interactions (Pica et al., 2018), a former teacher-student relationship (Pica et al., 2017), or a former neighbour relationship (Thompson et al., 2019) as being representative of familiarity. However, it is unclear whether mock jurors perceived these scenarios as familiar. In fact, some researchers (e.g., Pozzulo et al., 2014) have reasoned that mock jurors might have perceived the eyewitness and the defendant in the 'familiar' condition to be unfamiliar with each other, thereby resulting in lack of significant findings. The current study collected mock jurors' subjective ratings of the familiarity between the eyewitness and the defendant and found that the eyewitness and the defendant in the high-familiarity condition were rated to be much more familiar with each other than the eyewitness and the defendant in the low-familiarity condition.

While mock jurors' perceived familiarity was consistent with the familiarity manipulation in the current study, subjective familiarity influenced mock jurors' perceptions of the eyewitness

and the defendant, but experimental familiarity did not. Although further research is needed to better understand the relationship between subjective familiarity (i.e., jurors' perceptions of familiarity) and objective familiarity (i.e., facts of the familiar relationship as described in court or experimental manipulations), jurors' subjective perceptions of eyewitness evidence might play an important role in real-life decision-making. In fact, the most widely accepted model of juror decision-making, the Story Model, suggests that jurors create mental narratives based on 1) the objective evidence presented at trial and 2) their subjective prior knowledge, which are then used to reach a verdict (Pennington & Hastie, 1986). Jurors with different knowledge base might perceive the same evidence in a different way, create different stories, and thus, reach different decisions. Therefore, jurors' subjective perceptions of the different aspects of eyewitness evidence (such as their perceptions of the familiarity between an eyewitness and a defendant) should also be considered. The current study is the second study to find that perceived familiarity between the eyewitness and the defendant influenced mock jurors' legal judgments (see also Thompson et al., 2019).

Eyewitness Confidence

Given that jurors find confident eyewitnesses extremely convincing, it is not surprising that eyewitness confidence has been shown to consistently impact mock juror decision-making. Specifically, eyewitnesses who are confident in their identification of the defendant are perceived to be more accurate than eyewitnesses who lack confidence (e.g., Cutler et al., 1988; Fox & Walters, 1986). Additionally, defendants identified by highly confident eyewitnesses are perceived to be more guilty than defendants who were identified by less confident witnesses (e.g., Brewer & Burke, 2002; Cutler et al., 1990). However, only two studies to date (Pica et al., 2018; Vallano et al., 2018) examined whether this effect of eyewitness confidence on mock

jurors' evaluations of stranger identifications also extends to familiar identifications. The goal of the current study was to add to the very limited research assessing mock jurors' evaluations of familiar identifications made with different levels of eyewitness confidence. As predicted (Hypothesis 2), mock jurors perceived the testimony of a highly confident eyewitness more positively than the testimony of a less confident eyewitness, and found the defendant who was identified by a highly confident eyewitness to be more guilty than the defendant identified by a less confident eyewitness. This is consistent with findings of past research (Pica et al., 2018; Vallano et al., 2018), suggesting that eyewitness confidence plays a major role in juror decision-making.

However, past research is still unclear on how eyewitness confidence influences mock jurors' judgments when combined with other eyewitness factors. Because mock jurors are easily influenced by highly confident eyewitnesses, some researchers (e.g., Bradfield & Wells, 2000) reasoned that high confidence might diminish the importance of other factors in jurors' judgments. The current study tested this so-called certainty-trumps hypothesis. It was hypothesized that mock jurors' judgments would be unaffected by defendant race when the eyewitness expressed high confidence in his identification of the defendant, but that defendant race would influence mock jurors' judgments of the eyewitness' testimony and the defendant's guilt when eyewitness confidence was low (Hypothesis 4). The current study found no support for this prediction as the effect of defendant race on mock jurors' perceptions of the eyewitness' testimony and the defendant's guilt did not vary by eyewitness confidence. However, consistent with findings of Bradfield and Wells (2000), the current results seem to suggest that the effect of confidence with other factors might be additive or summative rather than interactive. According to the summative hypothesis, eyewitness confidence works together with other eyewitness

factors to shape jurors' overall perceptions of the eyewitness' testimony and the defendant's guilt. Indeed, defendant race was found to influence mock jurors' judgments regardless of the level of the witness' confidence.

Additionally, the possibility that eyewitness confidence has nullifying effects on other variables should not be ruled out. All three studies that examined the effect of familiarity and eyewitness confidence on mock jurors' judgments to date (Pica et al., 2018; Vallano et al., 2018; and current study) found that eyewitness confidence affected mock jurors' judgments, but familiarity did not. Brewer and Burke (2002) found similar results when examining the effect of testimonial inconsistencies and eyewitness confidence on mock jurors' judgments and suggested that eyewitness confidence might have nullified the effect of testimonial inconsistencies. It is possible that the effect of familiarity in the three studies mentioned above (including the current study) may have been nullified by eyewitness confidence in a similar manner. That is, low familiarity between the eyewitness and the defendant might be far less influential in mock jurors' judgments when the eyewitness is highly confident in his identification of the defendant than when his confidence is low; and high familiarity between the eyewitness and the defendant might not be as believable coming from an eyewitness who is not confident in his identification of the defendant than when his confidence is high. More research is needed to better understand the nature of the combined effect of eyewitness confidence with other variables (e.g., familiarity and defendant race).

Race of the Defendant

Although the cross-race effect, the finding that eyewitnesses identify same-race individuals with higher accuracy than cross-race individuals, is a well-established phenomenon in the eyewitness literature, very little research has examined mock jurors' perceptions of cross-

race identifications. Lack of awareness provides a possible explanation for the limited research examining the role of the cross-race effect in mock juror decision-making. Indeed, survey studies suggest that potential jurors drawn from community samples are relatively unaware of how cross-race identifications affect eyewitness accuracy (e.g., Deffenbacher & Loftus, 1982). However, undergraduate samples (e.g., Deffenbacher & Loftus, 1982) and Canadian samples (e.g., Desmarais & Read, 2011) have shown greater awareness of the cross-race effect than community and American samples, respectively. Therefore, it was expected that the current sample of Canadian University students would show some awareness of the cross-race effect. Only 34% ($n = 145$) of juror-participants in the current study demonstrated awareness of the cross-race effect, much lower than the average performance found among Canadian samples (i.e., 63.3%; Desmarais & Read, 2011) or student samples (i.e., 55.5%; Deffenbacher, & Loftus, 1982). Participants' awareness of the cross-race effect (CRE) in the current study was determined by their answer to a single multiple-choice question taken from the Knowledge of Eyewitness Behavior Questionnaire (Deffenbacher & Loftus, 1982). The question outlined a hypothetical scenario which included several witnesses (a White woman and an Asian woman) and perpetrators (a Black man and a White man) of different racial backgrounds. It is possible that the scenario was too difficult for participants to follow, thus resulting in a lower rate of correct responses (i.e., a more conservative estimate of CRE awareness). Moreover, survey studies that examined juror commonsense knowledge about factors that influence accuracy of eyewitness memory suggest that respondents tend to perform significantly better on agree-disagree items compared to multiple-choice items (e.g., Desmarais & Read, 2011). Therefore, it is also possible that the low awareness of the cross-race effect in the current study can be attributed to the chosen question format (i.e., multiple-choice). Future studies might benefit from

using multiple measures and a variety of question formats to ensure reliability of participants' awareness of the cross-race effect.

Race of the defendant was, nevertheless, found to influence judgments of mock jurors in the current study. Specifically, mock jurors perceived the eyewitness more positively when he identified the same-race defendant as opposed to the cross-race defendant, supporting Hypothesis 3a. This finding is consistent with results of Abshire and Bornstein's (2003) study which found that an eyewitness who made a same-race identification was perceived to be more credible than an eyewitness who made a cross-race identification. Moreover, supporting Hypothesis 3c, the effect of defendant race on mock jurors' perceptions of the eyewitness' testimony in the current study was dependent on mock jurors' awareness of the cross-race effect. Participants who were unaware of the cross-race effect rated the eyewitness who identified the same-race defendant and the eyewitness who identified the cross-race defendant approximately equally. However, participants who demonstrated awareness of the cross-race effect rated the eyewitness who identified the same-race defendant more positively than the eyewitness who identified the cross-race defendant. These results suggest that the cross-race effect plays a role in jurors' judgments of the eyewitness' testimony. Similarly, the results of the current study revealed that the same-race defendant was more likely to receive a guilty verdict and a higher guilt rating than the cross-race defendant, supporting Hypothesis 3b. In contrast, past research (e.g., Abshire & Bornstein, 2003) has not found verdicts to differ between cross-race and same-race identifications. However, Abshire and Bornstein (2003), who found that the cross-race effect influenced mock jurors' judgments of eyewitness credibility, attributed the lack of its influence on mock jurors' verdicts to the presence of strong incriminating evidence against the defendant (i.e., presence of the murder weapon at his home) in their study. The present study used eyewitness identification

evidence as the only form of evidence against the defendant and found that verdicts differed as a function of defendant race. However, the effect of defendant race on mock jurors' judgments of the defendant's guilt was not dependent on their awareness of the cross-race effect. Similarly, Abshire and Bornstein (2003) also found that "participants who were explicitly aware of the CRE [cross-race effect] were no more sensitive to variation in the race of the eyewitness than those who were unaware of the phenomenon" (p. 479). More research is needed to understand how to reliably measure participants' awareness of the cross-race effect and to determine whether mock jurors' awareness of the cross-race effect influences their perceptions of same-race vs. cross-race identifications.

The current study also tested Dodson and Dobolyi's (2017) theory that the impact of the cross-race effect on mock jurors' judgments might vary by eyewitness confidence (Hypothesis 4). More specifically, Dodson and Dobolyi speculated that the cross-race effect might affect jurors' judgments only when the eyewitness is moderately confident (vs. highly confident) in his/her identification of the defendant. The certainty-trumps hypothesis (Bradfield & Wells, 2000) offers a possible explanation for why the magnitude of the cross-race effect might be diminished with high eyewitness confidence. The hypothesis is built on the underlying assumption that eyewitness confidence is different from all other eyewitness factors. Indeed, Cutler and colleagues (1988, 1990) examined the effect of 10 factors known to influence accuracy of eyewitness memory on jurors' judgments and found that only one of the 10 factors, eyewitness confidence, significantly influenced jurors' judgments of eyewitness accuracy and defendant guilt. Moreover, past research has repeatedly demonstrated that high eyewitness confidence is extremely influential in jurors' judgments. For instance, Brewer and Burke (2002) found that mock jurors were more likely to find the defendant guilty when the testimony was

delivered by a confident witness (vs. unconfident witness), regardless of whether the testimony included inconsistencies, which are indicative of low accuracy. Accordingly, this overwhelming influence of high eyewitness confidence on jurors' judgments might overshadow the importance of other factors (e.g., testimonial consistency, defendant race) in their decision-making.

However, the current findings do not support Dodson and Dobolyi's theory or the certainty-trumps hypothesis as the interaction between eyewitness confidence and defendant race was not significant.

Moreover, the certainty-trumps hypothesis also did not hold up for the three-way interaction between familiarity, eyewitness confidence, and defendant race. Consistent with the certainty-trumps hypothesis, it was expected that familiarity and race would influence mock jurors' judgments only when eyewitness confidence was low. More specifically, it was expected that defendant race would influence mock jurors' judgments of the eyewitness' testimony and the defendant's guilt only when the eyewitness and the defendant shared a less familiar relationship. This part of Hypothesis 5 was based on the contact hypothesis, which holds that the cross-race effect occurs because most individuals have more exposure to (i.e., are more familiar with) members of their own race. Accordingly, if an eyewitness is highly familiar with an individual of a different race, the cross-race effect should be diminished. This prediction was, however, not supported. As the current study was the first to investigate the interaction between familiarity, eyewitness confidence and defendant race, more research is needed to understand the complex relationship between these variables and their impact on juror decision-making.

Limitations

It is important to consider some limitations of studies that use the mock juror paradigm. Decisions in real-life criminal cases are made by juries consisting of a number of individual

jurors who deliberate and together reach a single verdict. The use of individual non-deliberating jurors in the current study thus threatens its ecological validity. The outcome of a jury deliberation, the verdict for the defendant, is a group decision that requires unanimity. This requirement inevitably leads to conformity in some jurors as most of the time first-ballot votes are rarely unanimous (Nuñez et al., 2011). Although group judgments might differ from judgments of individuals, past research has found that final jury verdicts tend to reflect “the verdict favored by the majority of the jury at the beginning of deliberation” (Devine et al., 2001, p. 690). And thus, examining judgments of individual jurors might still offer a valuable insight into the jury decision-making process as well as into the influence of various factors on the final verdict decision.

The choice of the trial presentation medium further limits the overall ecological validity of the current study. Mock juror studies most commonly use one of two presentation mediums – a recording of a mock trial or a mock trial transcript. The current study presented mock jurors with a written transcript which detailed the events of the criminal incident in a manner similar to the real-life trial process. That is, the trial transcripts began with opening statements from the Judge, the Crown and the Defence, followed by the presentation of the Crown’s evidence (in the form of witness testimonies), cross-examination of the witnesses by the Defence, presentation of the Defence’s evidence, cross-examination of the witnesses by the Crown, and closing statements from both the Crown and the Defence. The trial transcript ended with the Judge providing jurors with instructions on how to apply the law. Although the current study created a trial transcript that attempted to mimic what jurors might experience during a real trial, many would argue that a video recording of the mock trial would increase the ecological validity of the current study even further. However, Pezdek and colleagues (2010) found that mock jurors’

perceptions of the eyewitness and the defendant did not differ between the video and transcript trial presentations, suggesting that the difference between the two mediums (i.e., transcript and video) might be minimal.

Lastly, the use of an undergraduate sample is another limitation of the current study. Real-life juries should be comprised of individuals that are representative of the community in which the crime took place, and thus it is very unlikely for juries to be composed merely of undergraduate students. Accordingly, the generalizability of findings from mock juror studies that use only undergraduate samples has been questioned for years. Past studies (e.g., Keller & Wiener, 2011) suggest that there are differences in judgments of student mock jurors and mock jurors sampled from the community. However, the nature of these differences is unclear as some studies (e.g., Keller & Wiener, 2011) found that student jurors are more lenient in their assessments of defendant guilt than community members, while other studies (e.g., Maeder et al., 2018) suggest the opposite. Alternatively, the results of a meta-analysis conducted by Bornstein et al. (2017) revealed no significant differences in guilty verdicts and culpability ratings between student and non-student samples, warranting the use of student samples in mock juror research. However, it should be noted that the use of undergraduate samples might be especially detrimental to the external validity of studies that assume a certain degree of awareness of eyewitness factors. The current study found that the effect of defendant race on mock jurors' perceptions of the eyewitness' testimony was dependent on their awareness of the cross-race effect. However, student samples tend to show a greater awareness of factors that might influence eyewitness accuracy than community samples (e.g., Deffenbacher & Loftus, 1982; Desmarais & Read, 2011). As such, the results of the current study might not be generalizable to community samples. Future research should replicate the current findings (especially those

involving awareness of the cross-race effect) with a more representative sample comprised of community members.

Implications and Future Directions

The current study examined mock jurors' perceptions of three factors involved in eyewitness identification evidence – prior familiarity between the eyewitness and the defendant, race of the defendant, and eyewitness confidence. The case of Walter Snyder is one of many examples of how jurors in real-life criminal cases, which involve eyewitness identification evidence, are likely to encounter each of these factors. Therefore, it is important to investigate how jurors make decisions in such cases.

The results of the current study suggest that the strength of a familiar relationship between an eyewitness and a defendant prior to the crime might not influence jurors' legal judgments. However, the current findings do not rule out the possibility that the presence or absence of familiarity between an eyewitness and a defendant might affect jurors' decisions. Future studies should examine whether jurors perceive familiar identifications in general to be different from stranger identifications, or whether they also distinguish between different levels of familiarity. Although the exact role of eyewitness-defendant familiarity in juror decision-making is still unclear, the current results suggest that jurors' subjective perceptions of familiarity influence their perceptions of both the eyewitness and the defendant. More research is needed to clarify how jurors make decisions in familiar identification cases as these cases commonly occur in real life.

The current study found differences in mock jurors' judgments of eyewitness identifications made with varying levels of confidence. Consistent with past research, the present findings suggest that jurors believe highly confident witnesses as defendants identified by such

witnesses are more likely to receive a guilty verdict. Given that potential jurors are generally unaware that eyewitness confidence might not always be a reliable indicator of identification accuracy (e.g., Devenport et al., 1997), real-life jurors may benefit from expert testimony on the relationship between eyewitness confidence and identification accuracy. Although eyewitness confidence has been consistently shown to play a major role in juror decision-making, future research should continue to examine how eyewitness confidence influences jurors' judgments when combined with other eyewitness factors.

Lastly, the current study also shows that jurors' perceptions of same-race identifications differ from their perceptions of cross-race identifications. And jurors who are aware that cross-race identifications tend to be less accurate than same-race identifications show more positive perceptions of the eyewitness in same-race (vs. cross-race) identification scenarios. Given that in many cases of wrongful convictions, the eyewitness misidentified a defendant of a different racial background, this finding has an important real-world implication. That is, educating jurors on the accuracy of same-race vs. cross-race identifications via expert testimony might help lower the rate with which other-race defendants, such as Walter Snyder, are wrongfully convicted of crimes that they did not commit.

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Appendix A

Informed Consent Form

You are invited to take part in this research project. The information in this form is intended to help you understand what we are asking of you so that you can decide whether you agree to participate in this study. Your participation in this study is voluntary and a decision not to participate will not be used against you in any way.

Project title: Be a Juror in a Robbery Case

Research personnel: The following people are conducting this study and will be available for contact at any time should you have any questions or concerns: Simona Mackovichova (Principal Investigator; email: SimonaMackovichova@cmail.carleton.ca) and Dr. Joanna Pozzulo (Faculty Advisor, JoannaPozzulo@cunet.carleton.ca).

Contact in case of concerns: Should you have any ethical concerns with the study, please contact Dr. Janet Mantler, Chair, Carleton University Research Ethics Board-B (by phone: 613-520-2600 ext. 4085 or by email: ethics@carleton.ca). For all other questions about the study, please contact the researchers.

Purpose: The purpose of this study is to examine how mock jurors make judgments in a robbery case.

Task requirements: Should you decide to participate in this study, you will first be asked to read a trial transcript from an armed robbery case. You will then provide some demographic information, make a verdict and answer some questions about the case you read and provide your general attitudes relevant to the case you read.

Eligibility requirements: To be eligible to participate in this study you must meet jury eligibility criteria in Ontario, which means you are a Canadian citizen, at least 18 years or older, and have not been convicted of a serious criminal offence under the Criminal Code. The study includes three questions that are meant to establish whether you meet jury-eligibility in Ontario.

Duration and Locale: This study will be completed online and last approximately 45 minutes.

Potential risk/discomfort: There is no known risk of physical or psychological discomfort associated with this study. Should you experience any unease, anxiety, or discomfort you have the right to withdraw from the study at any time and you will still be compensated.

Possible Benefits: You may not receive any direct benefit from your participation in this study.

Compensation: In exchange for your participation in this experiment, you will receive a bonus 0.50% towards your mark in PSYC1001, PSYC1002, PSYC2001, or PSYC2002.

Anonymity/confidentiality: The data collected in this experiment are strictly confidential. All data are coded such that your name is not associated with the responses you provide. Any identifying information associated with your code will be confined to a single page that will be separated from your questionnaire, and kept in a separate, secured file by the research investigators, who will keep this information confidential. We collect data through the software Qualtrics, which uses servers with multiple layers of security to protect the privacy of the data (e.g., encrypted websites and password protected storage). Your data will be stored and protected by Qualtrics in a server in Toronto, Ontario, but may be disclosed via a court order or data breach. All the information you provide will be strictly confidential. These data will be used for research at Carleton University and has the potential to be shared with trusted colleagues outside of Carleton.

Right to withdraw: Your participation is completely voluntary, and you may refrain from answering any questions on the questionnaire if you are uncomfortable or otherwise do not wish to do so. You can withdraw from the study without penalty at any point during the survey by closing the browser window. In this case, you will not get to read the debriefing form which outlines the purpose of this study and our predictions. If you are interested in this information, you may contact the researchers. In addition, you will be able to withdraw your data from the study at any point after the completion of the study until the end of the term by contacting the researchers. If you withdraw from the study, all information collected from you will be discarded.

This study has been reviewed and cleared by the Carleton University Research Ethics Board-B (CUREB-B Clearance #111544).

I have read the above form and hereby consent to participate in this study. By checking the 'Yes' box I confirm that I meet the jury eligibility criteria outlined in the 'Eligibility Requirements' section of this document:

Yes

No

Appendix B

Demographics Questionnaire

Some of this information (i.e., age, citizenship, criminal offence) will be used to determine if you meet jury eligibility in Ontario, which is a requirement for being able to participate in this study.

1. **Please indicate your age:** _____

2. **Please indicate your citizenship:**
 - Canadian
 - Other, please specify: _____

3. **Please indicate your gender:**
 - Female
 - Male
 - Other, please specify: _____

4. **Please indicate your ethnic background:**
 - White (e.g., European)
 - Black (e.g., African, African American, African Canadian, Caribbean)
 - East Asian (e.g., Chinese, Japanese, Korean, Polynesian)
 - South Asian (e.g., Indian, Pakistani, Sri Lankan, Bangladeshi)
 - Southeast Asian (e.g., Burmese, Cambodian, Filipino, Laotian, Malaysian, Thai, Vietnamese)
 - West Asian (e.g., Arabian, Armenian, Iranian, Israeli, Lebanese, Palestinian, Syrian, Turkish)
 - Latin American (e.g., Mexican, Indigenous Central, South American)
 - Indigenous Canadian
 - Mixed origin, please specify: _____
 - Other, please specify: _____

5. **Please indicate if you have been convicted of a serious criminal offence under the Criminal Code:**
 - Yes
 - No

Appendix C

Trial Transcript

This is an excerpt from a trial involving an armed robbery of a convenience store. This robbery was committed on September 10th, 2018 at approximately 9:30 p.m. Approximately one week later, 28-year-old Michael Jones was charged with section 344 of the Criminal Code: Robbery.

Please read through the facts of this case as they were presented at the trial of Michael Jones. You will be asked to make a decision regarding the defendant's guilt. Please read through the case carefully because you will not be able to refer back to the transcript when responding to the questions.

Judge: Mr. Jones has been charged with section 344 of the Criminal Code: Robbery. Under Canadian law, the Crown has the burden of proving that the defendant is guilty of this charge beyond a reasonable doubt. It is your responsibility to listen to all the evidence presented in this case, to decide the facts, and then to apply the law that I will give to you at the end of this trial. This case will begin with the Crown and the Defence presenting their opening statements. You should note that these statements are summaries of what will be presented throughout the trial and are not evidence. Each attorney will then present and question witnesses and law enforcement personnel and these witnesses also will be cross-examined. Please listen to the following proceedings carefully. Following the testimonies, you will be asked to make a decision as to whether the defendant is guilty or not guilty.

The Crown makes their opening statement.

Crown: Michael Jones is a 28-year-old **White/Black** male with a criminal record of shoplifting. In the late evening of September 10th, 2018, Mr. Jones entered the Quick-Way convenience store at the Elm Woods mini-mall wearing a ski mask. He approached the clerk, Ms. Linda Davis, and pointed a gun at her, demanding the contents of the cash register. Ms. Davis, scared for her life, complied and gave Mr. Jones approximately \$500 in cash. Upon leaving the store, Mr. Jones removed his mask and fled the scene. This act was witnessed by Peter Green, a White male and the defendant's **neighbour who moved into the neighbourhood three years ago/neighbour who moved into the neighbourhood three months ago**. By committing this robbery, Mr. Jones showed a complete disregard for the safety of Ms. Davis and for the property of the Quick-Way convenience store. It is your duty, as members and representatives of this community, to seek justice by finding Mr. Jones guilty of armed robbery.

The Defence makes their opening statement.

Defence: Ladies and gentlemen of the jury, my client Michael Jones absolutely, categorically did not commit an armed robbery in the evening of September 10th, 2018. It is absurd to assume that someone who committed a minor theft in the past would jump to committing a crime of this magnitude. What happened at the Quick-Way convenience store was a very serious crime, but it was not committed by Michael Jones. The only reason that Mr. Jones is here today is that he roughly matches the limited description provided by Peter Green, who also happens to be a neighbour of Mr. Jones for the past **3 months/3 years**. Mr. Green identified Mr. Jones with

limited confidence/strong confidence after claiming to see him for a few seconds while sitting in a vehicle outside the store at the time of the robbery. There is no other evidence of any sort that would place Mr. Jones at the crime scene on the night of September 10th, 2018. Therefore, to accuse Mr. Jones of an armed robbery is unfair and outrageous, and it is your duty to consider all of the facts accordingly. If you do so, you will come to the conclusion that my client is indeed not guilty.

The Crown calls their first witness, convenience store clerk Linda Davis, to the stand.

Crown: Please state your full name to the court.

Witness: My name is Linda Davis.

Crown: Where were you on the evening of September 10th, 2018?

Witness: I was working at the Quick-Way convenience store at the Elm Woods mini-mall.

Crown: Can you tell me about the incident that happened that evening?

Witness: I was working alone in the store when a **White/Black** man wearing a ski mask entered. He pointed a gun at me and demanded the money from the till. I gave it to him and he quickly left the store while taking off his mask. He then ran towards the Main Street.

Crown: Did you see him after he removed his mask?

Witness: No, his back was turned towards me at that point. I only saw that he had dark hair.

Crown: Could you see his face at all through the mask?

Witness: Not really, or not that I can remember... I was pretty focused on the gun and doing what he wanted me to.

Crown: What did you do after the robber left the store?

Witness: I looked out the window to make sure he was gone for good. Then I called 911. I didn't want him to come back and find me on the phone with the police – I was just so scared. Then I waited for the police to come.

Crown: Did you see anybody else out in front of the store?

Witness: I saw one car, looked like they had pulled up to get some gas. I saw a White man sitting in the driver's seat. He was looking in the direction that the robber had run towards. After a minute he came over to the store and made sure I was okay.

Crown: Thank you, Linda. No further questions, your Honour.

The Defence cross-examines the witness, Ms. Davis.

Defence: Ms. Davis, have you ever met the defendant, Michael Jones?

Witness: I don't know... If he was the robber, I guess I did meet him? I can't say for sure since the robber was wearing a mask.

Defence: Ms. Davis, can you confidently say that you have ever seen Mr. Jones in your store before the robbery?

Witness: I'm not sure.

Defence: Thank you, Ms. Davis. No further questions, your Honour.

The witness is excused.

The Crown calls their second witness, Detective Robert Anderson, to the stand.

Crown: Please state your full name and occupation for the court.

Witness: My name is Robert Walter Anderson. I have been a detective with the local police for a little over 6 years.

Crown: How did you come to be involved in this case, Mr. Anderson?

Witness: On the evening of September 10th, 2018, I responded to a 911 call from the Quick-Way convenience store at the Elm Woods mini-mall. I was happy to discover that there was a witness, Peter Green, who had actually seen the robber's face. I asked the witness for a detailed description of the robber. Based on this description, I constructed a lineup of known thieves in the neighbourhood. When I presented the lineup to the witness, he **identified Mr. Jones as the robber immediately and without hesitation/took a while to identify Mr. Jones as the robber and expressed some hesitation**. When I asked Mr. Green how confident he was in his identification, he said he was **somewhat confident that the man he identified was the robber/very confident that the man he identified was the robber**.

Crown: Can you please elaborate on the witness's confidence?

Witness: Yes. The witness said he saw the robber's face briefly when he took off the mask, that he was **40% confident/90% confident** that the robber was his **long-time neighbour Michael who has lived in the neighbourhood for 3 years/new neighbour Michael who has lived in the neighbourhood for 3 months**.

Crown: That is all the questions I have, your Honour. Thank you.

The Defence cross-examines the witness, Detective Anderson.

Defence: Detective Anderson, where did you show the lineup to the witness, Peter Green?

Witness: At the police station.

Defence: How long after the robbery did you present the lineup to the eyewitness?

Witness: It was about one week after the incident.

Defence: Isn't it true that Peter only briefly saw the robber as he was running from the store, which might make his memory of the perpetrator somewhat unreliable?

Witness: Yes, that is possible I suppose. However, I find it unlikely since Mr. Green did identify Mr. Jones as the robber.

Defence: It is my understanding, Detective, that Peter provided you with a description of the criminal on the evening of the incident.

Witness: Yes, that is correct.

Defence: Can you tell me how he described the robber to you?

Witness: He said that the robber was **White/Black** with dark hair, average build, and looked to be about 6 foot. He said that the robber looked like his neighbour Michael.

Defence: So, Peter said he knew the defendant here, Mr. Jones, from before the crime?

Witness: Yes. He said he has lived next door from Mr. Jones for **approximately three years now/approximately three months now**.

Defence: Thank you. That concludes my questions, your Honour.

The witness is excused.

The final witness for the Crown, eyewitness Peter Green, takes the stand.

Crown: Can you please state your name for the court.

Witness: Peter Green.

Crown: Can you tell the court where you were on the evening of September 10th, 2018, at approximately 9:30 p.m.?

Witness: I was on my way to pick up my girlfriend at a friend's house and I stopped out front the Quick-Way gas station to fill up.

Crown: What happened while you were there?

Witness: Well, before I got out of my car, I saw a **White/Black** man leave the Quick-Way store. He was taking off a mask. I thought that was strange. He looked around and started running away quickly. I went into the store to make sure the clerk was ok.

Crown: Now Peter, you say this man you saw committing the robbery looked like one of your neighbours?

Witness: Yes, he looked like Michael who lives on my street. **He moved in very recently, about 3 months ago or so. I have seen him around a few times since then, but we haven't talked much other than saying 'hi' to each other. Like I said, he had just moved into the neighbourhood for about 3 months. /He has been my neighbour for 3 years now, when he moved in next door. We started talking soon after he moved in, so it has been about 3 years now. Typically, we run on Sunday mornings with a running group.**

Crown: So would you consider this person familiar to you?

Witness: He's **somewhat familiar to me/very familiar to me.**

Crown: Thank you, Peter. No further questions, your Honour.

The Defence cross-examines the witness, Peter Green.

Defence: Hi Peter, how are you today?

Witness: Good.

Defence: Now Peter, are you sure you got a good look at the robber? Wasn't it dark out?

Witness: Yes, it was dark, but there were lights outside the store, I got a pretty good look at him. The ski mask was odd, so it attracted my attention.

Defence: I see. So, you stated you knew Michael before the incident, that he lived in your neighborhood?

Witness: Yes, as I said before, **I have seen him a few times before the robbery/I have seen him on a fairly regular basis before the robbery.**

Defence: Oh yes, thank you. You only got a brief look at the robber's face, is that correct? So, how confident were you that Michael was the robber?

Witness: Yes, that is correct. I briefly saw the robber's face when he took the mask off. I was **somewhat confident that the robber was my neighbour Michael/very confident that the robber was my neighbour Michael.**

Defence: On a scale from 0% to 100%, how confident were you?

Witness: **About 40%/About 90%.**

Defence: Peter, how many people do you know who are **White/Black** with dark hair that are about 6 foot in height?

Witness: I could probably name a few.

Defence: Thank you, Peter. Nothing further, you Honour.

The Defence calls their first witness, Neil Thompson, to the stand.

Defence: Can you please state your name and relation to the defendant for the court.

Witness: My name is Neil Thompson. I am Michael's best friend.

Defence: Okay, Mr. Thompson. How long have you known Mr. Jones?

Witness: Since high school, so about 14 years.

Defence: Thank you. Where were you on the evening of September 10th, 2018?

Witness: I was watching a hockey game on TV with Michael at my house.

Defence: What time was that?

Witness: The game was on at around 6:00 p.m. and ended at around 9:00 p.m. There is no way that Michael robbed that store!

Defence: Why are you so sure about that, Neil?

Witness: I have known him forever. He just would not do that now. I did not notice him acting weird or anything. If he was about to rob a store, he would not be acting normal.

Defence: Thank you, Mr. Thompson. That is all, you Honour.

The Crown cross-examines the witness, Neil Thompson.

Crown: Mr. Thompson, you stated that Michael was at your house the evening of September 10th?

Witness: Yes.

Crown: Now, Mr. Thompson, can you tell the court where you live?

Witness: Near the fire station on Third Street.

Crown: How far is that from the Quick-Way convenience store?

Witness: About a couple of kilometers.

Crown: So really, Michael had plenty of time to drive to the convenience store and commit the robbery?

Witness: No, I wouldn't say he had plenty of time.

Crown: But it's possible?

Witness: I guess it is possible. But I know him. He obviously would've been acting weird if he was about to commit a robbery.

Crown: That's all for this witness, your Honour.

The witness is excused.

The Defence calls their next witness, Julia Brown, to the stand.

Defence: Can you please state your name and relation to the defendant for the court.

Witness: Julia Marie Brown, I'm Michael's girlfriend.

Defence: Julia, did you spend any time with Michael on September 10th, 2018?

Witness: Yes, he picked me up after my shift, at about 4:30 p.m, and drove me home. I work at a restaurant downtown.

Defence: Right. Was Michael acting strange that day? Or talking about anything unusual?

Witness: No, he was just normal as always. I didn't notice anything unusual.

Defence: Thank you. That would be all, your Honour.

The Crown cross-examines the witness, Julia Brown.

Crown: Ms. Brown, do you know that Michael has stolen in the past?

Witness: Yes, but he wouldn't hurt anyone! He's too much of a sweetheart for that.

Crown: How much money do you make at the restaurant, Ms. Brown?

Witness: Well, servers make most of their money through tips, so it's hard to say.

Crown: Would you say you and Michael are financially stable?

Witness: We are trying our best.

Crown: Could you please elaborate?

Witness: I don't know. Neither of us makes a great deal of money, but Michael is good at saving.

Crown: Thank you. That's all, your Honour.

The witness is excused.

The Defence calls the defendant, Michael Jones, to the stand.

Defence: Please state your full name and age for the court.

Defendant: Michael Jones. I am 28 years old.

Defence: Have you ever been to the Quick-Way convenience store at the Elm Woods mini-mall?

Defendant: No, never, I have a convenience store in my apartment building. I always go there.

Defence: Mr. Jones, can you please state your relationship, if any, to the witness, Peter Green?

Defendant: Peter is my neighbour. **He's been my neighbour for about three months. I have seen him around a few times and we typically say 'hi' to each other./He's been my neighbour for about three years. We talk often and I have been his running partner for the past year or so.**

Defence: Where were you on the evening of September 10th, 2018?

Defendant: I worked until 4:00 p.m., then went to pick up Julia, my girlfriend, at work. After I dropped her off at her place, I went over to Neil's to watch the game. I left around 9:00pm and went straight home. It was a long day.

Defence: So you have a job now?

Defendant: Yes, I do. I have no reason to rob any convenience store.

Defence: Michael, do you own a gun?

Defendant: No.

Defence: Thank you. That's all the questions I have, your Honour.

The Crown cross-examines the defendant, Michael Jones.

Crown: Mr. Jones, you say you have a job now. Does it pay well?

Defendant: Well, it's just a little over minimum wage but that's fine for now.

Crown: Minimum wage, that's hardly enough to live on, wouldn't you say?

Defendant: It's tough, but I wouldn't rob anyone for more money.

Crown: You can't exactly say that you would never take somebody else's property.

Defendant: That was years ago, that's all behind me now.

Crown: You stated that you have never been to the Quick-Way convenience store at the Elm Woods mini-mall.

Defendant: That's true.

Crown: If that is true, why does Peter Green say that he saw you leaving the store the night of the robbery?

Defendant: He must have made a mistake.

Crown: Nothing further, your Honour.

The defendant is excused.

The Crown makes their closing statements.

Crown: Ladies and gentlemen of the jury, you have heard testimonies from a number of witnesses about the armed robbery at the Quick-Way convenience store that took place on September 10th, 2018. As jurors, it is your job to use this information to determine whether or not Michael Jones is guilty beyond a reasonable doubt of committing the crime of robbery. Please remember that Mr. Jones is known to the police department as being a thief. He does not have an alibi for the time of the robbery. Furthermore, the key witness, Peter – the defendant's neighbour of **three months/three years** – has positively identified Michael Jones to be the **White/Black** man who committed the robbery. The witness was **somewhat confident in this identification/very confident in this identification**. With this compelling evidence presented to you, I urge you to find the accused, Michael Jones, guilty of robbery. Thank you.

The Defence makes their closing statements.

Defence: Ladies and gentlemen of the jury, the evidence provided by the prosecution is questionable at best. Their key piece of evidence is from the eyewitness testimony of Peter, a man sitting in a car outside of the store, who only saw the robber briefly. This testimony cannot possibly lead you to conclude that Mr. Jones is guilty beyond a reasonable doubt. No other compelling evidence was provided. The only proper conclusion that you can come to is that my client, Mr. Jones, is not guilty. I trust that you will do that.

The Judge provides the law and instructions for the jury.

Judge: Members of the jury, it is now my responsibility to provide you with the law. Michael Jones has been charged under section 344 of the Criminal Code, which states that everyone commits robbery who

- (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
- (b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;
- (c) assaults any person with intent to steal from him; or
- (d) steals from any person while armed with an offensive weapon or imitation thereof.

When deciding on a verdict, please take into consideration all of the information you have heard today, and do not let any biases you may have come into your decision-making process.

Appendix D

Pilot Trial Transcript

This is an excerpt from a trial involving an armed robbery of a convenience store. This robbery was committed on September 10th, 2018 at approximately 9:30 p.m. Approximately one week later, 28-year-old Michael Jones was charged with section 344 of the Criminal Code: Robbery.

Please read through the facts of this case as they were presented at the trial of Michael Jones. You will be asked to make a decision regarding the defendant's guilt. Please read through the case carefully because you will not be able to refer back to the transcript when responding to the questions.

Judge: Mr. Jones has been charged with section 344 of the Criminal Code: Robbery. Under Canadian law, the Crown has the burden of proving that the defendant is guilty of this charge beyond a reasonable doubt. It is your responsibility to listen to all the evidence presented in this case, to decide the facts, and then to apply the law that I will give to you at the end of this trial. This case will begin with the Crown and the Defence presenting their opening statements. You should note that these statements are summaries of what will be presented throughout the trial and are not evidence. Each attorney will then present and question witnesses and law enforcement personnel and these witnesses also will be cross-examined. Please listen to the following proceedings carefully. Following the testimonies, you will be asked to make a decision as to whether the defendant is guilty or not guilty.

The Crown makes their opening statement.

Crown: Michael Jones is a 28-year-old male with a criminal record of shoplifting. In the late evening of September 10th, 2018, Mr. Jones entered the Quick-Way convenience store at the Elm Woods mini-mall wearing a ski mask. He approached the clerk, Ms. Linda Davis, and pointed a gun at her, demanding the contents of the cash register. Ms. Davis, scared for her life, complied and gave Mr. Jones approximately \$500 in cash. Upon leaving the store, Mr. Jones removed his mask and fled the scene. This act was witnessed by Peter Green, a White male and the defendant's neighbour. By committing this robbery, Mr. Jones showed a complete disregard for the safety of Ms. Davis and for the property of the Quick-Way convenience store. It is your duty, as members and representatives of this community, to seek justice by finding Mr. Jones guilty of armed robbery.

The Defence makes their opening statement.

Defence: Ladies and gentlemen of the jury, my client Michael Jones absolutely, categorically did not commit an armed robbery in the evening of September 10th, 2018. It is absurd to assume that someone who committed a minor theft in the past would jump to committing a crime of this magnitude. What happened at the Quick-Way convenience store was a very serious crime, but it was not committed by Michael Jones. The only reason that Mr. Jones is here today is that he roughly matches the limited description provided by Peter Green, who also happens to be a neighbour of Mr. Jones. Mr. Green identified Mr. Jones after claiming to see him for a few seconds while sitting in a vehicle outside the store at the time of the robbery. There is no other

evidence of any sort that would place Mr. Jones at the crime scene on the night of September 10th, 2018. Therefore, to accuse Mr. Jones of an armed robbery is unfair and outrageous, and it is your duty to consider all of the facts accordingly. If you do so, you will come to the conclusion that my client is indeed not guilty.

The Crown calls their first witness, convenience store clerk Linda Davis, to the stand.

Crown: Please state your full name to the court.

Witness: My name is Linda Davis.

Crown: Where were you on the evening of September 10th, 2018?

Witness: I was working at the Quick-Way convenience store at the Elm Woods mini-mall.

Crown: Can you tell me about the incident that happened that evening?

Witness: I was working alone in the store when a man wearing a ski mask entered. He pointed a gun at me and demanded the money from the till. I gave it to him and he quickly left the store while taking off his mask. He then ran towards the Main Street.

Crown: Did you see him after he removed his mask?

Witness: No, his back was turned towards me at that point. I only saw that he had dark hair.

Crown: Could you see his face at all through the mask?

Witness: Not really, or not that I can remember... I was pretty focused on the gun and doing what he wanted me to.

Crown: What did you do after the robber left the store?

Witness: I looked out the window to make sure he was gone for good. Then I called 911. I didn't want him to come back and find me on the phone with the police – I was just so scared. Then I waited for the police to come.

Crown: Did you see anybody else out in front of the store?

Witness: I saw one car, looked like they had pulled up to get some gas. I saw a White man sitting in the driver's seat. He was looking in the direction that the robber had run towards. After a minute he came over to the store and made sure I was okay.

Crown: Thank you, Linda. No further questions, your Honour.

The Defence cross-examines the witness, Ms. Davis.

Defence: Ms. Davis, have you ever met the defendant, Michael Jones?

Witness: I don't know... If he was the robber, I guess I did meet him? I can't say for sure since the robber was wearing a mask.

Defence: Ms. Davis, can you confidently say that you have ever seen Mr. Jones in your store before the robbery?

Witness: I'm not sure.

Defence: Thank you, Ms. Davis. No further questions, your Honour.

The witness is excused.

The Crown calls their second witness, Detective Robert Anderson, to the stand.

Crown: Please state your full name and occupation for the court.

Witness: My name is Robert Walter Anderson. I have been a detective with the local police for a little over 6 years.

Crown: How did you come to be involved in this case, Mr. Anderson?

Witness: On the evening of September 10th, 2018, I responded to a 911 call from the Quick-Way convenience store at the Elm Woods mini-mall. I was happy to discover that there was a witness, Peter Green, who had actually seen the robber's face. I asked the witness for a detailed description of the robber. Based on this description, I constructed a lineup of known thieves in the neighbourhood. When I presented the lineup to the witness, he identified Mr. Jones as the robber.

Crown: That is all the questions I have, your Honour. Thank you.

The Defence cross-examines the witness, Detective Anderson.

Defence: Detective Anderson, where did you show the lineup to the witness, Peter Green?

Witness: At the police station.

Defence: How long after the robbery did you present the lineup to the eyewitness?

Witness: It was about one week after the incident.

Defence: Isn't it true that Peter only briefly saw the robber as he was running from the store, which might make his memory of the perpetrator somewhat unreliable?

Witness: Yes, that is possible I suppose. However, I find it unlikely since Mr. Green did identify Mr. Jones as the robber.

Defence: It is my understanding, Detective, that Peter provided you with a description of the criminal on the evening of the incident.

Witness: Yes, that is correct.

Defence: Can you tell me how he described the robber to you?

Witness: He said that the robber was a man with dark hair, average build, and looked to be about 6 foot. He said that the robber looked like his neighbour Michael.

Defence: So, Robert said he knew the defendant here, Mr. Jones, from before the crime?

Witness: Yes. He said he lives next door from Mr. Jones.

Defence: Thank you. That concludes my questions, your Honour.

The witness is excused.

The final witness for the Crown, eyewitness Peter Green, takes the stand.

Crown: Can you please state your name for the court.

Witness: Peter Green.

Crown: Can you tell the court where you were on the evening of September 10th, 2018, at approximately 9:30 p.m.?

Witness: I was on my way to pick up my girlfriend at a friend's house and I stopped out front the Quick-Way gas station to fill up.

Crown: What happened while you were there?

Witness: Well, before I got out of my car, I saw a man leave the Quick-Way store. He was taking off a mask. I thought that was strange. He looked around and started running away quickly. I went into the store to make sure the clerk was ok.

Crown: Now Peter, you say this man you saw committing the robbery looked like one of your neighbours?

Witness: Yes, he looked like Michael who lives on my street.

Crown: Thank you, Peter. No further questions, your Honour.

The Defence cross-examines the witness, Peter Green.

Defence: Hi Peter, how are you today?

Witness: Good.

Defence: Now Peter, are you sure you got a good look at the robber? Wasn't it dark out?

Witness: Yes, it was dark, but there were lights outside the store, I got a pretty good look at him.

The ski mask was odd, so it attracted my attention.

Defence: I see. So, you stated you knew Michael before the incident, that he lived in your neighborhood?

Witness: Yes.

Defence: Thank you. You only got a brief look at the robber's face, is that correct?

Witness: Yes, that is correct. I briefly saw the robber's face when he took the mask off.

Defence: Peter, how many people do you know who are male with dark hair that are about 6 foot in height?

Witness: I could probably name a few.

Defence: Thank you, Peter. Nothing further, you Honour.

The Defence calls their first witness, Neil Thompson, to the stand.

Defence: Can you please state your name and relation to the defendant for the court.

Witness: My name is Neil Thompson. I am Michael's best friend.

Defence: Okay, Mr. Thompson. How long have you known Mr. Jones?

Witness: Since high school, so about 14 years.

Defence: Thank you. Where were you on the evening of September 10th, 2018?

Witness: I was watching a hockey game on TV with Michael at my house.

Defence: What time was that?

Witness: The game was on at around 6:00 p.m. and ended at around 9:00 p.m. There is no way that Michael robbed that store!

Defence: Why are you so sure about that, Neil?

Witness: I have known him forever. He just would not do that now. I did not notice him acting weird or anything. If he was about to rob a store, he would not be acting normal.

Defence: Thank you, Mr. Thompson. That is all, you Honour.

The Crown cross-examines the witness, Neil Thompson.

Crown: Mr. Thompson, you stated that Michael was at your house the evening of September 10th?

Witness: Yes.

Crown: Now, Mr. Thompson, can you tell the court where you live?

Witness: Near the fire station on Third Street.

Crown: How far is that from the Quick-Way convenience store?

Witness: About a couple of kilometers.

Crown: So really, Michael had plenty of time to drive to the convenience store and commit the robbery?

Witness: No, I wouldn't say he had plenty of time.

Crown: But it's possible?

Witness: I guess it is possible. But I know him. He obviously would've been acting weird if he was about to commit a robbery.

Crown: That's all for this witness, your Honour.

The witness is excused.

The Defence calls their next witness, Julia Brown, to the stand.

Defence: Can you please state your name and relation to the defendant for the court.

Witness: Julia Marie Brown, I'm Michael's girlfriend.

Defence: Julia, did you spend any time with Michael on September 10th, 2018?

Witness: Yes, he picked me up after my shift, at about 4:30 p.m, and drove me home. I work at a restaurant downtown.

Defence: Right. Was Michael acting strange that day? Or talking about anything unusual?

Witness: No, he was just normal as always. I didn't notice anything unusual.

Defence: Thank you. That would be all, your Honour.

The Crown cross-examines the witness, Julia Brown.

Crown: Ms. Brown, do you know that Michael has stolen in the past?

Witness: Yes, but he wouldn't hurt anyone! He's too much of a sweetheart for that.

Crown: How much money do you make at the restaurant, Ms. Brown?

Witness: Well, servers make most of their money through tips, so it's hard to say.

Crown: Would you say you and Michael are financially stable?

Witness: We are trying our best.

Crown: Could you please elaborate?

Witness: I don't know. Neither of us makes a great deal of money, but Michael is good at saving.

Crown: Thank you. That's all, your Honour.

The witness is excused.

The Defence calls the defendant, Michael Jones, to the stand.

Defence: Please state your full name and age for the court.

Defendant: Michael Jones. I am 28 years old.

Defence: Have you ever been to the Quick-Way convenience store at the Elm Woods mini-mall?

Defendant: No, never, I have a convenience store in my apartment building. I always go there.

Defence: Mr. Jones, can you please state your relationship, if any, to the witness, Peter Green?

Defendant: Peter is my neighbour.

Defence: Where were you on the evening of September 10th, 2018?

Defendant: I worked until 4:00 p.m., then went to pick up Julia, my girlfriend, at work. After I dropped her off at her place, I went over to Neil's to watch the game. I left around 9:00pm and went straight home. It was a long day.

Defence: So you have a job now?

Defendant: Yes, I do. I have no reason to rob any convenience store.

Defence: Michael, do you own a gun?

Defendant: No.

Defence: Thank you. That's all the questions I have, your Honour.

The Crown cross-examines the defendant, Michael Jones.

Crown: Mr. Jones, you say you have a job now. Does it pay well?

Defendant: Well, it's just a little over minimum wage but that's fine for now.

Crown: Minimum wage, that's hardly enough to live on, wouldn't you say?

Defendant: It's tough, but I wouldn't rob anyone for more money.

Crown: You can't exactly say that you would never take somebody else's property.

Defendant: That was years ago, that's all behind me now.

Crown: You stated that you have never been to the Quick-Way convenience store at the Elm Woods mini-mall.

Defendant: That's true.

Crown: If that is true, why does Peter Green say that he saw you leaving the store the night of the robbery?

Defendant: He must have made a mistake.

Crown: Nothing further, your Honour.

The defendant is excused.

The Crown makes their closing statements.

Crown: Ladies and gentlemen of the jury, you have heard testimonies from a number of witnesses about the armed robbery at the Quick-Way convenience store that took place on September 10th, 2018. As jurors, it is your job to use this information to determine whether or not Michael Jones is guilty beyond a reasonable doubt of committing the crime of robbery. Please remember that Mr. Jones is known to the police department as being a thief. He does not have an alibi for the time of the robbery. Furthermore, the key witness, Peter – the defendant's neighbour – has positively identified Michael Jones to be the man who committed the robbery. With this compelling evidence presented to you, I urge you to find the accused, Michael Jones, guilty of robbery. Thank you.

The Defence makes their closing statements.

Defence: Ladies and gentlemen of the jury, the evidence provided by the prosecution is questionable at best. Their key piece of evidence is from the eyewitness testimony of Peter, a man sitting in a car outside of the store, who only saw the robber briefly. This testimony cannot

possibly lead you to conclude that Mr. Jones is guilty beyond a reasonable doubt. No other compelling evidence was provided. The only proper conclusion that you can come to is that my client, Mr. Jones, is not guilty. I trust that you will do that.

The Judge provides the law and instructions for the jury.

Judge: Members of the jury, it is now my responsibility to provide you with the law. Michael Jones has been charged under section 344 of the Criminal Code, which states that everyone commits robbery who

- (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
- (b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;
- (c) assaults any person with intent to steal from him; or
- (d) steals from any person while armed with an offensive weapon or imitation thereof.

When deciding on a verdict, please take into consideration all of the information you have heard today, and do not let any biases you may have come into your decision-making process.

Appendix E

Verdict Form

Please answer the following questions based on the trial transcript you have just read:

1. On a scale from 0 to 10 (with 0 being *definitely not guilty* and 10 being *definitely guilty*), please rate the degree to which you feel the defendant is guilty or not guilty:

0 1 2 3 4 5 6 7 8 9 10

Definitely not guilty

Definitely guilty

2. Would you find the defendant *guilty* or *not guilty* based on the trial transcript you just read?

Guilty

Not Guilty

3. Please describe how you reached your final verdict decision. What factors, if any, did you consider in reaching your verdict of guilty or not guilty?

Appendix F

Verdict Sentencing Form

Please answer the questions below with regard to sentence recommendations for the armed robbery.

1. What do you think would be the appropriate sentence length for the armed robbery?
These sentences are based on the Criminal Code.
 - 4 years (minimum sentence allowed by the Criminal Code)
 - 10 years
 - 15 years
 - Life
2. If you could ignore the Criminal Code, what do you think would be the appropriate sentence and duration of time, if any, for the defendant? Please refer to the list of sentences available in Canada below to assist you in your answer.

Sentence (select all that apply):

- Absolute Discharge:*** A sentence that releases him or her into the community with no conditions, and no criminal record.
- Conditional Discharge:*** A sentence that releases him or her into the community with a set of conditions, and no criminal record.
- Conditional Sentence of Imprisonment:*** A prison sentence served in the community, under the watch of a supervisor. Conditions can be punitive, and usually involve house arrest.
- Probation:*** Offender is released on conditions prescribed in a probation order. Conditions are rehabilitative, not punitive, and directly relate to the offender's needs. Can be combined with imprisonment.
- Fine:*** A fee made payable to Her Majesty, the province in which the crime is committed. Can be combined with imprisonment.
- Imprisonment:*** A sentence served in an institution. Two years less a day is served in a provincial jail, two years or more is served in a federal penitentiary.

Duration: _____

Amount (if imposing a fine): _____

Appendix G

Eyewitness Rating Form

Please answer the following questions based on the trial transcript you have read.

Please answer the following questions in relation to the eyewitness, Peter Green.

1. How reliable do you find the eyewitness testimony?

1	2	3	4	5	6	7
Not Reliable			Moderately Reliable		Absolutely Reliable	

2. How accurate do you find the eyewitness testimony?

1	2	3	4	5	6	7
Not Accurate			Moderately Accurate		Absolutely Accurate	

3. How credible do you find the eyewitness testimony?

1	2	3	4	5	6	7
Not Credible			Moderately Credible		Absolutely Credible	

4. How truthful do you find the eyewitness testimony?

1	2	3	4	5	6	7
Not Truthful			Moderately Truthful		Absolutely Truthful	

5. How believable do you find the eyewitness testimony?

1	2	3	4	5	6	7
Not Believable			Moderately Believable		Absolutely Believable	

Appendix H

Defendant Rating Form

Please answer the following questions based on the trial transcript you have read.

Please answer the following questions in relation to the defendant, Michael Jones.

1. *How reliable do you find the defendant's testimony?*

1	2	3	4	5	6	7
Not Reliable			Moderately Reliable		Absolutely Reliable	

2. *How accurate do you find the defendant's testimony?*

1	2	3	4	5	6	7
Not Accurate			Moderately Accurate		Absolutely Accurate	

3. *How credible do you find the defendant's testimony?*

1	2	3	4	5	6	7
Not Credible			Moderately Credible		Absolutely Credible	

4. *How truthful do you find the defendant's testimony?*

1	2	3	4	5	6	7
Not Truthful			Moderately Truthful		Absolutely Truthful	

5. *How believable do you find the defendant's testimony?*

1	2	3	4	5	6	7
Not Believable			Moderately Believable		Absolutely Believable	

Appendix I

Manipulation Check

1. **How old is the defendant, Michael Jones?**
 - 24 years old
 - 26 years old
 - 28 years old
 - 30 years old

2. **What is the ethnic background of the defendant, Michael Jones?**
 - White
 - Black
 - Asian
 - Latin American

3. **What is the relationship shared between the defendant and the eyewitness?**
 - He was his neighbour 5 years ago
 - He has been his neighbour for 3 months
 - He has been his neighbour for 3 years
 - He is a stranger

4. **What weapon was used during the commission of the crime?**
 - Knife
 - Gun
 - Hand
 - No weapon was mentioned

5. **Where did the robbery occur?**
 - Local bar
 - Jewelry store
 - Convenience store
 - Pharmacy

6. **How confident was the eyewitness, Peter Green, in his identification of the defendant?**
 - 40%
 - 50%
 - 80%
 - 90%

Appendix J

Familiarity Rating Form

Please answer the following questions based on the transcript you have read:

1. How familiar would you rate the eyewitness as being with the defendant in this case?

0	1	2	3	4	5	6	7	8	9	10
Not Familiar			Moderately Familiar				Very Familiar			

2. How would you classify the relationship shared between Peter (the eyewitness) and Michael (the defendant)?

0	1	2	3	4	5	6	7	8	9	10
Strangers			Acquaintances				Friends			

Please answer the following questions to the best of your knowledge. Please read each question carefully and answer based on your personal opinion.

3. Agree or Disagree: A person's memory of another person increases (gets stronger and more precise) the more familiar they are with them (i.e., the more they know them/see them/talk to them).

0	1	2	3	4	5	6	7	8	9	10
Strongly Disagree			Neither Agree nor Disagree				Strongly Agree			

4. Agree or Disagree: A person's memory of another person lasts longer (i.e., takes longer to fade/decay) the more familiar they are with them.

0	1	2	3	4	5	6	7	8	9	10
Strongly Disagree			Neither Agree nor Disagree				Strongly Agree			

5. Agree or Disagree: Please select strongly agree here to show that you are paying attention.

0	1	2	3	4	5	6	7	8	9	10
Strongly Disagree			Neither Agree nor Disagree				Strongly Agree			

Appendix K

Eyewitness Memory Questionnaire

Please answer these questions to the best of your knowledge. Choose the one best answer for each of the following,

1. *When a person experiences extreme stress as the victim of a crime, there will be:*
 - a. generally a greater than normal ability to perceive and recall the details of the crime.
 - b. generally the same ability to perceive and recall the details of the crime as under normal conditions.
 - c. a majority of people who will become better at perceiving and recalling crime details whereas others will become worse at it.
 - d. generally a reduced ability to perceive and recall the details.

2. *Under less than optimal viewing conditions, such as those of a violent crime, which of the following statements would be true?*
 - a. The relationship between a witness' stated confidence and his/her accuracy of identification is moderately strong.
 - b. The relationship between confidence and accuracy is zero.
 - c. The relationship between confidence and accuracy is very strong.
 - d. The relationship between confidence and accuracy is very strong only for those of above average intelligence.

3. *Two women are walking to school one morning, one of them an Asian and the other White. Suddenly, two men, one Black and one White, jump into their path and attempt to grab their purses. Later, the women are shown photographs of known purse snatchers in the area. Which statement describes your view of the women's ability to identify the purse snatchers?*
 - a. Both the Asian and the White woman will find the White man harder to identify than the Black man.
 - b. The White woman will find the Black man more difficult to identify than the White man.
 - c. The Asian woman will have an easier time than the White woman making an accurate identification of both men.
 - d. The White woman will find the Black man easier to identify than the White man.

4. *Consider a situation in which a person is being robbed. The robber is standing a few feet from the victim and is pointing a gun at him/her. The victim later reports to a police officer, "I was so frightened, I'll never forget that face." Which of the following do you feel best describes what the victim experienced at the time of the robbery?*
 - a. The victim was so concerned about being able to identify the robber that he/she didn't even notice the gun.
 - b. The victim focused on the robber's face and only slightly noticed the gun.
 - c. The victim focused on the gun which would interfere with his/her ability to remember the robber's face.
 - d. The victim got a good look at both the gun and the face.

Appendix L

Racial Bias Scale

Please read the following questions carefully. For each of the following items, express your level of agreement/disagreement or pick the answer that most closely aligns with your opinions and beliefs.

1. *It's really a matter of some people not trying hard enough; if Blacks would only try harder, they could be just as well off as Whites.*

1	2	3	4
Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree

2. *Irish, Italian, Jewish, and many other minorities overcame prejudice and worked their way up. Blacks should do the same.*

1	2	3	4
Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree

3. *Some say that Black leaders have been trying to push too fast. Others feel that they haven't pushed fast enough. What do you think?*

1	2	3
Trying to push too fast	Going too slowly	Moving at about the right speed

4. *How much of the racial tension that exists in Canada today do you think Blacks are responsible for creating?*

1	2	3	4
All of it	Most	Some	Not much at all

5. *How much discrimination against Blacks do you feel there is in Canada today, limiting their chances to get ahead?*

1	2	3	4
A lot	Some	Just a little	None at all

6. *Generations of slavery and discrimination have created conditions that make it difficult for Blacks to work their way out of the lower class.*

1	2	3	4
Strongly agree	Somewhat agree	Somewhat Disagree	Strongly Disagree

7. *Please select somewhat agree here to show that you are paying attention.*

1	2	3	4
Strongly agree	Somewhat agree	Somewhat Disagree	Strongly Disagree

8. *Over the past few years, Blacks have gotten less than they deserve.*

1	2	3	4
Strongly agree	Somewhat agree	Somewhat Disagree	Strongly Disagree

9. *Over the past few years, Blacks have gotten more economically than they deserve.*

1	2	3	4
Strongly agree	Somewhat agree	Somewhat Disagree	Strongly Disagree

Appendix M

Debriefing Form

Project title: Be a Juror in a Robbery Case

What are we trying to learn in this research? The purpose of this experiment is to examine the role of factors that influence eyewitness memory (such as prior familiarity with the defendant, race of the defendant, and eyewitness confidence) in juror decision-making. Depending on the condition you were in, you were told that (1) the defendant was either Black (cross-race identification) or White (same-race identification), (2) the defendant and the eyewitness were neighbours for three years (high familiarity) or three months (low familiarity) and (3) that the eyewitness was 40% (low confidence) or 90% (high confidence) confident in his identification of the defendant. Our goal is to develop a better understanding of the factors that might influence juror verdicts and judgments.

Why is this research important to scientists or the public? This research will help us develop a better understanding of the factors that influence juror decision-making in the real world. Our findings will be added to a larger literature of scientific findings that seek to inform the legal system about how jurors respond to legal cases in which the eyewitness is familiar with the defendant, in which the eyewitness and the defendant are of same/different ethnic backgrounds, or in which the eyewitness identified the defendant with high/low confidence, among other factors.

What are our predictions? We predict that mock jurors will perceive the eyewitness as more accurate if he was the defendant's neighbor for three years than three months. We also predict that an eyewitness identification made with high level of confidence will be rated as more accurate than an identification made with low confidence. Finally, we predict that same-race identifications will be rated as more accurate than cross-race identifications.

Is there anything I can do if I found this experiment upsetting? If you feel any discomfort or negative emotions as a result of this experiment you may contact the Carleton's Health and Counselling Services at (613) 520-6674.

What if I have questions later? Any questions, comments, or concerns may be directed at any of the following researchers who have worked on this study: Simona Mackovichova (Principal Investigator, Simona.Mackovichova@carleton.ca) or Dr. Joanna Pozzulo (Faculty Advisor, Joanna.Pozzulo@carleton.ca). Should you have any ethical concerns with the study, please contact Carleton University Research Ethics Board-B (by phone: 613-520-2600 ext. 4085 or by email: ethics@carleton.ca). For all other questions about the study, please contact the researcher.

What if I want to withdraw my data from the study? If you want to withdraw your data from the study after you have completed it, you can do so until the end of the term by contacting the researchers. At the end of the term, all data will be deleted from SONA. Therefore, your SONA ID will no longer be connected to your responses in the Qualtrics dataset, which will make it

impossible for us to identify your responses. Participants who withdraw from the study will still receive compensation.

Qualtrics disclaimer: Your data will be stored and protected by Qualtrics in a server in Toronto, ON, Canada but may be disclosed via court order or data breach.

This study has been cleared by the Carleton University Research Ethics Board-B (CUREB-B Clearance #111544).

Thank you for participating in this study!