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The Jury's Role in Mass Incarceration

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## ABSTRACT

The jury trial is a fundamental part of our criminal justice system. But, can a group of people who each have minimal legal knowledge, be capable of impartiality, or do preconceived notions and implicit biases take over? In conducting this study, my central focus was if the race and gender of a defendant would increase the likelihood that a jury would convict them. Based on previous research, mock juror studies demonstrate a racial bias, treating black defendants more harshly than white defendants. In the American criminal justice system, black defendants are typically targeted, found to be guilty more than white defendants, and sentenced disparately. Women tend to be sentenced more leniently in the criminal justice system, and in mock juror studies, they received slightly preferential treatment. My goal in conducting this study is to demonstrate the possible biases jurors may display and determine if jury trials are the best way to handle criminal cases. My data consists of jury trials for defendants charged with first-, second-, and third-degree murder, as well as criminal homicide in Pennsylvania from 2012-2016, coded by researchers for a previous study, from the Administrative Office of PA courts online docket transcripts. Results demonstrated that black defendants were more likely to be convicted of second-degree murder than white defendants when charged with second degree murder, but this result was not consistent in any other category of murder. Similar to this, females were more likely than males to be convicted of first-degree murder when charged with first degree murders, which was also not a consistent result in the other categories of murder. Ultimately this study showed that with any given jury, results are likely to vary. However, based on this study, jurors seemed to accurately convict defendants, with little to no bias present.

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## **Chapter 1**

### **Introduction**

The right to a trial by jury, granted to us through the sixth amendment, allows the accused to be reviewed impartially by their own community members. By doing so, the jury is given legal instructions to which they must apply the law, and the fate of the defendant is placed in their hands. A jury can ultimately make any decision they please, even if the law is not applied entirely correct, meaning someone who is guilty of a crime has the opportunity to walk out free. On the other hand, this also means someone who really is innocent, might spend their life in jail. The idea is that the jury provides a voice of the community and the people, to the judicial system. However, because the jury consists of a group of people who each have minimal legal knowledge, can they be capable of impartiality, or do preconceived notions and implicit biases take over?

A jury trial is only a right to those who commit a crime that would serve a sentence of greater than 6 months, and are characterized as serious offenses, opposed to anything less than 6 months which is referred to as a petty offense. These are crimes that can vastly alter a person's life if found convicted, so impartiality is necessary when applying the law. I am conducting this study to explore if and how demographics play a factor in a jury's decision to convict a defendant. To do this, I looked at whether the race, and gender of the defendant increased the likelihood that a jury would choose to convict the defendant. The data I used consisted of convicted first-, second-, and third- degree, homicides by jury trial in Pennsylvania.

When someone is charged with criminal homicide, this encompasses all subsets and types of murder. Homicide means the killing of one human being by another human being, and the charge criminal homicide allows the prosecutor to charge the defendant broadly including murder, manslaughter, felony murder, justified killing and allows the jury to determine what exactly the defendant committed. This is different from murder, as murder is an intentional killing, committed purposefully, knowingly, or recklessly. First-degree murder is when a defendant intentionally kills another. Second-degree murder occurs when a defendant commits another felony offense such as robbery, or burglary, and in the process of committing this felony, they recklessly kill another person. This does not require intent, but does require malice, meaning they had the intent to commit crime, and recklessly allowed the murder to occur in the process. Third degree murder is typically not defined but encompasses all other murders that do not fall under first- or second- degree. The difference between the homicide statutes is important to note when examining results of this study, as they will explain the logic behind some of the analyses, and the difference in the variables I used. These statutes may vary from state to state, but these definitions are applicable to the data used, occurring in Pennsylvania.

## **Review of Literature**

Most of the literature on jury trials consists of studies conducted with “mock jurors”, or people chosen to play the role of a juror in an imitation trial. These studies are useful in determining how a person might act in a similar circumstance, but ultimately do not use data from real cases, and are not indicators of real jury decisions. This research was helpful in determining a hypothesis but would not be an accurate predictor of the results of my study, as I used data from real homicide cases. Because my topic deals with the way in which defendants are treated in the criminal justice system, I also chose to look at studies regarding how defendants are sentenced, to help form my hypotheses.

### **Race**

When looking into how the race of a defendant affects the decision of a jury to convict them, I found that in studies containing mock jurors, black defendants were more likely to be convicted than white defendants (Sweeny and Haney 1992), (Mitchell, T. L., Haw, R. M., Pfeifer, J. E., & Meissner, C. A. (2005)). This is expected as in most literature regarding the criminal justice system, there is disparate treatment between black defendants and white defendants. In another study, using secondary data from real jury trials, results found a significant relationship between racial composition of jury and conviction of defendants, where the percentage of white jurors and black defendants predicted conviction rates (Williams & Burek 2008). Similar to this in mock jury trials, black participants were found to be more likely to demonstrate racial bias in both verdict and sentencing decisions ((Mitchell, T. L., Haw, R. M., Pfeifer, J. E., & Meissner, C. A. (2005)), and black participants were more lenient to black



defendants (Skolnick & Shaw 1997). There have, however also been studies conducted that contradict the literature regarding mock jurors, most notably one done by Mazzella and Feingold, in which the type of crime committed was more likely to predict conviction, and black defendants were not treated more harshly. (Mazzella, R., & Feingold, A. 1994) From literature regarding sentencing, it is also a consistent finding that black and Hispanic defendants tend to receive harsher sentences than white defendants (Demuth and Steffensmeier 2004), (Doerner and Demuth 2010), (Kramer and Ulmer 1996).

### **Gender**

There have not been as many studies done regarding gender and juries, however the study mentioned previously by Mazzella and Feingold looked at gender and mock jurors. It was found to be a small tendency for jurors to be more punitive to male defendants than to female defendants, but there was no disparate treatment on the judgement of guilt (Mazzella, R., & Feingold, A. 1994). In two other studies done using mock jurors specifically looking at sexual abuse cases, jurors were more likely to give higher guilt ratings when the defendant was male compared to when the defendant was female (Pozullo, Dempsey, Maeder, & Allen 2010), and males were perceived as more culpable than female defendants for a sexual offense and victims as more credible when the crime is committed by a man rather than by a woman (Rogers and Davies 2007). Apart from this literature on juries, there are studies done on sentencing where gender plays an influence on sentence severity, with females receiving preferential treatment. (Doerner and Demuth 2014), (Kruttschnitt 1984), (Kramer and Ulmer 1996).

## Research Questions

1. Does race impact a jury's decision to convict a defendant in homicide cases in Pennsylvania?
2. Does gender impact a jury's decision to convict a defendant in homicide cases in Pennsylvania?

## Hypotheses

Based on how humans interact on a systemic level, and the levels of biases seen on a day to day, I originally chose to conduct this study to see how jurors use race as a factor when rendering a verdict. After a review of the literature on jurors as well as sentencing, I expected my results to demonstrate a clear racial bias. I would expect that black and Hispanic defendants would be more likely to be convicted due to a long history of racial bias and mass incarceration in the prison system. To further my research, I decided to look at gender as well. Gender has been researched in the work force, and in sexual assault cases, but seems to produce mixed results when conducting research on jurors. This could be dependent on the composition of the jury, as well as interaction effects of the race, and age of the defendant, and the crime committed. I would expect that women would be more likely to be treated leniently as they are often viewed by society as less culpable. A jury might be more likely to sympathize with a female defendant, than a male defendant, and treat her more leniently.

**Hypothesis 1:** Black and Hispanic defendants are more likely to be convicted by a jury.

**Hypothesis 2:** Female defendants are less likely to be convicted by a jury than male defendants.

## Chapter 2

### Data and Methods

The data set I originally started with was all cases charged with first-, second-, and third-degree murder, or criminal homicide in PA, from the years 2012-2016. The data was coded from the Administrative Office of PA courts online docket transcripts, obtained previously for researchers conducting a study on homicide prosecution and sentencing, funded by the National Science Foundation. My independent variables for race and gender were already coded in the data set as the variables: black, Hispanic, and female. My control variables, which I refer to in my analysis as “case characteristics”, were also coded as the variables: robbery, burglary, sex offense, and drug felony. These would allow me to observe the effects of someone charged with a degree of murder along with one of these, as they are common offenses paired with homicide.

To create my dependent variables, I had to filter out the cases that were a jury trial. After I was only dealing with the cases that were jury trials, I had to create my variables by recoding variables that were previously made. To do this I would recode each variable that represented the outcome of a case to only include the ones that were via jury trial. The frequencies of each of these are represented in Table 1. From here, I condensed some of these variables to create ones that would demonstrate if somebody was charged with a degree of murder and was convicted of a lesser charge. Rather than running analyses for murder 1 charge, murder 2 conviction and murder 1 charge, murder 3 conviction, my condensed variables allowed me to get the same results with a combined analysis.

To find my results, I did a logistic regression analysis for each of my dependent variables. Logistic regression is a statistical method that examines the probability that the

relationship between two events occurred. It is used for dichotomous dependent variables, meaning that the variables have an outcome of yes or no. This worked for my analyses as my dependent variables were demographic factors, where one can only be one category, such as male or female. Using logistic regression over regular regression, was necessary, because regular regression would have produced biased results with dichotomous dependent variables. After I did my analysis for each of my dependent variables, showing the relationship of each of them with my independent variables, I was able to look at the probability. The probability produced is read between the numbers 0 and 1, where anything significant must be less than the p-value, 0.05. From here, I can look at the odds ratio, to determine from the significant results, how many times more likely the event is to occur.

## Chapter 3

### Results

**Table 1**  
*Descriptive Statistics (N=1933)*

Variable	Frequency	Percent
<i>Independent Variables</i>		
<i>Defendant Characteristics</i>		
White defendant	496	25.7
Black defendant	1216	62.9
Hispanic defendant	188	9.7
<i>Defendant Gender</i>		
Female	173	8.9
Male	1759	91.0
<i>Case Characteristics</i>		
Charged with robbery	350	22.5
Charged with burglary	155	8.0
Charged with rape or felony sex offense	20	1.0
Charged with drug felony	39	2.0
<i>Dependent Variables</i>		
<i>Jury Trial Case Characteristics</i>		
Jury Trial	725	37.5
No Conviction	34	1.8
Murder 1 charge Murder 1 conviction	304	15.7
Murder 1 charge Murder 2 conviction	27	1.4
Murder 1 charge Murder 3 conviction	39	2.0
Criminal homicide charge murder 1 conviction	64	3.3
Criminal homicide charge murder 2 conviction	6	0.3
Criminal homicide charge murder 3 conviction	15	0.8
Murder 1 charge lesser conviction	9	0.5
Criminal homicide charge lesser conviction	8	0.4
Murder 1 charge no conviction	39	2.0
Murder 2 charge murder 3 conviction	3	0.2
Murder 3 charge lesser homicide conviction	6	0.3
Murder 2 charge murder 2 conviction	56	2.9
Murder 3 charge murder 3 conviction	140	7.2

My descriptive statistics table (table 1) includes the frequencies and percents of my independent, control, and dependent variables. Out of the 1933 homicide cases in the data set, 725 of those went to a trial by jury. My dependent variables include the total number of defendants for each variable, which I then ran analyses with each of my independent variables to

get my results. Out of the 1933 cases, 496 of the defendants were white (25.7%), 1216 were black (62.9%), and 188 were Hispanic (9.7%). The majority were male, 1759 (91.0%), with 173 being female (8.9%).

Table 2 shows the results of the first 3 analyses I ran, my first being cases in which the defendant was not convicted. There were 29 cases in which a jury did not convict the defendant. There was nothing of significance in whether any of my dependent variables predicted if there would be no conviction. Although the odds ratio for Hispanic defendants was 2.916, it was ultimately not significant due to the small number of cases including a Hispanic defendant.

My next analysis was cases in which the defendant was charged with first degree murder, and convicted of a lesser charge, including second-, and third- degree murder. There were 65 cases in which this occurred. The only variable that produced significant results in this analysis was robbery with an odds ratio of 1.834. This means that when a defendant was charged with murder and robbery, they were 1.834 times more likely to be convicted of a lesser charge than if they were not also charged with robbery.

My last analysis demonstrated in table 2 was the cases in which the defendant was charged with criminal homicide, and convicted of a lesser offense, including second-, and third-degree murder. There was one variable of significance, in which defendants were also convicted of a drug felony. Here a defendant was 4.663 times more likely to be convicted of a lesser offense when charged with criminal homicide if they were also charged with a drug felony, than if they were not charged with a drug felony.

**Table 2: Jury Trial Decisions: Logistic Regressions**

Variable	No Conviction (N=1556)	M1 Charge Reduction (N=1556)	Criminal Homicide Charge Reduction (N=1556)
	Full Model Odds Ratio	Full model Odds Ratio	Full model Odds Ratio
Female defendant	.00	.540	.000
Black defendant	1.024	.891	.686
Hispanic defendant	2.916	.749	1.795
<i>Case Characteristics</i>			
Drug Felony	.000	1.222	4.663*
Robbery	.555	1.834*	1.700
Burglary	.000	.842	.000
Sex Offense	.000	.000	.000

\*=*significant*

Table 3 demonstrated 3 more analyses. My first analysis was cases in which a defendant was charged with first degree murder, and not convicted. Here Hispanic defendants produced an odds ratio of 2.919 but were ultimately also not significant given the number of cases in the analysis. In this same analysis, cases in which the defendant was also charged with robbery were borderline significant. With an odds ratio of .338, this means that when charged with robbery along with first degree murder, they were .338 times more likely to not be convicted of first-degree murder, than a defendant who was not also charged with robbery.

My last two analyses included cases in which a defendant was charged and convicted of that charge, with the first one being first degree murder. Here female defendants were .460 times more likely than male defendants to be convicted of first-degree murder when charged with first degree murder. My next analysis included defendants charged and convicted of second-degree murder. Here there were three significant results. First being black defendants, who were 3.471 times more likely than white defendants to be convicted of second-degree murder when charged with second degree murder. The next result found to have significance was robbery. Here a

defendant was 53.489 times more likely to be convicted of second-degree murder when they were charged with robbery. It is important to note the ratio does not indicate a huge variance, as second-degree murder must encompass another felony offense, most of the time being robbery or burglary. This also explains why burglary was also a significant variable, where defendants were 3.533 times more likely to be convicted of second-degree murder when charged with burglary.

My last analysis included cases where a defendant was charged with third-degree murder and convicted of third-degree murder. Here Hispanic defendants were .271 times more likely than white defendants to be convicted of third-degree murder when charged with the same. Robbery and burglary were also significant, with defendants being .425 times more likely to be convicted of third- degree murder when also charged with robbery, and .256 times more likely to be convicted of third-degree murder when charged with burglary as well.

**Table 3:** *Jury Trial Decisions: Logistic Regressions Continued*

	<b>M1 Charge No Conviction (N=1556)</b>	<b>M1 Charge M1 Conviction (N=1556)</b>	<b>M2 Charge M2Conviction (N=1556)</b>	<b>M3 Charge M3 Conviction (N=1556)</b>
<b>Variable</b>	<b>Full Model Odds Ratio</b>	<b>Full Model Odds Ratio</b>	<b>Full model Odds Ratio</b>	<b>Full model Odds Ratio</b>
Female defendant	.00	.460*	.276	1.061
Black defendant	1.291	1.204	3.471*	1.080
Hispanic defendant	2.919	1.115	.632	.271 *
<i>Case Characteristics</i>				
Drug Felony	.000	1.207	.498	.393
Robbery	.338*	.721	53.489*	.425*
Burglary	.000	1.255	3.533*	.256*
Sex Offense	.000	.498	.000	.000



## Chapter 4

### Discussion

Of the variables tested, robbery and burglary produced the most significant results. First of which occurring with robbery being more likely to get a defendant charged with first degree murder a charge reduction. This can be assumed to be due to second-degree murder consisting of murder charges when accompanying another felony charge. Rather than saying that a defendant's odds are increased to receive a charge reduction when charged with first degree murder and robbery, it is important to understand that police typically file charges and the courts job is to determine through a guilty plea or a trial, what the defendant should be convicted of. It isn't that they are more likely to get a charge reduction, it is just the standard that they do get one based on the crime committed. When charged with criminal homicide, a defendant with a drug felony was more likely to get a charge reduction. This again, is likely due to murder along with another felony, falling under murder of the second degree.

When a defendant was charged with first degree murder, they were .338 times more likely to not be convicted if they were also charged with robbery. The reason behind this result might be due to the individual case facts, or more likely that only 2 percent of cases in my analyses produced a first-degree murder charge and no conviction. This means that even less would have produced this result when also being charged with robbery.

## **Review of Hypotheses**

One significant result that was relative to my hypothesis, was that black defendants were 3.471 times more likely than white defendants to be convicted of second-degree murder when charged with second-degree murder, consistent with many mock juror studies by (Sweeny and Haney 1992), (Mitchell, T. L., Haw, R. M., Pfeifer, J. E., & Meissner, C. A. (2005)). It is important to note that 62.9 percent of defendants included in my analysis were black, compared to 25.7 being white, possibly producing those results. However, when considering that a jury is able to ultimately make the decision it is possible that there was a level of bias involved as well.

The other significant result that was relevant to my hypothesis was that females were more likely than males to be convicted of first-degree murder when charged with first degree murder. This could be due to the facts of the case, where maybe first-degree murder was the only charge that ultimately fit the crime, or that women were maybe less likely to be involved in another crime like a robbery, or burglary which would depict a second-degree murder. However, there were only 173 females compared to 1759 males in the data set, so there again may have been some degree of bias by jurors. This is inconsistent with the literature on women, where typically women are given preferential treatment in both judgments of guilt and sentencing.

Considering that a jury is given legal instructions on what they must find the defendant guilty of based on the evidence they heard, it is assumed that they try to follow this to the best of their abilities. However, these are people who do not have a background in the law and have no reason to want justice for the defendant. For these reasons, juries are very complex, and able to decide based on their gut or based on the evidence presented. The results in this study are based

on many different jury trials consisting of different people in each one. There is no way to know how they based their opinions, but results produced gave the odds in which each event is likely to occur. While the results cannot generalize for every county or every state, they can contribute to how we see juries. Going into this, I hypothesized that results would show a clear racial and gender bias, but the results produced do not completely support this. Like I mentioned above, there were only two results that were relative to my hypotheses, but in those cases the defendant was convicted of their charge. This doesn't necessarily depict leniency as charges were not lowered, or dropped, it just depicts who was more likely to be convicted of that charge.

### **Study Limitations**

A strength of this study is that compared to most of the literature on juries, this study uses real data rather than a mock jury. However, at the same time this study cannot account for the mindset of the jurors, and ultimately, we do not know details of their deliberations. An ideal study would be able to include interviews with jurors, reports of their deliberations, etc. but most researchers do not have that kind of access. Considering that for each case in this data set, there would have likely been 12 different jurors deliberating, the amount of interviews that would have needed to take place would have been infeasible. On top of that, interviews would not take in account implicit biases, background of each person, etc., so an ideal study on juries is just not rational. There is also not a terribly high number of cases that actually go to a trial by jury, with a majority of cases being resolved through a plea deal. This study contained 725 cases that went to a trial by jury over a 4-year period, meaning to get a higher number to analyze, you would need to look at a larger span of years.

## **Areas for Further Research**

I do not think a study of juries, though it produced some significant results, can really indicate a need for policy implications. Our society is founded on the principle that we have a right to move our case to a jury trial, and we have a right to be reviewed by people of our community, rather than individuals with experience in the justice system. I think what a study like this can demonstrate is the inconsistency in the justice system. Whether you take a plea bargain or are convicted by a jury of a lesser charge than what you committed, or maybe you were found guilty of something you did not do, ultimately the system is a gamble. Research on how the race and gender of the jurors themselves impacted decisions to convict defendants could also produce further results demonstrating biases in the system. Research on the voir dire, and how jurors are chosen or removed to benefit each side would be important to further understand the system and the complexity of a jury trial. Rather than suggest the removal of jury trials, having a more consistent system of choosing jurors, and including jurors that equally are representative of the defendant and victim's demographics might produce more consistency in the system. Societal perceptions of jury trials do not seem to be entirely accurate. Often jurors may not know what it is that they are doing, and they might not pay full attention in the trial. Defendants might be convinced that a jury may give them a lower sentence, but I think a study like this demonstrates that this is not the case, and they are likely to convict a defendant of the crime that evidence most aligns with.

## **Chapter 5**

### **Conclusion**

As I mentioned in the study limitations, this research was able to demonstrate that ultimately a jury trial is a gamble. With any given combination of jurors, there is likely to be some level of bias through differences in the way each person has experienced life. This study demonstrated how certain crimes committed must fall under certain murder convictions, which is the way the system is set up. Ultimately a jury can make any decision they want, but defendants are likely to not be given a conviction that does not fit the crime they committed. There are statutes laying out the elements that must be met for each type of murder, and the jurors are given instructions on how they must come to the conclusion that they do. In unique cases they might sympathize with the defendant and find a defense that excuses their behavior. Ultimately, I think jurors serve justice in the capacity the trial demonstrates evidence. Although this study showed that black defendants were more likely to be convicted of second-degree murder than white defendants when charged with second degree murder, this result was not consistent in any other category of murder. Similar to this, females were more likely than males to be convicted of first-degree murder when charged with first degree murders, which was also not a consistent result in the other categories of murder.

Anywhere from 97-99 percent of crimes are resolved in a plea deal, allowing the criminal justice system to continue to move cases through efficiently. While there is much controversy around this, the fact is often a plea deal, is just that: a deal. This study demonstrated that jurors seem to convict defendants accurately, and do not seem to demonstrate a huge level of demographic bias. Ultimately, a plea deal can take years off one's sentence, and maybe even

result in a lower conviction. Going to a trial by jury, allows the jury to make a just decision, where they have no reason to give a defendant some sort of deal. Ultimately a defendant might be better off taking a plea deal, than taking a gamble in a jury trial, but further research could be done to determine this.

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