



Introduction and validation of the Juror Decision Scale (JDS): An empirical investigation of the Story Model

Dominic Willmott^a, Daniel Boduszek^{a,b,*}, Agata Debowska^c, Russell Woodfield^d

^a University of Huddersfield, Huddersfield, UK

^b SWPS University of Social Sciences and Humanities, Katowice, Poland

^c The University of Sheffield, Sheffield, UK

^d Leeds Trinity University, Leeds, UK

ARTICLE INFO

Keywords:

Juror Decision Scale (JDS)
Story Model
Confirmatory factor analysis
Differential predictive validity
Jury decision making
Certainty principles

ABSTRACT

Purpose: To develop and validate a self-report measure of individual juror decision making within criminal trials, based on theoretical features set out in the Story Model of juror decision making.

Methods: The Juror Decision Scale (JDS) and Acceptance of Modern Myths about Sexual Aggression (AMMSA) measure were completed by 324 jury-eligible participants split across 27 jury panels, after observing a rape trial re-enactment high in ecological validity. Dimensionality and construct validity of the JDS was investigated using traditional confirmatory factor analysis (CFA) techniques alongside confirmatory bifactor analysis at two time points (individual juror verdict decisions pre- and post-deliberation). Three competing models of the JDS were specified and tested using *Mplus* with maximum likelihood robust estimation.

Results: Bifactor model with three meaningful factors (complainant believability, defendant believability, decision confidence) was the best fit for the data at both decision points. Good composite reliability and differential predictive validity were observed for the three JDS subscales.

Conclusion: Alongside demonstrating its multidimensional conceptualisation, the JDS development permits future empirical testing of the Story Model theoretical assertions surrounding juror decision making. Present findings also provide early evidence of a certainty principle assessment process governing individual verdict decision formation. Theoretical and practical applications are discussed.

1. Introduction

Numerous theoretical models have been advanced in an attempt to explain how jurors arrive at verdict decisions within criminal trials. Competing explanations differ in their attempt to account for individual decision formation or collective group decision-making, which constitute two distinct processing tasks jurors must undertake throughout the duration of a trial. Yet despite distinctions between juror-versus-jury level decision models, most theorising to date has centred upon individual juror processing. Dual process models such as Epstein's (1994) Cognitive-Experiential Self-Theory, alongside Tversky and Kahneman's (1974) heuristic processing shortcuts, have gained plentiful support, with empirical explorations reporting features of both models to account for many processing stages jurors undertake (Bornstein & Greene, 2011; Brekke & Borgida, 1988; Hawkins & Scherr, 2017; Kovera, McAuliff, & Hebert, 1999; Krauss, Lieberman, & Olson, 2004; Lieberman, 2002; Mears & Bacon, 2009). Bayesian models have also been drawn upon, proposing a process by which individual jurors judge

discrete pieces of information upon a theorised continuum of guilt. Juror weightings are posited to shift as every new piece of evidence is independently assessed, allowing an overall probability of guilt to be constructed by the end of trial (Ostrom, Werner, & Saks, 1978). Nonetheless, despite aforementioned explanations accounting for many processes thought to underlie juror decisions, no theory has been so widely adopted or comprehensive in its account of juror decision formation as Pennington and Hastie's (1992) Story Model.

Attempting to provide a complete account of the decision-making process undertaken, the Story Model posits jurors to be actively engaged in a narrative construction of information surrounding a case. A combination of evidence presented during trial, existing world knowledge, and preconceived attitudes are said to be used by jurors to construct one or more possible interpretations of the event, termed stories (Pennington & Hastie, 1992). Personal inferences and pre-existing bias are considered most likely to be incorporated within the narrative interpretations jurors construct when key elements of the stories are not presented as evidence (Pennington & Hastie, 1988). Thus, trials lacking

* Corresponding author at: University of Huddersfield, Department of Psychology, Edith Key Building, Queensgate Campus, Huddersfield HD1 3DH, UK.
E-mail address: d.boduszek@hud.ac.uk (D. Boduszek).

compelling evidence, including CCTV or eyewitness testimony, appear most at risk from juror bias. In essence, the theory suggests that when hearing competing accounts of the same incident during trial, typically including one version put forward by a defendant and an alternative account put forward by a complainant, individual jurors construct differing narrative interpretations of what they believe actually occurred. At the end of trial and prior to deliberation, jurors then select one such narrative as the dominant, accepted version of events, they believe to be true (Pennington & Hastie, 1992). Yet before this occurs, competing stories or narratives are thought to undergo three differing phases of processing termed; story construction, verdict representation, and story classification.

Whilst the *verdict representation* phase relates to juror's ability to identify and understand differing verdict options available and the *story classification* phase surrounds juror's determination of which verdict option best matches the story accepted (according to the perceived goodness of fit between the two), the *story construction* phase is considered most important for individual decision formation (Pennington & Hastie, 1992). Here, jurors are thought to draw primarily upon evidence presented during trial, as well as prior knowledge held around what typically occurs in similar events, in making sense of the case (Pennington & Hastie, 1993). Prior knowledge is conceptualised as factual information, alongside assumptions and attitudes jurors bring to trial that are relevant to the issues under scrutiny. From the combination of such information, competing stories are thought to be concurrently constructed as variants of what may have happened in the case, though only one of multiple stories constructed will ultimately be selected (Pennington & Hastie, 1992).

Competing defendant and complainant stories are subsequently assessed by individual jurors according to what Pennington and Hastie (1992) term, *certainty principles*. Thus, a story constructed will only be accepted by an individual juror when considered to have adequate: *coverage* of crucial pieces of evidence integrated within an account (i.e., good fit between evidence presented and a given version of events), *coherence* regarding how *consistent* (i.e., lacks internal contradictions), *complete* (i.e., no aspects of the story are missing from the evidence available), and *plausible* (i.e., the story is credible and could possibly have happened) a story appears to be, and finally the *uniqueness* of the story, surrounding whether alternative equally credible and comprehensive explanations could emerge from the evidence available. Pennington and Hastie (1992, 1993) posit only upon satisfying each of these certainty principle elements within the story construction stage, will any story be accepted by an individual juror, over other competing possibilities. Once one story is accepted and matched to a verdict option available, a verdict decision will be made. Taken together, the Story Model considers individual juror decision formation is best conceptualised as representing two core factors surrounding, belief in a defendant's story and belief in a complainant's story, distinct factors thought to be independently ascertained through certainty principle assessments. Consideration of theoretical discussion surrounding the role of confidence in jurors' story assessments and verdict classifications (Pennington & Hastie, 1993), as well as the importance attributed to confidence in decision pathways more broadly within jury literature (Hawkins & Scherr, 2017; Matthews, Hancock, & Briggs, 2004; Willmott & Sherretts, 2016), a third theorised factor of decision confidence is also conceptualised.

2. Empirical support for the Story Model

Early attempts to examine jurors' mental representation of evidence offered initial support of a story construction process underpinning juror decision making. In one study, Pennington and Hastie (1986) exposed participants to a videotaped re-enactment of a murder trial and asked mock jurors to provide individual verdict decisions, before probing the decision-making process undertaken. Jurors reported constructing information into a story structure format in order to make

sense of the evidence and described a process by which they drew more heavily on information that supported their accepted version of events than other evidence presented. In fact, the authors found evidence presented during mock trials that did not directly fit with the story constructed, was much less likely to be discussed by the jurors, regardless of its individual merit. Where important elements of a juror's story were not presented as evidence, the researchers found mock jurors simply made inferences based upon personal experiences and assumptions, ensuring the accepted story was deemed coherent and complete. Adopting an alternative approach, Pennington and Hastie (1988) presented mock jurors with a written summary of a case which they were required to render a verdict upon before undertaking a memory recognition test of trial evidence. Results displayed memory of trial information was best when information being recalled was consistent with a story matching the verdict decision participants had made and poorest for story inconsistent evidence. Further, in studies that varied the presentation of evidence from the traditional narrative format (where witnesses were asked questions about the event sequentially), to an item-by-item format (where witnesses were asked about discrete aspects of the case non-sequentially), results displayed presentation order not only differentially affected a juror's memory of evidence but led to different verdicts being returned in respect of the same case. The traditional narrative format was found to allow easier credibility assessments of witness testimony to be undertaken than item-by-item evidence presentation (Pennington & Hastie, 1992). The authors report that when asked to make global judgements of the evidence (rather than item-by-item evaluations), jurors seemingly adopted a system of certainty principle processing of competing witness stories before deciding upon a chosen verdict (Pennington & Hastie, 1992). The authors made this assertion based upon qualitative responses mock jurors gave when asked to describe their decision-making process and thus more objective, quantitative analysis of the data gathered was not possible. To date, all studies report jurors' mental representations of trial evidence were underpinned by causally connected sequences of events, in which selected testimony appeared to be constructed into story formats. Whilst Pennington and Hastie's (1988) study displayed the same evidence would be considered stronger when presented in a story format, the greatest influence upon final decisions was found to be the strength of one story when compared to another (Pennington & Hastie, 1988, 1993). Contemporary studies appear to support the Story Model assertions surrounding juror's narrative construction of evidence underpinning individual decision-making (Blume, Johnson, & Paavola, 2007; Huntley & Costanzo, 2003). Ellison and Munro's (2015) qualitative examination of the role of written judicial instructions upon juror comprehension of legal guidelines also explored the process by which mock jurors reached verdict decisions. Analysis of deliberations led the legal scholars to again conclude a narrative construction of trial evidence was apparent.

However, the Story Model is not beyond criticism. Pennington and Hastie (1992) offer little explanation surrounding the process by which individual juror decisions remain stable or change during group-deliberations and provide no account of the exact verdict decision-making process undertaken by individual juror's during or post-deliberation. With much juror-level research dismissed as unrepresentative of collective agreed jury-level decisions, ultimately required within criminal trials before a verdict can be given (Darbyshire, 2011; Kapardis, 2014), the need to examine how individual juror decisions made pre-deliberation may interact with the group deliberation process remains apparent. Despite being considered crucial to the acceptance of one witness story over another, no researchers have directly empirically tested whether certainty principle assessments underpin the decisions individual jurors make during trial. Authors have sought to substantiate the premise that jurors construct competing stories during trial, however to date no researchers have directly sought to test whether the certainty principles set out within the Story Model do in fact govern the acceptance of one story over another. Individual constructs thought to

Download English Version:

<https://daneshyari.com/en/article/7242114>

Download Persian Version:

<https://daneshyari.com/article/7242114>

[Daneshyari.com](https://daneshyari.com)