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To cite this article: Stacy Ann Wetmore, Jeffrey S. Neuschatz & Scott D. Gronlund (2014) On the power of secondary confession evidence, *Psychology, Crime & Law*, 20:4, 339-357, DOI: [10.1080/1068316X.2013.777963](https://doi.org/10.1080/1068316X.2013.777963)

To link to this article: <https://doi.org/10.1080/1068316X.2013.777963>



Published online: 02 Apr 2013.



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## On the power of secondary confession evidence

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*(Received 24 September 2012; final version received 30 January 2013)*

Research on primary confessions has demonstrated that it is a powerful form of evidence. The goal of the current research was to investigate whether secondary confessions – the suspect confesses to another individual who in turn then reports the confession to the police – could be as persuasive. In Experiments 1 and 2, participants read a murder trial containing an eyewitness identification, a secondary confession, and character testimony, and made midtrial assessments of the evidence. Results indicated that the secondary confession was evaluated as the most incriminating. In Experiment 3, participants read summaries of four criminal trials, each of which contained a primary confession, a secondary confession, eyewitness identification, or none of the above. The two confession conditions produced significantly higher conviction rates. Our findings suggest that secondary confessions are another powerful and potentially dangerous form of evidence.

**Keywords:** secondary confession; jury decision-making; evidence; attribution; jailhouse informants

### Introduction

In recent years, the causes of wrongful conviction have received a great deal of attention from both psycho-legal researchers and the popular press (California Commission of the Fair Administration of Justice (CCFAJ), 2007; *Chapman v. California*, 1967; Justice Project, 2007; Rohrlich, 1992). This attention has revealed, according to one source, that false confessions are the second leading cause of wrongful conviction in DNA exoneration cases (Innocence Project, 2011). There are two types of confessions: primary and secondary. A primary confession is an admission by the suspect to committing a crime. Secondary confessions are not direct admissions of guilt from a suspect to the authorities, but rather statements by a third party about another person's admission of guilt. A secondary confession, therefore, is a statement made by an individual about hearing a suspect confess. Frequently, secondary confessions come from other inmates, also known as jailhouse informants or snitches. The focus of this paper is on secondary confessions from jailhouse informants and the effect these confessions can have on jury decision-making.

### Prevalence

Secondary confessions are common in criminal cases and have been identified as a leading cause of wrongful convictions in capital cases. In fact, the Center for

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Wrongful Conviction reviewed the cases of 111 people released from death row between 1973 and 2004 and found that 45.9% of the cases contained a false secondary confession from a jailhouse informant (Warden, 2004). According to the Innocence Project (2012), testimony from jailhouse informants contributed to the wrongful conviction of at least 16% of the DNA exonerations they investigated. This statistic likely underestimates the prevalence of false secondary confessions for two reasons. First, the prevalence calculations are based only on cases in which DNA evidence existed and was preserved. Second, no state currently keeps records pertaining to the use of jailhouse informants; thus, it is impossible to know how often jailhouse informants testify. These statistics highlight the unreliable nature and potential danger of testimony provided by jailhouse informants, as well as underscores the importance of research on how jurors perceive secondary confessions from jailhouse informants.

### **Primary confession research**

One goal of this research is to demonstrate that secondary confessions, like primary confessions, are unduly persuasive. The primary confession literature has revealed three important findings about primary confessions (Kassin & Kiechel, 1996; Kassin, Meissner, & Norwick, 2005; Kassin & Neumann, 1997). First, people will falsely confess in the presence of social pressure (Kassin & Kiechel, 1996; Russano, Meissner, Narchet, & Kassin, 2005). Second, jurors perceive primary confessions as more influential than other forms of evidence (Kassin & Neumann, 1997). Finally, jurors have difficulty discounting a primary confession even when they have been instructed to disregard the evidence and recognize that the confession was given involuntarily (Kassin & Sukel, 1997).

Given that primary confessions are a powerful form of evidence, it is not surprising that false secondary confessions hold the same power. The powerful influence of false primary confessions on juror decision-making has been explained by the fundamental attribution error (FAE or confirmation bias) (Meissner & Kassin, 2004). According to the FAE (Ross, 1977), a person's behavior is explained through reference to either dispositional or situational factors (or a combination of both). Disposition-based explanations attribute a person's behavior to traits unique to the individual's personality. Situation-based explanations, in contrast, attribute behavior to the situation in which the person is involved. The FAE occurs when people ignore the situational constraints, attributing behavior entirely to the personality of the person in question. In the case of false primary confessions, the FAE occurs when jurors do not attribute behavior to the situational constraints (e.g., severe interrogation tactics) and instead attribute the confession to dispositional factors (e.g., no one would confess if they were innocent). We will see that the FAE also can play a role in a secondary confession.

### **Secondary confession research**

The results from the secondary confession literature are consistent with many of the findings that have been established in primary confession research. For example, participants are willing to give false secondary confessions in the presence of social pressure, similar to the false primary confession research. Swanner, Beike, and Cole

(2010, Experiment 2) assigned the role of reader or typist to the participants. The reader read a string of letters, whereas the typist entered the data into a computer. Both the reader and the typist were cautioned that hitting the ALT key would cause the computer program to crash. Unbeknownst to participants, the computer crashed after 60 seconds regardless of whether the ALT key was struck. Following the computer crash, some of the readers were provided with an incentive (extra experimental credit) to give evidence against the typist (i.e., a secondary confession). Swanner et al. (2010) found that 90% of the readers were willing to sign a statement indicating that the typist had admitted to hitting the forbidden key. Thus, giving a reader minimal incentive was sufficient motivation for the reader to provide a false secondary confession.

Not only are some participants willing to give false secondary confessions for minimal incentive, these false secondary confessions are persuasive to mock jurors even when the informant is motivated to fabricate the confession. Neuschatz, Lawson, Swanner, Meissner, and Neuschatz (2008) investigated whether an incentive would influence verdict rates. In this study, a jailhouse informant either did or did not receive an incentive (5-year jail sentence reduction) for testifying. Overall, the secondary confession condition resulted in significantly higher guilty verdicts (approximately 70%) than the no confession control (45%). Moreover, participants indicated that the jailhouse informant testified for dispositional reasons, such as feeling bad for the families, as opposed to contextual reasons such as getting an incentive to come forward. This is consistent with the FAE.

Mock jurors are not only unable to discount the testimony of informants who receive incentives but also unaffected by the number of cases in which the jailhouse informant has testified. Neuschatz et al. (2012) investigated whether providing information about the testimony history of jailhouse informants – the number of times the informant had given testimony in other cases – would affect verdicts or change perceptions of a jailhouse informants' credibility. Participants read a murder trial summary in which a jailhouse informant testified as an informant in 0, 5, or 20 cases in the past, each time for an incentive. Surprisingly, participants voted guilty equally often, whether the informant had testified in 20 separate trials or had never testified previously. Moreover, testimony history did not significantly affect participants' ratings of the informant's credibility. Participants rated the informant as equally truthful and trustworthy regardless of the number of times he had testified in the past and regardless of whether he was receiving an incentive.

Although the results from the secondary confession literature parallel the findings from the primary confession literature, one aspect that has yet to be tested is whether secondary confessions are more influential than other forms of evidence. Kassin and Neumann (1997) found that a primary confession produced higher guilty verdicts than other forms of evidence (e.g., character, eyewitness, or a circumstantial evidence control). Participants read four trial summaries each containing different crimes (aggravated assault, first-degree murder, aggravated rape, and an automobile theft) and evidence. Guilty verdicts for trials containing primary confession evidence were significantly higher than guilty verdicts for trials containing the other forms of evidence in all cases, except theft. In Experiment 2, the three types of evidence (confession, character, and eyewitness) were combined in the aggravated assault trial to investigate which evidence would be most persuasive. Consistent with Experiment 1,

participants rated the primary confession evidence as the most incriminating. These two experiments demonstrate the influence and power of primary confessions.

This study replicated and extended Kassin and Neumann's (1997) results, by replacing the primary confession with a secondary confession. The primary goal of Experiment 1 was to evaluate how mock jurors view secondary confession evidence relative to other forms of evidence. In addition, we utilized both a college and a community sample to increase ecological validity. To be included in the study, participants in both samples had to meet the requirements for jury duty in the state of Alabama (i.e., be a registered voter or have a valid driving license in their respective states).

## **Experiment 1**

### ***Hypotheses***

Based on the results of Kassin and Neumann (1997), we predicted that secondary confessions would be the most persuasive to mock jurors. Thus, mock jurors should rank the secondary confession as more persuasive than the other forms of evidence. Also, participants should find the evidence more persuasive when presented during direct examination than when presented during cross-examination. This is based on Kassin and Neumann's finding that mock jurors found evidence provided by the prosecution (i.e., direct examination) to be more persuasive than the evidence provided by the defense (i.e., cross-examination).

## **Method**

### ***Participants***

Undergraduate students ( $N = 54$ ) were recruited from introductory psychology courses at the University of Alabama in Huntsville. The sample consisted of 19 males and 35 females, with a mean age of 20.8 years. Also, a community sample ( $N = 79$ ) was recruited through email solicitations. The community sample represented nine states including Alabama, California, Florida, Indiana, Iowa, Oregon, Tennessee, Texas, and Virginia. The sample consisted of 26 males and 53 females, with a mean age of 37.4 years. The majority of participants received a high school diploma as their terminal level of education (34.2%), with 15.2% receiving a 2-year college degree, 22.8% a 4-year college degree, and 16.6% a graduate degree. American Psychological Association (APA) ethical guidelines were adhered to at all times. Participants under the age of 19 were required to obtain parental/guardian consent prior to participation.

### ***Design***

The design conformed to a 2 (examination: direct, cross)  $\times$  3 (evidence: secondary confession, eyewitness, character) within-participant design. The main dependent variables were guilt/innocence ratings, verdicts, and juror rankings. Each paragraph of the trial summary contained a source of evidence (i.e., secondary confession, eyewitness, or character testimony), and after each paragraph, participants rated the evidence on a 0- to 100-point scale for the extent to which it led them to see the

defendant as innocent or guilty. Participants also made verdict decisions indicating either guilty or not guilty, and provided confidence ratings for those verdict decisions on a scale from 1 to 10. Finally, participants provided rankings of the evidence by indicating, in order of importance, the pieces of evidence that they thought led them to their verdict.

### ***Materials***

The materials were presented using Survey Monkey ([www.surveymonkey.com](http://www.surveymonkey.com)). The trial summary was adapted from the murder case in Kassin and Neumann (1997). In the trial summary, the defendant, Charles M. Wilson, was charged with murder in the first degree for the deaths of his wife, and Scott Maddox, her friend. According to the prosecution, Mr. Wilson killed his wife and Scott Maddox upon returning home to find them together.

The trial summary consisted of three pages of text in 17 paragraphs. Each participant read the trial containing summaries of opening statements, direct examination and cross-examination of witnesses, closing arguments, and judge's instructions. The trial contained circumstantial evidence and three key sources of evidence: an eyewitness (i.e., someone who was at the scene of the crime), a character witness (i.e., someone who testified about the reputation of the defendant), and a jailhouse informant (i.e., an inmate who testified that the defendant confessed to him in jail). The eyewitness, Chris Lopez, was a neighbor who was parked outside of the Wilson residence. He testified that he heard yelling and saw someone run out with something in his hand. He admitted that it had been very dark that night. The character witness, David McCabe, testified that Mr. Wilson was very intense and that he and his wife were never seen in public. Upon cross-examination, he admitted that he did not know the couple well. Lastly, the jailhouse informant, Paul Chastain, testified that Mr. Wilson had confessed to him while they were in jail together. Mr. Wilson also testified in his defense, adamantly denying he confessed in both the primary and secondary confession conditions.<sup>1</sup>

Participants were prompted to rate how persuasive each key piece of evidence was immediately after reading. They were instructed to start at neutral (50, indicating the evidence did not sway their opinion at all) and decide whether that piece of evidence persuaded them of the defendant's guilt (increasing scores toward 100) or innocence (decreasing scores toward 0), moving in 10-point increments. After reading the trial, the participants made a verdict decision, indicated their confidence in the verdict (1, not at all confident; and 10, extremely confident), and indicated the likelihood the defendant actually committed the crime. Following these verdict decisions, seven multiple choice, manipulation check questions were presented (e.g., who did the defendant allegedly confess to?). This manipulation check verified that participants had read and remembered details of the trial.

### ***Procedure***

Upon arrival, participants received instructions directing them to Survey Monkey, where they read the trial summary and completed the evidence ratings. Once participants finished the trial summary, they completed their verdict decisions (i.e., verdict, confidence, likelihood the defendant committed the crime, and standard of

proof percentage) and a manipulation check. Following the manipulation check, participants signed the debriefing form and were thanked for their participation.

## Results

### *Manipulation check*

Participants were asked to respond to seven questions regarding details of the murder trial summary. The average number of correct responses was 89.9%. Clearly participants read, understood, and remembered the facts of the trial.

### *Verdicts*

Overall, 52 (39%) participants voted guilty and 81 voted not guilty: The conviction rate for the community sample was 33% and the college sample conviction rate was 48%. The conviction rate did not significantly differ between the two samples  $\chi^2(1, N = 133) = 3.13, p = 0.07, \Phi = 0.15$ . The moderate overall conviction rate can be attributed to the fact that, on average, participants estimated that there was only 56.5% chance that the defendant actually committed the crime, which was much lower than their mean standard of proof of 90.2%. The mean level of confidence in verdicts decisions was 6.38. There was no significant difference in confidence between the college and community sample,  $F(1,1) = 3.4, p = 0.07, \eta_p^2 = 0.03$ . However, participants who voted guilty were more confident ( $M = 7.07$ ) about their verdict decisions than those who voted not guilty ( $M = 5.83$ ),  $F(1,1) = 9.3, p < 0.01, \eta_p^2 = 0.07$ .

### *Guilt/innocence ratings*

The guilt/innocence ratings were analyzed by collapsing over verdict with a 2 (examination: direct, cross)  $\times$  3 (evidence: secondary confession, eyewitness, character testimony)  $\times$  2 (sample: college; community) mixed ANOVA (see Table 1 for  $M$  and SD). Sample was the only between-participant factor. Because the main effect of sample was not significant,  $F(2,264) = 1.65, MS_e = 1412, p < 0.20, \eta_p^2 = 0.01$ , we collapsed over this variable in subsequent analyses.

We obtained significant main effects for both examinations,  $F(1,132) = 145.73, MS_e = 285, p < 0.001, \eta_p^2 = 0.52$ , and evidence,  $F(2,264) = 79.18, MS_e = 184, p < 0.001, \eta_p^2 = 0.37$ . As might be expected, the main effect of examination reached significance because participants perceived the defendant to be guiltier after direct examination ( $M = 64.4$ ) of the prosecution witnesses than after cross-examination ( $M = 49.9$ ) of those same witnesses  $F(1,131) = 149.82, MS_e = 281.69, p < 0.001, \eta_p^2 = 0.54$ .

Participants rated the secondary confession evidence to be the most persuasive after reading the prosecution's case; however, participants rated the eyewitness evidence to be more persuasive after reading the cross-examination of those same witnesses. Planned pair-wise contrasts investigated the evidence main effect. The secondary confession was rated as significantly more indicative of guilt than either the eyewitness or character evidence,  $F(1,132) = 53.45, MS_e = 189.26, p < 0.001, \eta_p^2 = 0.29$ , and  $F(1,132) = 133.86, MS_e = 214.68, p < 0.001, \eta_p^2 = 0.50$ , respectively.

Table 1. Means and standard deviations of guilt/innocence ratings.

	Not guilty	Guilty
Experiment 1		
Direct examination		
Confession	65.43 (2.3)	78.85 (2.9)
Eyewitness	59.87 (2.2)	75.38 (2.7)
Character	50.75 (2.2)	65.77 (2.7)
Cross-examination		
Confession	52.71 (1.8)	69.62 (2.3)
Eyewitness	41.97 (1.8)	53.85 (2.3)
Character	39.26 (2.1)	51.35 (2.6)
Experiment 2		
Direct examination		
Confession	64.06 (3.5)	83.33 (3.5)
Eyewitness	62.81 (3.8)	73.03 (3.7)
Character	57.19 (3.9)	71.50 (3.8)
Cross-examination		
Confession	45.63 (3.5)	65.15 (3.4)
Eyewitness	35.63 (3.1)	56.36 (3.0)
Character	31.25 (3.2)	52.72 (3.1)

Note: Standard deviations in parentheses.

In addition, the eyewitness testimony was rated as more indicative of guilt than the character testimony,  $F(1,132) = 32.38$ ,  $MS_e = 146.77$ ,  $p < 0.001$ ,  $\eta_p^2 = 0.12$ .

We obtained a significant examination by evidence interaction,  $F(2,264) = 8.73$ ,  $MS_e = 140$ ,  $p < 0.001$ ,  $\eta_p^2 = 0.06$ . Further analysis of the interaction revealed that, for both the direct examination and cross-examination, participants rated the secondary confession evidence to be stronger than the eyewitness evidence, and the character evidence as the least indicative of guilt (all greater than  $F(1,133) = 5.85$ ,  $MS_e = 78.70$ ,  $p < 0.01$ ,  $\eta_p^2 = 0.04$ ). The interaction was due to the fact that the differences in guilt/innocence ratings were larger in magnitude in the direct examination than the cross-examination condition.

### **Juror ranking**

On the post-trial questionnaire, participants were asked to list, in order, the three factors that were most important to their verdict. Using a 0- to 3-point scale, these data were coded for the order in which they appeared on the list. An item, for example, that was listed first received a score of 3, a 2 if second, and a 1 if third. If a piece of evidence was not cited at all, it received a 0 (see Table 2 for  $M$  juror rankings). The ratings were analyzed separately for not guilty and guilty verdicts using Friedman's ANOVA for ranked data. The Wilcoxon signed-rank test was used to conduct individual pair-wise comparisons and  $r$  was used as a measure of effect size.

As expected, there was a significant effect for both guilty and not guilty verdicts,  $\chi^2(2, N=52) = 44.03$ ,  $p < 0.001$  and  $\chi^2(2, N=81) = 10.7$ ,  $p < 0.05$ , respectively. Planned pair-wise comparisons revealed that participants who voted guilty ranked the secondary confession as more persuasive than the eyewitness or character



Table 2. Juror ranking means for Experiments 1 and 2.

	Experiment 1		Experiment 2	
	Guilty	Not guilty	Guilty	Not guilty
Confession	2.35	1.74	2.37	1.79
Eyewitness	1.48	2.17	1.84	2.06
Character	0.73	2.09	1.79	2.15

testimony,  $z = 3.61$ ,  $p < 0.001$ ,  $r = 0.35$ , and  $z = 4.23$ ,  $p < 0.001$ ,  $r = 0.42$ , respectively, and the eyewitness evidence was more persuasive than the character testimony,  $z = 5.24$ ,  $p < 0.001$ ,  $r = 0.52$ . Participants who voted not guilty ranked the eyewitness and character evidence as more persuasive than the secondary confession  $z = 2.87$ ,  $p < 0.05$ ,  $r = 0.23$ , and  $z = 2.27$ ,  $p < 0.05$ ,  $r = 0.18$ . The eyewitness evidence was not ranked significantly more persuasive than the character testimony,  $z = 0.43$ ,  $p = 0.69$ ,  $r = 0.03$ .

## Discussion

There were several noteworthy findings in Experiment 1. First, there was a significant effect of the secondary confession on participants' online ratings. More importantly, the secondary confession was more persuasive when mock jurors voted guilty. This is consistent with Kassin and Neumann's (1997) finding for primary confessions. Second, the juror rankings were consistent with the guilt/innocence ratings; when mock jurors voted guilty, they cited the secondary confession as the most persuasive piece of evidence. Consistent with the primary confession evidence literature, when participants vote guilty, they judge the secondary confession evidence as the most persuasive piece of evidence.

## Experiment 2

One alternative explanation of Experiment 1 is that the jailhouse informant was the only witness that was not cross-examined. Thus, it is possible that without a full cross-examination of all the witnesses that participants gave the informant's testimony more credence because he was not impeached. To address this issue, Experiment 2 added a cross-examination of the jailhouse informant to equate the perceived impact of all witnesses.

We also wanted to investigate whether participants would be able to assess the jailhouse informant's motives for testifying. Previous research on secondary confessions has demonstrated that participants fall prey to the FAE when utilizing this evidence (Neuschatz et al., 2008). To assess participant's attributions, we asked them to provide the reasons the witness would agree to testify.

## Hypotheses

The hypotheses for Experiment 2 remained the same as Experiment 1. We predicted that the secondary confession would be more indicative of guilt than the other two forms of evidence. We also predicted that the juror rankings would follow the same

pattern, and mock jurors would rely on the secondary confession evidence when making their verdict decisions. Finally, we predicted that mock jurors would believe that the jailhouse informant would provide testimony for dispositional reasons and succumb to the FAE.

## **Method**

### ***Participants***

Undergraduate students ( $N = 65$ ) were recruited from introductory psychology courses at the University of Oklahoma. The sample consisted of 14 males and 51 females, with a mean age of 18.7 years. Volunteers received course credit in exchange for their participation. APA ethical guidelines were adhered to at all times. Participants under the age of 18 were required to obtain parental/guardian consent prior to participation.

### ***Design***

The design in Experiment 2 was the same as Experiment 1: a 2 (examination: direct, cross)  $\times$  3 (evidence: eyewitness, character, secondary confession) within-participant design. All dependent variables remained the same in Experiment 2 with the addition of the attribution questionnaire.

### ***Materials and procedure***

The only changes involved the addition of a cross-examination of the jailhouse informant and the attribution questionnaire. The jailhouse informant reported that when he heard the confession, he was not actually in the same jail cell, and the jail had been very loud. He also indicated that he thought it was a bit strange that Mr. Wilson would confess only after a few hours. The attribution questionnaire required participants to provide reasons (open-ended) why each of the persons who provided key testimony came forward with their information (e.g., why did the witness who came forward with the confession evidence come forward with the information provided in his testimony?). The rest of the materials and procedure were the same as in Experiment 1.

## **Results**

### ***Manipulation check***

Participants were asked to answer seven questions regarding important details of the trial summary. These questions included details concerning the type of case, the names of the individuals involved in the case, and details specific to the case. The average number of correct responses was 86.6%.

### ***Verdicts***

The conviction rate for this study was 49.2% with 34 participants voting guilty and 35 voting not guilty. This conviction rate was similar to the estimated likelihood that

the defendant actually committed the crime, 53.8%, and the conviction rate for the college sample in Experiment 1 was 48%. However, this was still much lower than their mean standard of proof of 80.5%. The mean level of confidence in verdicts was 6.58. Those who voted guilty had a mean confidence of 6.35, whereas those who voted not guilty had a mean confidence of 6.91. Confidence did not vary significantly with verdict,  $t(64) = 1.29$ ,  $p = 0.25$ ,  $d = 0.28$ .

### ***Guilt/innocence ratings***

The guilt/innocence ratings were analyzed by collapsing over verdict with a 2 (examination: prosecution, defense)  $\times$  3 (evidence: secondary confession, eyewitness, character testimony) within-participant ANOVA. Only the main effects of examination and evidence were significant ( $F(1,64) = 74.24$ ,  $MS_e = 569.29$ ,  $p < 0.001$ ,  $\eta_p^2 = 0.53$  and  $F(2,128) = 25.11$ ,  $MS_e = 174.1$ ,  $p < 0.001$ ,  $\eta_p^2 = 0.28$ , respectively). Participants rated the defendant to be guiltier after reading the direct examination ( $M = 68.7$ ) of the witnesses from the prosecution, than after reading the cross-examination ( $M = 47.9$ ) of those same witnesses by the defense  $F(1,64) = 74.24$ ,  $MS_e = 569.29$ ,  $p < 0.001$ ,  $\eta_p^2 = 0.53$ .

Planned pair-wise comparisons were conducted on the three types of evidence. The secondary confession was rated as significantly more indicative of guilt than either the eyewitness or character evidence,  $F(1,64) = 20.78$ ,  $MS_e = 181.34$ ,  $p < 0.01$ ,  $\eta_p^2 = 0.24$ , and  $F(1,64) = 40.16$ ,  $MS_e = 209.77$ ,  $p < 0.001$ ,  $\eta_p^2 = 0.38$ , respectively. In addition, the eyewitness testimony was rated as more indicative of guilt than the character testimony,  $F(1,64) = 7.03$ ,  $MS_e = 131.27$ ,  $p < 0.01$ ,  $\eta_p^2 = 0.09$ .

### ***Juror rankings***

The juror ranking data were scored and analyzed as in Experiment 1. As expected, there was a significant effect of juror ranking of the evidence on guilty verdicts,  $\chi^2(2, N = 31) = 6.54$ ,  $p < 0.03$ . Planned pair-wise comparisons revealed that participants who voted guilty ranked the secondary confession as more persuasive than the eyewitness or character testimony,  $z_s > 1.98$ ,  $p < 0.05$ ,  $r > 0.34$ . Although eyewitness evidence was more persuasive than the character testimony, this difference was not significant,  $z = 0.62$ ,  $p < 0.5$ ,  $r = 0.10$ . There was no difference in evidence rankings for participants who voted not guilty ( $\chi^2(2, N = 23) = 1.04$ ,  $p < 0.60$ , although participants who voted not guilty ranked the eyewitness ( $M = 2.08$ ) and character ( $M = 2.08$ ) evidence as more persuasive than the secondary confession ( $M = 1.82$ ).

### ***Attribution***

Participants were asked to indicate why the jailhouse informant came forward with his testimony. Two independent raters categorized the reasons into one of four groups: situational (e.g., he was getting an incentive), personal (e.g., he felt guilty), both, or neither. Raters were provided with instructions that defined each category as well as what type of information should be used to place a response into a certain category. A third independent rater was consulted when the first two raters disagreed.

This only happened in four cases. Cohen's Kappa ( $k$ ) was used to assess the reliability of the raters. These raters showed a very high level agreement with  $k = 0.91$ .

Out of the 65 participants, 37 (57%) indicated that the jailhouse informant came forward for dispositional reasons (e.g., he wanted to help), whereas participants utilized the other responses much less often (19 situational, 2 both, and 7 neither). There were only two participants who provided an answer that included both situational and dispositional responses; these were classified with the neither responses. Removing these from the analyses did not change the results; therefore, we included them in our analyses. A  $\chi^2$  analysis of these groups revealed that participants were making dispositional attributions significantly more often than situational or both,  $\chi^2(2) = 21.68, p < 0.005$ . Consistent with the FAE, follow-up  $\chi^2$  analyses indicated that participants employed the dispositional attribution significantly more often than the situational or the both/neither attribution ( $\chi^2(1) = 6.23, p < 0.01$ , and  $\chi^2(1) = 17.62, p < 0.005$ , respectively). The FAE appears to be influencing participant decisions regarding why the jailhouse informant came forward as a witness.

In addition, we analyzed the attribution data separately for both guilty and not guilty verdicts to ascertain whether guilty verdicts were associated with more dispositional attributions. Given the low-frequency counts ( $n < 5$ ) for the situational + dispositional attribution and neither category, they were excluded from this analysis. Consistent with the FAE, significantly more dispositional attributions of witness behavior were observed when participants returned a guilty verdict,  $\chi^2(1, n = 30) = 6.53, p < 0.01, v = 0.47$ . Participant attributions about the witness motives did not differ when participants voted not guilty,  $\chi^2(1, n = 30) = 0.33, ns, v = 0.11$ . In sum, when participants are in favor of a guilty verdict, it appears that they commit the FAE, ignoring the situation and attributing the witness's behavior to personal factors.

## Discussion

Experiment 2 was designed to address the potential confound in Experiment 1 – that the jailhouse informant was the only witness who was not impeached through cross-examination. But the results indicate that the cross-examination of the jailhouse informant did not alter the results of either the guilt/innocence ratings or the juror rankings. Participants evaluated the secondary confession as the most pertinent piece of evidence and used it when making a guilty verdict decision. In addition, it also appears that participants fell prey to the FAE; the majority of witness attributed the motives of the jailhouse informant to dispositional factors.

## Experiment 3

Experiments 1 and 2 demonstrated that secondary confessions were rated as more important to a participant's conviction rates than either eyewitness or character testimony. This was true for both the college and community samples on their online ratings and juror rankings. However, the design did not allow for direct comparisons between primary and secondary confessions. Kassin and Neumann (1997) demonstrated that primary confessions were uniquely potent relative to other forms of evidence. In order to assess whether secondary confessions are as persuasive as

primary confessions, the methodology for Experiment 1 from Kassin and Neumann's results was adopted. More specifically, each participant read four trials (murder, assault, rape, and theft) and each trial contained one key piece of evidence (primary confession, secondary confession, eyewitness, and no evidence control).

### ***Hypotheses***

The predictions for this experiment were based on our previous results and those of Kassin and Neumann's (1997, Experiment 1) results. We predicted that secondary confessions would be as persuasive as primary confessions. Furthermore, we predicted that participants would vote guilty more often with the presence of a confession, either primary or secondary, than in the eyewitness or no evidence control conditions.

### **Method**

#### ***Participants***

Undergraduate students ( $N = 134$ ) were recruited from introductory psychology courses at the University of Alabama Huntsville. APA ethical guidelines were adhered to at all times. Participants under the age of 19 were required to obtain parental/guardian consent prior to participation.

#### ***Design***

The design conformed to a one-way (evidence: secondary confession, primary confession, eyewitness, and control) within-participant design. Each participant read four trial summaries: one murder, one assault, one theft, and one rape case. Each of the trial summaries contained only one key piece of evidence (secondary confession, primary confession, eyewitness, or control). The primary dependent variable was participants' verdict decision. Participants also provided confidence ratings, likelihood ratings, and standard of proof estimates.

#### ***Materials***

Each trial (murder, assault, theft, and rape) contained a two-page summary that included opening statements, direct examination and cross-examination of witnesses, closing arguments, and the judge's instruction. Each trial summary contained only one key piece of evidence: a secondary confession, primary confession, eyewitness, or no additional evidence (i.e., control). The trials were adapted from Kassin and Neumann (1997).

The murder case contained the same story line as in previous experiments with the alteration of only one key piece of evidence being presented. For a detailed description of the murder trial summary, please refer to Experiment 1; for all other trial summaries, see Appendix. The four trials were presented in two different orders (murder, rape, theft, and assault; assault, theft, rape, and murder). These two orders did not significantly affect verdict decisions ( $\chi^2(1, N = 536) = 0.00, p = 0.99, \Phi = 0.00$ ); therefore, it was collapsed in subsequent analyses. Within the two orders

of the trials, the piece of evidence that was contained in those different trials was also counterbalanced. Again, this counterbalancing was not significant and was collapsed over in subsequent analyses ( $\chi^2(1, N = 536) = 3.66, p = 0.30, \Phi = 0.08$ ).

### **Procedure**

At the beginning of each session, participants were provided with two booklets, the first containing the four trial summaries and the other containing the questionnaires to be filled out following each trial. After finishing the first trial and questionnaire, they were instructed to continue through the rest of the booklet. Experimental sessions took approximately 60 minutes to complete.

### **Results**

#### **Overall**

A  $4 \times 2$  hierarchical loglinear analysis was performed to examine the influence of evidence (primary, secondary, eyewitness, and control) on participants' verdict decisions (guilty, not guilty), collapsing over type of trial. Results indicated that evidence significantly affected verdicts,  $\chi^2(3, N = 536) = 45.09, p < 0.01, V = 0.16$ . Specifically, participants voted guilty more often when there was a confession, either primary (77%) or secondary (64%), than when there was no confession present (eyewitness and no evidence controls, 33% and 35%, respectively). Individual  $\chi^2$  analysis revealed that the conviction rate was higher in the primary and secondary conditions than in either the eyewitness or no evidence control conditions (all greater than  $\chi^2(1, N = 268) = 13.62, p < 0.01, \Phi = 0.22$ ). The two confession conditions did not differ by verdict ( $\chi^2(1, N = 268) = 2.53, p < 0.11, \Phi = 0.09$ ). Table 3 displays the conviction rates, mean confidence ratings, and likelihood ratings.

There was a significant effect of the type of evidence on the likelihood the defendant committed the crime,  $F(3,532) = 9.82, MS_e = 774, p < 0.01, \eta_p^2 = 0.05$ . Participants indicated that there was a greater likelihood that the defendant was guilty when there was a primary confession, as opposed to eyewitness testimony or the control condition (all greater than  $F(1,532) = 19.37, MS_e = 774.31, p < 0.01, \eta_p^2 = 0.03$ ). There was also a significant difference between the secondary confession and eyewitness testimony condition ( $F(1,532) = 4.86, MS_e = 774.31, p < 0.02, \eta_p^2 = 0.01$ ). Participants' confidence in their verdicts, as well as their standard of proof, did not vary by type of evidence ( $F(3,532) = 0.827, MS_e = 10.31, p = 0.48, \eta_p^2 = 0.004$ , and  $F(3,532) = 0.01, MS_e = 2.90, p < 0.69, \eta_p^2 = 0.008$ , respectively). We next analyzed each trial individually starting with the murder trial.

#### **Murder trial**

As was the case with the overall data, the analysis of the murder trial revealed that juror verdict varied with type of evidence,  $\chi^2(1, N = 134) = 15.85, p < 0.01, V = 0.19$  (see Table 3 for conviction rates). Evidence comparisons indicated that the conviction rates in the primary and secondary confession conditions did not differ,  $\chi^2(1, N = 67) = 0.79, p = 0.37, \Phi = 0.10$ , but having a confession led to more guilty verdicts than either eyewitness testimony or the control condition (all greater than  $\chi^2$

Table 3. Conviction rates, confidence ratings, and likelihood ratings for Experiment 3.

	Evidence			
	Conviction rates (%)			
	Primary	Secondary	Eyewitness	Control
Murder	76	67	41	36
Theft	53	52	12	27
Assault	56	51	29	15
Rape	44	21	16	26
Overall	57.4	47.7	24.6	26.1
Confidence ratings				
Murder	7.12 (1.55)	7.27 (1.70)	7.26 (1.50)	6.64 (1.62)
Theft	7.06 (1.63)	7.23 (1.52)	7.18 (2.07)	7.61 (1.32)
Assault	7.53 (1.54)	6.70 (1.76)	7.12 (1.72)	7.64 (2.03)
Rape	6.71 (2.18)	8.18 (1.47)	9.28 (11.21)	7.00 (1.57)
Overall	7.10 (1.75)	7.34 (1.68)	7.69 (5.69)	7.22 (1.69)
Likelihood ratings				
Murder	77.35 (16.57)	69.24 (26.34)	60.29 (25.64)	60.61 (25.55)
Theft	65.44 (25.68)	60.61 (23.04)	40.61 (30.12)	48.48 (28.07)
Assault	63.13 (28.03)	60.00 (25.15)	53.97 (23.84)	46.72 (31.19)
Rape	55.59 (28.62)	36.94 (30.13)	40.63 (425.86)	47.57 (25.96)
Overall	65.41 (26.12)	57.05 (28.43)	49.06 (27.57)	50.82 (28.02)

Note: Standard deviations in parentheses.

(1,  $N = 66$ ) = 6.16,  $p < 0.01$ ,  $\Phi = 0.30$ ). There was also a greater likelihood that the defendant was guilty when there was a primary confession as opposed to eyewitness testimony or the control condition (all  $F$ s greater than  $F(1,130) = 8.26$ ,  $MS_e = 568.09$ ,  $p < 0.01$ ,  $\eta_p^2 = 0.06$ ). Participants' confidence in their verdict decisions, as well as their standard of proof, did not vary with type of evidence ( $F(1,130) = 1.71$ ,  $MS_e = 130$ ,  $p = 0.32$ ,  $\eta_p^2 = 0.03$ , and  $F(1,130) = 0.96$ ,  $MS_e = 278.67$ ,  $p < 0.50$ ,  $\eta_p^2 = 0.02$ , respectively).

### **Theft trial**

In the theft trial, verdicts were affected by evidence type,  $\chi^2(1, N = 134) = 18.80$ ,  $p < 0.001$ ,  $V = 0.21$ . Individual comparisons revealed that a confession, primary or secondary, produced higher conviction rates than either the eyewitness or no evidence control (all greater than  $\chi^2(1, N = 66) = 4.06$ ,  $p < 0.04$ ,  $\Phi = 0.24$ ). There was no significant difference between the primary and secondary confessions,  $\chi^2(1, N = 67) = 0.014$ ,  $p = 0.91$ ,  $\Phi = 0.01$ . Again, the likelihood ratings varied by evidence type,  $F(1,130) = 6.29$ ,  $MS_e = 746.7$ ,  $p < 0.001$ ,  $\eta_p^2 = 0.13$ . Planned comparisons indicated that there was a greater likelihood that the defendant was guilty when presented with primary confession than either the eyewitness or no evidence control (all greater than  $F(1,130) = 6.44$ ,  $MS_e = 746.68$ ,  $p < 0.01$ ,  $\eta_p^2 = 0.04$ ). Participants also indicated a greater likelihood of guilt when presented with the secondary confession compared to the eyewitness,  $F(1,130) = 10.07$ ,  $MS_e = 746.68$ ,  $p < 0.001$ ,

$\eta_p^2 = 0.07$ , and the eyewitness was marginally different from the no evidence control,  $F(1,130) = 3.24$ ,  $MS_e = 746.68$ ,  $p < 0.07$ ,  $\eta_p^2 = 0.02$ . Also, there were no differences in participants' confidence ratings or standard of proof ratings,  $F(1,130) = 1.95$ ,  $MS_e = 3.13$ ,  $p = 0.13$ ,  $\eta_p^2 = 0.04$ , and  $F(1,130) = 0.529$ ,  $MS_e = 248.6$ ,  $p = 0.66$ ,  $\eta_p^2 = 0.01$ , respectively.

### ***Assault trial***

Conviction rates were influenced by type of evidence for the assault trial,  $\chi^2(1, N = 134) = 16.43$ ,  $p < 0.01$ ,  $V = 0.20$ . Individual comparisons indicated that participants were more likely to vote for conviction when a primary confession was presented than either the eyewitness or no evidence control (all greater than  $\chi^2(1, N = 66) = 0.49$ ,  $p < 0.03$ ,  $\Phi = 0.27$ ). Participants also were more likely to vote guilty when presented with the secondary confession compared to the no evidence control,  $\chi^2(1, N = 68) = 10.46$ ,  $p < 0.01$ ,  $\Phi = 0.39$ , and the secondary confession was marginally different from the eyewitness evidence,  $\chi^2(1, N = 69) = 3.50$ ,  $p < 0.06$ ,  $\Phi = 0.22$ . There was no difference between the primary and secondary confession,  $\chi^2(1, N = 67) = 0.156$ ,  $p = 0.70$ ,  $\Phi = 0.05$ . Also, there were no differences in confidence, likelihood, or standard of proof evaluations,  $F(3,130) = 6.63$ ,  $MS_e = 2.75$ ,  $p = 0.60$ ,  $\eta_p^2 = 0.02$ ,  $F(3,130) = 2.35$ ,  $MS_e = 719.82$ ,  $p = 0.07$ ,  $\eta_p^2 = 0.05$ , and  $F(3,130) = 0.196$ ,  $MS_e = 324.56$ ,  $p = 0.70$ ,  $\eta_p^2 = 0.001$ , respectively.

### ***Rape trial***

In the rape trial, verdicts were significantly affected by the evidence manipulation,  $\chi^2(1, N = 134) = 7.55$ ,  $p < 0.05$ ,  $V = 0.14$ . In contrast to the patterns obtained in the other cases, the primary confession only differed from the eyewitness evidence,  $\chi^2(1, N = 66) = 6.34$ ,  $p < 0.01$ ,  $\Phi = 0.30$ . There were no other significant effects. There was a significant main effect of evidence on likelihood ratings,  $F(3,130) = 3.51$ ,  $MS_e = 773$ ,  $p < 0.01$ ,  $\eta_p^2 = 0.08$ . Planned comparisons revealed that the likelihood ratings were significantly greater for primary confessions compared to secondary confessions and eyewitness testimony ( $F(3,130) = 9.45$ ,  $MS_e = 773.01$ ,  $p < 0.01$ ,  $\eta_p^2 = 0.07$  and  $F(3,130) = 4.77$ ,  $MS_e = 773.01$ ,  $p < 0.03$ ,  $\eta_p^2 = 0.03$ , respectively). There were no other significant effects of evidence on likelihood ratings. Again, confidence and the standard of proof ratings did not vary by evidence manipulation.

In summary, confession evidence, whether primary or secondary, proved to be more incriminating than the eyewitness or no evidence control in three of the four trial summaries. Furthermore, the conviction rate for primary and secondary confessions did not differ in any of the four trial summaries. The results from the individual trials and the overall data are consistent with the hypothesis that confessions, primary or secondary, are uniquely powerful and persuasive forms of evidence. Surprisingly, the conviction rate for eyewitness testimony was similar to that of the no evidence control condition. One possible explanation may be that since the eyewitness admits to the faults to their identifications, such as admitting they were at a far distance (i.e., murder trial summary) or only identified the person at another venue (i.e., rape trial summary).



### **General discussion**

There were several important results that arose from this series of experiments. Consistent with the predictions, participants indicated that confession evidence, both primary and secondary, was the most persuasive when presented during the trial summaries. In the first two experiments, the secondary confession was rated more persuasive than either the eyewitness or character testimony. In addition, juror rankings mirrored the guilt/innocence ratings, and the secondary confession was designated as most indicative of guilt, especially for those who voted guilty. Moreover, participants appear to fall prey to the FAE, providing dispositional reasons for the jailhouse informant testimony, especially when voting guilty. Experiment 3 allowed a direct comparison of primary to secondary confession evidence, and a secondary confession generally was perceived to be as indicative of guilt as a primary confession. This is alarming because a secondary confession is not provided to the police by the suspect, but by another individual who claims to have heard the confession. Overall, results revealed that secondary confession evidence has a great impact on juror's decision-making and is seen as more persuasive than other types of evidence.

One explanation for why jurors may perceive secondary confessions as persuasive involves the FAE. Even when jurors are presented with a number of different scenarios (i.e., incentive, expert testimony, or testimony history) and admonished to ignore such evidence, they still commit the FAE (Kassin & Sukel, 1997; Neuschatz et al., 2008). In these settings, mock jurors seem unwilling to consider the situational influences present for the jailhouse informant (i.e., incentive). Instead, they focus on the dispositional attributes of the informant testifying (i.e., to redeem him/herself for past indiscretions). The possibility that jurors are making the FAE is supported by their reliance on secondary confession evidence as a key component of conviction.

Legal scholars and psychologists have long opposed the power of primary confession evidence (Hasel & Kassin, 2009; Kassin & Kiechel, 1996; Kassin & Neumann, 1997; Kassin & Sukel, 1997; Kassin et al., 2005). The Supreme Court stated that erroneous admissions of forced confessions should not be treated as harmless (*Chapman v. California*, 1967). The results from the current studies corroborate that secondary confessions, if false, could be extremely harmful to a defendant. Therefore, prosecutors, judges, and juries should not treat secondary confessions as harmless.

### **Limitations**

The results from the current studies may be limited in a number of ways. For example, participants provided responses individually, rather than deliberating in groups. However, research indicates that jury verdicts do not differ from individual votes (Devine & Philips, 2001) and that verdicts are predictable by individuals' predeliberation verdicts (Kalven & Zeisel, 1966; Kerr, 1981). Nevertheless, a replication involving participants deliberating in groups might be merited. In addition, participants read a case summary of the trials rather than reading a transcript. Although this procedure may restrict ecological validity, it is important to note that Kassin and Sukel (1997) found that confessions were highly persuasive when embedded in either a full trial transcript or in trial summaries. It is likely that

the same results would be obtained with secondary confession evidence. Finally, when we compared the primary confession to the secondary confession in Experiment 3, we restricted the trials to only four pieces of evidence. It is possible that an individual's decision may be affected by more evidence to consider per trial summary. Future research should investigate the possibility of differential evaluation of secondary confessions based on more or other types of evidence presented during the trial.

### ***Practical implications***

Considering the frequent use of jailhouse informants and the many wrongful convictions obtained from false secondary confessions, a number of organizations have suggested reforms (CCFAJ, 2007; Justice Project, 2007; Sherrin, 1997a, 1997b). One suggestion for reform is to eliminate the use of jailhouse informants; however, in a number of cases, informants prove useful, and their use does not always lead to a wrongful conviction (Mazur, 2002). Thus, more practical suggestions have been made to address the issue of jailhouse informant testimony. The Justice Project (2007) suggested the following safeguards: written pretrial disclosures, pretrial reliability hearings, and corroborating evidence. Written pretrial disclosure requires that any information related to the jailhouse informant testimony, including any cooperation agreements (i.e., early release or monetary compensation), and any other information that might bear upon the credibility of the informant, be presented to the defense and judge before the trial begins. Pretrial reliability hearings would ensure that the informant testimony is reliable enough to be presented to the jury at trial, and corroboration of the testimony would further ensure that the testimony is reliable and linked to the facts of the case not just by the informant's testimony.

The CCFAJ (2007) has suggested that similar recommendations be adopted when jailhouse informants are utilized, and 17 other states have implemented the corroboration requirement for jailhouse informant testimony. The other recommendations that the CCFAJ provided include: (a) the testimony of an in-custody informant be reviewed and approved by supervisory personnel other than the deputy assigned to the case; (b) the maintenance of a central file preserving all records relating to contacts with in-custody informants, whether they are used as witnesses or not; and (c) the recording of all interviews of in-custody informants conducted by District Attorney personnel. Legal experts in Canada have made similar suggestions for the reform of jailhouse informant testimony (Sherrin, 1997a, 1997b). The fact that several organizations in two different countries have suggested wholesale reforms of the informant system underscore the errors that can arise from a reliance on secondary confession evidence, and the need for changes to current procedures to limit these errors.

### **Note**

1. Evidence order was counterbalanced in a pilot study. The results did not differ as a function of the order of evidence presentation. Consequently, we did not manipulate the order of evidence in Experiments 1 or 2.

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**Appendix**

In the assault case, the defendant, Stewart Adams was charged with aggravated assault for the stabbing of Michael Zemp. According to the prosecution, Zemp and Adams had agreed to meet at Jackson Tavern to settle a debt. During what became a heated discussion, Zemp accidentally pushed a table into Adams, and Adams retaliated. The prosecution argued that Adams then stabbed Zemp in the stomach with a piece of broken glass. According to the defense, Zemp shoved the table at the defendant and knocked him to the ground. Zemp then challenged Adams to a fight. Others in the crowd jumped in to break up the fight. Zemp was stabbed in all the commotion, but not by Adams. In the secondary confession condition, Brad Litt testified that Adams confessed to him after spending several hours together in jail. Mr. Adams testified that he never confessed to Mr. Litt, and the secondary confession never occurred. In the primary confession condition, Adams confessed to the police officer after being held in jail for an hour; however, he withdrew his confession the next day stating he could never do such a thing and had never even been arrested before. In the eyewitness condition, Michael Fox testified that he saw the whole fight and chose Adams out of the lineup. Upon cross-examination, Fox admits that he had been drinking as well as had a confrontation of his own with Mr. Adams.

In the automobile theft case, the defendant, Ronald Oliver, was charged with stealing a used car and driving it across state lines. According to the prosecution, Mr. Oliver was looking at used cars and test drove a Ford Mustang. When Oliver did not return, the dealer called the police. Mr. Oliver was apprehended on a highway in a neighboring state. According to the defense, Mr. Oliver had no idea that the car was stolen because he was just driving it home for an acquaintance that was similar in height and overall general appearance. In the secondary confession condition, Mr. Oliver confessed to Garry Leslie after they had spent several hours together in jail. Mr. Oliver admitted that he wanted the car but could not afford it. In the primary confession condition, Mr. Oliver confessed to the state trooper after being in custody for an hour. In both confession conditions, upon cross-examination, Mr. Oliver denied having confessed to either Mr. Leslie or the state trooper. In the eyewitness condition, a customer who was at the dealership that day positively identified Oliver in a lineup as the man who drove off the lot. When cross-examined, the witness admitted that he never actually interacted with the man he saw and was not paying very close attention.

In the rape case, the defendant, Herman Burks, was tried for aggravated rape. According to the prosecution, Burks entered the victim's apartment building, unscrewed a light bulb in the foyer, and approached her from behind and raped her. The victim identified the defendant; however, Burks had been at a party at the apartment building earlier in the day. The defense pointed out that Burks was too short to have unscrewed the light bulb, the victim did not smell alcohol on the rapist's breath, and hair samples found at the scene were of no value because the defendant had already been in the building. In the secondary confession condition, the prosecution presented that Mr. Burks confessed to David McCallister after being held in jail together. On cross-examination, Mr. Burks denied confessing. In the primary confession condition, a police detective testified that Mr. Burks confessed to him after an hour of intense questioning; however, according to the defense, Mr. Burks denied ever confessing. In the eyewitness condition, a woman testified that on the day in question she walked down the hallway stairs and saw a man standing over the victim, put something into his pocket, and ran out the door. She later positively identified the defendant as the man she saw. On cross-examination, the eyewitness conceded that the hall lighting was dim and that everything happened very quickly.