

# OBJECTIVE AND SUBJECTIVE COMPREHENSION OF JURY INSTRUCTIONS IN CRIMINAL TRIALS

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*It would seem important that jury instructions are clear and comprehensible to jurors if they are to effectively carry out their responsibility in criminal trials. Research suggests, however, that jurors may not fully understand instructions despite reporting high levels of comprehension. The current study (N = 33) surveyed jurors who had recently served on a jury to assess their level of comprehension and the factors that contributed to their decisions. It was found that a substantial proportion of jurors were mistaken about directions relating to beyond reasonable doubt and burden of proof. It also was found that higher levels of self-reported comprehension were associated with self-reported reliance on additional factors to arrive at a decision, and a more positive evaluation of the prosecutions' case. Overall, although jurors report that they understand directions, they do not appear to use those directions in arriving at a decision. Subjective comprehension appears to be an important factor in understanding the effect of directions on jurors.*

**Keywords:** *Jury instructions, instructions, comprehension, application, subjective understanding*

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## INTRODUCTION

Jurors' abilities to comprehend judges' instructions have been questioned since the earliest use of juries in justice systems (Ellsworth & Reifman, 2000). Likewise, comprehension of instructions has been an early focus for researchers. Initially, the focus was on rewriting instructions so that they were easier to understand (Charrow & Charrow, 1979), and a number of other reforms have been suggested since then (e.g., use of audio-visual presentation, Brewer, Harvey, & Semmler, 2004). Whereas early calls for reform did not see much uptake by judges and reform commissions (Tanford, 1991), there has been renewed interest in improving jurors' comprehension of judicial instructions. For example, several law reform commissions in Australia have spent the last few years examining the simplification and legal correctness of instructions (NSWLRC, 2012; QLRC, 2009a, 2009b; VCLR, 2009), and in the United States, Alaska, Arizona, California, Delaware and other states have taken steps to remove legalistic jargon from jury instructions (e.g., Dann & Logan, 1996; Marder 2006; Tiersma, 2001). The assumption underlying the focus on simplification is that the simplification of judicial instructions leads to better application of the law through improved comprehension of that law. Many of the suggested reforms to improve comprehension may have an unintended consequence—they may increase subjective comprehension at the same time as actual comprehension. This study examines the effect of subjective comprehension on jurors' decisions.

### A. The Function of Instructions

Judicial instructions have a number of purposes. They can be a guide for understanding legal concepts, as well as a guide for how to arrive at the legally correct decision. Judges also give instructions as a remedy for factors that might otherwise bias jurors' decisions (e.g., pretrial media exposure, prior criminal history). These purposes are not necessarily independent. Instructions also have an additional purpose that stems from the preceding purposes. This purpose is to avoid appeals to higher courts; misinstruction of the jury is often the only basis for appealing a jury's verdict. Courts are particularly keen to minimize the likelihood of a successful appeal because retrials are expensive, create additional burden on the court system, and can be traumatic for victims and witnesses. To this end, instructions may be

written not only for a jury, but also for the judges sitting on a court of appeal. Perhaps as a result of this, pattern instructions—those instructions prepared in advance for use in multiple trials—have also been characterized as a mindless ritual (Elwork, Alfini, & Sales, 1982). Instructions may have become lengthy and make use of complicated language, and include matters that are not necessary for the jury to consider (VLRC, 2009). Thus, the goal of protecting a verdict from a costly appeal might undermine the other purposes of instructions—namely, assisting jurors in their decisions and remedying any potential bias (Eames, 2007; Neave, 2012). The literature has noted this tension in the purposes of instructions for some time. Ideally, instructions should be both legally accurate and comprehensible (Severance, Greene, & Loftus, 1984). With this ideal in mind, there has been a renewed interest in improving jurors' comprehension of judicial instructions (Marder, 2006; Bornstein & Hamm, 2012).

## B. Comprehension of Instructions

Early research in this area demonstrated that the use of psycholinguistic principles to rewrite instructions improved juror comprehension (e.g., Elwork, Sales, & Alfini, 1977), but there has been limited research since then (e.g., Finkel, 2002), potentially because it was perceived by practitioners that jurors did not have a problem with comprehending instructions (Ellsworth & Reifman, 2000; although see Marder, 2006, and American Bar Association, 2005, for notable exceptions). Research has consistently shown that this is not the case (e.g., Ellsworth, 1989). Sometimes instructed jurors perform the same as uninstructed jurors (Reifman, Gusick, & Ellsworth, 1992), suggesting that either comprehension is poor or jurors do not rely on the directions. Comprehension as assessed by multiple-choice tests is often at chance levels (e.g., Severance et al., 1984; Reifman et al., 1992). We know that jurors do not always remember, understand, or apply judicial instructions correctly (Lieberman & Sales, 2000), deliberation does not improve jurors' comprehension of instructions (Rose & Ogloff, 2001), and that various remedies do work (Charrow & Charrow, 1979; Elwork et al., 1982; Semmler & Brewer, 2002; Young, 2003).

A number of ways to assess jurors' comprehension of instructions have been developed. Much of the early work showing an improvement in comprehension as a function of remedies such as simplification have made

use of the paraphrase test, which was developed by Charrow and Charrow (1979). This test asks jurors to write in their own words what they think the instructions mean. It has been criticized, however, as assessing memory and not actual comprehension (e.g., Kagehiro, 1990; Severance & Loftus, 1982). Other tests of comprehension have been developed, such as multiple-choice questions (e.g., Brewer et al., 2004) and via application (e.g., Goodman-Delahunty, Cossins, & O'Brien, 2011; Rose & Ogloff, 2001; Ruva & LeVasseur, 2011). In the latter test, researchers look for the impact of instructions on some meaningful outcome. For example, instructions to ignore pretrial publicity should influence verdicts differently when those instructions are not understood by jurors compared to when they are understood (and compared to when there is no pretrial publicity). It is argued that such a test might be more appropriate because jurors cannot apply an instruction unless they understand it (Rose & Ogloff, 2001). Although Rose and Ogloff concluded that the application test performed better than the paraphrase test, application and comprehension are not necessarily the same thing (see McGuire, 1968, 1972). Other factors besides actual comprehension may influence application. In addition, the subjective feeling of comprehension may exert an influence on verdicts beyond actual comprehension of judicial instructions.

For understandable reasons, most research has focused on assessing objective comprehension of judicial instructions: namely, whether participants or jurors can demonstrate that they understand what they were asked to do. Researchers who have made use of subjective or self-report measures of comprehension, have generally found that most respondents report that they understand the instructions given to them (e.g., Cutler & Hughes, 2001; Jackson, 1992; Saxton, 1998; Trimboli, 2008; Young, Cameron, & Tinsley, 2001), a finding at odds with the literature assessing objective comprehension (e.g., Reifman et al., 1992). Although some researchers have used such a measure for pragmatic reasons and acknowledged the limits of self-report for assessing comprehension (e.g., Trimboli, 2008), self-reported comprehension and its effects have not been a focus of study beyond highlighting the disconnection between objective and subjective measures (e.g., Saxton, 1998; Young et al., 2001). It is notable that Bornstein and Hamm (2012) did assess subjective comprehension of a number of instructions, and found that simplified and/or modified instructions made jurors more confident in their verdict in some circumstances. The current study examines the possible effect of subjective comprehension on jurors'

case-related perceptions, and how increases in subjective comprehension may increase tendencies to convict.

### **C. Objective versus Subjective Comprehension**

Research assessing real jurors' comprehension of judicial instructions appears to have arrived at a very different conclusion to the findings of laboratory studies of instruction comprehension. In New South Wales (Australia), 94.9 percent of actual jurors stated that they understood the instructions "mostly" or "completely" (Trimboli, 2008). A New Zealand study found similar results, with 85 percent of actual jurors believing that the instructions were clear (NZLC, 1999). In the United Kingdom, 94 percent of actual jurors stated that the instructions were not difficult to follow (NSWLRC, 2008). Importantly, these findings were based on subjective, or self-reported, comprehension of judicial instructions. Laboratory research assessing jurors' actual comprehension suggests that jurors may understand only half the instructions provided (Reifman et al., 1992). This disconnect between objective and subjective measures of comprehension may suggest that subjective measures are relatively inconsequential in understanding comprehension and the relationship between instruction complexity and case outcomes.

### **D. The Impact of Subjective Comprehension**

One potential way that subjective understanding of instructions may have an important impact on case outcomes is via confidence. A heightened perception that one understands the judicial instruction, and therefore the factors to take into account to arrive at a verdict, may result in less effortful information processing and more guilty verdicts. To understand why, first consider the heuristic systematic model of persuasion (Chaiken, 1980). According to this model, there are two modes of information processing, the systematic and the heuristic. The systematic mode is more cognitively effortful, and the outcome is influenced mainly by the content of the information being considered. The heuristic mode is less effortful, and the outcome is influenced more by decision-related heuristics such as the number of arguments presented by the prosecution compared to the defense. Although these two modes may co-occur and influence each other, there is a preference to conserve cognitive resources, so if a decision is possible via the heuristic mode, then limited systematic processing will

be preferred. The sufficiency principle determines whether systematic processing is necessary. The sufficiency principle says that people will exert the amount of effort needed to obtain a sufficient degree of confidence that they have satisfactorily accomplished their processing goals (Eagly & Chaiken, 1993). Whether a perceiver has achieved this confidence depends on their sufficiency threshold—the degree of confidence that a person aims to reach when making a particular judgment (Eagly & Chaiken, 1993).

Thus, the subjective experience of understanding judicial instructions may be important in its own right. Higher levels of subjective comprehension may result in less systematic processing because jurors' sufficiency threshold is more readily reached through the experience of decision-related confidence. This may result in guilty verdicts by making it easier for jurors to reach the appropriate standard of proof—typically beyond reasonable doubt—through increased decision confidence and less rigorous information processing. Increasing decision confidence should produce more verdicts in line with the prosecution case because of the standard of proof required for a guilty verdict. Whereas guilty verdicts are made by jurors who are confident beyond reasonable doubt that the defendant is guilty, not guilty verdicts are the result of jurors who thought the defendant was not guilty and jurors who thought the defendant might have been guilty (but had some doubts). By raising confidence and *reducing* jurors' doubts, some of these latter jurors may now support a guilty verdict, and so the overall tendency is for increases in confidence to result in more guilty verdicts.

### E. The Current Study

The current study involves a survey distributed to jurors sitting on trials in the Supreme and District courts in Brisbane, Australia, over a two-month period in 2009. Jurors were asked to reflect on their experiences during the trial, in particular on what they thought the instructions relating to “beyond reasonable doubt” and “burden of proof” meant. These instructions were chosen because they are presented in the same manner in all trials, except for infrequent occasions for burden of proof, where the burden would reverse for some aspects of the evidence. We measured both subjective comprehension and objective comprehension, along with how jurors evaluated both the prosecution and defense cases. As we were assessing jurors' perceptions related to real cases, it was not possible to directly

assess the individual verdicts jurors would have returned, nor their confidence in their verdict. In line with previous research, we expected that objective and subjective measures of comprehension would be relatively unrelated (H1). We also predicted that increasing levels of subjective, but not objective, understanding would be associated with more positive evaluations of the prosecution, but not the defense, case (H2) and a greater reliance on factors beyond the evidence presented, such as common sense (H3).

## METHOD

### A. Participants and Design

Fourteen criminal trials held in the Queensland Supreme Court ( $N = 3$ ) and District Court ( $N = 11$ ) were included in the study. Surveys were provided to 151 jurors (from the pool of 168 jurors). Thirty-three jurors completed and returned the survey—a response rate of 21.85 percent that, although modest, was within the range observed for studies involving real jurors using a similar methodology (see Frank & Morera, 2012). Because of the relatively small sample size and thus limited statistical power, our analyses focused on correlations between the key variables rather than more complex analyses—an a priori power analysis suggests that for an estimated effect size of  $r = .50$ , an  $N$  of 46 is required (Faul, Erdfelder, Buchner, & Lang, 2009). The final sample of jurors included 17 females and 16 males, with an average age of 43.30 years. There were 23 jurors who described themselves as professionals, three employed in the home, four retired, and two full-time students. In terms of highest educational level, 14 participants indicated that they had a bachelors degree or higher, 13 had completed a diploma, certificate, or apprenticeship, five completed secondary school, and one had partly completed secondary school. All participating jurors had English as a first language.

### B. Materials and Procedure

A 12-page survey was developed in consultation with the Queensland Law Reform Commission (QLRC). The questionnaire assessed jurors' perceptions of various aspects of the trial (QLRC, 2009b). This article focuses on the actual comprehension aspect of the survey. The findings of the broader

survey are reported as part of the QLRC's Review of Jury Directions (QLRC, 2009b). Jurors received the survey at the end of selected criminal trials in the Supreme and District Courts in Brisbane, Queensland, between August 6 and October 8, 2009. Staff from the Sheriff's Office distributed the surveys. Jurors could either complete the survey at the Courts Complex or return the survey via the post, using a reply-paid envelope provided in the survey pack.

### 1. Subjective comprehension

Jurors' subjective comprehension of the instructions relating to burden of proof and beyond reasonable doubt was assessed by asking jurors to indicate how much they understood burden of proof and beyond reasonable doubt on a 7-point scale ranging from 1, not at all, to 7, very much. For example, "To what extent did you understand what the Judge said about 'beyond reasonable doubt'?"

### 2. Objective comprehension

Jurors' objective comprehension of burden of proof and beyond reasonable doubt was assessed by a paraphrase test. Jurors were asked to explain these instructions in their own words. For example, "Briefly explain what 'beyond reasonable doubt' means."

### 3. Evaluation of evidence

Jurors' evaluation of each side of the case was assessed using two measures. First, jurors were asked to rate the convincingness of the prosecution and defense cases on a 7-point scale ranging from 1, not at all, to 7, very much. For example, "Overall, how convincing was the case presented by the prosecution?" Second, jurors were asked to rate both the prosecution and defense cases on four 7-point semantic differentials: weak/strong; unclear/clear; unpersuasive/persuasive; poorly presented/well presented. A rating of 7 was more positive, a rating of 1 was more negative. The item assessing how convincing the case was and three of the four semantic differentials were combined to form two reliable composites for the prosecution and defense cases ( $r = .91$ ). The item relating to clarity was not included in the composite, as it did not reliably fit with the other items. Finally, to assess what jurors thought they had relied on in arriving at their decisions, they

were asked to rate the extent to which seven factors (including the prosecution's evidence, defense's evidence, judge's instructions, jurors' morals, jurors' common sense, what the judge wanted, and what the community wanted) influenced their verdict on a 7-point scale ranging from 1, not at all, to 7, very much. For example, "In trying to reach a decision, how influential were each of the following: The instructions given to you by the judge?"

## RESULTS

### Subjective Comprehension

Overall, jurors reported a high level of understanding of burden of proof ( $M = 5.97$ ,  $SD = 1.60$ ). Jurors also reported a high level of understanding of beyond reasonable doubt ( $M = 6.64$ ,  $SD = 0.49$ ). A majority of jurors said that they understood burden of proof (57%) and beyond reasonable doubt (66%) very much.

### Objective Comprehension

A coding scheme was developed by project staff in consultation with staff from the Queensland Law Reform Commission. This consisted of agreed definitions for accurate and inaccurate responses for the concepts of burden of proof and beyond reasonable doubt. Jurors' responses were coded by a rater blind to jurors' other responses. Staff from the Law Reform Commission then reviewed the coding for accuracy. Adjustments were made to the coding by consensus.

Jurors' explanations of burden of proof were classified as either accurate or inaccurate (including no description). An accurate response was consistent with the definition of "burden of proof": the prosecution has to prove to the jury that the defendant is guilty of the charges (in most cases, the burden reverses in a small number of cases when specific defenses are claimed). Responses were coded as inaccurate if there was a clear misunderstanding of the instruction, such as describing a shift in the burden to the defendant unless a defense was mentioned (1 response), the burden was on the jury to assess the evidence (5 responses), or there was no attempt at an answer (7 responses). Overall, 20 out of 33 jurors accurately described burden of proof (see Table 1).

**Table 1. Number of jurors describing each instruction accurately or inaccurately.**

		<i>Burden of proof</i>		<i>Total</i>
		<i>Inaccurate</i>	<i>Accurate</i>	
Beyond reasonable doubt	Inaccurate	11	9	20
	Accurate	2	11	13
	Total	13	20	33

Likewise, jurors' explanations of beyond reasonable doubt were classified as either accurate or inaccurate. A correct response would indicate that as a juror you were to have no doubt that was reasonable when reaching a guilty verdict. There is no generally accepted alternative explanation in the Queensland jurisdiction, although other jurisdictions (e.g., New Zealand) have developed alternative explanations, including the concept of "are you sure?" (Young, 2003). Given the difficulties associated with classifying alternative descriptions of the concept of beyond reasonable doubt as either accurate or inaccurate, jurors' explanations were categorized according to the following three standards of proof: (1) Balance of probabilities: it was more likely than not that the defendant was guilty; (2) Minor/unreasonable doubt: there was some doubt that was not reasonable, or no reasonable alternative explanation; (3) No doubt: there was absolutely no doubt at all. A number of other responses were classified as describing a "reasonable person" test (involving what a reasonable person would conclude), and several responses could not be classified or were missing. Responses that were coded as minor or unreasonable doubt were considered to be accurate explanations of beyond reasonable doubt, and all other responses were categorized as inaccurate.

Overall, 13 out of 33 jurors accurately described beyond reasonable doubt (see Table 1). When responses did not center on minor or unreasonable doubt, they tended to require a level of proof that was higher than that technically necessary, or a comparable standard of proof based around what a reasonable person would expect. Only 33.33 percent of jurors accurately described both burden of proof and beyond reasonable doubt. A further 33.33 percent of jurors described only one of these terms accurately ( $n = 11$ ), and 33.33 percent described both the burden of proof and beyond reasonable doubt inaccurately ( $n = 11$ ).

### C. Relationship between Subjective Comprehension and Objective Comprehension

Pearson correlation coefficients were used to investigate the relationship between jurors' subjective and objective comprehension of both burden of proof and beyond reasonable doubt. The relationship between jurors' subjective and objective comprehension of the instruction on burden of proof was significant, but only moderate ( $r = .41, p = .02$ ). The more jurors said they understood the instruction, the more accurate they were when describing the meaning of the instruction. Jurors' subjective understanding accounted for approximately 17 percent of the variation in their objective understanding of the instruction. In contrast and consistent with H1, there was no correlation between jurors' subjective and objective comprehension of the instruction on beyond reasonable doubt ( $r = -.16, p = .36$ ).

### D. Evaluation of Evidence

Jurors' objective comprehension of beyond reasonable doubt was not correlated with their evaluation of the prosecution case ( $r = .02, p = .92$ ), but it was negatively correlated with their evaluation of the defense case ( $r = -.39, p = .03$ ). Jurors who did not understand the legal term "beyond reasonable doubt" evaluated the defense case more positively. Jurors' subjective comprehension of beyond reasonable doubt was not correlated with their evaluation of the defense case ( $r = -.25, p = .18$ ), but it was positively correlated with their evaluation of the prosecution case ( $r = .42, p = .02$ ). The more jurors felt they understood beyond reasonable doubt, the more positively they evaluated the prosecution case.

Jurors' objective comprehension of burden of proof was not correlated with their evaluation of either the prosecution ( $r = .05, p = .77$ ) or the defense case ( $r = -.23, p = .22$ ). Jurors' subjective comprehension of burden of proof, however, was positively correlated with their evaluation of the prosecution case ( $r = .38, p = .04$ ) and negatively correlated with their evaluation of the defense case ( $r = -.47, p = .01$ ). The more jurors felt they understood burden of proof, the more positively they evaluated the prosecution case and the more negatively they evaluated the defense case.

Partial correlations were then conducted to explore the relationship between jurors' subjective comprehension of burden of proof and beyond reasonable doubt, and their evaluation of the prosecution and defense case, after controlling for jurors' objective comprehension (see Table 2).

**Table 2. Partial correlations between subjective comprehension of burden of proof and beyond reasonable doubt and ratings of the prosecution and defense cases, controlling for objective comprehension.**

<i>Instruction</i>		<i>Evaluation of Prosecution's Case</i>	<i>Evaluation of Defense Case</i>
Beyond reasonable doubt	Subjective understanding	.43*	-.34 <sup>+</sup>
Burden of proof	Subjective understanding	.39*	-.42*

Note: \* $p < .05$ , <sup>+</sup> $p = .06$ .

Controlling for jurors' objective comprehension of beyond reasonable doubt only had an effect on the relationship between jurors' subjective comprehension of beyond reasonable doubt and their evaluation of the defendant's case, such that this relationship now approached significance.

### E. Factors Influencing Verdicts

Next, we analyzed the relationship between both jurors' subjective and objective comprehension of burden of proof and beyond reasonable doubt, and their ratings of the factors that they reported as being influential in their verdicts. As shown in Table 3, jurors' objective comprehension of burden of proof and beyond reasonable doubt was unrelated to all but one of the factors reported to be influencing their verdicts (beyond reasonable doubt was related to the measure of reliance on the defense case). Jurors' subjective comprehension of beyond reasonable doubt was also not related to their ratings of any of the factors influencing their verdicts. Consistent with H<sub>2</sub>, jurors' subjective comprehension of burden of proof, however, was strongly positively related to jurors' ratings about the extent to which they were influenced by the prosecution case, and negatively related to jurors' ratings about the extent to which they were influenced by the defense evidence when arriving at their verdict. Providing some support for H<sub>3</sub>, jurors' reliance on common sense was also strongly positively related to their subjective comprehension of burden of proof. Those jurors who reported that they had a better understanding of burden of proof said they were more influenced by the evidence presented by the prosecution and their own common sense, and less influenced by the defense evidence when arriving at a verdict.

**Table 3. Correlations between understanding of the instructions and ratings of influence of different aspects of the case on reaching a verdict.**

<i>Influence on jurors' verdict</i>	<i>Mean (SD)</i>	<i>Beyond reasonable doubt</i>		<i>Burden of proof</i>	
		<i>Objective understanding</i>	<i>Subjective understanding</i>	<i>Objective understanding</i>	<i>Subjective understanding</i>
Prosecution evidence	5.33 (1.65)	.06	.16	.28	.63**
Defense evidence	4.06 (1.74)	-.37*	.10	-.31	-.36*
Judge's instructions	5.88 (1.08)	-.03	.27	-.21	-.15
Morals	4.52 (1.99)	-.02	.01	.05	.29
Common sense	5.67 (1.51)	.06	.00	.19	.74**

Note: \*\* $p < .01$ ; \* $p < .05$ .

## DISCUSSION

Jurors' understanding of instructions given to them during the course of a trial has received increased attention in recent years. This investigation was conducted in the broader context of proposed jury reform in Queensland, Australia (QLRC, 2009a, 2009b) as a result of several Australian Law Reform bodies examining the simplification of jury instructions. This is an important area for study, as jurors' comprehension of judicial instructions—or noncomprehension, as the case may be—can affect courtroom justice. Previous research indicates that jurors' misunderstanding of instructions may lead to greater reliance on more confident (though not necessarily more knowledgeable) jurors during deliberation (Elwork & Sales, 1985) and reliance on extralegal evidence during decision making (Ruva & LeVasseur, 2011). This study explored the possible effect of subjective comprehension on jurors' verdicts in actual criminal trials. We focused on the *feeling* that one understands, compared to actually understanding, instructions about the burden and standard of proof required to reach a verdict. It was predicted that these two measures would be relatively unrelated (H<sub>1</sub>). It was also expected that the subjective experience of understanding judicial instructions would lead to a more favorable evaluation of the prosecution case (H<sub>2</sub>) and a poorer consideration of the evidence (H<sub>3</sub>). The results supported these three predictions.

Whereas a majority of jurors understood the instruction related to burden of proof, levels of understanding for the standard of proof instruction were substantially lower. Misunderstandings of this latter instruction tended to be in the form of requiring a more stringent standard of proof—no doubt at all. Although this misunderstanding might be less problematic for the defendant, it disadvantages the prosecution and discourages victims from reporting crimes. Further, it is arguable that to properly carry out their duties as instructed, jurors need to correctly understand both the instructions about standard and burden of proof. The results suggest that, consistent with other work in this area (e.g., Reifman et al., 1992), only one third of jurors objectively understood both instructions. Also consistent with prior work (e.g., O'Mara & von Eckartsberg, 1977), levels of objective and subjective understanding tended to be weakly related for burden of proof and unrelated for standard of proof (H<sub>1</sub>). For burden of proof, the relationship was such that greater levels of objective understanding were related to greater levels of subjective understanding.

The results were reasonably clear in showing that increases in subjective understanding, but not objective understanding, were consistently related to a more favorable evaluation of the prosecution case and a more negative evaluation of the defense case (H<sub>2</sub>). There was also one significant relationship for the measures of objective understanding, consistent with the observation that misunderstandings of beyond reasonable doubt tended to be in the direction of a more stringent standard of proof: the less jurors actually understood the standard of proof, the more convincing they believed the defense case to be. The findings for the measure of subjective understanding held even when data analyses controlled for objective understanding. This suggests that the experience of feeling as though one understands exerts an influence on how the case is perceived beyond actual comprehension, and any relationship between objective and subjective comprehension cannot explain the current findings.

If objective understanding does not account for the effect of subjective understanding, what might be the reason for the observed findings? The findings for the factors that were important in jurors' decisions give some insight into this. The more jurors thought they understood the instructions surrounding burden of proof, the more they said they relied on common sense (see also Ogloff, 1991). This suggests a less thorough consideration of the evidence (H<sub>3</sub>), and the correlations between subjective understanding of this instruction and self-reported reliance on the prosecution evidence and defense evidence are consistent with this: higher subjective understanding was associated with a more one-sided consideration of the evidence, with prosecution evidence being seen as more important and defense evidence being seen as less important. Although this might be interpreted as being consistent with the burden of proof, both sides of the case are relevant for determining whether the prosecution has proved their case, as the defense evidence might undermine the prosecution case.

We argued that greater subjective comprehension of instructions might increase jurors' confidence, and therefore increase the chance that they would return a guilty verdict. In the current study it was not possible to directly assess verdicts, nor could we measure confidence. We did find the expected effects for the measures of how the prosecution and defense cases were evaluated. Although untested in this research, it is plausible to think that evaluating the prosecution more positively and the defense more negatively may result in more guilty verdicts. Some research does suggest, however, that continuous probabilistic measures of guilt (such as likelihood)

and dichotomous verdicts are not necessarily directly related to each other (Arkes, Shoots-Reinhard, & Mayes, 2012). Further work is needed to more clearly establish the link between subjective understanding and actual verdicts. Although we did not measure confidence, we did assess jurors' self-reported reliance on a range of factors. These findings suggested that increases in subjective understanding was associated with a less thorough consideration of the evidence, which would be consistent with jurors achieving higher confidence in their decisions (Eagly & Chaiken, 1993). Future work should directly assess confidence, however, and explore the relationship between confidence, subjective understanding, and verdicts. Future work could also directly manipulate the strength of the case to assess the degree to which jurors evaluate the evidence as a function of instruction complexity (e.g., McKimmie, Masters, Masser, Schuller, & Terry, 2012).

Although the current study did not directly manipulate instruction complexity, the findings suggest that if instructions are simplified (as proposed by some as a way to increase comprehension of instructions), this may have some unintended consequences. The first of these is to do with jurors' confidence in making a decision. When jurors are given more simplified instructions, they may feel more confident and so be less likely to scrutinize the evidence carefully. Although we did not directly test the link between simplification and confidence, we did find that higher levels of subjective comprehension were related to a less thorough consideration of the evidence (see also Bornstein & Hamm, 2012). Further work is needed to more carefully examine the link between simplification and the extent to which jurors use more effortful information processing strategies instead of relying on heuristics. This suggests that reforms aimed at simplifying instructions carried out with the intention of improving jury decision making, may need to employ additional strategies to manage any inflated sense of confidence in understanding. This might be achieved by emphasizing a motivation to be correct or by highlighting the difficulty that people have understanding instructions (even if they have been simplified).

There may also be social consequences associated with not properly understanding instructions, or feeling as though you do understand the instructions. Ellwork and Sales (1985) identify a number of problems with objective misunderstanding and jury deliberation: deliberations are more likely to include "legally inappropriate" topics and more likely to miss important points of law, and confusion could upset the jury dynamics,

leading to an inappropriate influence from some jurors (see Kagehiro, 1990, for a fuller consideration of these points). It is also possible that overconfident jurors who misunderstand the instructions might exert a disproportionate influence on jury deliberations, perhaps stifling other dissenting (and possibly more correct) interpretations. Rijnbout and McKimmie have highlighted the importance of dissent during group decision making in helping the group to arrive at a decision based on a more thorough consideration of the information (Rijnbout & McKimmie, 2012a, 2012b). They also showed that unanimous decision rules, compared to majority decision rules, maximize the positive effects of dissent (Rijnbout & McKimmie, *in press*). Thus encouraging jurors to consider all viewpoints during deliberation, and structuring their task to maximize the effect of dissent through the use of unanimous decision rules, may also counter the negative consequences of instruction simplification.

There are some not insignificant limitations to the current research, and the above points are made more with the view of stimulating discussion about the simplification of instructions and the role that comprehension plays, rather than making claims about the data that would otherwise benefit from further investigation. Some limitations have been noted so far, but it is also important to note that we examined only a small set of instructions in the current research—instructions related to the legal concepts of beyond reasonable doubt and burden of proof. Further work is needed to examine these issues across a larger number of instructions to establish the extent to which the issues of subjective and objective comprehension are generalizable to other instructions. Second, we did not look at the processes and content of the deliberation (for obvious practical reasons, as the study involved actual jurors, and those types of enquires are not legally permissible in the jurisdiction in which this research was conducted). Further work is necessary to examine the effect of instructions on jury deliberations, because to date this has been an under-researched aspect of jury decision making. Finally, in light of the modest response rate and number of participants, and the correlational nature of the design, the conclusions drawn from the data should be considered tentative. Further work is obviously needed to explore these ideas more systematically and thoroughly.

Although we are not able to make definitive statements about the role of objective and subjective instruction comprehension in jury decision making, the current data suggest that a more careful consideration of the

consequences of instruction simplification is warranted. It is clear from the current findings that a substantial proportion of jurors struggle to understand two of the fundamental directions given to them, thus attempts to improve comprehension through simplification are understandable. This research suggests that some care is needed, however, to avoid counterproductive outcomes. Namely, simplification may lead to increased subjective understanding, which this research suggests is associated with a less thorough consideration of the evidence. Although not directly tested in the current research, a number of strategies have been suggested to limit any increases in subjective understanding while gaining the benefits of improved comprehension through simplification of instructions. This research suggests clearly that, rather than consigning subjective understanding of instructions to the role of being an imprecise measure of objective understanding, subjective understanding should be studied as an influence on jurors' decisions in its own right.

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