

# **Possibility of Death Sentence Has Divergent Effect on Verdicts for Black and White Defendants**

(Running Head: Death, Race & Verdicts)

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## **Abstract**

When anticipating the imposition of the death penalty, jurors may be less inclined to convict defendants. On the other hand, minority defendants have been shown to be treated more punitively, particularly in capital cases. Given that the influence of anticipated sentence severity on verdicts may vary as a function of defendant race, the goal of this study was to test the independent and interactive effects of these factors. We conducted a survey-embedded experiment with a nationally representative sample to examine the effect on verdicts of sentence severity as a function of defendant race, presenting respondents with a triple murder trial summary that manipulated the maximum penalty (death vs. life without parole) and the race of the defendant. Respondents who were told life-without-parole was the maximum sentence were not significantly more likely to convict Black (67.7%) than White (66.7%) defendants. However, when death was the maximum sentence, respondents presented with Black defendants were significantly more likely to convict (80.0%) than were those with White defendants (55.1%). The results indicate that the death penalty may be a cause of racial disparities in criminal justice, and implicate threats to civil rights and to effective criminal justice.

**Keywords:** Sentence severity; prejudice; discrimination; capital punishment; legal decision-making

### **Possibility of Death Sentence Has Divergent Effect on Verdicts for Black and White Defendants**

The possibility that, in criminal trials, the severity of a prospective sentence influences the determination of guilt subverts the sequential process of criminal sentencing. Yet, there is compelling evidence that it can do just that. The high salience and stakes of the death penalty suggest that capital cases may be especially susceptible. Furthermore, the evidence for racial bias in verdicts and sentencing implicate a likely interaction of the death penalty and defendant race in juridical decisions. We formulate this hypothesis – that defendant race moderates the effect of the possibility of a death penalty (punishment severity) on verdict decisions – on the basis of several lines of research. One set of studies proposes that the decisions people make may be affected by the severity of the potential consequences, in general, (Beck, 1984) and specifically in criminal cases (Kerr, 1993). It follows that the extraordinarily high stakes of the death penalty would reduce the frequency of guilty verdicts in capital cases. Survey research has found, in fact, that even among proponents of the death penalty, a large majority responded that they would need more evidence to vote guilty if the penalty were going to be death than if it were going to be life imprisonment (Ellsworth & Ross, 1983). At the same time, research reveals that a strong stereotypic association between Black individuals and criminality (e.g. Eberhardt et al., 2004) leads to the endorsement of harsher treatment (e.g. Goff et al., 2008) and more severe punishment for Black defendants (e.g. Eberhardt et al., 2006). These tendencies could translate into higher conviction rates (Sommers & Ellsworth, 2000, 2001) and harsher sentences (Mitchell, 2005) for Black defendants. Given the differential treatment of minority suspects and defendants, the effects of capital punishment on verdicts may not be comparable across race and ethnicity. Accordingly, the present study investigates experimentally whether and how defendant race and the possibility of the death penalty interact to influence verdicts.

#### **Effect of Punishment Severity on Verdict**

Although more severe crimes (e.g., first-degree as opposed to second-degree murder) mandate more severe penalties, jurors are instructed to not consider the penalty when deciding to acquit or convict. The experimental evidence regarding the likelihood of success of such instructions is equivocal (see Kerr, 1993, for a review). There is evidence that when jurors expect defendants to receive relatively severe punishments, they are more inclined to acquit (Kaplan & Krupa, 1986; Kerr, 1978; Vidmar, 1972). Many of these studies have manipulated crime severity and sentence severity together to enhance ecological validity. In direct manipulations of punishment severity, some studies find no effect on verdict (Davis, Kerr, Stasser, Meek, & Holt, 1977; McComas & Noll, 1974), although, as Kerr (1978) notes, McComas and Noll (1974) used a continuous guilt rating scale, rather than a dichotomous verdict. Asking how guilty someone is has different implications than asking whether or not he should be convicted, particularly vis-à-vis the punishment consequent to the verdict.

In a study designed to isolate the effect of punishment severity (above and beyond crime severity) on verdict, Kerr (1978) used a 3 (crime severity: first degree murder; second degree murder; manslaughter) x 2 (sentence severity: “lenient” range of one to 20 years imprisonment; “severe” range of 25 years imprisonment to execution). He found that penalty severity and probability of conviction were indeed inversely related. Note that the difference in severity in the conditions could be as small as five years (20 versus 25 years of imprisonment) and that the “severe” condition conflates two very different penalties: a life sentence and capital punishment.

A more discriminating test of the effect of sentence severity would compare life without parole to the death penalty. This approach would thereby take into account the fact that the mere possibility of the death penalty, above and beyond the next most severe, and comparably incapacitating punishment (life without the possibility of parole), could influence conviction rates. Indeed, the effect of sentence severity could apply with particular force to capital cases because the death penalty is categorically different from prison sentences (i.e., not just on a time continuum), irreversible, highly salient, and morally potent. The presence of the death penalty in the sentencing range, which, for example, could be a function of in which U.S. state a trial occurs, may therefore lead to higher rates of acquittals compared to when life imprisonment without the possibility of parole is the maximum. In the only known study to have directly tested the differential effect of the death penalty in contrast to life in prison, Hester and Smith (1973) found suggestive, mixed evidence. The defendant in a gang-war murder was less likely to be convicted when death was the mandatory sentence. But there was no significant difference in conviction rate in an experimental condition in which the crime was a particularly senseless murder of a child (again, by a gang member, proving himself to the gang). However, it is difficult to generalize from their study, which involved an American undergraduate sample judging cases ostensibly taking place in Mexico (at the time of the study, the death penalty had been ruled unconstitutional by the U.S. Supreme Court in *Furman v. Georgia* and not yet reinstated). The overall conviction rate was low (under 50%, with some conditions yielding conviction rates as low as 14%), suggesting that the case was not particularly coherent. The comparison condition was a sentencing range of 20 years to life, rather than life without the possibility of parole, which precludes a strict comparison of equally incapacitative sentences.

More severe anticipated sentences should, for the reasons discussed, lead to a reduction in the likelihood of conviction. Alternatively, the possibility also exists that the specter of a more severe sentence could trigger the opposite effect; it may serve as a signal of crime brutality and cause jurors to be more inclined to convict. Either way, because the determination of guilt should be independent of and prior to determinations of punishment, it is problematic if a change in conviction rates does indeed occur.

A further refinement of the test of punishment severity, and a specific test of the effect of the death penalty would compare verdicts in cases with death versus life without the possibility of parole as the maximum in the sentence range. Yet another important enhancement of the test of sentence severity on verdicts would take into account a very salient and demonstrably influential defendant characteristic: race. However, the interactive effects of defendant race and sentence severity on verdict have yet to be investigated, a gap which the current study proposes to fill.

### **Harsher Treatment for Black Defendants**

One source of insight into how defendant race might interact with punishment severity to affect verdicts is the robust evidence that, despite the statutory (and ethical) irrelevance of race in the determination of suspicion, guilt, or punishment, African-American and Latino defendants receive harsher treatment throughout the criminal justice system. Controlling for relevant variables such as socio-economic status, type of crime, criminal histories, and victim race, White defendants are, on average, treated more leniently in sentencing than are minority defendants (e.g., Albonetti, 1997; Baldus, Woodworth, & Pulaski, 1990; Kramer & Steffensmeier, 1993; U.S. General Accounting Office, 1990). The death penalty, in particular, is the locus of pronounced disparities (e.g. Gross & Mauro, 1984; Holcomb, Williams, & Demuth, 2004;

Paternoster & Brame, 2008; Radelet, 1981), with Black individuals representing nearly half of the current federal death row prisoners (Death Penalty Information Center, 2013). Some studies have found these disparate outcomes to be most pronounced when the victim is White (Baldus et al., 1998; Eberhardt et al., 2006). These correlational studies document the perennial and significant disparity in the treatment of Whites versus non-Whites – with the latter tending to receive harsher treatment. This is an initial indication that, while punishment severity may reduce convictions in general, defendant race may qualify this relationship.

There is also a set of experiment-based studies that have found no effect of defendant race on criminal justice outcomes (e.g., Sunnafrank & Fontes, 1983) but have found interactions of defendant and victim race (greater punitiveness when racially discordant; e.g., Hymes, Leinart, Row, & Rogers, 1993) particularly for cases with Black defendants and White victims (e.g., Lynch & Haney, 2000; Pfeifer & Ogloff, 1991), reflecting the trends in the historical/archival data (Baldus et al., 1998; Eberhardt et al., 2006; U.S. General Accounting Office, GAO, 1990). Meta-analyses of experiments manipulating defendant race have yielded mixed results. Mazzella and Feingold (1994) obtained a mean effect that did not differ significantly from zero, however, they observed considerable variability in effect sizes (centering on zero), with some indicating pro-White and some pro-Black discrimination. The sizes and directions of these effects also tend to vary by crime type.

Such investigations of Black/White disparities dominate the literature on racial biases in juror decision-making. However, even when the focus is shifted to more general in-group/out-group differences, race plays a role in determinations of guilt. This is the finding in Mitchell, Haw, Pfeifer, and Meissner's 2005 meta-analysis of 34 studies of juror verdict decisions. They find that racial bias has a small but significant effect on determinations of guilt. However, the authors also discover that the effect of racial bias is non-significant when a dichotomous guilt response option is used. This convict/acquit response is a more realistic representation of juror decisions and trial outcomes than the continuous scale often used in mock juror studies, but as with most binomial dependent variables, it is less sensitive to variation.

Whether or not defendant race will consistently influence verdicts (which it ideally does not), there is ample empirical evidence demonstrating the sequence of psychological mechanisms by which racial bias can affect criminal justice outcomes, starting with the stereotypic association between African-Americans and crime (Devine, 1989; Devine & Elliot, 1995; Trawalter, Todd, Baird, & Richeson, 2008; Wood & Chessser, 1994). It is important to note that this association is bi-directional – thinking of crime brings to mind Black people, just as thinking of Black people brings to mind crime (Eberhardt et al., 2004). The implication is that reading about a criminal act, as in a case summary, may increase the salience of defendant race, particularly if the defendant is Black.

The strength of the association between African-Americans and crime has particular relevance in general assessments of criminality. Police officers have been found to be more likely to select Black faces when asked "Who looks criminal?" (Eberhardt et al., 2004). This disparity has been translated into action in a series of studies on "shooter bias" wherein it has been shown that the cultural stereotype associating Blacks with danger predicts the tendency to, in a simulation, shoot Black suspects relative to White suspects (e.g., Correll, Park, Judd, & Wittenbrink, 2002). Furthermore, the more stereotypically "Black" a suspect physically appears, the more likely individuals are to mistakenly shoot him (Kahn & Davies, 2011).

A similarly informative demonstration of particular relevance is a study of actual death penalty-eligible cases involving a White victim. Defendants whose appearance was rated as more

stereotypically Black by participants in the study had been more likely to actually receive the death penalty than those whose appearance was less stereotypically Black (Eberhardt et al., 2006). While the effects in these studies typically occur independent of racial animus, the relationship between racial antipathy and punitiveness is also well-established in the literature (for a review, see Unnever, Cullen, & Jonson, 2008). For example, jurors' racial attitudes have been found to be predictive of decisions to convict Black defendants (Dovidio, Smith, Donnelly, & Gaertner, 1997). Taken together, this evidence shows that the strong association between African-Americans and crime can affect behavior, opinion, and juridical decision-making. These effects may vary in direction and magnitude as a function of incidental factors, such as the stereotypic fit between the crime and the group to which the defendant belongs.

### **The Interaction of Defendant Race and Punishment Severity**

While we predict that increasing sentencing severity will decrease conviction rates, there are several reasons why defendant race could moderate the effects of punishment severity on verdict. Although punishment severity can increase the perceived "cost" of an error (i.e., wrongful conviction) (Kerr, 1978, 1993), this effect may be mitigated by the tendency to dehumanize minorities (Goff et al., 2008). Dehumanization entails denying an outgroup member their essential human nature; when it occurs, individuals are seen less as people. As an example, neuroimaging evidence shows that members of extremely marginalized out-groups (e.g., drug addicts and the homeless) fail to stimulate the part of the brain associated with recognizing people (Harris & Fiske, 2006). There is also evidence that in the context of criminality, there is a relatively strong association between Black men and apes (Goff et al., 2008). It follows that insofar as Black people may be viewed as being less worthy of humane (or even human) treatment, concerns over punishment severity (even death) would be less consequential.

Another mechanism by which defendant race might moderate punishment severity effects on verdicts has to do with racial patterns in attitudes toward the death penalty, particularly to the extent that most jurors are White. There is evidence that Whites are relatively unmoved by the concern of a wrongful conviction when expressing support for the death penalty. In one study of opinions about the death penalty, arguments about the potential for wrongful convictions had less of an effect on the opinion of White versus Black individuals (Unnever & Cullen, 2005). In another study, arguments that the death penalty discriminates against Blacks actually *increased* support for the death penalty among Whites (Peffley & Hurwitz, 2007). Indeed, there is converging evidence that support for punitive crime policy increases when the ostensible offender is non-White (Eberhardt et al., 2006; Gilliam & Iyengar, 2000; Gilliam, Iyengar, Simon, & Wright, 1996; Hetey & Eberhardt, 2014) and that support for punitive crime policy is higher among those who stereotype African-Americans as violent (Welch, Payne, Chiricos, & Gertz, 2011). Accordingly, we anticipate that Black defendants may be relatively excluded from the considerations that would otherwise reduce convictions when the punishment is the death penalty.

On the other hand, the effect of defendant race on verdict decisions can be reduced in certain circumstances. For instance, when race is particularly salient in a trial, race-biased decision-making can be eliminated (Sommers & Ellsworth, 2000, 2001). This result is consistent with Mazzella and Feingold's (1994) meta-analysis of 80 mock-juror studies, in which there is no significant mean effect of race on verdict. However, the authors explain that this finding is misleading because race interacts complexly with other factors such as crime type. While crime

type did not significantly affect determinations of guilt on the basis of race, Blacks received harsher treatment for homicide, while Whites were punished more severely for fraud.

In sum, research has shown that punishment severity tends to decrease the probability of convictions, while Black defendants tend to evoke more convictions, but there are also a considerable number of null results in both literatures. The variability in findings across studies likely results from wide variation in methods, including study design and the specifics of the cases presented. If defendant race and sentence severity interact, a failure to manipulate both could lead to the masking of one effect or the other. For example, if sentence severity tends to reduce willingness to convict but, as we hypothesize, this is weaker for Black defendants, studies where the defendant's race is specified or implied (or assumed) to be Black could result in weak or null results. Likewise, in studies looking at the effect of defendant race, if the specified, implied, or assumed punishment is light, this could mask racial differences. As a more specific example, in the Davis et al. (1977) experiment, the alleged crime was rape and sentence severity was manipulated. Although it is not specified in the published report, a query to the authors revealed that the defendant in the stimulus video was portrayed by a White man. Similarly, studies investigating defendant race effects may include stimulus details that indicate mild or severe punishment. If racial bias in verdicts is most pronounced when anticipated punishment is severe, studies with minor crimes and/or mild punishments could underestimate those effects. For example, Gleason and Harris (1975) found no effect of race of defendant on judgments of guilt, but the crime at issue was non-violent – burglary – and the defendant had no prior convictions. There are not enough studies to fill the four cells of this matrix (defendant race by crime/sentence severity) for a practicable meta-analysis, and, again, the stimuli and procedures vary widely between studies, perhaps too widely to allow systematic comparison. The point, however, is that if defendant race and punishment severity interact, across-study variation in one or the other could be blunting, if not wholly confounding, tests of either.

Despite the evidence that both punishment severity and defendant race affect determinations of guilt, as well as a considerable number of null results for one or the other tested separately, the interaction of these factors has never been tested. This, in addition to isolating the potentially unique effect of the death penalty, is the goal of the present study.

## Overview of the Study

Recognizing that the effect of sentence severity on verdicts may vary as a function of defendant race, we sought to test the independent and interactive effects of these two factors. We hypothesized that the possibility of the death penalty would reduce the conviction rate. However, we expected defendant race to moderate this relationship, such that jurors will be more concerned about the consequences of their decisions for White defendants.

We asked participants in a nationally representative sample to make an acquit/convict judgment on a murder trial described with a case summary meant to convey guilt for most jurors, but not so overwhelmingly that we could not detect variation. We experimentally manipulated both the race of the defendant and sentence severity (maximum: death penalty versus life without the possibility of parole) in order to isolate the causal effects of both variables on likelihood to convict. Because emphasizing race in a trial can alter decision-making (Sommers, 2007), we subtly manipulated the race of the defendant by using stereotypically Black- or White-sounding names. Race of the victim was left ambiguous to isolate the effect of defendant race. Using a nationally representative sample, we offer the first test of the unique effect of the death penalty

(as compared to permanent incarceration), as well as the first test of the interaction of sentence severity and defendant race on verdicts.

## **Method**

### **Participants**

A random sample of 276 American adults was obtained through Time-Sharing Experiments in the Social Sciences (TESS). TESS employed a high-quality national survey conducted by Knowledge Networks (KN). KN utilized rigorous sampling procedures, including random digit dialing with extensive follow-up recruitment. The survey was Web-administered, and KN provided personal computers and Internet access to participants who did not already have them. Median age was 46 years. 50% of the sample were women. 84.8% were White, 6.2% Hispanic, and 4.7% Black.

The collected sample had 314 respondents. Thirty-eight were dropped because they took an extremely short (less than six minutes) or long (more than 68 minutes) time to complete the survey, based on discontinuities in the duration distribution. The pattern of results was the same with these respondents.

### **Design**

We used a 2 (Maximum Sentence: Life Without the Possibility of Parole; Death Penalty) x 2 (Defendant Race: Black; White) between participants design. The primary dependent measure was the decision to convict or acquit.

### **Materials**

We developed a realistic, triple-murder trial summary within which we manipulated maximum sentence (life without parole vs. death) and defendant race (Black vs. White). The trial summary was based on extensive review of real trial transcripts of murder trials in California. The stimulus was drafted in direct consultation with legal experts, including judges and trial lawyers. The goal was to develop a realistic stimulus that achieved a high, but not unanimous, conviction rate. Similar trial summary methodologies have been commonly used by social scientists to study the effect of race, sentencing, and other trial variables on juror decision-making (see literature review above). The resulting 1,185-word, 4-page detailed trial summary was formatted like a court document. The trial summary was laid out as an unfolding trial, with detailed information about the case, including a description of the crime, witness testimony, the relationship between the defendant and the victims, and closing arguments from both the prosecution and defense.

Embedded in the trial summary was the manipulation of maximum sentence severity (life in prison without parole vs. death by legal injection) and defendant race (Black vs. White). Our manipulation of maximum sentencing simulates the various ways that jurors could come to presume that the death penalty was either possible or not for a given case (e.g., living in a state that either does or does not have capital punishment, being instructed during jury selection whether or not the case could result in a capital sentence). The maximum sentence manipulation was repeated three times in the summary: first by anchoring the mandatory sentencing range stated at the beginning of the summary with either “life in prison without parole” or “death by lethal injection”, and was repeated twice in the body of the trial summary description.

The defendant’s race was unobtrusively manipulated by using first names stereotypically associated with Blacks (Darnel, Lamar, Terrell) or Whites (Andrew, Frank, Peter). Pretesting

determined that each of the six names was associated with the intended racial group. In addition, the first names were orthogonally crossed with three racially neutral last names (Hill, Rogers, Wilson). The victims' names were deliberately left racially ambiguous.

After development and legal experts' endorsement of the stimulus, the transcript was extensively pilot-tested on an undergraduate sample ( $n=182$ ) for realism and to test the conviction rates. Pilot testing demonstrated that the conviction rate ranged around 70% and the stimulus materials were deemed realistic.

### Procedure

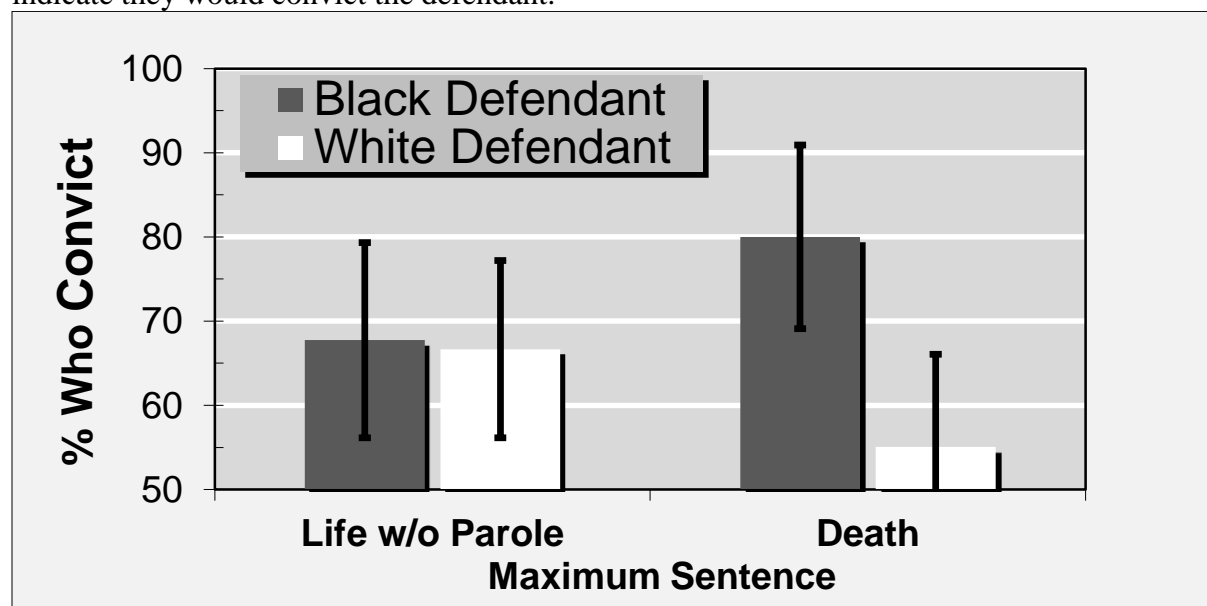
Respondents read the triple-murder trial summary. The dependent variable, decision to acquit or convict, was assessed immediately following the case summary, using the following language:

Based on your reading of the preceding case, if you were a juror in this case, what would be your judgment with regard to the three counts of murder? If you believe the defendant was guilty *beyond a reasonable doubt*, then you should vote to convict. If not, you should vote to acquit.

We employed this dichotomous measure for the sake of ecological validity (jurors do not make continuous judgments) and ease of interpretation. However, dichotomous measures tend to be statistically weaker than continuous measures, a state of affairs borne out by Mitchell et al's (2005) meta-analysis of mock juror decision-making studies (see also Bray & Kerr, 1979; Pfeifer, 1990). The acquit-convict judgment, therefore, offers a relatively conservative, but valid test of the effects of sentence severity and defendant race.

### Results

**Figure 1.** Effects of maximum sentence and defendant race on percent of respondents who indicate they would convict the defendant.



Error bars represent 95% confidence intervals.



To test the effects of defendant race and maximum sentence severity on verdict, we conducted a 2-way factorial analysis of variance (Log-linear and logistic regression analyses yielded equivalent results). Consistent with previous studies, there was a main effect of defendant race – a greater tendency to convict ostensibly Black (73.9%) than White (60.9%) defendants,  $F(1, 272) = 5.4$ ,  $p = .021$ ,  $d = .27$ , 95% CI [.22, .33]. Consistent with *some* of the past research on sentence severity and verdicts, there was no main effect of maximum sentence on verdict,  $F(1, 272) = .007$ ,  $p = .934$ ,  $d = .01$ , 95% CI [-.05, .07]. However, as Figure 1 depicts, these main effects are moderated by a significant interaction of maximum sentence and defendant race,  $F(1, 272) = 4.54$ ,  $p = .034$ ,  $d = .26$ , reflecting diverging effects of sentence severity for White and Black defendants and revealing that the race effect is driven by the death penalty condition, where 25% more Black than White defendants were convicted,  $Z(137) = 3.24$ ,  $p = .002$ ,  $d = .55$ , 95% CI [.48, .63]. The simple effects of maximum sentence for Black ( $p = .11$ ) and White ( $p = .156$ ) defendants only *trended* toward statistical significance, so one cannot conclude with confidence that the death penalty *increases* convictions for Black defendants or *decreases* them for White defendants, only that conviction rates are higher for Black than White defendants when the death penalty is a possible sentence, and not when life without parole is the maximum sentence. Having said that, the differential difference exhibited in this interaction has to result from one or both race groups being treated differently as a function of the possibility of the death penalty.

*Death Qualification.* Current American jurisprudence holds that “The proper standard for determining when a prospective juror may be excluded for cause because of his views on capital punishment is whether the juror's views would ‘prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath’” (*Wainwright v. Witt* 1985, citing *Adams v. Texas* 1980). This standard tends to exclude more people than the earlier precedent established in *Witherspoon v. Illinois* (1968) (Neises & Dillehay, 1987). To approximate this narrowing of the relevant population, we replicated the analysis excluding the 89 respondents who indicated that they do not support the death penalty. We recognize that responses to this question do not exactly reflect the procedures and standards typically used by prosecutors and judges, but dropping these respondents nevertheless makes the sample more representative of a population that would qualify for capital cases. Excluding these respondents did not change the results. Most notably, in the death penalty condition, Black defendants were still convicted at a higher rate (80.4%) than were White defendants (56.5%),  $Z(95) = 2.6$ ,  $p = .011$ ,  $d = .54$ , 95% CI [.45, .63].

## Discussion

Using a nationally representative sample, the present findings indicate that, not only are potential jurors influenced by punishment severity, but defendant race alters *how* they are swayed – with deleterious outcomes for Black defendants. The demonstration that sentence severity, specifically, the possibility of a death sentence, has a qualitatively different effect on verdicts for ostensibly Black and White defendants is novel.

The lower rate of convictions for White defendants when the maximum sentence is more severe is consistent with past work by Kerr (1978, 1993), who theorized that sentence severity can increase concerns over wrongful convictions and thereby alter individuals’ decision criteria. Confronted with the likelihood of a relatively severe punishment, jurors may set stricter criteria for judgments of guilt, requiring more evidence and/or higher levels of certainty before deciding

to convict. It is possible that for participants considering Black defendants, wrongful conviction was a lesser concern, and instead the death penalty signaled the brutality of the crime. Furthermore, capital punishment may seem more appropriate for Black defendants, given that they are conspicuously overrepresented on death row (DPIC, 2013), that Blacks are stereotypically associated with violence (e.g. Eberhardt et al., 2004), that Blacks are relatively strongly associated with animals (Goff et al., 2008), and that convicted capital defendants who look more stereotypically Black are more likely to be given a death sentence (Eberhardt, et al., 2006).

Another possible explanation for the relatively high conviction rate of Black defendants is that violence is consistent with the stereotype that many Americans hold of Blacks. Gordon, Bindrim, McNicholas, and Walden (1988) found that such alignment with stereotypes leads to harsher treatment. While that study focused on the alignment of type of crime with verdict, our study is a demonstration of alignment between type of crime and type of punishment, and its effect on verdict – a different and possibly more problematic relationship.

The small number of non-White participants in our sample prohibited robust analysis of juror race effects. Future research should explore whether the in-group/out-group differences found in previous research (Mitchell et al., 2005) hold true for juror verdict decisions when both defendant race and punishment severity are experimentally manipulated. However, racial differences in attitudes about the death penalty, as explained above, complicate conclusions that could be drawn from similar results for Black jurors considering Black defendants in a capital case.

The current study has several limitations, mostly involving threats to ecological validity. For one, the methodology employed individual mock jurors making a decision to convict or acquit the defendant. Future research should replicate the study using groups of mock jurors engaging in group deliberation. Moving from individual level decision-making to a group setting can introduce decision-making biases and social influence processes, including group polarization and groupthink (e.g., see Kerr, MacCoun, & Kramer, 1996), although post-deliberation verdicts do tend to hew to the preponderant pre-deliberation tendencies. Another limitation results from the lack of judicial instructions to respondents about definitions of charges and standards of proof. The verdict question does include phrasing indicating the *beyond a reasonable doubt* standard, and the case summarized clearly reflects an act of willful homicide, but a real trial would likely involve much more extensive instruction. Future replications could bolster these ecological aspects to allow for more confident predictions about actual trial outcomes, but the present results make it clear that defendant race and sentence severity can interact to influence at least interim verdicts.

Our results also indicate a potential explanation for the inconsistent results in past studies of the effect of sentence severity on verdict. Some studies have found that when jurors expect defendants to receive relatively severe punishments, they are more inclined to acquit (e.g., Kaplan & Krupa, 1986; Kerr, 1978), while others have found no effect of sentence severity on verdict (e.g., Freedman, Krismer, MacDonald, & Cunningham, 1994). The diverging trends as a function of defendant race – White defendants eliciting fewer and Black defendants more convictions when the maximum sentence was death – raise the possibility that stimulus materials in these previous studies may have implied different defendant races. Alternatively, participants in experiments showing no effect of sentence severity could also have been relatively evenly distributed in terms of their assumptions about defendant race. It should also be noted that it is possible that the defendant race by sentence severity interaction observed in the present study

may be unique to the death penalty. Future studies of sentence severity should take care to either manipulate defendant race or choose one, unambiguous defendant race and limit conclusions accordingly.

In addition to civil rights concerns implicated by a stronger tendency to convict Black defendants under the specter of a death sentence, another implication of the present findings relates to the death penalty's incapacitative function. Given that execution irreversibly incapacitates convicts, capital punishment's effectiveness in this regard should be uncontroversial. However, the present results indicate that the aggregate effect of capital punishment could be the incapacitation of fewer criminals. If we consider the conviction rate in the experiment's life-without-parole condition the "expected" outcome, upward departures (as with Black defendants) implicate increased probability of wrongful convictions. Downward departures (as with White defendants) increase the probability of wrongful *acquittals*. Wrongful convictions do not promote criminal incapacitation, but wrongful acquittals undermine it. The net effect of the death penalty could therefore be diminished incapacitation of society's most violent criminals. At the same time, the present results provide evidence that capital punishment may be more than another *domain* of racial disparities; it may actually be a *cause*. This implication is more than just interesting; it has direct bearing on the administration of American criminal law. Specifically, as Vito and Keil (2000) note, part of the Supreme Court's rationale in the *McCleskey v. Kemp* ruling that upheld the use of the death penalty was that if racial bias in the administration of the death penalty is cause for eliminating capital punishment, why would it not be cause for eliminating any punishment that is administered with racially disparate outcomes? If, as the present data indicate, the death penalty is more than just a domain of bias, but rather a catalyst of it, this rationale should be reconsidered.

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