Law Hum Behav
DOI 10.1007/s10979-007-9100-1

ORIGINAL ARTICLE

The Effects of Accomplice Witnesses and Jailhouse Informants on Jury Decision Making

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Abstract The present study presents one of the first investigations of the effects of accomplice witnesses and jailhouse informants on jury decision-making. Across two experiments, participants read a trial transcript that included either a secondary confession from an accomplice witness, a jailhouse informant, a member of the community or a no confession control. In half of the experimental trial transcripts, the participants were made aware that the cooperating witness providing the secondary confession was given an incentive to testify. The results of both experiments revealed that information about the cooperating witness' incentive (e.g., leniency or reward) did not affect participants' verdict decisions. In Experiment 2, participant jurors appeared to commit the fundamental attribution error, as they attributed the motivation of the accomplice witness and jailhouse informant almost exclusively to personal factors as opposed to situational factors. Furthermore, both experiments revealed that mock jurors voted guilty significantly more often when there was a confession relative to a no confession control condition. The implications of the use of accomplice witness and jailhouse informant testimony are discussed.

Keywords Confessions · Jury decision making · Jailhouse informants · Accomplice witnesses

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On June 10, 2003, Rick Walker was released from prison after serving 12 years for a murder that he did not commit. In 1991, the state convicted Walker of brutally murdering his ex-fiancée Lisa Hopewell. The primary evidence used for his conviction was testimony provided by two witnesses—the first was an accomplice witness whose fingerprints were found at the crime scene and the second was a witness that Walker claimed was his alibi; however, the witness testified instead that Walker was an accomplice to the murder. Both received an incentive to testify; however, the state did not release this information to the defense attorneys during the trial, thereby limiting the defense's ability to effectively cross-examine the witnesses. Eventually, DNA evidence exonerated Walker and proved he did not help the accomplice witness who testified in the case. Without the help of a clever law student, Allison Tucher, Walker would have spent the rest of his life in prison for a murder he did not commit. The most disconcerting aspect of the case is that two witnesses who were provided incentives to testify and had been motivated to fabricate evidence in order to receive leniency were successful in persuading the jurors of Walker's culpability. This case exemplifies the potentially prejudicial and unreliable nature of testimony that is obtained through plea agreements from accomplices and informants.

Since the introduction of plea-bargained testimony, many accomplice witnesses and jailhouse informants have come forward with information that has led to the conviction of innocent suspects. The plea bargain becomes an incentive that can mean freedom and/or a reduced sentence for those informants who wish to cooperate, creating an enticement to fabricate evidence. Accomplice witnesses and jailhouse informants belong to a specific subset of witnesses known as cooperating witnesses (see Cassidy 2004). An *accomplice witness* is one that through

his/her own admission has participated in a crime and is willing to testify regarding the role of the co-conspirator. In contrast, a *jailhouse informant* is a cooperating witness who provides testimony about his/her knowledge of a crime based on information obtained while incarcerated. Often, the testimony provided by these cooperating witnesses includes information garnered through conversations with the accused, which can include a purported confession to the crime. This type of confession provided by a cooperating witness will be referred to as a *secondary confession* in order to distinguish it from a primary confession that is obtained directly from the suspect by police investigators.

Within the context of psychological research, many studies have examined the effects of primary confession evidence on judicial decision-making (Kassin and Wrightsman 1980, 1981; Kassin and Sukel 1997); however, to date there has been no psychological research examining the effects of secondary confessions. The paucity of psychological research on secondary confessions from a cooperating witness is remarkable for several reasons. First, the courts frequently rely upon accomplice witnesses and jailhouse informants for prosecutorial information (Mazur 2002). The actual frequency of such testimony is impossible to estimate because informants and accomplices are only revealed when they testify in court; however, legal experts argue that the inclusion of such testimony is common practice in high stakes capital cases (Rappold 2005). Reliance on evidence from accomplices and informants is especially likely when there is little other evidence to support the prosecution's case (Cassidy 2004). Prosecutors know that obtaining this type of information will increase the strength of their case and make a conviction more likely.

The Northwestern School of Law Center on Wrongful Convictions has identified testimony from jailhouse informants as one of the leading causes of wrongful convictions in capital cases. In fact, since the reinstatement of capital punishment, in 51 of the 111 death row exonerations (46%), convictions were based, at least in part, on testimony from cooperating witnesses. These numbers are almost certainly an underestimation given the magnitude of cooperating witness testimony, yet they further underscore the unreliable nature of informant testimony.

Information from cooperating witnesses is often provided in exchange for a plea bargain or some other incentive. As one can imagine, this kind of inducement creates a situation that is highly conducive to evidence fabrication on the part of the cooperating witness. In fact, in an investigation encompassing interviews and documentary evidence from defense attorneys, prosecutors, correction personnel and informants, the Los Angeles grand jury commission concluded that given the fact that lying informants are rarely, if ever prosecuted, informants have much to gain and little to lose by testifying falsely (Bloom 2002).

While the Supreme Court has recognized the prejudicial and unreliable nature of evidence created through bartered testimony, it has consistently held that safeguards are in place to protect the rights of the accused (Giglio v. United States 1972; United States v. Singleton 1998). In Giglio vs. United States (1972), the court indicated that any incentive or deal that a cooperating witness receives in return for testimony must be disclosed to the defense under the Confrontation Clause of the Sixth Amendment (Cassidy 2004). This clause is supposed to protect the rights of the accused by allowing effective cross-examination of the cooperating witness and by permitting the jury to consider the motivations of the witness; however, the protection this safeguard is supposed to provide to the accused could be illusory. There are cases in which a district attorney or investigator simply implied that if the cooperating witness would testify that he or she would receive an incentive in exchange for his or her testimony. For example, the district attorney or investigating officer may say things in private conversation with the informant such as, "if you help us out we will take care of you" or they may wink or nod at the informant in a manner that suggests the witness will receive something in return for the testimony (Mazur 2002). There have also been cases in which the prosecuting lawyer or the investigating officer had a reputation for reducing sentences for informants who testify (Bloom 2002). This person is often informally referred to as the "Juice Man" by jailhouse informants. In this way, the prosecution is not explicitly stating what incentive, if any, will be given in exchange for the testimony, but the social situation may be such that the informants know they will receive some form of incentive for their testimony. The ramifications are such that implied leniency creates a form of exchange the state does not have to disclose to the defense. Therefore, the jurors may not be able to scrutinize the reliability of a cooperating witness efficiently (Mazur 2002).

Further complicating the problems with the coercive nature of bartered testimony is psychological research indicating that not only are mock jurors unable to detect the coercive nature of confession testimony, but they also give undue weight to confession evidence when rendering guilt decisions (Kassin and Neumann 1997). Kassin and colleagues have consistently demonstrated the persuasive effects that coerced confessions can have on judicial decision-making. For example, Kassin and Wrightsman (1980, 1981) found that mock jurors rightly disregarded confessions that had been elicited via negative pressure (threats of worse treatment and/or harsher punishment); however, jurors failed to fully disregard confessions elicited via positive pressure (promises of better treatment

and/or leniency). These effects were demonstrated even when participants acknowledged that the suspect had been coerced into confessing and judicial instructions to disregard the confession had been presented. This is particularly relevant to the present study because if people have difficultly realizing the effect that the blatant positive pressure has on a person's behavior, they may also fail to note the effect that an implied incentive may have on an informant's behavior.

One possible explanation for the superficial examination by jurors of confession evidence is the fundamental attribution error (Kassin and Sukel 1997). The fundamental attribution error is the tendency for individuals to attribute the behavior of others to dispositional factors while diminishing the contribution of the situation or context (Kassin and Gudjonsson 2005). Regardless of the coercive nature of the interview, mock jurors in prior studies (Kassin and Gudjonsson 2005) attributed the confession to the fact that the defendant committed the crime because "only a guilty person would confess to such a crime" regardless of the situational pressure under which the confession occurred. The same logic can be applied to the testimony of cooperating witnesses—mock jurors may presuppose that accomplice witnesses and jailhouse informants offer their testimony as atonement rather than deducing that the testimony may be motivated by a self-serving incentive. Thus, jurors may accept the testimony without considering the other motives of the cooperating witness or the situational inducements of an incentive.

The use of cooperating witnesses creates a substantial problem for the criminal justice system. Testimony given in conjunction with an incentive creates a situation in which the motivation of the cooperating witness is to procure the best deal by pleasing the prosecution even if this means fabricating evidence. If jurors cannot perceive the difference between an honest and a dishonest cooperating witness there is grave potential for such testimony to lead to wrongful convictions of the innocent. The goals of the present study were to examine whether mock jurors can effectively differentiate between the sources of a secondary confession, and to determine whether information that the secondary confession was garnered in exchange for an incentive would affect mock juror verdicts.

This effect was examined in the current studies by using both college and community samples. Given that the vast majority of psychological studies employ college students as participants, researchers over the years have criticized the results as failing to represent the general population (Shultz 1969; Dill 1964; Oakes 1972; Sears 1986; Wiek 1967). Thus, it is important to employ community as well as college samples. As Bornstein (1999) has indicated, the external results of jury simulation research is a particularly important issue considering the infrequency with which college students serve as jurors and that the goal of this research, in some sense, is to directly influence the criminal justice system. Generally, researchers argue that college students are typically younger, more susceptible to authority and more homogenous than non-college students (Sears 1986). In a meta-analysis conducted by Peterson (2001), there was a demonstrable difference in effect sizes between the two samples. However, the author expresses caution in interpreting the results in that substantial differences were found in only 48% of the studies. Thus, further research appears necessary to understand any differences between college and non-college sample responses.

Based on prior psychological research, three predictions were made with regard to secondary confessions. First, it is clear from the literature on confessions that jurors perceive confession evidence to be extremely compelling and that participants' verdict decisions are influenced by confession evidence even when they recognize that the confession has been coerced (e.g., Kassin and Sukel 1997). To the extent that jurors assign a similar status to secondary confessions it was expected that mock jurors would vote guilty more often in all conditions in which a secondary confession was provided relative to a no-confession control condition. Second, to the extent that jurors commit the fundamental attribution error when evaluating cooperating witnesses who present secondary confession evidence, it was expected that conviction rates would not vary as a function of incentive. Rather the cooperating witness' testimony would be taken at face value regardless of the circumstances under which it was collected. Third, consistent with prior mock juror research we predicted that the pattern of results with the community sample would show fewer guilty verdicts compared to the college sample.

Experiment 1

Method

Participants

A total of 345 college and community members participated in this experiment. The college sample consisted of 168 undergraduate psychology students from a southeastern university. Participants received course credit for participation. Demographic data was collected for both the college and community samples; however, some participants chose not to provide this information. The average age of the college participants was 20.36 (N = 165). There were 120 women and 45 men who reported gender. Of the 146 college participants who reported their ethnicity, 97 self-identified as Caucasian, 35 as African American, 5 as

Asian, and 9 as "other". The community sample consisted of 177 participants with the constraint that the participants had to be eligible to vote and could not be students from the University of Alabama in Huntsville. The average age of the community participants was 42.03 ($N = 163$). There were 104 women and 67 men who reported gender. Self-report of ethnicity in 118 participants included 85 self-identified as Caucasian, 25 as African American, 2 as Asian, 3 as Hispanic, and 3 as "other". The average years of education completed for the community sample was 15.59 ($N = 161$). All participants were randomly assigned to one of the seven experimental conditions with each session containing small groups of participants of six or less. All participants were treated according to ethical guidelines of the American Psychological Association (APA).

Design

The experiment conformed to a 3 (Witness: *Accomplice, Jailhouse, Civic Duty*) × 2 (Incentive: *No Incentive*, *Incentive*) × 2 (Sample: *College, Community*) between participants factorial design. A *No-Witness/No-Incentive Control Condition* was also included for comparison purposes. The dependent measures of interest included verdict (guilty or not guilty) and participants' self-reported confidence in their verdict decision. Participants also completed a questionnaire containing items that queried their views on a burden of proof item, the likelihood that the defendant committed the crime, and a true/false recognition test about the material in the trial transcript. In addition, participants completed questions regarding their perceptions of the cooperating witnesses' truthfulness, interest in justice and interest in serving their own self.

Materials

Trial transcript The trial transcript was an abbreviated version of *State of Arkansas vs. Echols and Baldwin*. The control transcript was six pages in length and the experimental transcripts were eight pages. The names of the individuals and locations were altered to prevent priming in participants who may have had prior knowledge of this case. The transcript contained opening and closing statements in addition to the testimony of two witnesses in the control transcript. More specifically, one witness for the state presented fiber evidence and the other presented knife evidence. The only difference between the control trial transcripts and the experimental trial transcripts was that the experimental transcripts also had a cooperating witness who provided a secondary confession. In all conditions Brandon Chase, a 22-year old male, was on trial for the murders of three 8-year-old boys: Doug Raplee, Shane Gavin and James Debolt. The prosecution presented evidence that a knife had been found in a lake behind the defendant's residence and that fiber evidence was recovered that was "microscopically similar" to a bathrobe found at the defendant's residence. The defense argued that the prosecution's evidence was largely circumstantial and that there was no actual evidence linking Brandon Chase to the crime.

Witness manipulation The critical evidence manipulated in the trial transcript was the secondary confession evidence given by the cooperating witness, Seth Rogers. For all witness types, Seth Rogers testified that the defendant, Brandon Chase, confessed to him that he did indeed kill the three boys. In the *accomplice witness* condition, Seth Rogers is a friend of Brandon Chase who testifies that Brandon called him and asked him to come to the murder scene, upon which he confessed to murdering the victims and asked the witness to help dispose of the bodies. In the *Jailhouse Witness* condition, Seth Rogers is a convicted criminal in a correctional facility who testified that while in a correctional facility with Brandon Chase, the defendant confessed to him about killing the three boys. In the *Civic Duty Witness* condition, Seth Rogers is a classmate who testified that Chase confessed to killing the three boys during a card game. In the *Incentive* conditions, both the accomplice witness and jailhouse witness also testified that they received a reduced sentence in exchange for their testimony, while the civic duty witness testified that he received a monetary reward in exchange for testifying. Seth Rogers did not testify in the *no-witness control condition*.

Questionnaire The dependent measures were typed on three separate pages but were presented one page at a time and in the same order for each participant. The first page of the questionnaire included a verdict decision (guilty or not guilty), a 10-point confidence rating (1-not at all confident, 10-very confident) and a percentage estimate of the likelihood that the defendant actually committed the crime (0 *no likelihood* to 100-*high likelihood)*. The second page contained four questions regarding participants' attributions of the cooperating witness who provided the secondary confession, including his trustworthiness, his interest in serving justice, his interest in seeking the truth, and the extent to which he was perceived as serving his own self-interests. All of these questions were assessed on a 10-point Likert-type scale (1 = *not at all* to 10 = *extremely*). The third page was a 12 question memory test about details of the trial.

Procedure

Participants arrived at the experimental session and were assigned seating in the experimental room to ensure that they could not influence one another's responses. They were then asked to complete an informed consent and

provide demographic information that included their name, age, ethnicity, level of education and profession. Afterwards, participants were instructed to imagine that they were jurors in a trial and were told to pay close attention to the details of the trial transcript they were about to review because their memory would be later tested and they would not be able to look back at the trial transcript. A trial transcript was randomly selected and handed to each participant. Participants were instructed to sit quietly after reading the trial transcript. They were also provided with a manila folder in which to put the trial transcript and each completed questionnaire. They were informed that they would not be allowed to go back to any sheet already placed into the folder. Every participant completed each step in the procedure before the experimenter proceeded to the next step. After all participants finished reading the trial transcript, the first questionnaire was administered. The questionnaire asked for a verdict of *Guilty* or *Not Guilty*, a Likert measure of their confidence in their verdict decision, and their likelihood rating that the defendant committed the crime. Next, they provided ratings on a Likert-scale as to the secondary witness' interest in truth, his trustworthiness, his interest in justice, and his own self-interests. Finally, they completed a true-false memory questionnaire. After completing all questionnaires, the experimenter debriefed all of the participants.

Results and Discussion

Manipulation Checks

In order to determine whether participants read the transcript, the 12 true-false questions regarding details of the trial transcript were analyzed. In every condition, participants averaged 10.37 out of 12 correct on the true/false recognition test. This is significantly greater than chance-level performance or 6 out 12, $t\,(344) = 65.73$, $p < .01$. A 3 (Witness Type: *Accomplice, Jailhouse, Civic Duty*) × 2 (Incentive: *Incentive, No Incentive*) × 2 (Sample: *College, Community*) factorial ANOVA conducted on the recognition accuracy scores revealed no significant differences on the true-false performance of participants. Furthermore, none of the experimental groups differed from the control group in terms of their average score on the true-false questions.

Verdicts

A 3 × 2 × 2 × 2 hierarchical loglinear analysis (HILOG) was performed to examine the influence of Witness (*Accomplice, Jailhouse, Civic Duty*), Incentive (*Incentive, No Incentive*) and Sample (*College, Community*) on participants' Verdict decisions (*Guilt*, *Not Guilty*). Results indicated a significant Witness × Verdict interaction, $\chi^2\,(2) = 13.19$, $p < .01$, $v = .14$, such that participants in the *Civic Duty* condition voted guilty more often then either the *Accomplice Witness* or *Jailhouse Confession* conditions. Importantly there was no main effect, χ^2s (1) = .30, *ns*, $v = .03$,[1] or any interaction with the Incentive Condition, χ^2s > 1.93, ns, *v*s < .05. Finally, participants in the experimental conditions voted guilty significantly more often than those in no-witness control condition, χ^2s (2) > 12.00, *p*s < .01, *v*s < .29. There was also a significant Sample × Verdict interaction, $\chi^2\,(1) = 10.61$, $p < .01$, $v = .13$, such that conviction rates were higher in the college sample relative to the community sample; however, Sample did not interact with any of the experimental manipulations.

Likelihood of Commission

Aside from providing verdict decisions, participants also estimated their perceived likelihood that it was the defendant who committed the crime (0 = *no likelihood* and 100 = *high likelihood*). A 3 (Witness Type: *Accomplice, Jailhouse, Civic Duty*) × 2 (Incentive: *Incentive, No Incentive*) × 2(Sample: *College, Community*) factorial ANOVA was conducted on the likelihood estimates. The overall likelihood that the defendant committed the crime was 67.31%. Consistent with the verdict analysis, a significant main effect of Witness Type was observed on the likelihood estimates, $F\,(2, 281) = 2.91$, $MSE = 572$, $p < .05$, $\eta_p^2 = .02$. Planned follow-up tests revealed that participants viewed the defendant as significantly less likely to have committed the crime in the *Accomplice Witness* condition when compared with the *Civic Duty* condition, $t\,(1{,}195) > 2.40$, $p < .01$, *d*s > .11. Furthermore, likelihood estimates in each witness type differed significantly from the no-witness control condition, *t*s (281) > 3.70, *p*s < .01, *d*s > .21.[2] A significant effect of Sample was again found, $F\ (2,\ 281) = 4.16$, $MSE = 572$, $p < .05$, $\eta_p^2 = .01$, as the

[1] The power to detect this very small effect of incentive was admittedly low ($1 - \beta = .10$). One alternative explanation that could account for why participant juror verdicts decisions were not influenced by incentive may be that they did not remember there was an incentive. To address this question 28 additional participants participated in the *Jailhouse Incentive Type* and were asked to indicate in a free recall test whether there was there an incentive. If the participants said there was then they were asked to indicate what the incentive was. Of the 28 additional participants 17 or 61% voted guilty (approximating well the percentage reported for this condition in Experiment 1). Importantly, all but three participants remembered the incentive and were able to recall details about the incentive. Thus, we do not believe that the pattern of results reported in The College Sample can be attributed to the fact that participants simply failed to remember that there was an incentive.

[2] Here again, power to detect the small effect of Incentive was admittedly low ($1 - \beta = .21$).

college sample (M = 73.5, SD = 22.55) expressed significantly greater likelihood estimates than did the community sample, (M = 67.79, SD = 25.81). No significant differences between the *Incentive* and *No Incentive* conditions were found, F (1, 281) = 1.22, MSE = 572, *ns,* η_p^2 = .004, nor any higher-order interactions, Fs (2,281) < .079, MSE = 572, *ns*, η_p^2 < .001.

Witness Ratings

A multivariate analysis of variance (MANOVA) was also conducted to assess the effect of the Sample, Witness, and Incentive manipulations on participants' ratings of the witness' truthfulness, trustworthiness, interest in serving justice, and interest in serving his own interests. The results of this analysis revealed a significant multivariate main effect of Witness Type, F (8, 565) = 6.96, p < .01, η_p^2 = .091, and Incentive, F (4, 277) = 4.60, p < .01, η_p^2 = .063. The interaction was also significant, F (8, 565) = 2.78, p < .0, η_p^2 = .039. No other significant effects, including those involving the Sample variable, were observed. Univariate tests confirmed a main effect of Witness Type on each rating, Fs (1,291) > 13.27, ps < .01, η_p^2 > .086. Tukey's HSD follow-up tests revealed that the main effect of Witness Type resulted from participants rating the *Civic Duty* witness as significantly more trustworthy, truthful, interested in serving justice and less interested in serving his own interests than either the *Jailhouse* or *Accomplice Witness*es. The main effect for Incentive, F (1,291) = 14.70, p < .01, η_p^2 > .050, and the Witness × Incentive interaction, F (2,291) = 9.47, p < .01, η_p^2 > .063, were only significant for the attribute of serving own interest. Witnesses who received an incentive were rated by participants as more interested in serving their own interests compared to witnesses who did not receive an incentive—although this effect did not translate into differential verdicts as previously discussed. Univariate follow-up tests on the interaction revealed that the difference in participants' perceptions of the witness's interest in serving his own self-interest were greatest in the *Accomplice Witness* condition.

Summary of Findings

Overall, the results of Experiment 1 illustrate several important and novel findings. First, both college and community samples demonstrated that conviction rates were unaffected by the explicit provision of information indicating that the witness received an incentive to testify. Second, and consistent with the research on confession evidence in the courtroom (Kassin and Neumann 1997; Kassin and Sukel 1997; Kassin and Wrightsman 1980, 1981), the presence of a confession, albeit a secondary confession, had a significant influence on mock juror conviction rates. More specifically, in every witness type and across both college and community samples, mock jurors convicted significantly more often when there was a secondary confession provided by a cooperating witness than when no such witness had testified. Third, the only significant difference between the two samples was that the conviction rates were much higher in the college sample. Fourth, the civic duty witness was rated as being more trustworthy, truthful, interested in serving justice, and less interested in serving his own needs when compared with other witnesses. Consistent with these ratings, participants in this condition voted guilty more often than did participants in the other conditions (Table 1).

It appears that the present results are quite consistent with the fundamental attribution error (Kassin and Gudjonsson 2005; Ross 1977). According to the fundamental attribution hypothesis, perceivers will ignore the contextual and situational factors in favor of a dispositional attribution. In application to a jury situation, jurors should perceive a witness' behavior as influenced by personal factors rather than situational demands. Even though the witness in the incentive condition had an enormous motivation to fabricate evidence (having been provided a situational incentive to testify), jurors appeared to ignore this information and render verdicts that were not significantly different across the *Incentive* and *No Incentive* conditions. The participants may not have recognized or considered the impact that an incentive might have on behavior and/or the willingness to provide accurate and truthful information. Furthermore, participants did not have significantly different ratings of truthfulness or trustworthiness across the *Incentive* and *No Incentive* conditions. Thus, participants appeared to diminish the contextual influence of the incentive in favor of the dispositional attributions of trustworthiness and truthfulness in accepting the testimony at face value.

Alternatively, the null results could have occurred because (a) participants failed to notice the incentive manipulation when it was provided or (b) participants assumed that both the *Accomplice Witness* and *Jailhouse Informant* were receiving an incentive, even if an incentive was not explicitly described. In Experiment 2, we tested these possibilities by asking participants to indicate whether the witness was provided an incentive and what the incentive was. Additionally, to assess the underlying causes behind participants' verdict decision, we asked respondents to indicate why the cooperating witness came forward with the secondary confession evidence.

Experiment 2

Experiment 2 was conducted to assess whether the results of Experiment 1 were due to the fundamental attribution

Table 1 Means and standard errors for the conviction rates attributes and likelihood scores for Experiment 1

	Conviction rate	Trust	Truth	Justice	Own interest	Likelihood of guilt
College sample						
Accomplice						
No incentive	66.67(9.8)	5.04(.53)	5.17(.52)	5.12(.58)	7.75(.55)	71.04(4.51)
Incentive	62.50(10.1)	5.50(.52)	5.46(.53)	4.46(.46)	8.00(.48)	65.62(5.44)
Total	64.58(4.83)	5.27(.37)	5.31(.37)	4.79(.37)	7.87(.36)	
Jailhouse						
No incentive	70.83(9.5)	5.37(.38)	6.08(.41)	6.33(.49)	5.54(.55)	73.17(3.73)
Incentive	62.50(10.1)	5.87(.42)	6.00(.43)	5.67(.41)	7.21(.50)	65.42(4.80)
Total	66.67(4.76)	5.62(.28)	6.04(.29)	6.00(.32)	6.37(.39)	
Civic duty						
No incentive	91.67(5.8)	6.92(.31)	7.62(.35)	7.87(.36)	5.21(.63)	82.42(4.13)
Incentive	87.50(10.3)	6.83(.49)	7.04(.49)	6.87(.52)	5.67(.49)	83.33(3.84)
Total	89.58(3.09)	6.87(.29)	7.33(.30)	7.37(.32)	5.44(.40)	
Control	37.5(10.1)					52.08(5.48)
Community sample						
Accomplice						
No incentive	47.83(10.7)	4.00(.51)	4.61(.54)	3.91(.56)	8.43(.48)	61.30(5.23)
Incentive	66.67(8.3)	5.85(.48)	5.20(.53)	5.24(.56)	7.52(.46)	67.12(5.15)
Total	56.82(5.03)	4.44(.35)	4.90(.38)	4.58(.37)	7.98(.33)	64.21(3.73)
Jailhouse						
No incentive	53.85(10.0)	5.11(.48)	4.82(.49)	5.12(.53)	5.08(.46)	76.38(5.05)
Incentive	50.00(9.6)	4.57(.46)	4.61(.55)	4.96(.51)	8.89(.49)	69.41(4.96)
Total	52.37(5.01)	4.84(.33)	4.93(.36)	5.04(.37)	6.98(.32)	72.89(3.54)
Civic duty						
No incentive	58.33(10.3)	6.92(.50)	6.75(.54)	6.54(.55)	5.21(.47)	68.83(5.26)
Incentive	58.33(10.3)	5.79(.50)	6.00(.54)	5.89(.55)	6.63(.47)	67.12(5.26)
Total	58.3(5.63)	6.35(.35)	6.37(.38)	6.20(.37)	5.92(.33)	66.29(3.73)
Control	23.53(6.0)					44.07(5.09)

error or whether the participants more simply failed to notice the incentive manipulation. Three changes were made to test these possibilities. First, all participants in the experimental conditions were asked whether the witness was provided an incentive for the testimony, and they were further asked to indicate what the incentive was. Thus, if participants accurately reported regarding the incentive manipulation, then the alternative hypothesis that participants did not notice the incentive could be ruled out as an explanation of the Experiment 1 results. Second, all witnesses in the experimental conditions were asked to indicate why the cooperating witness would come forward with the secondary confession evidence. This question should allow for the assessment of the fundamental attribution error hypothesis. That is, if the results are due to the fundamental attribution error then it was expected that participants in all conditions should attribute the secondary confession to personal aspects of the cooperating witnesses such as his honesty, trustworthiness or feelings of guilt, rather than to situational demands such as receiving an incentive.

Finally, to ensure that participants do not assume an incentive in the *No Incentive* condition, we included a new condition, *No Incentive Explicit*, in which the witness is specifically asked during the trial whether he received a monetary award (*Civic Duty*) or a decrease in his sentence (*Accomplice Witness, Jailhouse*) in exchange for the testimony. The witness in the explicit conditions indicated that no incentive was given, thus disambiguating the notion of an incentive.

Method

Participants

A total of 248 college students volunteered to participate in this study in exchange for course credit. Demographic data was collected; however, some participants chose not to

provide this information. The average age of the participants was 20.75 (N = 248). There were 168 women and 80 men. In term of the racial composition of the sample, 76 participants identified themselves as Caucasian, 45 as African American, 5 as Asian, 2 as Bi-Racial, 1 as Native American, 4 as Hispanic and 12 as Other. All participants met Alabama juror eligibility requirements of either being a registered voter or having a current driver's license. Each participant was randomly assigned to one of the nine experimental conditions or the control condition. Participants were tested in small groups of up to six people and worked independently. All participants were treated according to ethical guidelines of the American Psychological Association (APA).

Design

The experiment conformed to a 3 (Witness: *Accomplice, Jailhouse, Civic Duty*) × 3 (Incentive: *No Incentive, No Incentive Explicit, Incentive*) between participants factorial design. As was the case in Experiment 1, a *No Witness Control* condition was also included for comparison purposes. The primary dependent measure of interest was the verdict decision. Participants also completed a questionnaire containing items that queried their views on a burden of proof item, the likelihood that the defendant committed the crime, and a true-false recognition test about the material in the trial transcript. In addition, participants completed questions regarding their perceptions of the cooperating witness' truthfulness, interest in justice, and interest in serving himself.

Materials and Procedures

Trial Transcript The trial transcripts were the same as those used in Experiment 1 with two exceptions. First, the specific incentive was stated in the trial transcript. More specifically, in the *Civic Duty Incentive* condition, the trial transcript was adapted so that the witness was asked if they had received a $10,000 reward for their testimony, to which they respond, "Yes sir, I did". In both the *Jailhouse Informant* and the *Accomplice Incentive* conditions, the trial transcript was adapted so that the witness was asked if he had received 5 years off his sentence, to which he responded, "Yes sir, I did". Second, for the new *No Incentive Explicit* condition, the witness was asked if he had received an incentive for their testimony to which he replied, "No Sir, I did not".

Questionnaire The questionnaire was the same as in Experiment 1, with the addition of three new questions. The first question asked the participant to speculate as to why the cooperating witness came forward with the secondary confession testimony. The second question asked the participants if the witness received an incentive for the testimony. If the participant responded yes to the second question, they were asked to indicate what the incentive was.

Procedure The procedure for Experiment 2 followed precisely those employed in Experiment 1.

Results and Discussion

Manipulation Checks

Similar to Experiment 1, participants were very accurate in answering questions about the trial transcript with the mean recognition accuracy rates in each condition greater than 79% (approximately 9.48 out of 12 correct answers). As was the case in Experiment 1, memory performance was significantly greater than chance or 6 out 12, t (344) = 46.96, $p < .01$, d = 2.98. A 3 (Witness Type: *Accomplice, Jailhouse, Civic Duty*) × 3 (Incentive: *Incentive, No Incentive, No Incentive Explicit*) factorial ANOVA conducted on the true-false recognition scores revealed no significant effects. Furthermore, none of the experimental groups significantly differed from the *No-Witness* control condition in terms of their recall of the facts of the trial transcript. In addition, all participants in the *Incentive* condition were asked if an incentive had been provided to the witness and (if so) what it was. Overall, 72 of 76 participants in the incentive condition indicated that the witness was provided with an incentive and participants correctly indicated what the incentive was. The four participants that did not indicate that the witness received an incentive simply left both questions blank. Based on these data we are confident that participants attended appropriately to the incentive manipulation. Therefore, the verdict data cannot be attributed to the fact that participants simply did not realize that the witness was paid or provided a sentence reduction for his testimony. Finally, no participants in the *No Incentive* condition indicated that witness was provided an incentive.

Verdict

The primary dependent measure of interest was the impact that the source of the secondary confession and the incentive would have on verdict decisions. Collapsing across all experimental conditions, the total conviction rate was 70.86% with 180 of 254 individuals voting guilty. A 3 × 3 × 2 hierarchical loglinear analysis (HILOG) was performed to examine the influence of witness type (*Accomplice, Jailhouse* or *Civic Duty*) and incentive (*Incentive, No incentive, or No Incentive Explicit*) on participants' verdict decisions (*Guilty, Not Guilty*). Consistent

with Experiment 1 neither the Incentive × Verdict, χ^2 (2) = 2.39, *ns*, *v* = .10[2], the *Witness* × *Incentive* × *Verdict* interaction, χ^2 (4) = 3.69, *ns*, *v* = .07, nor the *Witness* × *Verdict* Interaction, χ^2 (2) = .05, *ns*, *v* = .03, were significant. Additionally, participants in all witness types voted guilty significantly more often than those in the *No Witness* control condition, χ^2s (2) > 3.92, *p*s < .04, *v*s = .29. Table 2 provides the percentage of guilt verdicts across the levels of Witness type and Incentive.

Likelihood of Commission

Aside from providing verdict decisions, participants also estimated their perceived likelihood that it was the defendant who committed the crime (0 = *no likelihood* and 100 = *high likelihood), A* 3 (Witness Type: *Accomplice, Jailhouse, Civic Duty*) × 2 (Incentive: *Incentive, No Incentive, No Incentive Explicit*) factorial ANOVA was conducted on the likelihood estimates. The overall likelihood that the defendant committed the crime was 73.34%. Consistent with the verdict measure, no significant effects of Witness condition, *F* (2,218) = 1.92, *ns*, η_p^2 = .017, Incentive, *F* (2,218) = .208, *ns*, η_p^2 = .002, or Witness × Incentive interaction, *F* (4,218) = 1.84, *ns*, η_p^2 = .033, were found in the data. However, planned comparisons demonstrated that all Witness conditions significantly differed from the *No-Witness Control* condition, *t*s(242) > 2.02, *p* < .05, *d*s > .11. Once again, the presence of a secondary confession provided by a cooperating witness significantly increased participants' perceptions of guilt relative to the absence of this testimony.

Witness Ratings

A multivariate analysis of variance (MANOVA) was conducted to assess the effect of Witness Type and Incentive on participants' ratings of the witness' truthfulness, trustworthiness, interest in serving justice and interest in serving his own interests. Both the main effects of Witness type, *F* (8, 428) = 2.93, *p* < .01, η_p^2 = .095, and Incentive were significant, *F* (8, 428) = 5.30, *p* < .01, η_p^2 = .055. The interaction was not significant, *F* (16, 864) = 1.21, *ns*, η_p^2 = .022. With regard to the interest in serving justice, planned follow-up tests revealed that participants rated witnesses who received an incentive as significantly *less* interested in serving justice when compared with witnesses who were not provided an incentive, *ts* (218) > 2.30, *ps* < .02, *ds* = .47, in return for their testimony. Similarly, participants rated the witness who received an incentive as more interested in his self-interest than the witness who was not getting an incentive in exchange for his testimony, *its*(218) > 4.57, *ps* < .01. Furthermore, the *Accomplice Witness* was also rated as being more concerned about his own self-interest than with *Jailhouse Informant, t* (218) = 3, 57, *p* < .01, *d* = .34 or *Civic Duty Witness, t* (218) = 2.31, *p* < .02, *d* = .44. It is important to note that even though the witness was receiving an incentive, participants did not significantly differentiate between the witness' truthfulness or trustworthiness compared to the witness who was not receiving an incentive. In addition, even though the witness who was provided an incentive was rated as being more concerned about his own self interest and less interested in justice,

Table 2 Means and standard errors for the conviction rates attributes and likelihood scores for Experiment 2

	Conviction rate	Trust	Truth	Justice	Own interest	Likelihood of guilt
Accomplice						
No Incentive	68.00 (9.52)	5.84 (.57)	6.36 (.62)	5.68 (.59)	7.60 (.58)	74.32 (4.22)
No incentive explicit	80.77 (7.88)	5.96 (.49)	6.15 (.56)	5.58 (.58)	7.77 (.43)	77.38 (3.54)
Incentive	88.00 (6.63)	5.84 (.42)	9.88 (3.82)	5.60 (.50)	6.08 (.61)	77.44 (2.94)
Total	78.95 (4.71)	5.88 (.28)	7.45 (1.29)	2.78 (.32)	7.16 (.33)	76.38 (2.06)
Jailhouse						
No incentive	76.92 (8.43)	5.92 (.36)	6.77 (.46)	6.46 (.45)	5.00 (.47)	78.62 (3.33)
No incentive explicit	65.38 (9.51)	4.88 (.41)	4.85 (.53)	4.76 (.54)	8.46 (.36)	65.38 (5.53)
Incentive	84.00 (7.48)	5.64 (.47)	6.72 (.43)	6.72 (.41)	5.08 (.59)	77.72 (3.90)
Total	75.32 (4.95)	5.48 (.24)	6.10 (.29)	2.48 (.29)	6.19 (.32)	73.91 (2.58)
Civic duty						
No incentive	66.67 (9.83)	7.00 (.42)	7.38 (.47)	7.17 (.46)	5.13 (.65)	67.83 (5.18)
No incentive explicit	72.00 (9.17)	5.76 (.47)	6.20 (.49)	5.92 (.49)	7.04 (.39)	73.48 (4.31)
Incentive	68.00 (9.52)	5.64 (.45)	5.84 (.50)	6.60 (.49)	4.72 (.53)	67.60 (4.57)
Total	68.92 (5.42)	6.12 (.26)	6.46 (.29)	2.42 (.28)	5.64 (.32)	69.63 (2.69)
Control	40.00 (10)					55.24 (22.5)

these attributions did not significantly influence guilt ratings or perceptions of culpability.

Attribution Responses

Participants answered an open-ended question regarding why the witness would come forward and testify. In order to assess participants' response to this question, independent raters were asked to indicate if the motivation of the witness was due to a situational factor (e.g., he was getting an incentive), a personal factor (e.g., he felt guilty), both, or neither. All the raters were provided with a sheet that classified types of answers with designations for situational (e.g. incentive, time off sentence, monetary reward) and personal (e.g. he felt guilty, he was a good person, he believed it was the right thing to do in the situation). The raters agreed on their ratings 92% of the time. A third rater settled the 19 disagreements. To check the reliability of the raters we calculated Cohen's Kappa (k) which is measure of agreement among raters. Kappa ranges from 0 to 1, with 0 representing no agreement among the raters and 1 representing perfect agreement. Kappa for these raters was .74, which represents a high agreement among the raters' choices. In order to assess whether the results were due to the fundamental attribution error, ratings that were attributed to personal factors were scored as 1. If the raters said both personal and situational, the response was scored as 2 whereas situational attributions were scored as 3 (Table 3).

It is clear from the data that participants were committing the fundamental attribution error; out of 227 witnesses, 173 or 73% indicated that the witness came forward due to personal factors as opposed to the situation. Given the low frequency counts for the situational and situational + personal attribution categories, we combined these two categories in an attempt to assess the influence of the manipulations on attributions of witness behavior (personal vs. other). Consistent with the fundamental attribution error, no significant relationship between participants' attributions of witness behavior were observed as a function of the *Incentive vs. No incentive* manipulation, χ^2 (1) = 1.49, *ns*, v = .04. It appears that participants were committing the fundamental attribution error by ignoring the situation and overwhelmingly attributing the witness's behavior to personal factors.

Table 3 Frequencies of the attributions per experimental condition

	Personal	Situational	Both	Total
Accomplice				
No incentive	19	5	1	25
No incentive explicit	20	4	1	25
Incentive	16	5	5	26
Total	55	14	7	
Jailhouse				
No incentive	25	0	1	26
No incentive explicit	19	4	2	25
Incentive	14	10	2	26
Total	58	14	5	
Civic duty				
No incentive	21	3	0	24
No incentive explicit	22	2	1	25
Incentive	17	1	7	25
Total	60	6	8	
Overall Total	173	34	20	227

General Discussion

Overall, the results can be simply summarized. First, juror conviction rates were unaffected by whether or not the cooperating witness received an incentive in exchange for his testimony—despite the fact that participants perceived the witnesses who received incentives as less interested in serving justice and more interested in serving self-interests. This was true for both Experiment 1 and Experiment 2. It is clear from Experiment 2 that participants were aware of the incentive as they were able to identify what the incentive was with high accuracy (over 90%). Thus, participants were cognizant of the fact that the witness in the incentive condition was receiving some form of compensation for his testimony, whether it be money or a reduced sentence, but this still did not affect the verdict decisions. Furthermore, having the defense directly asks about the incentive and the witness explicitly stating that he did receive an incentive had no effect on verdict decisions. Second, the presence of a secondary confession provided by a cooperating witness had a strong influence on conviction rates when compared with the absence of such testimony. This finding replicates prior research on the power of primary confession evidence in the courtroom (Kassin and Wrightsman 1981; Kassin and McNall 1991; Kassin and Sukel 1997). Third, the results appear to be consistent with the fundamental attribution error.

According to the fundamental attribution error hypothesis, perceivers overly cite internal motivation for behaviors without considering external factors in the environment (Kassin and Gudjonsson 2005; Ross 1977). In the current study, support for the fundamental attribution error occurred in that 85% of individuals attributed the witness' testimony to personal characteristics (i.e., felt guilty, feeling sorry for the family, etc.) or both personal and situational factors compared to 15% that attributed the witness' testimony to situational factors (i.e., reward,

reduced sentence, etc.). Even though the witness in the incentive condition had an enormous motivation to fabricate evidence having been provided a situational incentive to testify, jurors were able to ignore this and vote guilty so that there were no significant differences between the incentive and no incentive conditions. Participants in this study were able to diminish the contextual influence of the incentive in favor of the dispositional attributions of trustworthiness and truthfulness in order to accept the testimony at face value. However, it is possible that future research could address the fundamental attribution error by including a condition that uses the two-step attribution model (Gilbert and Malone 1995). It is possible, according to this literature, that giving participants the resources and motivation that allow them to consider the incentive more carefully might moderate the non-significant effects of incentive seen in the present study. We have started by incorporating a former jailhouse informant as an expert witness for the defense to evaluate whether an expert for the defense will make mock jurors more sensitive to the effect of incentives on rewards.

An alternative explanation of the results may involve cognitive consistency. Cognitive consistency theory posits that people desire a state of balance in order to ease cognitive processing (Simon and Holyoak 2002). Considering that the participants completed their verdicts before they made their attributions, it is possible that this influenced their attributional ratings. Thus, in order to ease cognitive processing by retaining a state of balance, participants who voted guilty would then have to justify their verdict by indicating that the witness was honest and truthful. If this were the case then there should be differences in the attributions for people who voted guilty and not guilty in the witness type. In order to test this theory, we conducted an independent samples t-test between participants who voted guilty and not guilty for both samples in Experiment 1. The results seem to support the theory for cognitive consistency in that there were significant differences for truth, t (294) = 11.03, $p < .05$, and trust, t (294) = 11.03, $p < .05$, such that the ratings were higher for both truthfulness and trustworthiness for participants who voted guilty. The patterns of results were the same when both samples were analyzed separately. Future research should counterbalance the presentation of the verdict and the attributional questions for a more valid test of the cognitive consistency hypothesis.

One aspect of the findings that deserves mention is the effect of secondary confession evidence on jury decision-making. It is clear from these experiments and Kassin's prior research (Kassin and Gudjonsson 2005; Kassin and Neumann 1997) that mock jurors perceive primary confession evidence to be one of the most persuasive and compelling forms of evidence. In the present experiments, a secondary confession increased conviction rates in every condition relative to the *No-witness Control.* There are a few things to note about this finding. First, the secondary confession evidence was just that, secondhand information. The witness was not privy to the crime but was just reporting what he was told by the defendant. This was true even in the accomplice witness condition in that the witness did not see the defendant kill the boys. It is possible that the defendant did not commit the crime, but rather was covering for someone close to him. Therefore, the testimony by the accomplice witness can still be considered as a secondary confession. Second, the secondary confession evidence was presented in an extremely weak case as evidenced by the fact that in the control condition, participants voted guilty only 26% of the time (38% of College Sample and 14% of Community Sample). Third, when we asked participants what factors influenced their verdict, the modal response for participants who voted guilty in the both experiments (76% of College Sample and 66% of Community Sample) was the secondary confession evidence. These results are consistent with Kassin and Sukel (1997) who reported that mock jurors could not discount primary confession evidence when the confession was inherently biased and even when the judge had admonished them to do so.

Another issue that deserves mention is the lack of effect of Witness Condition in Experiment 2. In Experiment 1 participants in the civic duty condition voted guilty more often than in the other witness conditions. Close inspection of that data reveals that this effect is due in large part to the high number of guilty verdicts for the college sample in Experiment 1 (M = 89.58) which were much higher than guilty verdicts in either the community sample (M = 58.30) or the college sample in Experiment 2 (M = 68.92). It is unclear why college participants voted guilty more often than in the community sample. However, the data does support previous research by Sears (1986) that college students tend to be younger and are also more susceptible to information given to them by an authority figure (i.e. the court). These results do not distract from the major finding of the paper which is that incentive in no way influenced verdicts. This pattern was clear in both experiments.

There are some limitations of this study that are important to note. First, the results may have been different if the defense had addressed the incentive earlier in the trial transcript. In a real case, the defense attorney might be more persistent in ensuring that the jurors paid attention to the incentive and the effect the incentive may have on a person's testimony. In future studies, trial transcripts could include a more thorough cross-examination of the witness and details in the judges' instructions that alert the participants to the potential impact of the incentive on the witness. We have already begun this important work.

Another possible limitation is that the control trial transcript contained less evidence than that of the other trial transcripts (i.e., no secondary confession was provided by a cooperating witness). It is possible that the differences in the verdicts may have been due to the addition of this evidence rather than to the manipulation (i.e. secondary confession). However, given prior research that demonstrates the power of primary confession evidence, the results are likely to have been the same regardless of this limitation. It may also be possible that the attribution questions were affected by the verdict, given that the verdict was taken before the attributions were made. In future research, it may be important to address the possibility that these responses were simply matched to the verdict by varying the order in which the verdict and attributions were made. This design would allow for a test of cognitive consistency and may give insight into the role of the fundamental attribution error on verdicts.

Practical Implications

The argument for the use of jailhouse informants and accomplice witnesses is that the statements from these witnesses may be the most solid evidence that the prosecution has in the case. This makes the accomplice witness necessary in the legal system and creates a policy conundrum of sorts because sometimes incentives are needed in order to make a witness come forward with truthful information. While this argument has some merit, it could be possible for the system to incorporate policies that allow the witnesses to be utilized and still protect the rights of the accused.

Presently the use of a cooperating witness creates an enormous problem for the criminal justice system because it can generate a situation in which the motivation of the witness is to procure the best deal by pleasing the prosecution, even if this means fabricating evidence (Bloom 2002). In response to the unreliable nature of testimony from informants, several courts and lawmakers have taken measures to protect the accused. In Illinois, for example, if a jailhouse informant is presented in a capital case, the judge must conduct a pretrial interview to determine the reliability of the testimony. In California, judges now instruct the jury to carefully scrutinize the testimony and consider how much the testimony from the informant might have been influenced by promises of leniency. Similar instructions have been adopted in Oklahoma, Mississippi, Montana, and Louisiana. However, these safeguards will be effective only if jurors can perceive the enormous incentive to fabricate evidence in exchange for leniency and differentiate between honest and dishonest witnesses. While evidence from prior research demonstrates that judicial instructions might have some potential regarding eyewitness identifications (Cutler et al. 1990; Greene 1988; Katzev and Wishart 1985), the effect that judicial instructions have on secondary confessions from cooperating witnesses is yet to be determined. To the extent that judicial safeguards are ineffective, then the practice of using accomplices and informants may continue to lead to many wrongful convictions of innocent persons. Future research needs to determine the efficacy of such safeguards.

Acknowledgements The authors give thanks to Aurora Torres and Michael P. Toglia for helpful comments on earlier versions of this manuscript. Grateful appreciation is also expressed to Adam Shipley, Michelle Davis, Daniel Neuschatz, Anita Quinlivan, and Christy Gray for their assistance during the data collection phase of this experiment.

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