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RAPE MYTHS AND THEIR INFLUENCE ON JURORS:

**A criminological study on rape myths, juror decision-making
and judicial guidance in England and Wales**

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DECLARACIÓ D'AUTORIA I ORIGINALITAT

Jo, *Maya Daly Russell*, certifico que el present treball no ha estat presentat per a l'avaluació de cap altra assignatura, ja sigui en part o en la seva totalitat. Certifico també que el seu contingut és original i que en soc l'únic/a autor/a, no incloent cap material anteriorment publicat o escrit per altres persones llevat d'aquells casos indicats al llarg del text.

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Abstract

The purpose of this study was to investigate common rape myths and their influence on juror decision-making, as well as current practices that seek to educate jurors on rape myths in England and Wales. The first aim was to investigate how the real ‘rape stereotype’ differs from the reality of rape. A 2019 victimization survey showed that most victims are assaulted by somebody they know, in their own home or in the perpetrator’s, without necessarily suffering physical injuries or offering resistance, and the perpetrator does not always use physical force. The second aim was to determine the prevalence of false accusations of rape, data revealing that 3% of reported rapes are actually false. The third was to investigate how rape myths influence jurors verdicts, the analysis of quantitative and qualitative studies using mock juries confirmed the frequent use of rape myths during deliberation, and their impact on the verdict. Lastly, this study explored if the judicial guidance on false assumptions about rape is sufficient, an interview with a Q.C. Barrister indicating that judicial guidance is probably not enough to effectively tackle rape myths in court.

Keywords: false rape allegations, judicial guidance, juror decision-making, rape myths.

Resum

L'objectiu d'aquest estudi era investigar els mites més comuns sobre la violació i la seva influència en les decisions del jurat, així com les pràctiques actuals que pretenen educar al jurat sobre aquests mites a Anglaterra i Gal·les. El primer objectiu era investigar com l'estereotip de la ‘violació real’ difereix de la realitat. Una enquesta de victimització del 2019 ha demostrat que la majoria de les víctimes són agredides per algú que coneixen, a casa seva o a la de l'agressor, no necessàriament pateixen lesions físiques, ni ofereixen resistència, i l'agressor no sempre fa servir la força física. El segon objectiu era determinar la prevalença de les falses denúncies per violació, i les dades d'informes oficials han revelat que el 3% de les violacions denunciades són en realitat falses. El tercer objectiu era investigar com els mites de la violació influeixen en el veredict del jurat. L'anàlisi d'estudis quantitius i qualitius ha confirmat l'ús freqüent de mites durant el procés de deliberació, i el seu impacte en el veredict. Finalment, aquest estudi ha explorat si l'orientació judicial que rep el jurat sobre mites falsos sobre la violació és suficient, i una entrevista amb un advocat ha posat de manifest que probablement no és suficient per abordar amb eficàcia els mites de la violació.

Paraules clau: denúncies falses, orientació judicial, deliberació del jurat, mites falsos sobre la violació.

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1. INTRODUCTION

Rape myths can be described as ‘*prescriptive or descriptive beliefs about rape that serve to deny, downplay or justify sexual violence that men commit against women*’ (Bohner et al., 1998:14). According to Dinos et al. (2015) acceptance of rape myths is one of the main barriers that prevents progress in legal reform. The ‘real rape’ stereotype prevents many women from being recognized as genuine victims of rape, which partly explains the low conviction rate for sexual offences, as well as the extensive number of unreported rape cases. Research has found that the vast majority of women have been assaulted by somebody they know, mainly a partner or previous partner, in their own home, do not always suffer physical violence or severe injuries, and in many occasions do not offer physical resistance due to fear (Du Mont and White, 2007). In addition, a recurrent rape myth is that false rape allegations are a common occurrence. In reality, the prevalence of false rape allegations is between 2 and 11% of all rapes reported to the police (Lisak et al., 2010).

Many people in society still accept rape myths as being true, and this is extrapolated to jurors. Jurors enter the courtroom with preconceived notions about rape and how victims of rape are supposed to behave before, during, and after sexual assault. Research over the last four decades has studied how these beliefs and attitudes towards rape influence juror decision-making, and specifically, decisions about blame, guilt and verdict (Klement et al., 2019; Chalmers et al., 2021). As a consequence of legal restrictions not allowing researchers to solicit information about arguments made by jurors (Juries Act, 1974), or observe real deliberations in the jury room (Contempt of Court Act, 1981), researchers have used mock juries and mock trials -highly realistic simulations of real criminal trials- to study the influence of rape myths and attitudes on juror decision-making. The qualitative studies analysed in this dissertation have found that jurors routinely resort to rape myths while deliberating, in fact, in rape cases that involve variables such as lack of physical injuries, lack of resistance/force, delayed reporting or calm complainant demeanour while testifying, mock jurors are less likely to perceive the complainant as credible, and more likely to blame her for the incident (Ellison and Munro, 2009, 2013). Similarly, the analysed quantitative research has evidenced how mock jurors who have higher Rape Myth Acceptance scores - meaning they adhere to rape myths to a higher degree - are more likely to be lenient towards the defendant, and not give a guilty verdict (Dinos et al., 2015; Willmott et al., 2018).

Furthermore, previous research has found that judicial guidance that aims to tackle the dangers of adhering to rape myths is only given to juries at the end of the trial about half the time. The extent and quality of legal directions varies between judges, and rape myths remain relevant to the jury (Smith and Skinner, 2017; Temkin et al. 2016).

The main purpose of this dissertation was to investigate the most common rape myths and their influence on juror decision-making, as well as the current policies and practices that seek to educate jurors on the dangers of assumptions in sexual offence trials in England and Wales. With this in mind the objectives of this dissertation are to (1) investigate how the ‘real rape’ stereotype differs from reality, (2) determine the prevalence of false rape allegations, (3) investigate how rape myths influence juror decision-making, (4) research the type and level of education that jurors receive on rape myths, (5) and explore initiatives and proposals that look to improve juror education.

In regard to methodology, first, I analysed a victimization survey on the nature of sexual assault in order to determine how the reality of rape differs from the ‘real rape’ stereotype or scenario. Second, to determine the rate of false rape allegations, I focused on studies conducted by the Home Office, the Ministry of Justice and the Crown Prosecution Service, as well as police recorded data. Third, to investigate the influence of rape myths on juror decision-making, I analysed peer-reviewed qualitative and quantitative studies that have used mock juries and/or Rape Myth Acceptance scales. Lastly, I conducted an interview with a Q.C. Barrister, with extensive experience in serious crime, in order to investigate the current practices in court that offer judicial guidance on rape myths, as well as explore several options that look to tackle juror bias.

2. SOCIOPOLITICAL CONTEXT AND PREVALENCE OF RAPE

Rape and assault by penetration are considered *indictable only* offences in England and Wales, and are tried by a jury in the Crown Court. Section 1 of the Sexual Offences Act (SOA) (2003) states that a person commits **rape** when he intentionally penetrates the vagina, anus, or mouth of another person with his penis (1), without the consent of the other person (2), and does not reasonably believe that the person has consented to the penetration (3). Whereas, s. 2 states that **assault by penetration** can be committed by both men and women using a part of their body or an object (SOA, 2003).

Over the last few decades there have been new initiatives and reforms in the law regarding sexual offences in England and Wales. For example, according to s.41 of the Youth Justice and Criminal Evidence Act (1999), the defence is not allowed to adduce evidence or ask questions during cross-examination about past sexual behaviour of the complainant. The Sexual Offences Act (SOA) (2003), established the definition of **consent**: ‘*a person consents if he agrees by choice, and has the freedom and capacity to make that choice*’ (s. 74). Section 75.2 of the SOA (2003) introduced a list of evidential presumptions which prove the lack of consent of the complainant: (1) the defendant uses or threatens to use violence against the complainant (2) or another person, (3) unlawful detention, (4) the complainant was asleep or unconscious, (5) had a physical disability that made it impossible to communicate consent, (6) and/or administration of a substance to the complainant causing them to be overpowered. It is also important to highlight the fact that the SOA (2003) does not require that the complainant communicate¹ a lack of consent. In addition, there is still a lack of consent to one form of penetration even if the complainant had previously consented to a different form of penetration (SOA, 2003). In 2007, the requirement that sexual assault complaints be made ‘as soon as could reasonably be expected’ was removed, meaning evidence that is introduced weeks, months or years later would still be valid (Office for Criminal Justice Reform, 2007). In 2010, myth-buster directions aimed at educating jurors on harmful assumptions and stereotypes about rape were introduced at the end of trials (Judicial Studies Board, 2010). There has also been an increase in the number of public awareness campaigns², such as the *JURIES Campaign*, created in 2014, which aims to introduce mandatory briefings about rape myths and stereotypes for juries.

Despite these legal changes and public awareness campaigns, various studies have determined that the majority of rapes are not reported to the police, and conviction rates for sexual offences have decreased considerably (e.g. Temkin, 2010; Hohl and Stanko, 2015). In fact, in 1985, 25% of reports ended in a conviction, in 1995, 12%, and from the year 2000 onwards rates have remained below 7% (Hohl and Stanko, 2015). To illustrate the current situation, I will analyse prosecution and conviction rates, as well as, police recorded data and public survey results.

¹ In *R v. Malone* (1998), the Court of Appeal stated that the *actus reus* of rape does not require that the complainant demonstrate or communicate a lack of consent to the defendant (Crown Prosecution Service, 2021).

² Other notable public awareness campaigns are the *Disrespect NoBody Campaign* launched by the Home Office in 2017, and the *#NoConsentNoSex* campaign launched by Northamptonshire police in 2018.

2.1. Prosecution and conviction rates

According to the Ministry of Justice (2020), the conviction rate for indictable offences was 83% in 2019, in England and Wales. Between the years 2016 and 2019, prosecutions for sexual offences dropped by 62% (12,572 to 7,744), and convictions for sexual offences decreased by 66% (7,511 to 5,017). Moreover, in 2019, sexual offences had a conviction ratio of 64%, which was well below the overall conviction rate for indictable offences (83%).

2.2. Police recorded data

As stated by the Office for National Statistics (2021a), the police recorded 162,936 sexual offences between April 2019 and March 2020. Approximately 36.12% (58,845) are categorised as rape, 36.1% (58,815) are considered sexual assault, 14.96% (24,387) constitute sexual activity with minors, and 12.8% (20,889) are categorized as other sexual offences (grooming, incest, trafficking for sexual exploitation, etc.).

2.3. Prosecution and conviction rates against total of recorded sexual offences

As mentioned in the previous section, the total of recorded sexual offences between April 2019 and March 2020 was 162,936. Considering the fact that in 2019 there were 7,744 prosecutions for sexual offences, it is estimated that only 4.7% of recorded sexual offences were prosecuted that year. Similarly, in that same year, 5,017 people were found guilty, so only 3.1% of recorded sexual offences ended with a conviction. However, these calculations hold certain limitations because the data collected by the Ministry of Justice is for the year 2019, whereas the data collected by the Office for National Statistics is for the April 2019 - March 2020 time period. There was no police recorded crime data for only the year 2019, therefore, the calculations are simply estimations.

2.4. Victim survey

According to the Office for National Statistics (2021a), data extracted from the Crime Survey for England and Wales demonstrates the prevalence of sexual assault since the age of 16 is 22.9% for women and 4.7% for men. The most prevalent types of offences against women are indecent exposure or unwanted sexual touching (21.9%) and rape or assault by penetration, including attempts (7.1%). In addition, the survey found that only 15.8% of female victims told the police (Office for National Statistics, 2021b).

3. THEORETICAL FRAMEWORK

3.1 Rape myths

Bohner et al. (1998: 14) described rape myths as: *'prescriptive or descriptive beliefs about rape that serve to deny, downplay or justify sexual violence that men commit against women'*. Lonsway and Fitzgerald (1994) argued that this justification involves blaming the victim for the incident, rather than the perpetrator. This entails analysing the behaviour of the victim in search of evidence that she may have provoked the situation herself (e.g. previous flirtation with the perpetrator). Thus, rape myths are used to discredit incidents of sexual assault that do not fit into the 'real rape' category, ignoring the reality and extent of the phenomenon (Burt, 1991).

Leverick (2020) suggests that 'just world beliefs' could explain why some people believe rape myths, and especially, how some women believe them. According to Lerner (1978) the *just world* hypothesis states that people believe the world to be a just and orderly place, and that people get what they deserve depending on how they behave. Specific rape myths might reassure women that they will not be victims of this type of crime because they would never behave in such a 'risky' manner (i.e. if the victim was voluntarily intoxicated) (Leverick, 2020).

According to Christie (1986), the 'ideal victim' is an individual who is weaker than the offender and puts a reasonable effort into protecting herself. Nevertheless, these two elements are not necessarily sufficient, and the author discusses other important attributes that characterize the ideal victim status: the victim was engaging in a respectable project -e.g. she was visiting her sick relative-, the victim was in a place where she cannot be blamed for being in -e.g. in the street during the day-, and the offender was bigger and was unknown to the victim.

The 'ideal victim' can be linked to the 'real rape' stereotype. Ellison and Munro (2010) discuss what society considers 'real rape' to look like: a sudden, surprise attack by a stranger - who is often armed and a sexual deviant -, in a public, but isolated place, and the victim suffers severe physical injury due to the violence inflicted by the perpetrator or the victim's efforts of resistance. The authors establish that when a rape case differs from the 'real rape'

stereotype it is less likely to be considered authentic, and less likely to end in a conviction. In fact, a global review issued by the World Health Organization (Du Mont and White, 2007) found that the disparities between reported sexual offences and prosecution rates was connected to the victim’s reputation, and her behaviour before (e.g. voluntary intoxication), during (e.g. lack of struggle), and after the sexual assault (e.g. delayed reporting). Therefore, the real rape stereotype prevents many women from being recognized as victims of rape (Ellison and Munro, 2010). In addition, the review determined that many victims are assaulted by somebody they know, the vast majority by a current or ex-partner, and in the victim or the perpetrator’s home (Du Mont and White, 2007). The review³ found that almost half of victims (41.7%) do not suffer physical violence, many do not physically resist, and a considerable portion do not suffer any physical injuries (10-71%) or internal trauma (33-91%). Nevertheless, many suffered considerable negative physical, psychological and social consequences (sexually transmitted infections, PTSD, suicide attempts, difficulties at work/school, amongst others) (Du Mont and White, 2007).

Smith and Skinner (2017) define in Figure 1 the most commonly discussed myths according to the four categories suggested by Bohner et al. (2009):

Figure 1

| Categories of rape myths (Bohner et al., 2009) | Commonly discussed myths (Smith and Skinner, 2017) |
|--|--|
| (a) Beliefs that blame the victim/survivor | 1) People who get voluntarily intoxicated are at least partly responsible for their rape |
| | 2) People provoke rape by the way they behave and dress |
| | 3) If the victim/survivor does not scream, fight or get injured, then it is not rape |
| | 4) False allegations are common, mostly because of |

³ The review analysed studies that were conducted in Australia, Denmark, Canada, Finland, Norway, United Kingdom and United States. For this reason, the authors have illustrated a percentage interval, as proportions varied between studies.

| | |
|--|--|
| (b) Beliefs that express disbelief in claims of rape | revenge or regret |
| | 5) All victim/survivors will be visibly distressed in the aftermath of the rape and when giving evidence |
| | 6) Any delay in reporting the rape is suspicious |
| (c) Beliefs that exonerate the perpetrator | 7) Rape is a crime of passion |
| | 8) Male sexuality is uncontrollable once 'ignited' |
| (d) Beliefs that assume only certain types of women/social groups are raped | 9) It only occurs between strangers in public places |
| | 10) Male rape only occurs between gay men |
| | 11) People working in prostitution cannot be raped |

Note: Smith & Skinner (2017). How Rape Myths Are Used and Challenged in Rape and Sexual Assault Trials. *Social & Legal Studies*. 26(4) 441-466

The belief that false allegations of rape are common is one of the most popular rape myths; nevertheless, there is a lack of evidence that suggests that there are more false reports of rape than for other offences (Ellison and Munro, 2010). Lisak et al. (2010) analysed seven studies (1977-2008) that have investigated the proportion of false rape allegations, and found that the prevalence of false rape allegations is between 2 and 11% of all rapes reported to the police. The authors concluded that police forces that use a more thorough classification of rape cases have lower rates of false rape reports.

Rape myths do not portray an accurate image of the responses victims can experience due to trauma, shame, fear of not being believed, etc. In fact, studies show that in reality many victims of sexual assault never report the offence to the police, they delay reporting (Clay-Warner and Burt, 2005), and sometimes have a calm demeanour as a coping strategy after the attack (Schuller et al., 2010).

3.2. Prevalence of rape myths among the population

A survey answered by 3,922 members of the British population, shows that many people are unsure about what constitutes rape (YouGov, 2018). For example, 33% of respondents believe that it is generally not rape if a woman is pressured to have sex but there is no physical violence. Similarly, the vast majority (roughly 75%) believe that a great deal of physical injury is experienced by victims of rape (regardless of victim-perpetrator relationship). Additionally, roughly a quarter of respondents do not believe it is rape if a woman has flirted while on a date and sex happens without her consent (27%), or if she changes her mind in the middle of sex, but it continues (28%). Furthermore, 97% of respondents believe that if a woman is forced to have sex in a park it is rape, whereas, there is a drop of 30% if a man has sex with his long-term partner without her consent. On a similar note, McGee et al. (2011) interviewed by telephone 3,120 members of the public in the Republic of Ireland and determined that 40.2% of participants believed that rape accusations are often false.

3.3. The influence of rape myths on juror decision-making:

Temkin and Krahe (2008) argue that one of the reasons why conviction rates are so low for sexual offences is because people have preconceptions about what constitutes the crime of rape (the 'ideal rape' scenario) and how victims should behave before, during and after the sexual assault. These extra-legal factors, including the emotions jurors feel during the trial and their difficulty to make decisions based exclusively on the evidence, are likely to translate into biased decisions about blame and guilt (Temkin and Krahe, 2008). Similarly, Pennington & Hastie (1986) suggested that jurors follow a 'story model' when making decisions about credibility and culpability by creating 'stories' according to the type of people involved in the case, as well as the available evidence and any previous knowledge they might have about similar situations. According to Ruva et al. (2012), jurors are selective and focus more on information that matches pre-existing knowledge and opinions. Essentially, jurors who adhere to rape myths may create a story that matches their beliefs, and focus on specific elements of the case when making a decision (e.g. if the victim was intoxicated, the way she was dressed) (Dinos et al., 2015).

Various quantitative studies that have used Rape Myth Acceptance scales with mock juries have found a significant correlation between RMA scores and attributions of blame, credibility, and verdict (Klement et al., 2019; Leverick, 2020). Jurors with higher RMA scores, perceive the complainant as a less credible witness, and are more likely to blame her

for the incident (Ayala et al., 2015; Klement et al., 2019). Likewise, jurors with higher RMA scores are also less likely to find the defendant guilty (Gray, 2006), and tend to recommend a more lenient prison sentence (Osborn et al., 2021).

The qualitative research shows that false assumptions about rape and victim behaviour are routinely expressed during deliberations in mock trials. Studies have found that variables like the consumption of alcohol and any previous flirtation between the complainant and the defendant influence attribution of responsibility (Ellison & Munro, 2010). Lack of physical injuries, absence of struggle on the part of the victim (Temkin and Krahe, 2008), calm demeanour while testifying in court (Wessel et al., 2006; Ellison & Munro, 2010), and delayed reporting of the offence to the police (Taylor and Lerner, 2005), all influence jurors' decisions about blame, guilt, and verdict choice. Additionally, mock jurors believe that false rape allegations are routinely made by women, and that women may lie about such accusations due to feelings of rejection and revenge (Chalmers et al., 2021), shame and embarrassment, or due to emotional or mental instability (Ellison & Munro, 2010).

3.4. Tackling bias in court

Leippe et al. (2004) stated that judicial guidance about rape myths would be more effective if it was offered by the judge at the beginning of the trial because jurors would be more open to myth-buster directions throughout the course of the trial. Similarly, Smith and Skinner (2017) defend the use of legal directions because jurors are more likely to make decisions based solely on evidence. Nevertheless, according to the authors, the exclusive use of judicial directions is not enough to tackle bias in court. Through the observation of 18 rape trials, Smith and Skinner (2017) found that myth-buster directions about victim reactions were offered at the end of 10 trials (just over half). The authors noted that the defence undermined the judicial directions, attempting to discredit the victim, and rape myths remained relevant to the jury. Temkin et al. (2016) have similar findings, and through the observation of 8 rape trials, found that some judges gave appropriate and useful directions about specific rape myths, while others gave them inadequately, or simply did not give any. The authors found that it was rare for judges to intervene with myth-related legal directions after the cross-examination of the complainant had become oppressive or irrelevant. On a similar note, a study issued by the Ministry of Justice found that only 31% of jurors completely understand the legal directions offered by the judge, and this percentage increases to 48% when written directions are given (Thomas, 2010).

Smith & Skinner (2017) suggested that watching a video before the trial might benefit the jury. An example would be the 'Tea and Consent' video (Blue Seat Studios, 2015) used by Thames Valley Police (n.d.), as part of the 'Consent is everything' campaign. The video was approximately three minutes long, it used stick figures as humans, and compared the action of initiating sex as the action of making somebody a cup of tea (i.e. if the other person does not want tea, do not make them drink the tea) (Blue Seat Studios, 2015). Rowe and Hills (2020) tested the video with (mock) jurors, and suggested that it might have been more effective at educating jurors if it was more realistic and one is able to relate the content of the video with a specific rape scenario. JURIES (Boydell and Saward, 2014), a campaign that aims to introduce mandatory briefings for juries in sexual offence trials, supports the idea of showing a pre-trial video to jurors detailing important aspects of sexual assault (e.g. trauma, freeze/flop/flight and fight responses, statistics about acquaintance rape and stranger rape, statistics about false rape allegations).

Other authors like Keogh (2007) defend the use of expert testimony as a means of offering general evidence on the realities of sexual violence in an impartial manner, but authors like Temkin and Krahe (2008) argue that it could only be effective if it was not subjected to cross-examination from the defence.

Scientific jury selection was originally created as a way of identifying the views of potential jurors on a specific matter, with the objective of excluding biased jurors from criminal trials, and therefore, guaranteeing a fair trial (Willmott and Oostinga, 2017). Since research has determined that beliefs and attitudes towards rape victims influence individual verdict decisions, Willmott (2016) suggests the idea of giving potential jurors a questionnaire, in order to establish to what degree they adhere to rape myths. Jurors with high scores -and are, therefore, biased- would be removed from sexual offence trials, making verdict decisions fairer.

4. CURRENT PRACTICES THAT TACKLE RAPE MYTHS IN COURT

Part 1 of the Crown Court Compendium⁴ (CCC) (Judicial College, 2021) is a resource that provides judges with legal directions on how to guide the jury in Crown Court trials. The contents of the Crown Court Compendium consists of practices, procedures and suggestions for judges to follow. Lord Justice Simon stated in *Regina v. Guy* (2018) that the directions have been carefully crafted, and that when applied to the specific circumstances of a case, are an indispensable resource to give a legally appropriate direction. He also stated that ‘*those who do not avail themselves of these draft directions are at risk of introducing error in the summing-up*’ (*Regina v. Guy*, 2018: 22).

Sexual offences are specifically discussed in section 20 of part 1 of the CCC (Judicial College, 2021). Depending on the circumstances of the case, the judge may give directions about how (1) individuals react differently to trauma, (2) some might complain immediately whilst others might complain later in time because of shame and embarrassment, and (3) a delayed report does not mean it is a false allegation. Complainant demeanour was discussed in *R v. Miah* (2014), specifically, how victim demeanour should only be used as evidence if it is relevant to the case and that in the majority of cases this type of evidence should not be adduced.

The trial judge has the responsibility of deciding the level of guidance the jury should receive, and also the best moment to do it: at the start, during, and/or at the end of the trial while summing up the case (Judicial College, 2021). Furthermore, throughout the trial judges can manage inappropriate comments made by advocates through directions, while remaining impartial. Additionally, the judge has the option of giving written judicial directions to the jury, as research by Thomas (2013) has shown jurors understand better the oral legal directions given by the judge if they are accompanied by written directions. In fact, the author determined that all of the jurors who had received written directions from the judge considered them to be helpful, whereas 85% of jurors who had not received any written directions, said they would have liked them while deliberating.

⁴ The first version of the Compendium was written in 2016, and is revised twice a year. The current version replaces all of the previous guidance provided by the Judicial College, but includes the strengths of previous publications, and therefore, further reference to them is not considered necessary (Judicial College, 2021).

Currently, the CCC (Judicial College, 2021) establishes that neither the defence nor the prosecution is allowed to use generic expert evidence⁵ about different victim reactions during and after a sexual assault, because such reactions can be addressed with judicial directions.

The CCC (Judicial College, 2021) includes a list of general directions for judges, as well as various examples of directions that judges need to adjust to match the specific circumstances of the case, yet the judge should always discuss the directions with the advocates in advance. Depending on the evidence and arguments used in court, judges might need to offer directions on certain indicators relating to myths about (un)truthfulness, consent, and background of the defendant (Judicial College, 2021) (see Figure 2).

Figure 2

| Indicators | Myths |
|---|---|
| (1) Untruthfulness | a) Delay in making a complaint |
| | b) Complaint made for the first time when giving evidence |
| | c) Inconsistencies in arguments made by complainant |
| | d) Lack of emotion/distress when giving evidence |
| (2) Truthfulness | a) A consistent account given by the complainant |
| | b) Emotion/distress when giving evidence |
| (3) Consent and/or belief in consent | a) Revealing or provocative clothing |
| | b) Intoxication of the complainant while with others |
| | c) Friendship/sexual relationship between complainant and defendant. It might be necessary to inform jurors about the difference between consent and submission . |
| | d) Previous consensual sexual activity on the same day |

⁵ In R v. Turner (1975) emerged the principle that expert evidence is only admissible if it offers the jury information that is not part of their normal experience, such as medical evidence, forensic evidence, and even evidence of psychological injury if the information is relevant for the jury (Crown Prosecution Service, 2021).

| | |
|------------------------------------|---|
| | e) Lack of use or threat of force, physical struggle, signs of injury. Difference between consent and submission. |
| (4) Background of defendant | a) In an established sexual relationship with someone else |
| | b) Sexual orientation (if relevant) |

Source: Judicial College (2021). Crown Court Compendium. Part 1: Jury and Trial Management and Summing Up

In summary, the CCC offers judges directions on how to guide the jury in sexual offence cases so they can decide on guilt by focusing solely on the evidence at hand, rather than stereotypes and beliefs about rape.

5. OBJECTIVES AND HYPOTHESIS

Since the literature has evidenced the disparities between how society defines real rape and what the nature of this crime actually looks like, the first objective is (1) to investigate how the ‘real rape’ stereotype differs from reality. The assumption that false rape allegations are common and that women often lie about being raped due to embarrassment or revenge has inspired the second objective, which is (2) to determine the prevalence of false rape allegations. As research has shown that jurors have preconceptions about rape and what ‘normal’ reactions to rape are, the third objective is (3) to investigate how rape myths influence juror decision-making. Legal resources have specified what protocols have been set up in regard to tackling bias in court, but how this translates to a real court setting is fairly undiscovered. So, the fourth objective is (4) to research the type and level of education that jurors receive on rape myths. Lastly, after investigating the legal side of judicial guidance and also common practices in court, the fifth objective would be (5) to explore initiatives and proposals that look to improve juror education.

These objectives, as well as the literature review, have led me to formulate the four hypothesis in the following paragraphs.

A 2010 global review commissioned by the World Health Organization, demonstrated that most rapes are committed by somebody known to the victim, in one of the party’s houses,

without there being physical violence, victim resistance, or severe physical injuries. Therefore, the first hypothesis is:

H1. The 'real rape' stereotype does not portray an accurate image of the reality of rape.

Many people still believe that false rape allegations are common, in fact, 40% of people who participated in a 2011 telephone survey in Ireland, believed that rape accusations are often false, and findings from previous studies have shown that false rape accusations are a common topic throughout mock jury deliberations. A 2010 study found that a more accurate false rape allegation rate is between 2 and 11%. So, the second hypothesis is as follows:

H2. False accusations of rape are lower than is commonly believed.

Quantitative studies have statistically proven the relationship between rape myths and juror decision-making, specifically, decisions about blame, credibility and verdict. Qualitative studies have demonstrated how mock jurors resort to rape myths when analysing the behaviour of the parties, especially the complainant's, and this influences attributions of blame. In light of this, the third hypothesis is as follows:

H3. The jury is influenced by rape myths when deciding the verdict.

Two studies involving court observations in the UK found that the extent and quality of legal directions varied between judges, and that rape myths remained relevant to the jury. In addition, the Crown Court Compendium is a guide for judges and is not, in any case, prescriptive. And the fact that only 31% of jurors completely understand the legal directions offered by the judge justifies the conceptualization of the fourth hypothesis:

H4. The judicial guidance that the jury receives on false assumptions and stereotypes about rape is insufficient.

6. METHODOLOGY

In regard to the first hypothesis (**H1**) '*the real rape stereotype does not portray an accurate image of the reality of rape*', I will analyse the dataset 'Nature of sexual assault by rape or penetration, England and Wales' (Office for National Statistics, 2021b) from the Crime Survey for England and Wales. The CSEW is a public survey that aims to measure the extent

and nature of crime, including sexual offences, in England and Wales in the previous twelve months, as well as offences that have not been reported or recorded by the police. In this study, the following indicators will be analysed in order to debunk the ‘real rape’ stereotype: location, victim-perpetrator relationship, perpetrator behaviour, victim resistance/struggle and negative effects. The survey participants were between the ages of 16 and 59, and only the data referring to women will be used in this study. The dataset combines data for both the year ending March 2017 and the year ending March 2020 in order to obtain a bigger sample size.

With reference to the second hypothesis (**H2**) ‘*false accusations of rape victimisation are lower than is commonly believed*’, I will analyse police recorded data for the years 2019/2020, and data from reports that have investigated the prevalence of false rape allegations. I will focus on the data from a Home Office report conducted in 2005 on attrition rates in rape cases. More recent data on the prevalence of false allegations in the UK was unavailable, but the Home Office study is one of the largest studies conducted on the issue of false rape allegations. A later study issued by the Ministry of Justice (Burton et al., 2012) that corroborates the Home Office findings will also be examined.

In relation to the third hypothesis (**H3**) ‘*the jury is influenced by rape myths when deciding the verdict*’, I will analyse two quantitative studies that have investigated the influence of rape myths on verdict choice using Rape Myth Acceptance scales (Dinos et al., 2015; Willmott et al., 2018), and two qualitative studies that have examined the use of rape myths in a mock trial setting -highly realistic simulations of real trials- (Ellison and Munro, 2009, 2013). The four studies are high quality research studies that were chosen from peer-reviewed journals. Three out of the four studies were conducted with English members of the public, and one of the studies is a systematic review and meta-analysis of various studies conducted in the USA, Canada, Germany and UK.

Regarding the fourth hypothesis (**H4**) ‘*the judicial guidance that the jury receives on false assumptions and stereotypes about rape is insufficient*’, I will interview a Queen’s Counsel Barrister, to gain insight into how judicial guidance is offered in court to counter the risks of assumptions and stereotypes about rape. The main objective is to determine how the Crown Court Compendium (Judicial College, 2021), a resource used by judges to guide the jury, is transferred to a real court setting and to what degree it is followed and referenced in court. Essentially, the goal is to determine how effective judicial guidance offered in sexual offence

trials is in educating jurors on rape myths. The interview script and the transcription of the interview will be included in the Annex.

7. RESULTS

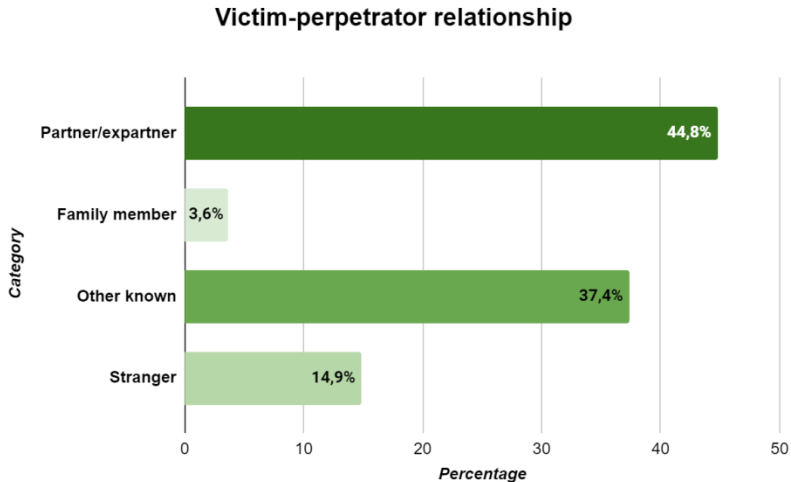
7.1 Data analysis (H1 - H2)

7.1.1 Debunking the ‘real rape’ stereotype (H1)

In this section I will analyse the data from the ‘Nature of sexual assault by rape or penetration, England and Wales’ (Office for National Statistics, 2021b) dataset. As stated in the methodology, the objective is to debunk the ‘real rape’ stereotype. Thus, the five indicators analysed are: victim-perpetrator relationship, location, perpetrator behaviour, victim resistance, and negative effects.

Regarding **victim-perpetrator relationship** (see Figure 3), the results of the survey show that 85.8% of the victims were raped by somebody they knew, either by a partner or an ex-partner (44.8%), by a family member (3.6%), or by somebody else known to the victim (37.4%), such as a friend, date, acquaintance or colleague. Whereas, 14.9% of the victims were raped by a stranger.

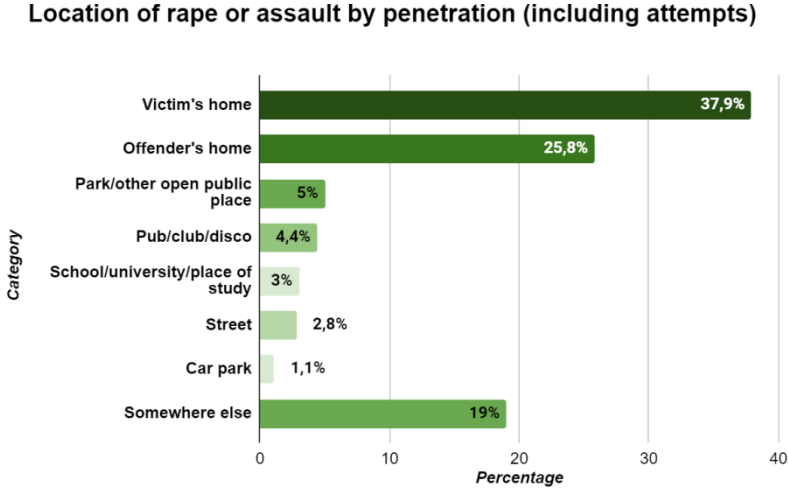
Figure 3



With respect to the **location** where the rape occurred (see Figure 4), over half of the respondents (63.7%) were sexually assaulted either in their own home (37.9%) or in the

offender’s home (25.8%). Only 5% of the respondents reported having been assaulted in a park or in an open public space, and 2.8% of them in the street. Less than 5% of the assaults happened in a pub or club, and 3% of them at school, university, or where the victim usually studies. Approximately a fifth of respondents (19%) reported that the sexual offence occurred in a place not specified in the survey questions.

Figure 4

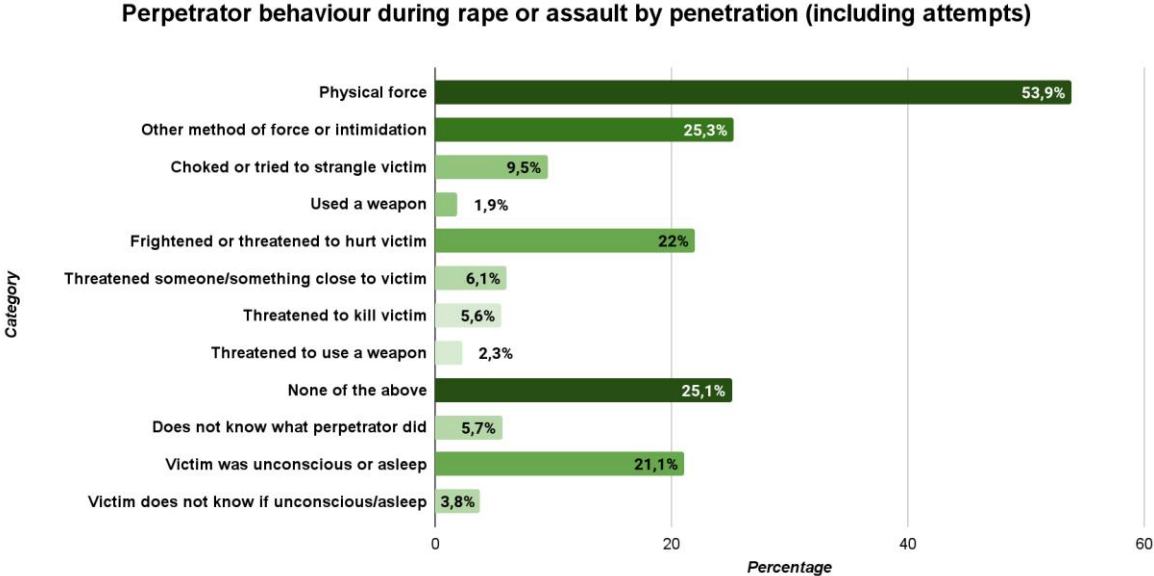


With reference to the **behaviour of the perpetrator**⁶ during the attack (see Figure 5), approximately half of the respondents (53.9%) reported that physical force was used against them, such as, holding down, punching or kicking. Similarly, 25.3% of respondents mentioned the perpetrator intimidated them or used a different method of force to the ones stated above, 9.5% of them were choked or strangled by the perpetrator, and 1.9% stated that the perpetrator either used a weapon or threatened to (2.3%). Other methods of submission involved frightening or threatening to hurt the victim (22%) or, someone/something close to the victim (6.1%), and in some instances the perpetrator threatened to kill them (5.6%). A fifth of the respondents (21.1%) answered that they were unconscious or asleep when the rape occurred. On a related note, a quarter of the respondents (25.1%) stated that the perpetrator did not use physical force, intimidation or threats, those respondents most likely being the ones who were unconscious or asleep (21.1%). This means the 4% difference could be the respondents who were awake but might have frozen in fear, and were unable to physically

⁶ The respondents were allowed to select more than one option; therefore, when totalling up the percentages they do not add up to 100%

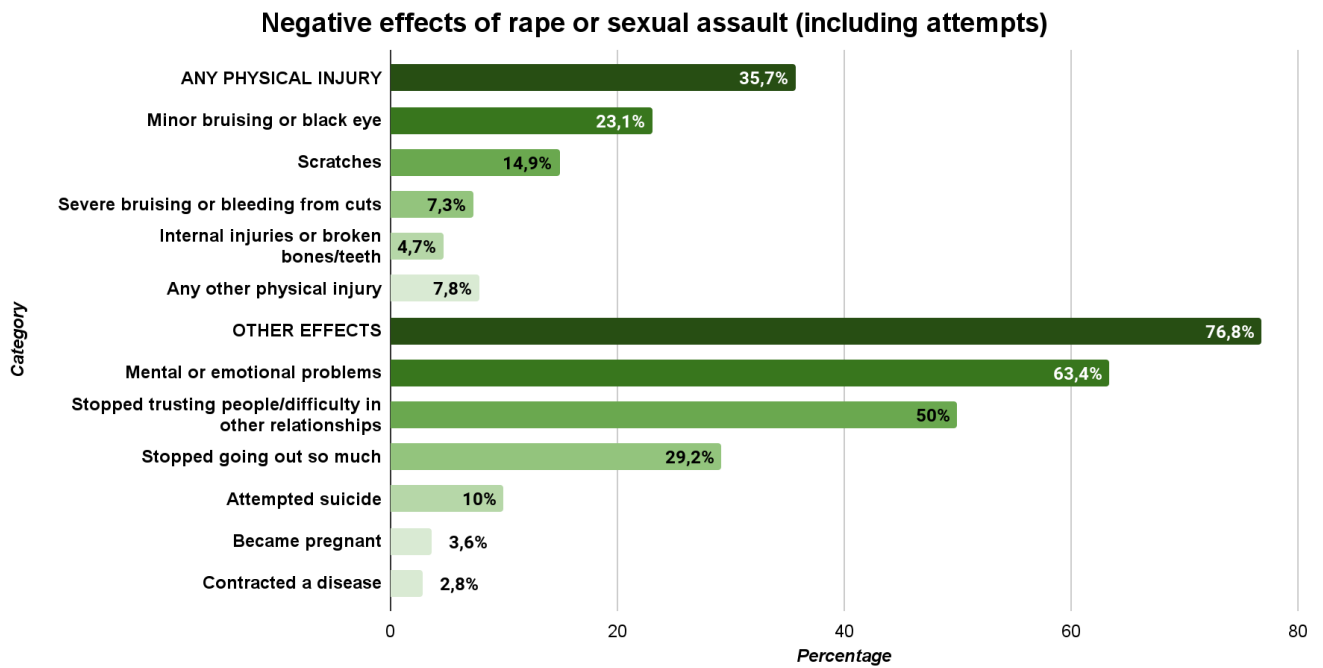
struggle. Nevertheless, this does not mean that a certain number of respondents who reported the perpetrator using physical force, intimidation or threats, did not also freeze.

Figure 5



In regard to **negative effects** of rape (see Figure 6), the respondents were also allowed to choose various options, so the percentages do not add up to 100%. The results of the survey show 35.7% of respondents suffered physical injury of some type; the most common physical injury being minor bruising or a black eye (23.1%), followed by scratches (14.9%). Additionally, a smaller portion of the respondents endured more severe physical injuries: 7.3% suffered severe bruising or bleeding from cuts and 4.7% suffered internal injuries or broken bones/teeth. The majority of respondents (76.8%) suffered other negative effects, such as, mental or emotional problems (63.4%), had difficulties trusting other people (50%), and left their house with less frequency (29.2%). One in ten respondents attempted suicide afterwards, and a small proportion became pregnant (3.6%) and/or contracted a disease (2.8%).

Figure 6



Victim resistance: Unfortunately, the survey did not ask victims if they struggled or offered any resistance against the attacker, so this variable cannot be analysed.

7.1.2 Prevalence of false rape allegations (H2)

In 2005, the Home Office (Kelly et al., 2005) conducted one of the largest studies on rape and attrition rates. A total of 2,643 rape offences were reported to the police; 216 cases were classified by the police as false allegations, which amount to 8%. The classification criteria used by the police was: the complainant admitted that the allegation was fake, the complainant retracted the complaint, non-cooperation by part of the complainant, or decisions made by the police according to evidence. The Home Office study analysed 144 cases due to a lack of available information. Of the 144 cases classified by the police as false allegations, the study found that 44 were ‘probably’ false complaints, in 33 cases there was a ‘possible’ false complaint, and in 75 it was ‘uncertain’. Consequently, the study calculated that a 3% rate of false rape allegations was more accurate. The study points out that the false allegations category should be reserved for those cases where the complainant admits to lying, or where there is sufficient evidence about the falseness of the allegation. Otherwise, rates of false rape allegations will be higher than the reality of the phenomenon. A study issued by the Ministry

of Justice (Burton et al., 2012) found that when focusing on the broad definition of false allegations -cases where there is a lack of recollection by the victim, or physical injury and medical evidence, delayed reporting, witness retractions- the rate of false rape allegations recorded by the police was 12%. Whereas, when focusing on a narrower definition of false allegations -malicious complaints-, the study estimated a 3% rate.

According to the Home Office (2022) for the April 2019-March 2020 time period, the police in England and Wales recorded 73,576 rape incidents. Amongst these incidents, the police classified 2,890 of them as ‘cancelled rape offences’, which include three scenarios: the recorded offence was cancelled due to new information proving that the crime had not happened, the specific offence had already been previously recorded, or there was an error when recording the crime. Cancelled rape offences account for 3.9% of total rape incidents recorded by the police. Since the available police data does not differentiate between the three scenarios, it is fair to assume that within this percentage exist the reports that are considered false rape allegations, thus making them a rare occurrence.

7.2 Literature review (H3)

7.2.1 Methodology of the studies

The analysed quantitative studies used measuring scales to determine the extent to which individuals accept rape myths as being true (RMA scores) in order to predict how likely an individual is to acquit or convict a defendant. The first measuring scale was created by Burt (1980), the Rape Myth Acceptance Scale (RMAS), which consists of a 19-item questionnaire (see Annex 1) that measures a subject’s beliefs in regard to sex-role stereotypes, sexual conservatism, adversarial sexual beliefs, and acceptance of interpersonal violence. The RMA scale was predominantly used by the studies analysed in this dissertation, along with more updated and empirically verified scales.

The analysed qualitative studies have investigated how and to what extent false assumptions about rape and rape victims’ behaviour are used in mock jury deliberations, and how they influence decisions about blame, guilt, and verdict. Due to restricted⁷ access to real juries,

⁷ In England and Wales, it is considered an offence to intentionally reveal information about arguments made during the deliberation process in court, or to solicit or acquire this information (s. 20D, Juries Act, 1974). In addition, the Contempt of Court Act (1981) restricts researchers from observing deliberations in the jury room.

researchers have used mock trials, group deliberation, and accurate judicial guidance to investigate how (mock) jurors explain their reasonings and negotiate to reach a consensus, as would happen in a real trial (Ellison and Munro, 2009).

However, it is worth noting the main limitations of these studies. On the one hand, the rape myth acceptance scales have been criticised for their lack of subtlety and excessively complex language, with ‘right’ answers that are too obviously socially acceptable (Payne et al., 1999; Leverick, 2020). However, these scales have been able to detect statistically significant differences between RMA scores and variables (Leverick, 2020). On the other hand, mock jurors were aware from the beginning that it was not a ‘real’ trial and that their decisions would not have any impact, but the two qualitative studies analysed in this paper (Ellison and Munro, 2009, 2013) found that they did take their roles seriously, and even commented on how their verdict would affect the defendant and the complainant.

Due to various legal changes in the sexual offences legislation⁸, I chose studies that were conducted after the year 2003. Most of the studies, except for one, were published before the first version of the Crown Court Compendium came out in 2016, so the judicial guidance used in most of the studies is from earlier resources published by the Judicial College. Since there were no studies conducting a meta-analysis of only English quantitative studies, one of the analysed studies is a systematic review and meta-analysis of various studies from Western countries.

The first study (*A systematic review of juries' assessment of rape victims: Do rape myths impact on juror decision-making?*) published in 2015, is a meta-analysis of 9 high-quality and peer-reviewed quantitative studies that investigated the relationship between rape myths and juror decision-making using data analysis. I chose this study because it determined the correlation between both variables at an international level, and also looked at the differences between countries.

The second study (*Introduction and validation of the Juror Decision Scale (JDS): An empirical investigation of the Story Model*) was published in 2018. One of the objectives was to establish the relationship between RMA scores, the believability of the complainant or the

⁸ The definition of consent was changed in the Sexual Offences Act 2003.

defendant, and the verdict outcome. I chose this study because it specifically studied the influence of rape myths on a sample of English members of the public, and because of its recent publication.

The third study (*Reacting to rape: Exploring Mock Jurors' Assessments of Complainant Credibility*) was published in 2009. The objective was to analyse mock juror deliberations in the context of three rape scenarios that differed in terms of the presence of physical violence/resistance, delayed reporting, and complainant demeanour. I chose this study because the authors are well known in the field of rape myths and juror decision-making, and also because of its high citation rate.

The fourth and last study (*Better the devil you know? 'Real rape' stereotypes and the relevance of a previous relationship in (mock) juror deliberations*), was published in 2013 by the same authors as the third study. The objective of the study was to investigate how victim-perpetrator relationship influences jurors' perception of blame. I chose this study for the same reason as the third study, but also because it introduces a common rape scenario that completely contradicts the 'real rape' stereotype.

7.2.2. Results of the studies

7.2.2.1. Quantitative studies

A systematic review of juries' assessment of rape victims: Do rape myths impact on juror decision-making? (Dinos et al. 2015)

This study is a systematic review and meta-analysis of previous peer-reviewed studies that have investigated the relationship between rape myths and decision-making in a mock jury setting. The researches selected 9 studies⁹ that were conducted in the USA (n = 5), in the UK (n = 1), Germany (n = 2) and Canada (n = 1). All of the studies used mock juries, used valid measures of rape myth acceptance, and involved participants making decisions. In most of the studies, the participants were students (n = 7), except for two studies where participants were selected from the general population. The sample sizes ranged between 106 and 330 participants, except for one study conducted in the USA with 58 participants. Three of the

⁹ Only studies from Western countries were used in this study due to the changing nature of rape myths between different cultures (Nayak et al., 2003; Pederson and Stromwall, 2013).

studies used Rape Myth Acceptance Scale (RMAS), three used Rape Empathy Scale (RES¹⁰) and the other three used other types of scales.

In regard to the overall results (see Figure 7), seven out of the nine studies either partially or fully verified the hypothesis that rape myths influence juror decision-making.

Figure 7

Summary of reviewed studies and data for meta-analysis.

| Publication | | Sampling | | Measures used | | | Meta-analysis data | | Magnitude and quality of study | | |
|--------------------------------|---------|-------------------|----------------|---------------|-----|-------|-------------------------------|-----------------|--------------------------------|---------------------|---------------|
| Author(s), year of publication | Place | Total sample size | Student sample | RMAS | RES | Other | Sample size for meta-analysis | Correlation (r) | Effect size | Supports hypothesis | Quality score |
| Deitz et al., 1984 | USA | 190 | ✓ | | ✓ | | 118 | .208 | Small | Partially | 16 |
| Eysell and Bohner, 2011 | Germany | 170 | ✓ | | | ✓ | 168 | .33 | Medium | Fully | 16 |
| Eysell and Bohner, 2011 | Germany | 160 | ✓ | | | ✓ | 158 | .46 | Medium | Fully | 16 |
| Gray, 2006 | UK | 168 | ✓ | ✓ | | | 168 | .46 | Large | Fully | 15 |
| Schuller and Wall, 1998 | Canada | 136 | | | | ✓ | 136 | .26 | Medium | Fully | 20 |
| Stewart and Jacquin, 2010 | USA | 229 | ✓ | ✓ | | | 229 | .31 | Medium | Fully | 16 |
| Weir and Wrightsman, 1990 | USA | 330 | ✓ | | ✓ | | 330 | .235 | Small | Fully | 15 |
| Wenger and Bornstein, 2006 | USA | 106 | ✓ | ✓ | | | 106 | No info | Not reported | Partially | 13 |
| Wiener et al., 1989 | USA | 58 | | | ✓ | | 58 | .1042 | No effect | No | 17 |

The researchers used meta-analysis for correlation studies and calculated the overall Pearson correlation coefficient¹¹ (r) to determine if it was significantly different from zero. The meta-analysis of the eight remaining studies determined a correlation coefficient of 0.316, which was highly statistically significant at the 0.001 level¹² (meaning there was 0.1% risk of the result being wrong). Interestingly, studies conducted in Europe showed that rape myths influenced juror decision-making to a higher degree than studies from the USA. This relationship was statistically significant at the 0.05 level, meaning there was a 5% risk of error [$\chi^2(6, N = 1208) = 13.47, p < 0.05$].

Introduction and validation of the Juror Decision Scale (JDS): An empirical investigation of the Story Model (Willmott et al., 2018)

¹⁰ RES was designed in 1982 by Deitz et al. (1982). Its purpose was to measure the level of empathy towards the rape victim. This scale has 20 items.

¹¹ Pearson correlation coefficient measures the correlation (not the causation) and the strength of the relationship between two linear variables. r is a number between -1 and 1, the closer it is to -1 or 1 the stronger the relationship is. The relationship between both variables can be negative or positive. If a value is greater than 0 then there is a positive relationship, i.e. if the value of one variable increases, then so does the value of the other variable. If a value is less than 0 then there is a negative relationship, i.e. if the value of one variable increases, the value of the other decreases (Laerd statistics, 2020).

¹² There are various levels of significance. The levels are 0.1 (10% risk of concluding that there is a correlation between variables when in reality there is not), 0.05 (5% risk), 0.01 (1% risk), 0.005 (0.5% risk) and 0.001 (0.1% risk).

The researchers created the Juror Decision Scale (JDS), with the objective of measuring the process of individual juror decision-making, using theoretical concepts from the *Story Model* (Pennington and Hastie, 1992). The relevant variables analysed were: complainant believability and defendant believability. The researchers correlated the items from the Acceptance of Modern Myths about Sexual Aggression scale (AMMSA¹³) with the variables from the JDS in order to establish the relationship between levels of rape myth acceptance and believability in the defendant or the complainant. There were 27 mock trials in total, and the sample consisted of 324 participants selected on the basis of jury service eligibility from the general public. The study involved a typical rape case scenario, one that is often seen in court: voluntary intoxication, previous acquaintanceship, evidentially ambiguous, and lack of independent witnesses.

As seen in Figure 8, there was a significant negative relationship between complainant believability and rape attitudes both pre-deliberation ($\beta = -0.16$) and post-deliberation ($\beta = -0.25$). Higher rape myth acceptance scores were associated with lower levels of complainant believability.

There was a significant positive relationship between defendant believability and rape attitudes, both pre-deliberation ($\beta = 0.23$) and post-deliberation ($\beta = 0.16$). Jurors who strongly adhered to rape myths believed more frequently the defendant's story than the complainant's.

There was a significant positive relationship between complainant believability and guilty verdict decisions, both pre-deliberation (Odds Ratio¹⁴ = 1.62) and post-deliberation (OR = 1.45). In fact, jurors who believed the complainant were 1.62 times more likely to return a guilty verdict pre-deliberation, and 1.45 times more likely, post-deliberation. Likewise, there was a significant negative relationship between defendant believability and guilty verdict decisions pre-deliberation (OR = 0.68) and post-deliberation (OR = 0.78). Jurors who believed the defendant were less likely to find him guilty.

Figure 8

¹³ AMMSA was created in 2007 by Gerger et al. (2007) with the objective of creating a more realistic and accurate measure of rape beliefs and attitudes by developing more subtle items. This scale has 30 items.

¹⁴ An Odds Ratio that is greater than 1 means there is a positive association between two variables, and an OR below 1 signifies a negative relationship.

Associations between the three JDS factors and external variables.

| Variable | Verdict Decision 1 | | Verdict Decision 2 | |
|---------------------------|---|---|--|---|
| | Guilty Verdict ($\chi^2 = 236.50$, $p < 0.05$) OR (95% CI) | AMMSA (F [3, 319] = 11.61, $p < 0.001$) β (95% CI) | Guilty Verdict ($\chi^2 = 190.10$, $p < 0.001$) OR (95% CI) | AMMSA (F [3, 319] = 12.76, $p < 0.001$) β (95% CI) |
| Decision confidence | 1.13 (0.88/1.45) | -0.03 (-0.13/0.08) | 1.03 (0.84/1.27) | 0.01 (-0.11/0.11) |
| Complainant believability | 1.62*** (1.45/1.81) | -0.16** (-0.27/-0.05) | 1.45*** (1.32/1.59) | -0.24*** (-0.35/-0.12) |
| Defendant believability | 0.68*** (0.60/0.76) | 0.23*** (0.11/0.34) | 0.78*** (0.71/0.85) | 0.16** (0.04/0.27) |

Note: Verdict Decision 1 = Individual Verdict Decision 1 (made pre-deliberation); Verdict Decision 2 = Individual Verdict Decision 2 (made post-deliberation); Guilty Verdict = Individual juror guilty verdict selections; AMMSA = Acceptance of Modern Myths about Sexual Aggression total score; ** $p < 0.01$; *** $p < 0.001$.

7.2.2.2. Qualitative studies

Reacting to rape: Exploring Mock Jurors' Assessments of Complainant Credibility (Ellison and Munro, 2009)

This study focused specifically on mock jurors' understandings of how victims can behave after an attack, and how they can impact the perceived credibility of the victim, and thus, on the verdict outcome. The researchers organised 9 mini-trials that were re-enacted in front of a mock jury of 29 members (N=216), recruited from the general public on the basis of jury service eligibility. There was an equal distribution of men and women, seen as previous studies have determined the influence of gender on decision-making in rape cases¹⁵. The mock jurors were given legal directions from the Judicial Studies Board Specimen Direction, and proceeded to deliberate.

There were three rape case scenarios, and three variables: complainant demeanour, physical violence/resistance, and reporting time frame.

- **Physical violence/resistance**

In trials where the complainant had not suffered any physical injuries, jurors regularly saw this as a reason for not convicting the defendant. Even in trials where the complainant had bruises and scratches, many jurors still expected more severe injuries. According to many jurors, verbal resistance was not enough for a guilty verdict, and struggling during an attack was seen as a 'normal' response to rape. Female jurors regularly emphasised that if they were in that type of situation they would fight back. A frequent assumption was that freezing seemed more understandable if the victim was in the street (in accordance with the ideal 'real rape' scenario), but not if she was in her own home.

¹⁵ The researchers mentioned Foley and Pigott (2000) and Taylor and Larsen (2005), to name a few.

- **Reporting time frame**

Even though some jurors recognized the admissibility of delayed reporting (due to self-blame, fear of judgment or disbelief), the three-day delay scenario affected juror perception of complainant credibility. The allegation was perceived as true in scenarios where the offence was reported immediately, whereby jurors saw the speed of reporting as an indicator that the complaint had not been fabricated. In addition, in trials where the complainant offered no resistance during the attack but reported the offence immediately, jurors were unconvinced of the likelihood of the complainant being paralysed during the attack and then being sufficiently composed to immediately call the police.

- **Complainant demeanour**

Most jurors expected the complainant to be more visibly emotional during her testimony, especially with the presence of the defendant in the courtroom; the suggestion being that her calmness was a lack of feeling and honesty. The authors commented that the observed deliberations supported Sue Lee's hypothesis that '*paradoxically, the complainant's distress is not seen as corroborative, but absence of distress can be used against her*' (Lees 1996: 119). Similarly, some mock jurors who witnessed a rape scenario with a distressed complainant considered the possibility of her behaviour being "for show".

Better the devil you know? 'Real rape' stereotypes and the relevance of a previous relationship in (mock) juror deliberations (Ellison and Munro, 2013)

One of the main objectives of the study was to investigate how mock jurors evaluate evidence in an acquaintance rape case. The researchers organized 4 rape trials that were re-enacted live in front of a mock jury. The sample of the study consisted of 160 members of the public, selected on the basis of jury service eligibility. There was an equal distribution of men and women. Jurors were given judicial directions from the Crown Court Benchbook, and were later divided into groups to deliberate. The researchers chose a common acquaintance rape scenario: a previous romantic relationship, voluntary intoxication, previous consensual physical contact, and lack of resistance and physical injuries.

- **Previous romantic/sexual relationship**

Jurors generally acknowledged the fact that in reality most rapes are committed by somebody known to the victim, and some jurors even referenced the directions given by the judge. Similarly, most jurors considered acquaintance rape to be just as serious as stranger rape, possibly even having more traumatic and psychological effects. Having said that, the researchers found that the previous intimate relationship introduced certain ambiguities, making it harder for jurors to convict.

- **Sexual (miss)communication**

Jurors analysed the behaviour of the complainant, possibly more than the defendant's, in order to identify ways in which she may be partly to blame for the assault. Jurors invoked scripts that positioned women as being primarily responsible for communicating their willingness or unwillingness clearly and without ambiguity. It was generally accepted amongst jurors that indirect verbal and non-verbal signals, like body language, showed one's willingness to engage in sexual activity. In general, jurors stated that the complainant's previous behaviour might have signalled sexual interest and was open to misinterpretation: (a) inviting the defendant into her home, (b) offering him a glass of wine, (c) having a friendly conversation with him for a couple of hours, (d) and kissing him.

- **Resistance/force**

According to jurors, when verbal rejections were ineffective at stopping the defendant, who many believed was too aroused to adequately understand the rejection, the complainant should have offered more physical resistance. Female jurors said they would have instinctively fought back. In addition, the vast majority of jurors considered the 'freezing' response to be plausible in situations where the victim did not know the attacker, but would be improbable in an acquaintance rape scenario where additional violence would not be expected (unless there was a history of domestic abuse). In addition, many jurors still expected there to be some type of internal vaginal trauma if there was genuine resistance on the part of the complainant.

7.3 INTERVIEW (H4)

To answer the fourth hypothesis '*the judicial guidance that the jury receives on false assumptions and stereotypes about rape is insufficient*', I decided the best way to verify this hypothesis would be to interview criminal experts with extensive experience in the field of

sexual offence trials. Initially, I had planned to explore the use of legal guidance given in court to tackle rape myths from the perspective of various legal professionals. Of such professionals, a High Court Judge, a prosecutor, and a barrister acting for the defence or prosecution, or both. In the end, it was not possible to do two of the three interviews, due to the unavailability of the participants, and time constraints on finding replacements. I was fortunate enough to secure the interview with a Queen's Counsel¹⁶ barrister, with extensive experience in serious crime, including sexual offences, prosecuting and defending in London.

The interview consisted of eight questions¹⁷ and is divided into two sections. The first section of the interview discusses common practices in court in regard to giving legal directions about rape myths to the jury. This section is essential in order to verify the fourth hypothesis. The second section addresses the barrister's opinion on various ways to improve judicial guidance. This section looks at one of the initial objectives of this study, which was to explore initiatives and proposals that look to improve judicial guidance in court.

7.3.1. Analysis of the results

One of the main objectives of the interview was to investigate the degree to which the Crown Court Compendium's legal directions about rape myths are given to the jury by judges. When asked about this, the barrister guaranteed that it is a common practice for these legal directions to be given by the judge, as failing to do so could result in an appeal. This is illustrated in s. 58 of the Criminal Justice Act (2003) which states that the prosecution can appeal an adverse ruling by the judge made at any time during the trial before the judge's summing up of the case. This, however, demonstrates how there is no right of appeal if the judge misdirects the jury during the summing up. Additionally, according to the barrister, it is common for both the prosecution and the defence counsel to ask the judge for certain directions to be given to the jury. Essentially, using the directions stated in the Crown Court Compendium is technically not mandatory, but the omission of such directions could have negative consequences for the judge. When asked if he believes judges who do not use these directions are failing to fight bias on the part of the jury, the barrister voiced that he agrees with the use of judicial directions and that such directions give the jury the opportunity to consider the assumptions and stereotypes they have about the nature of sexual assault.

¹⁶ In the UK, a Queen's Counsel is a barrister or solicitor advocate that has been recognized as an expert in their legal field.

¹⁷ The interview questions and transcription are in Annex 2.

When asked about his opinion on the benefits of written directions, the barrister specified that the use of written directions about rape myths has become quite a common occurrence, and that they can be quite helpful for the jury. In addition, the judge will usually consult with the prosecution and the defence about what to include in the written directions and invite them to make suggestions. The barrister's first statement is coherent with the results of a survey conducted by the Judicial College (2021), which determined that 90% of judges occasionally use written directions, but judges had different views about the frequency, the specific moments, and the format these written directions should have.

Another important aspect was to determine at what stages of the trial the judge can give directions about rape myths and how it determines the effectiveness of such directions in terms of educating the jury. This question was developed keeping in mind Leippe et al.'s (2004) suggestions that legal directions should be given at the start of the trial as a way of conditioning the jury into hearing and analyzing the evidence while recalling the directions given by the judge. When questioned about this, the barrister explained that directions regarding putting aside emotions are usually given at the start of the trial, whereas directions about rape myths tend to be given at the end while the judge sums up the case. The barrister explained that if legal directions are given at the start before the jury has heard the evidence; there is the potential danger that the jury is being prejudiced. Whereas, if the directions are introduced while summing up the case, the judge can give legal guidance on the relevant rape myths that emerged during the trial. The barrister gave an example of a historical allegation of rape in which the judge considered whether to give a direction about delayed reporting after the witness had been cross-examined by the defence, but he decided not to because the defence believed it would be unfair, and because it might have seemed like the judge was attempting to strengthen the witness's case. In summary, directions about rape myths can be given at any point of the trial if the judge considers it necessary and relevant to the circumstances of the case.

When asked if he believes the current reality of judicial guidance is enough to educate jurors on rape myths and fight bias, the barrister uttered that *'it is probably not enough to educate jurors, but probably as far as a judge can go in order to ensure that there is a fair trial'*. According to the barrister, it is difficult for judges, through the use of legal directions, to tackle assumptions that jurors already have about rape. In addition, judges have a difficult

task when attempting to maintain the balance between a) educating the jury on the dangers of assumptions and stereotypes about rape, and b) not giving such directions in a way that the jury feels pressured. The idea would be to improve judicial directions but in a way that still guarantees a fair trial for both the complainant and the defendant. Similarly, Carline & Gunby (2011) interviewed fourteen barristers for an English study and found that in general they were against the increase of judicial directions in sexual offence cases, and argued that they pushed jurors towards conviction.

The second half of the interview focused on the barrister's opinion on three alternative or possibly complementary, options on how to tackle bias in court. First of all, based on his experience with expert testimony, the barrister announced that if it is possible for the prosecution to call an expert to give evidence on the varied reactions victims can have to rape, then the defence could do the same thing and also call an expert. The barrister pointed out the possibility of it becoming a 'battle of the experts'.

Second of all, in regard to the use of scientific jury selection as a method of excluding biased jurors from sexual offence trials, the barrister made two very interesting arguments. Firstly, potential jurors could quite easily guess the socially acceptable answers, so this method would probably not be effective in determining attitudes towards rape. Secondly, the current jury system in the UK consists of the selection of individuals from the public, who are completely diverse in terms of demographic characteristics, who have different views, some more or less accepting of rape myths, and the idea is that people's biases cancel each other out. According to the barrister, the current jury system that the UK has is 'fairer' and 'more democratic', and long as the evidence is presented in the right way and legal professionals are doing their job in line with the law, the jury will come up with a fair result.

Third of all, and lastly, the barrister agreed with the idea of showing jurors a video at the beginning of the trial detailing some of the false assumptions and stereotypes about rape. The video should consist of general explanations about rape myths, not specific to the case. However, according to the barrister, there would need to be a balance between a) making sure the video effectively educated jurors, and b) not prejudicing the trial. The barrister stated that the video should not be too emotive to the point of having a powerful effect on the jury. As an example, he mentioned that including in the video interviews of real victims of rape could potentially influence the jury to the point of not examining the evidence fairly.

8. CONCLUSION

From the results of the study, I have established the following conclusions.

First of all, the hypothesis that *'the real rape stereotype does not portray an accurate image of the reality of rape'* has been verified. The results of the victimization survey showed that the vast majority of victims were raped by somebody known to them, mainly by a partner or ex-partner, and over half were assaulted either in their own home or the perpetrator's home, and only a small percentage in the street or in a park (less than 5%). Half of the victims disclosed that the perpetrator used physical force, approximately a quarter stated that the perpetrator used some form of intimidation or frightened/threatened them, and a fifth were actually unconscious or asleep during the incident. In relation to the negative consequences of rape, over a third of the victims reported having suffered physical injuries, and less than 7% suffered severe physical injuries. The majority of rape victims actually suffered more psychological or social problems (e.g. stopped trusting people, 50%) than physical injuries. Nevertheless, I was unable to find any data on the prevalence of victims that do not offer physical resistance. However, the results of the survey are in line with the findings of the World Health Organization global review (Du Mont and White, 2007) that evidenced the disparities between what society considers 'real' rape to look like and what the reality and nature of sexual assault really entails.

Second of all, the hypothesis that *'false accusations of rape are lower than is commonly believed'* has been verified. The study conducted by the Home Office in 2005 concluded that 3% of rapes reported to the police were actually false, and highlighted the problematic criteria used by the police to identify alleged false rape reports (occasionally based on subjective interpretations), and how it can lead to an overestimation of the prevalence of false rape allegations. The Ministry of Justice study, conducted in 2012, corroborated these results by stating that when focusing on a narrow definition of false allegations -those that are malicious complaints- the rate of false rape allegations was 3%. In the 2019-2020 time period 3.9% of total rape incidents were cancelled, which suggests that the rate of false rape reports is below this percentage. These results are in line with previous studies that estimated a false rape allegation rate of between 2 and 11% of all reported cases to the police (as shown in the review conducted by Lisak et al., (2010)).

Thirdly, the hypothesis that *'the jury is influenced by rape myths when deciding the verdict'*, has been verified. On the one hand, quantitative studies have statistically proven the strong positive relationship between rape myths and juror decision-making, specifically attributions of blame, guilt, and verdict decision. Jurors who adhere to rape myths to a higher degree are more likely to acquit the defendant, whereas jurors who do not endorse rape myths are more likely to convict the defendant. These findings are supported by previous quantitative studies that have proven the significant positive correlation between RMA scores and attributions of blame (Klement et al. 2019; Leverick, 2020), perceptions of complainant credibility (Ayala et al., 2015), as well as, decisions about guilt (Gray, 2006). On the other hand, the qualitative studies have determined the frequent use of rape myths during jury deliberations, mainly to discredit the victim's allegations, but also to blame her for the sexual assault, and in some scenarios using her 'inappropriate' behaviour as a justification for such blame. This is especially the case if the complainant and the defendant were in a previous romantic relationship, and also in cases where the victim does not suffer physical injuries. The results conform to what previous studies have found on the influence of lack of physical injury (Temkin and Krahe, 2008), calm demeanour (Wessel et al., 2006), and delayed reporting (Taylor and Lerner, 2005) on decisions about blame, guilt and verdict.

Finally, the hypothesis that *'the judicial guidance that the jury receives on false assumptions and stereotypes about rape is insufficient'* is inconclusive. It is possible to conclude that it is a common practice for judges to use the legal directions stated in the Crown Court Compendium to tackle rape myths (written and oral), and failing to do so could result in an appeal, but the effectiveness of such legal directions in actually educating jurors is limited. The barrister remarked that the current reality of judicial guidance in court 'is probably not enough to educate jurors, but probably as far as a judge can go in order to ensure that there is a fair trial'. This sits in line with the findings from court observations conducted by previous researchers. Smith and Skinner (2017) considered that the exclusive use of judicial directions is not enough to tackle bias in court, as rape myths remain relevant to the jury, and affirmed that judicial guidance on rape myths was offered by judges only half the time. This last statement contradicts what the Q.C. Barrister said on legal directions about rape myths being commonly used by judges. Similar to Smith and Skinner's observations, Temkin et al. (2016) found that it was rare for judges to intervene with legal directions after the derogatory use of rape myths by the defence during cross-examination. Accordingly, it is possible to deduce that the type and extent of judicial guidance given to the jury is likely not enough to tackle juror

bias in court, but more in-depth research is needed to be able to affirm such argument. For example, interview a larger number of legal professionals, and even use other methods involving mock trials or court observations.

On another note, the last objective of this thesis was to explore initiatives and proposals that seek to improve juror education. To achieve this objective I asked the Q.C. Barrister about his opinion on various proposals made by researchers and how they would work in a real court setting. The use of expert testimony was deemed superfluous due to its inevitable subjection to cross-examination by the defence. The barrister's view is coherent with Temkin and Krahe's (2008) suggestion that expert testimony could only be effective if it was not subjected to cross-examination from the defence. The barrister dismissed scientific jury selection as being ineffective in determining people's attitudes toward rape, as the respondent would probably be able to work out which answer is more socially acceptable. Also, scientific jury selection would be *'an intrusion into the general principle that the trial process itself is sufficiently robust to ensure that juries reach proper results'*. Conversely, Willmott (2016) argued that scientific jury selection would remove potential jurors who are biased from sexual offence trials, making the verdict decision fairer. However, experiments with RMA questionnaires have only been conducted with mock jurors, so it would be imperative to test the effectiveness of such scales with real jurors. Finally, the Q.C. Barrister considered it a good idea to show jurors a video detailing general rape myths at the start of the trial, but a balance would need to exist between educating the jury and avoiding prejudicing the trial. Smith and Skinner (2017) suggested that showing a video at the beginning of the trial might benefit jurors, along with the use of legal directions. Rowe and Hills (2020) suggest that the content and the format of the video would have to be realistic so that jurors can apply such content to the elements of the rape case. Yet, the Q.C. Barrister made an interesting point when he mentioned that the video should not be too emotive to avoid jurors being prejudiced.

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10. ANNEX

Annex 1

| <i>Rape Myth Acceptance Scale Items</i> |
|--|
| Item 1: A woman who goes to the home or apartment of a man on their first date implies that she is willing to have sex. |
| Item 2: Any female can get raped. |
| Item 3: One reason that women falsely report a rape is that they frequently have a need to call attention to themselves |
| Item 4: Any healthy woman can successfully resist a rapist if she really wants to |
| Item 5: When women go around braless or wearing short skirts and tight tops, they are just asking for trouble. |
| Item 6: In the majority of rapes, the victim is promiscuous or has a bad reputation. |
| Item 7: If a girl engages in necking or petting and she lets things get out of hand, it is her own fault if her partner forces sex on her. |
| Item 8: Women who get raped while hitchhiking get what they deserve. |
| Item 9: A woman who is stuck-up and thinks she is too good to talk to guys on the street deserves to be taught a lesson. |
| Item 10: Many women have an unconscious wish to be raped, and may then unconsciously set up a situation in which they are likely to be attacked. |
| Item 11: If a woman gets drunk at a party and has intercourse with a man she's just met there, she should be considered "fair game" to other males at the party who want to have sex with her too, whether she wants to or not. |
| Item 12: What percentage of women who report a rape would you say are lying because they are angry and want to get back at the man they accuse? |
| Item 13: What percentage of reported rapes would you guess were merely invented by women who discovered they were pregnant and wanted to protect their own reputation ? A person comes to you and claims they were raped. How likely would you be to believe their statement if the person were: |
| Item 14: your best friend? |
| Item 15: an Indian woman? |
| Item 16: a neighborhood woman? |
| Item 17: a young boy? |
| Item 18: a black woman? |
| Item 19: a white woman? |

Note: Own elaboration using information from Burt, M. (1980), "Cultural myths and support for rape", *Journal of Personality and Social Psychology*, Vol. 38, pp. 217-30

Annex 2

Interview questions

1. Is it a common practice for judges to use the directions stated in the Crown Court Compendium (in regard to false assumptions about rape)? Do you believe that judges who do not use these directions are failing to fight bias on the part of the jury?
2. Are judicial directions about rape myths usually given to the jury at the beginning (like a briefing), or at the end of the trial when summing up the case? Which one do you believe is more effective at tackling rape myths?
3. According to the Crown Court Compendium (and Crim PR Rule 25.14), a judge can give the jury legal directions at any time during the trial if he/she considers it appropriate. Does this also apply to directions about rape myths?
4. Do you believe that the current reality of judicial guidance is enough to educate jurors on rape myths and, therefore, fight bias?
5. If there was a choice between judicial guidance and expert testimony, which do you believe would be more effective in educating jurors on the varied reactions that victims can have during and after rape? (e.g. freezing out of fear and shock)
6. Do you believe that written directions of rape myths relevant to the case would help jurors to understand better the false assumptions about rape? (Alongside verbal directions).
7. How would you feel about the use of scientific jury selection to remove biased jurors from sexual offence trials?
8. Before a trial takes place, would you consider it necessary or beneficial to show jurors a video detailing some of the false assumptions and stereotypes about rape and its victims?

Annex 3

Interview transcript

Interviewer: Maya Daly Russell (MD)

Interviewee: Q.C. Barrister (QC)

Date and time: May 24th 2022 11:15

Location: Online - Zoom

Length of recording: 39:14

[00:29] Interview Time Stamp

QC: Hello?

MD: Hi

QC: Hi. That's much better [*I was having trouble getting the microphone to work*]

MD: Okay, good.

QC: How are you doing?

MD: I'm good, how are you?

QC: Not bad, not bad.

[*The first six minutes of the interview were not transcribed, the official interview started at 06:10*]

[06:10]

MD: Okay, perfect. So, let's start. First question. Is it a common practice for judges to use the directions stated in the Crown Court Compendium (in regard to false

assumptions about rape)? And do you believe that judges who do not use these directions are failing to fight bias on the part of the jury?

[06:25]

QC: Yeah, well... that is quite an easy one. It is common practice for judges to use those directions in the Crown Court Compendium. We refer to it as the Bench Book, but it's the same thing. And it is common practice because, first of all, defense counsel are very likely to ask for such directions to be given, prosecution counsel, one counsel or another is likely to ask for those directions to be given, and bearing in mind judges are asked, if a judge is asked to give such a direction, doesn't give a direction, then it can lead to problems later on because of an appeal. We'd put the judge in a vulnerable situation if they didn't give a direction. If that makes sense?

[07:30]

MD: Yes, it does... so the Crown Court Compendium isn't simply just suggestions, it's something that judges have to follow?

[07:40]

QC: Well, that's a really good question. When does a suggestion become a direction for judges? It's good practice, it's not strictly speaking mandatory, but it's pretty much mandatory because the judge is going to feel vulnerable if they don't give it, particularly if they're asked to, so it's pretty much standard.

[08:23]

MD: Okay, great, next question. Are judicial directions about rape myths usually given to the jury at the beginning (like a briefing), or at the end of the trial when summing up the case? And which one do you believe is more effective at tackling rape myths?

[08:38]

QC: I will go to that, but did you... in your interview questions, question number one, you also asked if 'do you believe that judges who do not use these directions are failing to fight bias on the part of the jury'. Shall I answer that one first?

[08:54]

MD: Yes, yes please.

[08:56]

QC: So... I think that, yes, I think that judges who do not use those directions would be failing to fight bias on the part of the jury. I think that most judges are pretty judges have a difficult task when attempting to maintain the balance between a) educating the jury on the dangers of assumptions and stereotypes about rape, and b) not giving such directions in a way that the jury feels pressured or is pushed towards conviction. The idea would be to improve judicial directions but in a way that still guarantees a fair trial, to those kinds of issues and... yeah, I don't think that there are many judges who don't give those directions, if they didn't then, yeah, there's a concern isn't there, that there would be biases on the part of the jury that just haven't been dealt with? Or that the jury hasn't been given the opportunity to consider those biases. So, should I go onto question number two now?

[09:58]

MD: Yes, please. Would you like me to repeat it?

[10:02]

QC: No, it's okay. I can see it. So, some directions are usually given to the jury at the beginning of the case. In a case like this, typically directions on putting aside emotions, it would be quite standard for them to be given at the beginning of the case. But, in terms of rape myths, in my experience, there is more typically at the end of the case, as part of the summing up. And in a case that I did that concerned historic sexual abuse of a young person, a child, the judge considered whether or not to give a direction after cross-examination because the cross-examination had been quite focused on the complainant not making a complaint at the time, and the complainant seeming to have a fair amount of affection for the defendant. So the judge considered

whether he should bring the direction forward, but in the end, decided against it. He decided against it, first of all, because the defence counsel said that they thought it would be unfair to do it straight after the witness had given evidence, and also, in the end, the judge thought that if he did give it early, straight after the witness, that it might be seen to be bolstering a weak witness and so it could backfire. I think it's 'when to give the direction?', I think it's really quite a tricky one. If you give it at the very beginning of the trial and before any evidence is heard, then there is a potential danger that you're actually prejudicing the jury, or you're making them aware of something that may actually not be raised during the course of the evidence. It's a tricky one, but overall, I think it's best to do it when summing up the case. It's at that stage that the judge is gonna know exactly what the issues are and what myths they need to dispel.

[13:04]

MD: Okay, perfect. The next question is quite similar. According to the Crown Court Compendium, a judge can give the jury legal directions at any time during the trial if he or she considers it appropriate. Does this also apply to directions about rape myths? You've sort of answered it, in a way.

[13:29]

QC: I guess so, but yes, it can be given at any time in accordance with criminal procedure rules, as exactly as you've spotted already, so it can be. Now, I guess that reserves a certain amount of flexibility, there will be cases where it will be appropriate for judges to give it earlier on, but that's a very difficult decision for a judge to make, one way or another.

[14:06]

MD: So, during the trial, the judge will only give directions if they think it's relevant to the case, depending on the circumstances?

[14:16]

QC: Relevant, depending on the circumstances and over the course of time judges deal with quite a lot of these kinds of cases and they develop a feel for it, and different

judges will go about it in different ways. I suppose that's a good thing, you know, the judge has got that flexibility and they can tailor their directions to the particular case and also tailor when they give the directions to the particular case, as well.

[14:51]

MD: Perfect. Next question. Do you believe that the current reality of judicial guidance is enough to educate jurors on rape myths and, therefore, fight bias?

[15:05]

QC: It's a really good question, and I think that even if it's not enough it probably is as far as judges can go. And the reason I say that is because judges have always got to be very conscious throughout that a defendant is facing trial for a very serious matter. If they are convicted then they may well get ten years in prison, fifteen years in prison, or more, and so there's a difficult balancing act for a judge, any judge, between dispelling myths on the one hand, and also, not doing it in such a heavy-handed way, or not doing it in such an extensive way that the jury feels under pressure. And so, a long answer, but I guess what I'm really trying to say is... it is probably not enough to educate jurors, but probably as far as a judge can go in order to ensure that there is a fair trial.

[16:52]

MD: So, do you think maybe the problem is more at a legislation level? Like, maybe the Sexual Offences Act?

[17:09]

QC: Well, the Sexual Offences Act as you know has done a bit to tackle some of the myths around consent and there are certain assumptions around it. Actually, I'm not sure that there is a quick fix in terms of changing legislation. I mean, I'm just genuinely interested, Maya, do you think that there is anything more that legislation could do?

[17:50]

MD: Well, I have been looking at something that it says in the Sexual Offences Act about how juries have to decide if the defendant reasonably believed that the complainant was consenting and, therefore, they have to analyse the circumstances of the case. And some authors have said that this means that juries focus on extra-legal factors, like say, the behaviour of the victim, and that's when they can use rape myths and it can be harmful to victims. So, maybe something like this, the reasonable belief, maybe should be changed.

[18:31]

QC: Yeah, I mean, that's a really interesting point. The more difficult thing is to think about how would you change it, and again, Maya, I'm really asking because I'm just genuinely interested, do you have any thoughts about what you could possibly replace it with?

[18:50]

MD: Yeah, that's the thing, it's really difficult. In particular, I'm not sure, I'm still thinking about it, and I'm still coming up with some proposals and initiatives.

[19:09]

QC: Yeah, no, I think that's great, I think that you know, there is a need for fresh thinking about these things. At the moment we have got the law..., and nothing says that it can't go further in terms of directions. But yeah, it just needs time, doesn't it? You need to think about how you can actually improve the directions of the law, but also maintain a fair trial.

[19:45]

MD: Also, I think a lot of it is really just society in general. Because people already have these presumptions and assumptions about rape and victims, so maybe, if anything, we need more public awareness.

[20:01]

QC: Yeah, you're right, and it's difficult, isn't it? It's difficult for any judge or any direction to fight against biases that someone may have held over many years and that

might be part of general societal assumptions. How can a judge tackle that in a few words?

[20:30]

MD: Yeah, I agree. It's difficult. Okay, so, why don't we move on to different ways to maybe improve judicial guidance. So, if there was a choice between judicial guidance and expert testimony, which do you believe would be more effective in educating jurors on the varied reactions that victims can have during and after rape?

[21:04]

QC: I quite like the idea of expert testimony, about educating jurors in this way. Well, I'm just thinking about how the trial processes usually work. Say for instance there was a prosecution expert who was giving evidence about varied reactions that victims can have during and after rape, sounds sensible, but that would also potentially leave the door open for the defence to call their own experts on that issue. And I'm not saying that these defence experts would be right, but you can get experts to say pretty much what you want them to. I don't mean in the context of sexual offence cases, I just mean in terms of my experience of how experts generally work in courts, you have defence experts and you have prosecution experts. So, if you did have a prosecution expert, It's a good idea, but how do you stop it from becoming a contest, a battle of experts? That's the difficult thing. Going back to education before the trial starts, maybe it wouldn't be a bad idea if jurors who were going to be undertaking these kinds of cases watched a video at the beginning of the case, a standard video, looking at some of these issues.

[23:18]

MD: So, a video with, like, general explanations about myths or more like about the specific case?

[23:31]

QC: General explanations about myths.

[23:35]

MD: Okay, so the next question. Do you believe that written directions of rape myths relevant to the case would help jurors to understand better the false assumptions about rape? Alongside verbal directions given by the judge.

[23:55]

QC: I do think so, and a judge can give written directions on these kinds of things. In the old days, judges didn't really give written directions to juries, the judge would just spend two days reading it all out, the law and the facts. Judges are a lot better now at working out what a jury needs to have in front of them when they go out to consider their evidence, so it's quite common these days. And, also, it can be quite helpful because a judge will often circulate those written directions before giving one and invite the defence and prosecution to comment and make submissions, and so that helps the judge come to the right approach. Often, usually, the judge arrives at a written direction with the agreement of both sides and when that goes to the jury it can be quite helpful.

[25:23]

MD: Okay. Next question. How would you feel about the use of scientific jury selection to remove biased jurors from sexual offence trials?

[25:39]

QC: Well, I think that's a brilliant question. But Maya, can you help me with something? Can you say a bit more about what you mean by scientific jury selection?

[25:50]

MD: Well, this is a term [scientific jury selection] that Dr Dominic Willmott used in one of his studies where he suggests giving [potential] jurors a questionnaire for them to fill out, in order to establish to what degree they adhere to rape myths, so as to then select, remove jurors who have high scores so that the trial is less biased. So, more like neutral jurors.

[26:27]

QC: Yeah, I'm not convinced for a couple of reasons. First of all, I think jurors don't want to be on a particular case, then it's not difficult to answer questions in a way that people are saying the right thing to help them get onto juries, so I'm not sure how effective it would be in terms of really working out what people's attitudes are. But, secondly and more fundamentally, I think that goes a lot further than what we currently do in the United Kingdom in terms of selecting jurors. We rightly or wrongly, usually just take the twelve jurors that come up on the ballot, and on the basis that they are gonna be a good mixture of people in society, you know, some of those jurors might have some strong views, one way or the other. But, overall, the general approach that we take in the UK is that unless there are particular reasons not to have one juror or another, because they may know a defendant or they may know some of the witnesses or be too closely involved, generally we accept the jurors that come up and we trust them to come up with a right result, and by trusting them I guess I really mean also that we trust the trial process. So, we work on the basis, I work on the basis, that if evidence is called in the right way, if the lawyers do their job, and the judge is doing their job, then that should be sufficient to arrive at a fair result. So, I'm not really in favor of that [scientific jury selection], I think that's quite problematic and also open to criticism, I mean, who's to say that the scientists got it right? Yeah, that's my view.

[29:30]

MD: So, do you think maybe scientific jury selection would favor the complainant in a way?

[29:37]

QC: Possibly, but I think it depends on who's setting the questions, and what the scores are. I think it's not gonna be a very effective tool in terms of removing jurors who have specific views on things. It's not gonna do a huge amount of good, but there is a harm in terms of an intrusion into the general principle that the trial process itself is sufficiently robust to ensure that juries reach proper results. So, it's a long answer from me.

[30:57]

MD: Okay, perfect. So the eighth question¹⁸ you sort of mentioned already, the video. But, is there anything else you'd like to add about the video?

[31:09]

QC: No, there isn't a video like that, not that I'm aware of. Juries do now I think see a general video before they do jury service about how it all works, but that's just basic stuff. I don't think it's a bad idea, but in the UK we are terribly litigious, so there would bound to be arguments and anxiety about what should be in the video, what it should say, and so that video itself would be important and people would have to make sure that it did educate about false assumptions and stereotypes, but didn't do so in a way that prejudiced the trial. So, yeah, good idea but it would take quite a lot of thought and work.

[32:22]

MD: Yes, because there are lots of different types of rape myths, It would be a bit difficult to choose exactly which ones to talk about.

[32:29]

QC: It is, although I suppose you could just have a video that just dealt with all of those potential aspects. Yeah, I don't think that would be a bad idea at all. I guess another thing that would have to be worked out in relation to this is to try to make sure that it was not too emotive. And if it was too emotive, say for instance, if the video had interviews with survivors, victims of rape, would that have such a powerful effect on the jury that they wouldn't be able to consider the evidence in a fair way? What do you think?

[33:28]

MD: Yeah, I do think that would influence them in a way. I think that if there's gonna be a video it should be like the video the police did. It was like an animation video explaining the definition of consent, the difference between consent and submission...

¹⁸ Before a trial takes place, would you consider it necessary or beneficial to show jurors a video detailing some of the false assumptions and stereotypes about rape and its victims?

So, I think that would be good, like an animation type of video, very simple and not too long. As simple as possible.

[34:02]

QC: Yeah, and equally Maya, I didn't ask you about question seven, what do you think about the potential use of scientific jury selection?

[34:12]

MD: Well, I do think it sounds potentially beneficial, but then after hearing what you said, it does have a lot of difficulties, well, one, it would probably be very expensive, and also, you said that lots of jurors don't really want to answer a questionnaire, and so on. So, I do think it would maybe complicate things, but I do think that it's something that would be beneficial. I do agree with it.

[34:55]

QC: It's an interesting idea. I can't see it happening, though.

[35:05]

MD: Okay, I think it's something that they do in the United States, the jury selection.

[35:11]

QC: Yeah, but they approach it in a very different way, don't they? Jury selection? You know, overall. Their way of thinking about jury selection is completely different from ours, and leaving aside these kinds of cases, but just generally a case, as a lawyer, usually a prosecution lawyer, I really like the idea that you get the jury that you were given. And I usually work in the courts in London and the juries that you get there are just completely diverse, different ages, backgrounds, everything, and I quite like that. I guess the idea is, rightly or wrongly, that people's biases cancel each other out.

[36:21]

MD: So, you think it's fairer for the jury to be random?

[36:29]

QC: I do, I think it is fairer, more democratic, and I think it's up to us, as lawyers and judges, to make sure that jurors approach cases in a fair way.

[36:57]

MD: Perfect. Well, that's everything I wanted to ask you, so thank you, you've given me a lot to work with.

[37:05]

QC: Pleasure.

[39:14]

End of interview.