

Grisly court evidence makes juries more likely to convict

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Jurors presented with gruesome evidence, such as descriptions or images of torture and mutilation, are up to five times more likely to convict a defendant than jurors not privy to such evidence, research reveals.

The finding, from two published mock trial studies, lends support to concerns by the Australian Law Reform Commission that admitting gruesome evidence may prejudice juries by influencing them to make decisions based on emotion or a desire to punish defendants.

“The finding that gruesome evidence can be prejudicial suggests that such evidence should be excluded in court proceedings,” says one of the research authors, David Bright, a UNSW PhD student. “Gruesome information in the form of pictures or descriptions appears to influence jurors’ decisions by increasing the incriminating value that they ascribe to such evidence.

“The results of our research and of other researchers suggest that the prejudicial influence of gruesome evidence on decision making occurs at an unconscious level. Jurors appear to be unaware of the extent to which they are susceptible to prejudice as a result of exposure to this type of evidence”

“Established safeguards, such as judicial directions that jurors should view such evidence in a calm and deliberate manner probably don't offer sufficient protection to defendants.”

Provisions in Australian statutory and common law dictate that gruesome evidence is less likely to be excluded in jury trials. A review by Mr Bright and Dr Jane Goodman-Delahunty of cases that have considered the potential prejudicial impact of gruesome evidence, such as postmortem photographs, reveals that Australian trial and appellate judges are reluctant to exclude such material.

“Australian case law tends to assume that post-mortem photographs, for example, have little or no prejudicial impact on juries,” says Dr Goodman-Delahunty, an Associate Professor in the UNSW School of Psychology. “Gruesome photographs have been considered for exclusion by NSW criminal courts on several occasions but in each case courts have held that the probative value of post-mortem photographs outweighed any prejudicial impact on jurors.”

For example, in the criminal trial *R v Bowhay* (1998, NSWSC 782), Justice Dunford explained his admission of post-mortem photographs into evidence, saying: “In this day and age where people see ‘blood and guts’ on the television and on the movie screen day after day and week after week, I fail to see how it could be expected the jury would misuse this evidence”.

During the 1996 trial of convicted serial killer, Ivan Milat, for the “backpacker murders” Milat’s defence team challenged the admissibility of photographs of one of the victim’s skeletal remains (*R v Milat* (1996) 87 A Crim R 446).

However, prosecutors argued that to connect the murder to other murders and to implicate Milat as the perpetrator, the photographs should be admitted to demonstrate the savagery and cruelty of the murders. Chief Justice Hunt ruled the photographs admissible, quoting from an earlier case to support his decision:

“If a photograph is of a particularly horrific nature, a question will no doubt arise as to whether its prejudicial shock effect is so great as to outweigh its probative value ... It is important ... (to consider) whether its prejudicial effect outweighs its probative value, not merely whether it merely accompanies such probative value The mere horrific nature of the photograph is not by itself a ground for its rejection.” (R v Allen, December 1992, NSW CCA, p6).

Horrific details are unlikely to be excluded from evidence so long as they have high “probative value” -- meaning evidence that proves or disproves a controverted fact in a case, according to Mr Bright.

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Mr Bright says introducing gruesome evidence may influence juror decision-making by unfairly damaging a defendant’s case in some unacceptable way, for example, by provoking an irrational, emotional response, or by giving undue weight to this evidence.

In a 2004 study, the researchers had 68 third-year UNSW psychology

students read a transcript of a hypothetical trial involving a defendant charged with his estranged wife's murder. Participants were assigned to one of two evidence conditions: a gruesome or a non-gruesome evidence condition.

In the non-gruesome version, the victim was stabbed in the chest. In the gruesome version, the victim was "brutally tortured" for over 30 minutes, as numerous incisions were made to her body with a sharp instrument. The victim's face was "obliterated beyond recognition" and cuts were made to almost every part of her body. After her death, an attempt was made to decapitate the corpse.

After reading witness examinations by the prosecution and the defence, mock jurors read the judge's instructions outlining the role of jurors, the elements of the crime of murder and the definition of reasonable doubt -- instructions identical to those administered by judges in similar cases in criminal courts in New South Wales. Participants who reviewed gruesome evidence were more than twice as likely to find the defendant guilty (34.4%) than were participants who did not review gruesome evidence (13.9%).

In a 2006 study, the UNSW researchers found that mock jurors who saw gruesome photographs, compared with those who saw no photographs, reported experiencing significantly more intense emotional responses, including greater anger at the defendant.

As well, the conviction rate was significantly higher among jurors who witnessed visual evidence in the form of gruesome (41.2%) or neutral photographs (38.2%) compared to the conviction rate among those without photographic evidence (8.8%).

"The study revealed that mock jurors who viewed gruesome photographic evidence attributed significantly higher incriminating

weight to the prosecution evidence than that by mock jurors who did not view any photographs,” says Dr Goodman-Delahunty.

“Further analyses revealed that mock jurors who saw gruesome photographs rated the prosecution evidence as more adequate or sufficient to support a guilty verdict compared with mock jurors who saw no photographs or who saw neutral photographic evidence, because the nature of the photographs enhanced mock juror anger at the defendant.”

This finding underscores the caution expressed by the Australian Law Reform Commission that admission of gruesome evidence in courts could be prejudicial against a defendant, especially “if it that appeals to jurors’ sympathies, arouses a sense of horror, provokes an instinct to punish, or triggers other mainsprings of human action which may cause the fact-finder to base his decision on something other than the established propositions of the case”. (ALRC, 1985, pp 351-2).

In the 2006 study, researchers randomly assigned 102 participants (UNSW psychology students aged 17-54 years) to one of four groups: verbal gruesome, verbal non-gruesome, color photographs and black-and-white photographs.

The gruesome version contained detailed descriptions of the wounds to the victim’s neck. These detailed descriptions were omitted from the verbal non-gruesome trial excerpts.

Participants in the two photograph groups viewed 20 photographs from a real murder case tried in NSW (R v Valevski, 2000, NSWCCA 445.) in color or black and white, selected to include both neutral and differentially gruesome photographs (such as a close-up of a victim’s neck wound versus blood-stained clothing).

This study indicates that photographic evidence, irrespective of whether this evidence is neutral or gruesome, can increase the likelihood of conviction, according to Mr Bright.

“Admitting gruesome photographic evidence appears to increase the incriminating value that jurors ascribe to prosecutorial evidence by influencing jurors’ emotional state.

Although photographs of a gruesome and neutral nature appeared to have similar effects on mock juror overall emotional responses, emotional reactions to gruesome photographic evidence appear to lead to changes in the mental processing of evidence, and to an increased likelihood of conviction, compared with neutral and no photographs.

This research provides empirical support for concerns about prejudicial evidence outlined by the Australian Law Reform Commission and the Commonwealth Government’s Advisory Committee on the Federal Rules of Evidence that prejudicial evidence such as gruesome photographs can damage a defendant’s case by provoking an irrational, emotional response, or giving evidence more weight than it warrants.

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