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EXAMINING THE GAY PANIC DEFENSE

EXAMINING THE GAY PANIC DEFENSE WITH AN EXPERIMENTAL DESIGN

by

ANNIKA I. WURM

A thesis submitted in partial fulfillment of the requirements for the degree of  
Clinical Psychology

Department of Psychology and Counseling

Adam McGuire, Ph.D., Committee Chair

College of Arts and Sciences

The University of Texas at Tyler  
August 2022

EXAMINING THE GAY PANIC DEFENSE

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**Abstract**

**EXAMINING THE GAY PANIC DEFENSE WITH AN EXPERIMENTAL DESIGN**

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July 2022

The gay panic defense (GPD) is a type of provocation defense used in criminal trials for the purpose of mitigating a defendant's culpability to a jury. The current study utilized chi-square tests and logistic regression to investigate the effects of the GPD on jury decision-making and to assess potential associations of personal characteristics of jurors on verdict selection. Contrary to hypotheses, testing resulted in null findings. Limitations, as well as study strengths, are discussed. Findings suggest that methodology and case details may be pertinent in the empirical investigation of the GPD.

*Keywords: experimental design, gay panic defense, criminal trial, jury verdicts*

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## Chapter 1

### Introduction and General Information

The gay panic defense (GPD) is a type of provocation defense used in criminal trials. The GPD does not argue guilt or innocence, but rather is offered to argue a loss of self-control, similar to a “heat of passion” argument (Holton & Shute, 2005) for the purpose of mitigating a defendant’s culpability to a jury. In such a scenario, a defendant, typically a heterosexual male, who has been charged with the murder of a gay man, owns to killing the man but justifies his actions by claiming that his victim made an unwanted sexual advance upon him (Salerno et al., 2015). Whether consciously or unconsciously, the GPD capitalizes on problematic stereotypes. Thus, the purpose of this study is to examine the GPD strategy and its effects on jury decision-making.

### **History of Gay Panic Defense**

The American Bar Association (ABA) has publicly decried the GPD since 2013 (*House of Delegates approves new policies at ABA Annual Meeting, 2013*; Holden, 2020), encouraging its disuse and welcoming psychological study to further test the validity of the *gay panic* construct. In 2006, former California Attorney General and now-Vice President Kamala Harris organized a conference to address the use of *panic defenses*, arguing that such crimes on which they are based are “so insidious...borne out of a deep and unreasonable and irrational and ignorant position” (Saymanski, 2006). Harris further elaborated that this type of defense suggests that an offender is helpless to his violent reaction—that the defendant is “posturing as though they were disabled” (Saymanski, 2006). However, to this day, only 15 states plus the District of Columbia have enacted legislation to ban the GPD. Thus, in 35 states and 5 U.S. territories, the GPD is permissible and effective in reducing the sentences of violent offenders (*Gay/Trans Panic Defense Laws, 2021*).

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### *Case Example*

One such case is that of the murder of Ahmed Dabarran, a former Atlanta district attorney. In 2001, Dabarran was bludgeoned to death in his apartment by his attacker, Roderiquez Reed (The LGBTQ+ Bar, 2021). Following the murder, Reed burgled the apartment, stealing large-ticket items such as Dabarran's cell phone and car, and fled, although he was later apprehended and charged (Saymanski, 2006). At his trial, Reed successfully utilized the GPD, arguing that he had acted in self-defense to thwart Dabarran's unreciprocated sexual advances. Reed was fully acquitted of the murder, despite confessing to the crime and despite unequivocal forensic evidence finding that Dabarran had actually been asleep at the time of his death (Saymanski, 2006).

### *Previous Research on GPD*

Because juries are responsible for returning verdicts in jury trials, one method of understanding the GPD's effectiveness is studying individual juror characteristics associated with guilt and sentencing findings. A few studies have been structured in this way; some research has analyzed the GPD specifically, while other studies have examined related topics, such as victim blame. One experiment measured the relationship between political orientation and charge selection, verdict confidence, and perceptions of a fictitious crime (Salerno et al., 2015). Using a vignette, participants selected either manslaughter or murder charges, which differ based on aspects such as intent and premeditation. This study ultimately found that conservatism was a predictor of GPD influence (i.e., less punitive verdicts) and that conservative jurors were less morally outraged by the defendant's actions than liberal jurors.

A posited key to understanding the GPD is the concept of victim blame, which occurs when culpability is placed with the victim for the harm that befell them (Cramer et al., 2013).

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One study examining victim blame in the context of sexual orientation is that of Plumm and colleagues (2010), in which participants were presented with vignettes and trial transcripts from numerous real hate crimes. Researchers manipulated both setting (i.e., gay bar vs. local bar) and provocation, finding that victim blame was significantly higher when a gay victim had been in a local bar and when the gay victim was perceived as provoking the attacker (i.e., made a sexual advance). Thus, perceptions of blame may be central to the discourse on the GPD.

A final mock courtroom experiment examined both gay and lesbian murder by analyzing the effects of jury actor gender, jury instructions, sexual prejudice, and social desirability on charge, guilt, and sentencing selections (Kraus & Ragatz, 2011). Findings from this study suggested social desirability was not a significant predictor of guilt and sentence length, the presence of standard jury instructions predicted more punitive findings, male jury actors were more punitive than females, and sexual prejudice was a significant predictor of guilt and sentence selections. Therefore, it appears that personal characteristics of jurors may be salient to their decision-making in crimes against lesbian, gay, bisexual, trans, and queer/questioning (LGBTQ+) individuals.

Previous studies have provided a framework for scientific investigation of jury decisions surrounding the GPD and have produced preliminary findings that indicate potentially relevant factors and considerations within this area of research. However, little is known about jury actors' innate characteristics that influence GPD success besides juror political orientation and gender. Further, because so few experiments have been conducted in this area of research, and because methodology and vignette content differ across studies, continued measurement of responses to these mock-cases is still warranted to better understand how the GPD mitigates perceptions of guilt and danger and how jurors think a defendant should be sentenced. Because

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of its significance to the U.S. legal system, its effects on victims and their families, and the lack of insight into its success, more research is needed to understand how the GPD continues to exist and sways the minds of jurors. This study aims to fill these gaps in the literature and thereby garner insight into legal actors' innate qualities that are associated with GPD success.

### **Potential Predictors of GPD Response**

#### ***Social and Economic Conservatism***

Political orientation has long been associated with acceptance of sexual orientation. Existing research supports the notion that conservatives find gay individuals to be essentially different from straight individuals, blame gay individuals for their sexual orientation, and experience greater innate levels of sexual prejudice (Hoyt et al., 2018). Republicans are significantly less likely than Democrats to support same-sex marriage in the United States (McCarthy, 2014) and often use organized religion as a means of system justification to defend their beliefs (van der Toorn et al., 2017).

Within the realm of legal psychology, conservatism has been found to predict moral outrage at a gay victim's sexual orientation and at their sexual advances towards a straight defendant (Salerno et al., 2015). It has also been associated with less punitive verdict selections in a mock-trial, as well as less moral outrage at a straight defendant's murder of a gay victim (Salerno et al., 2015). Another study found that conservative participants were less likely to characterize a vignette detailing the intentional killing of a gay man by a straight man as a hate crime, as compared to their liberal counterparts (Michalski & Nunez, 2020). However, in this same study, conservative participants were less likely to select punitive verdicts or view the victim negatively. These researchers speculated that these results may have been mediated by religion, suggesting that perhaps conservative participants viewed the act of murder as more

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unacceptable than the sexual orientation of the victim.

Aspects of conservatism are often separated into two distinct, but associated categories: social and economic conservatism. Social conservatism refers to conservative stances on social issues, such as abortion, marriage, traditional values, the family unit, and patriotism. Economic conservatism refers to conservative stances on fiscal issues, such as welfare benefits, fiscal responsibility, and business. While several studies have examined conservatism as a whole with regards to sexual prejudice, few studies have analyzed whether type of conservatism is salient to acceptance of sexual orientation or whether it is relevant to the legal psychology of GPD criminal cases.

### *Deontic Justice*

Preliminary research suggests that deontic justice, an intrinsic sense of fairness, duty, and morality (Beugré, 2012), may be associated with jury findings in GPD cases. The concept of deontic justice is believed to fall on a continuum of three related constructs: moral obligation, moral accountability, and moral outrage (Beugré, 2012). Moral obligation is seen as a sense of duty to uphold social norms (Turillo et al., 2002), with moral accountability, the desire to hold others accountable for their actions, being the ultimate byproduct to preserve these norms (Cropanzano et al., 2003). Moral outrage, by comparison, refers to the emotional response to witnessing violations of fairness and may include experiences of “anger, indignation, and resentment” (Beugré, 2012).

Salerno and colleagues (2015) found feelings of justice and morality to be salient to jury decisions: in a mock-trial experiment, participants who experienced greater moral outrage at the defendant’s actions were more likely to be resistant to the GPD and selected more punitive verdicts. Moral outrage was also linked to political ideology such that conservative jurors were

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less morally outraged by the defendant's actions than liberal jurors. However, this appears to be the only study in which deontic justice and morality were assessed in the context of the GPD. Therefore, continued efforts should be made to determine how deontic justice and its related constructs affect jury decision-making.

### ***Religious Faith***

Some preliminary data suggests that strength of religious faith may be linked to verdict selection and other predictors key to this study, such as political orientation. Indeed, at least one study has found that religious fundamentalism is a significant predictor of lenient jury decisions in a GPD case (Michalski & Nunez, 2020). However, further research is needed to validate its relevance to these cases, and as such, religious faith remains an exploratory variable in the current study.

A greater research basis supports the notion that religious faith is related to, or interconnected with, other aspects of a person's identity. Jonathan (2008) found that religious fundamentalism was associated with conservative political ideology, and that both variables were associated with greater sexual prejudice. The concept of religious fundamentalism assumes strict interpretation of religious texts and translational effects of religion into all aspects of one's life, including "social, economic, and political" spheres (Razaghi et al., 2020). Strength of religious faith has also been shown to have major effects on one's social desirability bias (Chung & Monroe, 2003), such that those who have greater religious faith, particularly women, perceive themselves to behave in more ethical and socially desirable ways. Thus, in the current study, it is plausible that participants with greater religious faith may produce more socially desirable responses, particularly on the more sensitive questionnaires pertaining to sexual prejudice or deontic justice. However, few studies have examined these aspects of identity altogether,

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especially in the context of legal psychology and the GPD.

### ***Social Desirability***

Measurement of response accuracy and honesty will be imperative in determining whether scores on sensitive questionnaires truly reflect participants' values and opinions. Existing research supports the link between greater religious faith and sexual prejudice and responding in a more socially desirable way (Tsang & Rowatt, 2007). There have also been documented gender effects. For example, Chung and Monroe (2003) found that women are more likely to endorse socially desirable responses to ethics-based vignettes than men. However, contrary to these findings, social desirability has not been a significant predictor of guilt and sentencing decisions in at least one study (Kraus & Ragatz, 2011). Ultimately, responses to questionnaires and vignettes related to the GPD should be interpreted through the lens of social desirability to more effectively analyze mock-juror identities.

### ***Disgust Propensity and Sensitivity***

Physical and moral disgust may also be related to GPD decisions, since feelings of moral disgust can produce similar physiological responses to physical disgust (Pirlott & Cook, 2018). Thus, in addition to the measurement of aspects of morality and justice, including moral obligation, accountability, and outrage, measurement of physical disgust propensity and sensitivity may provide an indication of a participant's likelihood of rejecting a gay homicide victim, particularly in the context of a participant's gender, political orientation, and religious faith.

One study theorized that physical disgust may be an innate reaction to ingroup threat; specifically, group members may be more likely to reject or be aggressive to an outgroup member when there is risk of biological, moral, and value contamination (Cottrell & Neuberg,

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2005). In the context of sexual prejudice, the majority population, or *ingroup* may subscribe to the social myths that LGBTQ+ individuals can influence others' sexual orientations or that they are a danger to vulnerable populations (e.g., children). Filip-Crawford (2015) validated this notion, finding that belief in these myths predicted disgust towards homosexual persons. Further, this study found that moral and physical disgust were associated with desires to both avoid and also verbally and physically aggress against gay individuals.

Physical disgust has not yet been measured within the context of legal psychology and the GPD. However, these preliminary studies suggest that it may be relevant to the jury findings in a criminal trial with a gay victim.

### ***Sexual Prejudice***

Sexual prejudice is at the heart of GPD research since the heat-of-passion argument is based in heteronormativity and stereotypes about homosexuality (Lee, 2008). It has been argued that the GPD is in part successful because victims in these cases are not ideal victims (i.e., they are not heterosexual), and thus they are viewed as deserving victims of prejudice (Mason, 2007). This concept is similar to the idea of victim blame, which has been used in at least one study to assess perceptions of crime against homosexual individuals (Plumm et al., 2010). In short, these researchers found that participants were more likely to blame gay victims for their own murders when the victim had either been in a setting mostly populated by straight individuals and when victims were perceived as provoking the same-sex attacker by putting their arm around them or asking them to dance.

Another study explicitly examined sexual prejudice in a similar GPD mock-trial and found that sexual prejudice is a significant predictor of selected defendant guilt and sentence length (Kraus & Ragatz, 2011). However, vignettes used in the examination of the GPD vary in

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victim profile, defendant profile, type of provocation, and more. Thus, additional research on the association between sexual prejudice and juror decision-making is needed to better reflect the variety in real GPD cases.

### ***Gender and GPD Success***

Juror gender may also be a salient factor for verdict selection. Existing research has supported the notion that on average, men harbor greater sexual prejudice towards sexual minorities than women, and that, while sexual prejudice towards gay men tends to decrease in women over time, the same is not true for men (Poteat & Anderson, 2012). Further, men may derive gender self-esteem, the feeling of being a real man, through “greater adherence to gender-role norms...[feeling] greater discomfort during role violation” (Falomir-Pichastor & Mugny, 2009). Thus, heterosexual men may experience greater intrinsic sexual prejudice towards gay men, as compared with heterosexual women.

In GPD research, however, the findings on gender are mixed. Kraus and Ragatz (2011) measured guilt and sentence length ratings in a mock-vignette design, finding that men were more likely than women to select punitive verdicts. The authors theorized that heterosexual male participants may have psychologically distanced themselves from the defendant, a purported victim of a same-sex sexual attack, consistent with the above model of male gender self-esteem. Yet, a similar study found no gender effects on sentencing decisions, instead finding sexual prejudice to be the key indicator of jury-actor decision (Michalski & Nunez, 2022). The inconsistency in these findings suggest that further research into the effects of gender on GPD responses is warranted.

### **The Current Study**

The purpose of this study is to further investigate the GPD strategy using an experimental

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design with two specific aims. The first aim was to determine whether there are significant differences in the charges and sentences selected by participants between an experimental condition (GPD-related legal case vignette) and a control condition (non-GPD legal case vignette). Based on previous research and legal case examples, it was hypothesized that those in the experimental condition would select less severe charges (e.g., manslaughter rather than murder) compared to those in the control condition.

The second aim of this study was to assess potential associations between the personal characteristics of jurors and GPD success as indicated by less severe charges for participants presented with the GPD-related vignette. Based on past studies, it was hypothesized that participants who earned higher scores on measures of sexual prejudice and social and political conservatism, as well as those who were male, would select less severe charges. Additionally, strength of religious faith, intrinsic justice, and propensity and sensitivity to disgust were examined as potential predictors of less severe charges; however, given mixed or limited findings in extant research, these variables were considered exploratory.

### **Methods**

#### **Participants and Procedures**

Undergraduate participants were recruited using the Sona Systems subject pool platform through the University of Texas at Tyler. Participants were considered eligible for the study if they provided informed consent, indicated English language proficiency, and were at least 18 years of age—consistent with age requirements for U.S. jurors. There were no exclusion criteria for participation; however, participants were excluded from data analysis if they failed two attention screeners designed to assess effort and determine whether they noticed the most salient aspects of the case vignettes. After providing informed consent, participants first completed

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baseline measures of demographics and personal characteristics (e.g., political and religious attitudes). Then, participants were randomly assigned to either a control or experimental vignette with subsequent related questions. In both conditions, participants examined a brief description of a murder case (vignette) and used the available information to select a verdict (or no charge) for the mock defendant. Following completion of the control vignette items, participants in the control condition were then asked to read and respond to the experimental vignette to expand the potential sample size for potential secondary analyses. Immediately thereafter, control participants provided a written rationale for why their verdict and sentencing selections did or did not change, producing additional qualitative data to aid in potential secondary analyses.

### ***Vignettes, Guilt, and Sentencing***

Participants received one of two vignettes that included mock scenarios, each detailing a violent crime. The scenarios were based on a real criminal case in which the defendant killed his neighbor and later claimed that he had experienced an unwanted sexual advance, in court (Compton, 2018). However, to better represent other criminal trials where the GPD has been used, several aspects of this case were changed. Notably, the vignettes make mention of the perpetrator leaving the home where the altercation took place, retrieving a deadly weapon, and returning to the home to carry out the murder. This addition is decisive in that it aims to introduce the concept of premeditation, which has often been a component of GPD cases (State v. McKinney, 1999; Gould, 2011; Kranc, 2020) and should increase the chances of a more severe charge if perceptions of the crime were unaffected by the GPD-related factors of the case. The base vignette is as follows, with the variable component in brackets. Bolded indicates the text for the experimental condition and underlined indicates the text for the control condition:

*One evening in 2018, neighbors James Miller (69) and Daniel Spencer (32) were at*

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*Spencer's home playing instruments and drinking. After a couple beers, an argument and a physical altercation ensued when [Spencer made an advance towards Miller's wife / Spencer attempted to kiss Miller but was rebuffed]. Miller left Spencer's home, retrieved a knife from his car, returned inside, and stabbed Spencer, killing him. Miller was charged with murder. At his trial, Miller used a 'heat of passion' defense, claiming that the shock of the advance caused him to panic and lose control.*

Using the vignette, participants were then provided text explanations of the various criminal charges applicable to the case as defined by Texas law, which included No Charge, Intoxication Manslaughter, Manslaughter, Murder, and Capital Murder. First, participants were asked to indicate whether they believed the defendant to be guilty of a crime, as per typical jury instructions. Then, participants were instructed to choose the charge they considered to best represent the crime, if applicable. Participants in the control condition completed these items in reference to both the control and experimental vignettes.

### ***Manipulation and Attention Check***

To screen for attention and to determine whether participants noted the most salient aspects of the vignette, two screener questions were presented after participants had finished reading the vignettes. The first question was in multiple-choice format and read, "*What were the men doing earlier in the evening, prior to the altercation?*" Possible responses included (a) *Playing cards*, (b) *Playing instruments*, and (c) *Playing chess*, with (b) being the correct answer. The second question required a text response and read, "*What happened immediately prior to the violent altercation?*" Answers were considered to be valid if they gave some indication of the victim having made a sexual advance towards the defendant (in the experimental condition) or the defendant's wife (in the control condition). Participants who failed both items were removed

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from analyses.

### **Measures**

#### ***Social and Economic Conservatism***

The Social and Economic Conservatism Scale (SECS; Everett, 2013) is a 12-item questionnaire designed to measure ideological attitudes pertaining to peripheral issues of conservatism. The measure consists of two subscales: Social Conservatism and Economic Conservatism. Participants select to what extent they care about a social or economic issue (e.g., abortion, welfare benefits, limited government) using a numerical sliding scale that ranges from 0 to 100 with increments of 10. A score of 10 indicates that a participant feels *extremely negatively* about a topic, while a score of 90 indicates that a participant feels *extremely positively* about a subject. All items are summed to create a total score, with higher total scores indicating greater conservatist values (Cronbach's  $\alpha = .88$ ).

#### ***Deontic Justice***

The Deontic Justice Scale (DJS; Beugré, 2012) is an 18-item questionnaire designed to measure reactions to justice or injustice. It consists of 3 subscales: Moral Obligation, Moral Accountability, and Moral Outrage. Items are scored using a 5-point Likert scale with responses varying from 0 (*strongly disagree*) to 4 (*strongly agree*). The measure consists of items such as “I have a moral obligation to treat others fairly” and “People should be confronted when they act unfairly.” All items are summed to create a total score, with higher total scores indicating a greater sense of intrinsic justice (Cronbach's  $\alpha = .93$ ).

#### ***Religious Faith***

The Santa Clara Strength of Religious Faith Questionnaire (SCSRFQ; Plante & Boccaccini, 1997) is a 10-item questionnaire that measures spiritual and religious commitment.

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Items are scored using a 4-point Likert scale with responses varying from 1 (*strongly disagree*) to 4 (*strongly agree*). Example items include “My religious faith is extremely important to me” and “I pray daily.” Items are summed, with a higher total score indicating greater strength of religious faith (Cronbach’s  $\alpha = .97$ ).

### ***Social Desirability***

The Social Desirability Scale–17 (SDS-17; Stöber, 2001) is a 16-item questionnaire that measures the tendency to provide responses that might be perceived by others as favorable, even when inaccurate. Participants respond either *true* or *false* to items including “I take out my bad moods on others now and then” and “I always eat a healthy diet.” Items are summed, with higher total scores indicating socially desirable response styles (Cronbach’s  $\alpha = .72$ ).

### ***Disgust Propensity and Sensitivity***

The Disgust Propensity and Sensitivity Scale–Revised (DPSS-R; Cavanagh & Davey, 2000) is a 16-item questionnaire designed to measure symptoms of, and reactions to, disgust. The measure consists of two subscales: Disgust Propensity and Disgust Sensitivity. Items are scored on a 5-point Likert scale ranging from 1 (*never*) to 5 (*always*). Items include statements such as “When I feel disgusted, I worry that I might pass out” and “I worry that I might swallow a disgusting thing.” All items are summed to create a total score, with higher total scores indicating greater disgust propensity and sensitivity (Cronbach’s  $\alpha = .78$ ).

### ***Sexual Prejudice***

The Homophobia Scale (HS; Wright et al., 1999) is a 25-item questionnaire measuring sexual prejudice. Items are scored using a 5-point Likert scale ranging from 1 (*strongly agree*) to 5 (*strongly disagree*). Statements include “If I discovered a friend was gay I would end the friendship” and “I fear homosexual persons will make sexual advances towards me.” Items are

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summed, with higher total scores indicating greater sexual prejudice (Cronbach's  $\alpha = .93$ ).

### *Legal System Experience*

Knowledge and experience with the legal system was assessed using five multiple choice items. Participants indicated their familiarity with the U.S. legal system and whether they had ever been prosecuted or convicted of a crime, served on a jury, or been involved in a murder trial. Affirmative responses to these questions did not warrant exclusion from analyses, but may be considered for future, secondary analyses.

### **Data Analysis**

Jamovi (Version 2.2.5) was used to conduct all data analyses. For the first aim, chi-square tests were used to examine the differences in frequencies of sentences across the two conditions. The two categorical variables were 1) the randomly assigned condition (control or experimental), and 2) the selected verdict for the reported crime.

For the second aim, the verdict selections were dichotomized into 1) manslaughter charges, which do not require intent or premeditation in the state of Texas, and 2) murder charges, which do require intent or premeditation and are assumed as the more severe sentence. Logistic regression was used to determine whether personal characteristics of participants were associated with selecting a less severe (manslaughter) or a more severe verdict (murder). A logistic regression model was fit with the selected charge as the dependent variable. Independent variables included several key predictors with a priori hypotheses that were rooted in literature: sexual prejudice, social and economic conservatism, and gender of the participant. Additionally, exploratory variables that were theorized to have an effect but that currently have lesser research support were also added to the model: strength of religious faith, intrinsic justice, and disgust propensity and sensitivity. Lastly, social desirability was added as a covariate to account for

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potential of distorted responses on the final verdict and sensitive measures (e.g., items pertaining to sexual prejudice). A power analysis was conducted using the software G\*Power (Faul et al., 2009) to determine the number of participants needed to run the statistical analyses. Using a .05 alpha level and an estimated effect size of small-to-moderate ( $w = 0.20$ ), results indicated that a sample size of  $N = 273$  was necessary to achieve a power of .80. The final sample size of this study was  $N = 123$ , which indicates that the results of this study should be interpreted with caution.

### Results

Three participants were removed prior to analysis for having consented to the study and then immediately exiting out of the survey. One additional participant was removed for completing all formal questionnaires but not the vignette items. All remaining participants successfully completed both manipulation checks. The final sample consisted of 123 participants. On average, participants were 20 years old ( $M = 20.9$ ,  $SD = 4.91$ ) and female, although other gender identities were represented ( $n_{female} = 87$ , (70.7%),  $n_{male} = 27$ , (22.0%),  $n_{genderqueer,gender\ non-binary,or\ gender\ fluid} = 2$ , (1.6%),  $n_{transgender\ male} = 2$ , (1.6%)). Participants were predominately White ( $n_{White} = 63$ , (51.2%),  $n_{Hispanic} = 33$ , (26.8%)  $n_{Black} = 13$ , (10.6%),  $n_{Asian} = 6$ , (4.9%),  $n_{Biracial} = 5$ , (4.0%),  $n_{American\ Indian\ or\ Alaska\ Native} = 3$ , (2.4%)) and heterosexual ( $n_{Heterosexual} = 93$ , (75.6%),  $n_{Bisexual} = 18$ , (14.6%),  $n_{Pansexual} = 4$ , (3.3%),  $n_{Queer} = 4$ , (3.3%),  $n_{Gay\ or\ Lesbian} = 2$ , (1.6%)).

### Verdicts

Across both conditions, 59% of participants selected a murder charge for the defendant (i.e., Murder or Capital Murder). However, a chi-square test of independence revealed no significant differences in verdict selection across conditions,  $\chi^2(3, N = 123) = .770, p = .857$ .

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The most frequently selected charge in both conditions was *Murder* (52% of participants in control condition, 59% of participants in experimental condition), which was categorized as a more punitive verdict for the purposes of this study. The similarity of selected charges is contrary to the hypothesis that there would be a significant difference in verdicts selected across conditions. See Table 1 for a full breakdown of verdict selections.

**Table 1**

*Verdict Frequencies Across Control and Experimental Conditions*

Verdict	Condition		Total <i>n</i> (%)
	Control <i>n</i> (%)	Experimental <i>n</i> (%)	
Intoxication Manslaughter	10 (16.13%)	9 (14.75%)	19 (15.45%)
Manslaughter	17 (27.42%)	14 (22.95%)	31 (25.20%)
Murder	32 (51.61%)	36 (59.02%)	68 (55.28%)
Capital Murder	3 (4.83%)	2 (3.28%)	5 (4.07%)
Total	62	61	123

### Predictors of Verdict Selection

Within the experimental condition, a logistic regression model was fit using verdict selection as the dependent variable, with more punitive charges (i.e., Murder and Capital Murder) coded as 0, and less punitive charges (i.e., Intoxication Manslaughter and Manslaughter) coded as 1. Seven independent variables were included in the model: social and economic conservatism, deontic justice, strength of religious faith, disgust propensity and sensitivity, gender, and social desirability (covariate). Prior to analysis, the data were screened for missingness and collinearity. As previously indicated, there was no missing data in the final sample, including the subsample randomized to the experimental condition ( $n = 61$ ). Multicollinearity assumption was satisfied with all variance inflation factors (VIF) below 2.0. The overall model was not statistically significant ( $\chi^2(6, 61) = 2.53, p = .865$ ), explaining only

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5.54% (Nagelkerke  $R^2$ ) of the variance in the verdict selection. Further, results from the model indicated there were no significant associations between personal characteristics as predictors and the dichotomized verdict selection, contrary to hypotheses (see Table 2).

**Table 2**

*Logistic Regression Model: Personal Characteristics as Predictors of Verdict Selection*

Variable	Estimate	SE	Z	p	Odds ratio	95% Confidence Interval	
						Lower	Upper
Intercept	-1.77	4.00	-0.44	.657	0.17	<0.01	430.51
Conservatism	-0.00	0.00	-0.61	.540	1.00	1.00	1.00
Deontic Justice	-0.01	0.03	-0.44	.657	0.99	0.93	1.04
Religious Faith	0.03	0.03	0.82	.409	1.03	0.96	1.10
Social Desirability	-0.06	0.14	-0.39	.696	0.95	0.71	1.26
Disgust	-0.00	0.03	-0.02	.985	1.00	0.95	1.05
Sexual Prejudice	0.04	0.05	0.89	.374	1.05	0.95	1.15
Gender	-0.22	0.27	-0.81	.419	0.80	0.47	1.37

Note. Estimates represent the log odds of *Manslaughter/Intoxication Manslaughter/No Charge* vs. *Capital Murder/Murder*.

### Discussion

To date, there is limited research on the gay panic defense (GPD) and its use in criminal trials. This study aimed to add to the limited body of work analyzing differences in verdict and sentencing selections in a homicide case based on the presence of perceived gay provocation. This study also sought to investigate innate jury actor characteristics associated with GPD success. First, it was hypothesized that mock jurors would be less punitive in an experimental condition with a gay victim. It was also hypothesized that certain traits would be associated with

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these jury decisions—namely, participant gender, aspects of conservatism, deontic justice, religious faith, social desirability, disgust propensity and sensitivity, and sexual prejudice. However, contrary to hypotheses, no significant differences between verdict selections were found, and no juror characteristics were found to significantly predict these selections.

### **General Factors Associated with Null Findings**

When interpreting the results of this study, an area that warrants further inquiry is ecological validity. There are a few notable differences between the sample of this study and a typical jury; while this mock-jury included predominately college-aged individuals, most real-world jurors are selected through voter ID lists, and therefore, tend to be “older, white, and more affluent than the general population” (Joshi & Kline, 2015). Although college-aged persons are eligible to serve on juries, they rarely comprise the majority of the jury, and thus, age and other demographics may be vital in analyzing jury decision-making. According to one University of Chicago Law School study, “older jurors are significantly more likely to convict” (Anwar et al., 2012). Therefore, the punitiveness of our mock-jurors may not accurately represent the verdicts of a real jury. Further, jurors in real-world trials are typically male, and extant research has consistently found that male jurors are “more accepting of aggression than their female counterparts” (García Toro, 2015). Thus, the major finding of this study that participants tended to be just as punitive across conditions, even when confronted with a crime possibly motivated by sexual prejudice, may be related to the fact that participants were mostly young and female.

The ecological validity of the specific vignettes presented to the mock-jurors may also be called into question. First, it is unclear to what extent a brief vignette accurately represents the presentation of a real case. A criminal jury trial may last days to months, with the presentation of material and circumstantial evidence, expert, character, and eyewitness testimony, and a greater

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development of victim and defendant identity (Schmitt, 2019). The current study's vignette was limited to five sentences in length across both conditions, and was void of any discussion of identity, development of motive, or any of the aforementioned factors. Although the vignettes were intentionally crafted to contain aspects of the crime salient to sentencing (e.g., possible intent, premeditation), participants were required to use their best judgments based upon limited information. The use of a vignette may also feel less personal than what is experienced in a real murder trial; although the vignettes were based on a real GPD case, various details were changed, and participants could complete the survey from the comfort of their own homes, void even of any photographs of the victim and other experiential components which may have otherwise influenced motivation to provide real justice for a victim and a victim's family.

Additionally, in a real murder trial, verdicts are only reached after jury deliberation (if the trial is presented before a jury, unlike bench trials). Jury deliberation involves thorough discussion of the details of a case amongst twelve jurors, exposing jurors to opinions and biases that are not their own and that may better inform or sway their decisions. However, discussion amongst participants was not a part of this study and may have impacted the verdicts selected.

Another factor of the vignette that could influence verdict selection may be the specific details of the case. Across the few existing GPD studies using vignettes, each research team has used a different case, whether factual or crafted. These stories have differed in levels of violence, type of weapon used, type of supposed gay provocation, explicit mention of premeditation or intent, demographics of victim and defendant, and more. Perhaps one or more of these factors is key in verdict selection in murder trials. The most selected verdict in this study across both conditions was *Murder*, which was categorized as a more punitive verdict for the purposes of this study. Perhaps details such as the use of a knife in both the control and experimental conditions

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elevated the perceived wrongfulness of the defendant on behalf of the mock-jurors. Or, perhaps the possible premeditation of the defendant (in his leaving the home to retrieve the weapon and returning to the scene of the crime to carry out the murder) had the same effect. Ultimately, it is difficult to compare the responses to this vignette to existing studies, as these factors may be innate to each presented crime.

Another factor that should be considered in light of the null findings across conditions is the extent to which social desirability influenced responses. Although this was captured by scores on the Social Desirability Scale–17, which was included in the model as a covariate, it is still possible that participant responses do not accurately represent their real-world actions for the same reasons described above. Finally, effect sizes across tests were smaller than expected, and might indicate a need for a larger sample size to detect significant relationships. Future studies that aim to replicate these findings should enroll a greater number of participants.

### **Verdict Selection**

One potential way to better understand why there was no significant difference in verdict selection across conditions could be the participants' reported rationale for their decisions. This information could be examined in the supplementary qualitative data that was collected at the end of each vignette. Participants in the control condition, who were subsequently asked to read through and respond to the experimental vignette, were also asked to provide a written rationale for why their verdict and sentencing selections did or did not change. The following are direct quotes from participants who chose more punitive verdicts across vignettes (i.e., Murder, Capital Murder):

*The defendant was aware in both cases that what he did was not acceptable.*

*Although the defendant was intoxicated, he possessed the wherewithal to carry out a plan*

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*of murder.*

*Murder is wrong no matter what.*

*Women experience similar things and do not kill over it.*

Next, the following are direct quotes from participants who chose less punitive verdicts across conditions (i.e., No Charge, Intoxication Manslaughter, Manslaughter):

*They did not differ because the defendant was intoxicated in both.*

*Financial penalties should suffice for the defendant.*

*Need more information about the defendant's history of past trauma and biases.*

*The defendant is older and should not be sentenced to die in prison.*

Finally, the following are responses from individuals whose punitiveness varied across conditions (i.e., from more to less punitive, or vice versa):

*The crime when the defendant was hit on was motivated by sexual prejudice or hatred.*

*The defendant was overcome by emotion when he was hit on by the victim.*

*The defendant is unlikely to kill again as it was a "heat of the moment" crime.*

Of greatest interest to the results of this study are the responses from participants who selected more punitive verdicts in response to both vignettes, since their findings comprised the majority of the results gathered, and since they contribute most heavily to the lack of significant difference between conditions. It appears that participants tended to view both vignettes in a similar way; the rationale that the defendant committed a planned murder in both cases was among the most common response received. Further, these participants did not appear to be swayed by the mention of alcohol in the vignettes and occasionally questioned the defendant's gender, stating in essence that being a male does not excuse the defendant's aggression. Thus, participants' own rationales may provide preliminary support for null findings regarding

expected differences across conditions.

### **Predictors of Verdict Selection**

The null findings pertaining to the examination of innate juror characteristics may be explained by several methodological and construct factors. First, verdicts were dichotomized to represent either less or more punitive verdicts. Thus, *No Charge*, *Intoxication Manslaughter*, and *Manslaughter* all represented one category of verdict, while *Murder* and *Capital Murder* comprised the other. While this approach allowed for the direct analysis of several predictors using logistic regression, perhaps the distinctions between these verdicts are more fluid and subtle. Thus, dichotomizing the verdict options may have resulted in too much variance restriction and prevented the adequate identification of nuanced, participant bias. The real world of criminal justice is not constrained to two options; thus, it might be insufficient to test a two-option outcome. Future studies should seek to examine these innate juror characteristics across more than two categories.

Lastly, although predictors in this study were selected based on their relevance in previous work, future studies may seek to incorporate additional variables that might better explain juror decisions. For example, future research should consider examining aspects of personality (e.g., openness, conscientiousness, extraversion, agreeableness, neuroticism), to determine the extent to which these traits influence verdict decision.

### **Conclusion**

This study aimed to contribute to the meager research base into the gay panic defense (GPD) and the role of juror perceptions and characteristics that may influence how a defendant is sentenced. Although no statistically significant findings were found with regard to the study's main aims, the results may be informative for future studies that seek to understand why the

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GPD is successful in real homicide trials using experimental designs. Analysis of participant responses indicate that there may be a threshold of violence or planning beyond which most mock-jurors may find a defendant to be more culpable. Other study factors, such as participant age, gender (i.e., sample population), and overall sample size, may be key in future efforts to properly examine this heat-of-passion defense.

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