Using pre-recorded investigative interviews to improve the quality of complainant evidence in rape cases

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Submitted in fulfilment of the requirements of the degree of Doctor of Philosophy

December 2011
Abstract

There is a sound empirical basis to suggest that the pre-recorded interview of an adult rape complainant made during the investigation should provide the court with more accurate, detailed and complete testimony than live evidence later given at trial. The timeliness of the interview, and the different questioning and interviewing strategies used by police when compared to prosecutors, are all likely to improve the quality of the complainant’s recall (e.g. Memon et al., 2010; Powell et al., 2005; Read & Connelly, 2007). Despite these potential improvements, pre-recorded evidence is seldom used with adults (Kingi & Jordan, 2009; Stern, 2010). In part this may be due to the limited systematic research that examines whether the potential benefits are seen in practice. The purpose of the present thesis was therefore to explore how using pre-recorded evidence may improve the quality of information complainants provide and thereby outcomes in rape cases.

In the first two of three studies a mixed-methods approach was used to explore the perceptions of police (N=136) and then prosecutors (N=30) regarding the use of video interviews for investigations and evidence. A questionnaire firstly used a between-subjects design to determine whether question type and interview format in a mock rape complainant transcript influences judgments about accuracy and decisions to charge. Next, perceptions about the advantages and disadvantages of using the video recorded interview were explored. Finally, a list of characteristics was rated according to what denoted an effective investigative interview. This was compared with how they rated the same characteristics for what provides the best evidence. The findings suggest that for both police and prosecutors accuracy, detail and completeness are three of the most desirable traits for investigations and for evidence. The enhancement of these traits was also the most commonly cited benefit of the video recorded interview. Poor questioning methods were ranked as the least desirable characteristics for both investigations and evidence. The presence of these characteristics in the interview was cited as a disadvantage of the video by both groups as it was considered that this may diminish complainant credibility judgments. Supporting the importance of questioning methods, both groups rated the mock transcript of the complainant’s account as less accurate and that they were less likely to charge or recommend charges when poor questioning was used. Commonly cited disadvantages of both police and prosecutors was that pre-recorded evidence may be less impactful as evidence both due to the video medium and
interview format. The findings suggest concerns about interview format relate to the long free narratives likely generated by the cognitive interview contrasting with expectations of a more controlled eliciting of testimony from the complainant.

The third study presented in this thesis was the only study to ever use a within subjects design to compare the investigative interview of the complainant with their live evidence at trial in real rape cases (N=10). Content consistency, questioning and interview format were examined. A customised consistency coding scheme was developed to particularize details that may make complainant’s testimony more convincing. Findings indicated that over two thirds of the details in the interview that were central to establishing the offending were later omitted from live evidence. This loss of detail was most pronounced with cognitions that may form a vital part in explaining counter-intuitive behaviour by the complainant such as her own explanation for her behavioural response (see Ellison, 2007, Temkin, & Krahé, 2008). Also diminished were details about verbalizations, physical actions and emotions, that may reduce ambiguity around consent and add to the convincingness of complainant testimony. For example, details about conversations around the issue of consent. A small number of inconsistencies between the interview and live evidence suggest accuracy was also reduced (e.g., Powell et al., 2005; Read & Connelly, 2007). Both police and prosecutors predominantly used closed questions, but open questions elicited a majority of the information. The significantly longer question responses and use of cognitive interview techniques by police may explain some of the differences in testimony found.

The findings clearly suggest that the quality of information received by jurors is severely diminished when rape complainants give live testimony compared with a police interview. Pre-recorded evidence is perceived by police and prosecutors as a legitimate means of improving the quality of complainant testimony and thereby, given the central role of complainant testimony, increasing convictions in rape cases. Empirical evidence of actual court cases indicates that reality is consistent with these perceptions.
Nina Westera

Date: 7 December 2011
Acknowledgements

I am grateful for the on-going support of my employer, the New Zealand Police. The commitment of the NZ Police to improve responsiveness to rape complainants and its vision to professionalise investigations through evidence-based practice enabled this research to be conducted. To this end, I am grateful to Police Commissioner Peter Marshall for his support and the support of the NZ Police Executive. Additionally I thank Detective Inspector Ross Grantham for his encouragement and professional support.

I am indebted to my academic supervisors whose dedication and enthusiasm for research to provide real outcomes to justice sector policy and practice have made this thesis possible. First, Associate Professor Mark Kebbell whose insight, judgement and innovation has guided and motivated me. Secondly, Dr Becky Milne whose unrivalled passion for practitioner driven research inspired and moulded this doctoral thesis. I am also thankful for the many others who assisted with this research including Ms Lauren Vogel for her invaluable assistance with the research coding; Ms Tom Tom for her editorial prowess and continuous support; Dr Matthew Gerrie for his helpful comments on my draft work; and Professor Simon Bronitt and his the team at the Centre of Excellence in Policing and Security for their collegial support.

Finally, thank you to members of the judiciary who agreed to allow the release of court documents, and Crown Prosecutors and NZ Police employees, who participated in the research. A special acknowledgment to Crown prosecuting agencies - Meredith Connell; Luke, Cunningham and Clere; and Raymond, Donnelly and Company who, through a desire to improve the prosecutions of rape cases, assisted with the data collection and access to participants for this research. In particular I am indebted to Mr Simon Moore, Mr Phil Hamlin, Ms Joanne Moore, Mr Grant Burston, Ms Kate Feltham, Mr Brent Stanaway and Ms Anne Toohey whose continued assistance enabled this research.
# Table of Contents

List of Tables ...................................................................................................................... ix

List of Figures ...................................................................................................................... x

Statement about contribution to jointly authored works and publications ..................... xi

Chapter 1: Pre-recorded evidence and the present study ......................................................... 1
  Interviewing witnesses: Do investigative and evidential requirements concur? ............. 3
  Advances in investigative interviewing ............................................................................ 3
  When investigations and trials meet ............................................................................... 6
  Conclusion .......................................................................................................................... 13
  The problem with rape cases ......................................................................................... 13
  The present thesis ........................................................................................................... 15

Chapter 2: Interviewing rape complainants: Police officers' perceptions of interview format and quality of evidence ................................................................. 17
  Method ............................................................................................................................... 24
  Results ............................................................................................................................... 26
  Discussion ........................................................................................................................ 34

Chapter 3: It is better, but does it look better? Prosecutor perceptions of using rape complainant investigative interviews as evidence ......................................................... 39
  Method ............................................................................................................................... 44
  Results ............................................................................................................................... 46
  Discussion ........................................................................................................................ 53

Chapter 4: Losing two thirds of the story: A comparison between recorded police interviews and the live evidence of rape complainants ......................................................... 58
  Method ............................................................................................................................... 64
  Results ............................................................................................................................... 69
  Discussion ........................................................................................................................ 74
  Conclusion ........................................................................................................................ 79

Chapter 5: General discussion ........................................................................................................ 80
  Summary of findings and theoretical implications ............................................................ 81
  Limitations ........................................................................................................................ 86
  Recommendations for practice ....................................................................................... 88
  Suggestions for future research ...................................................................................... 93
  Conclusion ........................................................................................................................ 95
Appendix A: Promoting pre-recorded complainant evidence in rape trials: Psychological and practice perspectives.................................................................................................................. 96

Appendix B: Abstracts from the papers presented in chapters 1, 2, 3 & 4.......................... 107

Appendix C: Transcript conditions.......................................................................................... 110

Appendix D: Example police questionnaire.............................................................................. 115

Appendix E: Example prosecutor questionnaire ....................................................................... 139

Appendix F: Case summaries...................................................................................................... 147

Appendix G: Prosecutor questionnaire for transcript study .................................................. 153

Appendix H: Coding guidelines and schedule.......................................................................... 159

References..................................................................................................................................... 170
List of Tables

Table 2.1  Means and standard deviations for interview condition broken down into type of information provided. ................................................................. 27
Table 2.2  Means and standard deviations for interview condition broken down into participants’ judgments on likelihood the alleged offender committed the offence and case outcome. ........................................................................... 28
Table 2.3  Rankings, means and standard deviations for the best characteristics of the complainant’s account when used for investigative or evidential purposes................................................................. 31
Table 3.1  Means and standard deviations for interview condition broken down into type of information provided. ........................................................................... 47
Table 3.2  Means and standard deviations for interview condition broken down by judgments on likelihood the alleged offender was guilty........................................ 48
Table 3.3  Rankings, means and standard deviations for the best characteristics of the complainant’s account for investigative or evidential purposes. ................. 50
Table 4.1  Means and (standard deviations) for percent of question types and response word count during the interview and live evidence................................. 70
Table 4.2  Means and (standard deviations) for number of details by type and consistency of live evidence with the interview ....................................................... 73
List of Figures

Figure 4.1  Mean response word count by question type for the investigative interview and live evidence .................................................................71

Figure 4.2  Mean number of details by type and consistency of live evidence with the interview .............................................................................74
Statement about contribution to jointly authored works and publications

Contributions by others to the thesis as a whole

Mark Kebbell (primary supervisor) was responsible for comment on the design of the research programme and reviewing the thesis. Becky Milne (associate supervisor) provided advice on the design of the research programme and reviewed the thesis. I was responsible for the remainder of the work including conception and design of the research project, data coding and analyses, writing and revising the thesis.

Acknowledgement of published papers included in this thesis

Section 9.1 of the Griffith University Code for the Responsible Conduct of Research (“Criteria for Authorship”), in accordance with Section 5 of the Australian Code for the Responsible Conduct of Research, states:

To be named as an author, a researcher must have made a substantial scholarly contribution to the creative or scholarly work that constitutes the research output, and be able to take public responsibility for at least that part of the work they contributed. Attribution of authorship depends to some extent on the discipline and publisher policies, but in all cases, authorship must be based on substantial contributions in a combination of one or more of:

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- Offer authorship to all people, including research trainees, who meet the criteria for authorship listed above, but only those people.
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- Include in the list of authors only those who have accepted authorship
- Appoint one author to be the executive author to record authorship and manage correspondence about the work with the publisher and other interested parties.
- Acknowledge all those who have contributed to the research, facilities or materials but who do not qualify as authors, such as research assistants, technical staff, and advisors on cultural or community knowledge. Obtain written consent to name individuals.
Included in this thesis are published papers in *Chapters 1, 2, 3 and 4* which are co-authored with other researchers. My contribution to each co-authored paper is outlined at the front of the relevant chapter. The bibliographic details for these papers are:

**Incorporated in Chapter 1**

**Incorporated as Chapter 2**

**Incorporated as Chapter 3**
Westera, N., Kebbell, M., & Milne, B. (accepted subject to acceptable amendments). It is better, but does it look better? Prosecutor perceptions of using rape complainant investigative interviews as evidence *Psychology, Crime & Law*.

**Incorporated as Chapter 4**

Additional published works by the author
The following co-authored journal article is relevant to the thesis but did not form part of it and is attached in the appendix. The bibliographic details for this paper are:

**Incorporated as Appendix A**