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## Similar sentences, similar crimes? Using deep sample analysis to examine the comparability of homicides and punishments by victim-offender relationship



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### ABSTRACT

Perspectives in sociology of law and criminology provide theoretical justification for expecting victim-offender relationship to affect sentencing. Screening devices used by court actors may consider factors not directly related to the crime, but grounded in dominant stereotypes about the crime and those involved. Using data from an urban jurisdiction in Canada, this study compares cases that differed by relationship to determine whether similar homicides were treated similarly at sentencing and whether stereotypes about intimate partner homicide could explain any punishment disparity. The deep sample analysis showed that disparities in sentencing appeared to be most common for cases in which an offender who killed intimate partners received shorter sentences than other offenders, despite the intimate partner homicide appearing more serious in nature. Results also challenge dominant stereotypes about intimate partner homicide that may affect punishment outcomes. Controls for offense severity in traditional, quantitative sentencing research may not effectively capture variations in homicide.

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## 1. Introduction

Traditional and current perspectives in sociology of law and criminology provide strong theoretical justification for expecting the relationship between an offender and a victim to affect criminal justice outcomes. These perspectives draw attention to the use of screening devices by court actors that consider many factors not directly related to the crime itself (Auerhahn, 2007; Becker, 1963; Erikson, 1964; Kitsuse and Cicourel, 1963; Sudnow, 1965; Rubington and Weinberg, 1978; Schur, 1971; Swigert and Farrell, 1977; Emerson, 1983; Black, 1976; Horwitz, 1990). These factors may lead to assumptions about the nature of offences and those involved based on associated stereotypes. Such assumptions can, in turn, shape public attitudes and behaviors toward particular offenders and help identify those defined as more criminal than others and to what degree (Farrell and Swigert, 1986). As such, some offenders may be subject to lighter sanctions because they or their crimes do not adhere to stereotypes of criminal behavior that warrant severe legal reactions.

The victim-offender relationship generates assumptions about offenders and victims, particularly in cases of violence, that may elicit one or more 'crime scripts' resulting in lighter sanctions for some offenders more than others. For example, those who perpetrate violence against intimate partners compared to offenders who do not share an intimate relationship with

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their victims, may be punished differently even though their crimes are similar (Miethe, 1987; Dawson, 2006). Although limited and somewhat dated, prior research shows that the association between victim-offender relationship and criminal justice outcomes is not clear with intimacy playing a role at some, but not all, stages of the criminal justice process (Adams, 1983; Dawson, 2004a; Erez and Tontodonato, 1990; Horney and Spohn, 1996; Miethe, 1987; Simon, 1996a; Spohn and Spears, 1997; Williams, 1976) or not at all (e.g. Albonetti, 1991; Simon, 1996b; Myers, 1979a, 1979b).

The assumption underlying many of these quantitative studies is that a 'measure of similarity' can largely be achieved by controlling for a variety of factors that distinguish intimate and non-intimate partner violence and that may also affect punishment outcomes. Few studies, however, have examined in further detail how 'similar' were these crimes beyond such controls which may not capture all or even most of the relevant factors. Using Daly's (1994) qualitative deep sample approach, this study examines cases that differed by victim-offender relationship but were matched according to key criteria using data from a wide sample dataset (Dawson, 2004a,b). Matched cases were then used to determine whether 'similar' cases of homicide were treated similarly at sentencing by collecting data on other factors that may be equally relevant at sentencing, but were absent in the larger sample. The collection of new data for specific cases focused on particular variables that are argued to capture the role of common stereotypes or 'crime scripts' associated with intimate partner violence as discussed next.

### 1.1. Stereotypes about intimacy and violence

Dominant stereotypes about intimacy<sup>1</sup> and violence are shown in Table 1 (for review, see Dawson, 2006). These can be organized around three focal concerns believed to be emphasized by judges when responding to crime: (1) offender culpability; (2) public protection; and (3) the practical constraints of the courts (Steffensmeier et al., 1993, 1998). Each stereotype is linked to explanations for criminal justice leniency in cases of intimate partner violence and, while one stereotype may be applicable to more than one concern, each is couched within a single category for ease of discussion. The first focal concern emphasizes that the severity of punishment should increase according to the degree of offender culpability. Research generally shows that offense seriousness, measured in terms of culpability and harm, is the most significant factor in sentencing (e.g. Gottfredson and Gottfredson, 1988; Huang et al., 1996). As shown in Table 1, two stereotypes about intimate partner violence may be linked to perceptions of culpability, leading to lighter sanctions for these offenders compared to other offenders. The first stereotype focuses on perceived loss of control by an offender (or 'heat of passion'; Stereotype 1) which portrays an offender as acting with moralized rage, decreasing the degree of offender culpability (Rapaport, 1994). The second stereotype concentrates on the role the victim may have played in providing the impetus for the violence (Stereotype 2). For victim participation/provocation to mitigate offender culpability, the participation must be sufficient enough for a reasonable other to lose self-control if placed in a similar situation (Rapaport, 1994).

A second focal concern for judges is public protection and this typically focuses on the need to incapacitate the offender or to deter would-be offenders and involves predicting future danger and/or calculating risk of recidivism (Steffensmeier et al., 1998; Identifier #1 removed). Four stereotypes associated with intimate partner violence may contribute to perceptions about dangerousness and recidivism. These stereotypes relate to the perceived unpredictability of intimate partner violence (Stereotype 3), the lack of future danger posed to the public (Stereotype 4), their tendency to target victims from similar social locations (Stereotype 5), and the perpetration of violence in private rather than public (Stereotype 6). When endorsed, all of these stereotypes may lead to the lenient treatment of intimate partner offenders throughout the criminal justice process (Dawson, 2006). It may be argued that stereotypes that mitigate sentencing (e.g. loss of control) have the opposite effect when judges perceive a correlation between loss of control and increased recidivism. However, sentencing is also determined by judicial perceptions of permanence; losing control is typically not a permanent attribute and is susceptible to reform, thus, justifying a lenient sentence (Steffensmeier, 1980).

The final focal concern relates to the practical constraints of the criminal justice system, emphasizing organizational and individual factors. Organizational concerns include ensuring stable flow of cases, maintaining court relationships, judicial accountability, and being sensitive to resources/costs of incarceration (Dixon, 1995; Steffensmeier et al., 1993; Ulmer and Kramer, 1996; Eisenstein et al., 1988). However, the role of such concerns is more difficult to examine with individual-level data and, as such, the first two sets of stereotypes are the focus of this study.

The next section describes how the deep sample was constructed and how it compares to and is representative of the larger sample. This is followed by a description of new data collected to capture various factors identified in the above stereotypes that were not available in the wide sample, but arguably hold the potential to increase the comparability of cases and to understand if more 'similar' cases were treated similarly at sentencing.

<sup>1</sup> The terms 'intimacy' and 'victim-offender relationship' are used interchangeably in this paper. It is acknowledged that intimacy may be perceived as an affective trait while victim-offender relationship may be more structural in nature. The terms are used here to refer to the degree of 'closeness' perceived to exist between victims and offenders. Drawing from work by Black (1976, 1993) and others (Decker, 1993; Horwitz, 1990; Silverman and Kennedy, 1987, 1993), intimate partner relationships are considered to be 'closer' than other types of relationships.

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