



# A Critical Examination of the “White Victim Effect” and Death Penalty Decision-Making from a Propensity Score Matching Approach: The North Carolina Experience

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## ABSTRACT

**Purpose:** Death penalty research has rather consistently demonstrated a statistically significant relationship between defendant race and victim race in general, and for the Black defendant/White victim race dyad specifically. The bulk of this evidence has been derived from correlational studies and from cases over relatively condensed time frames.

**Methods:** The current study uses data from North Carolina ( $n = 1,113$ ) over several decades (1977–2009) to evaluate the link between defendant/victim racial dyad and jury death penalty decision-making.

**Results:** Results suggest that there is an apparent “White victim effect” that can be observed in death penalty decision-making in traditional logistic regression models. Yet, once cases are matched via propensity score matching on approximately 50 case characteristics/confounders including the type of aggravators and mitigators accepted by the jury in addition to the number of aggravators and mitigators accepted, the relationship is rendered insignificant. Furthermore, these results hold for a defendant of any race killing a White victim and for the “most disadvantaged” situation for Black defendants (e.g., cases with White victims).

**Conclusions:** The “White victim effect” on capital punishment decision-making is better considered as a “case effect” rather than a “race effect.”

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## Introduction

One of the most widely debated issues in the criminological literature is whether there is racial discrimination in the implementation of the death penalty. Extant studies have investigated biases regarding the race of the defendant, the race of the victim, and different defendant/victim racial dyad compositions. These important inquiries have produced a near voluminous body of work suggesting that a racial disparity in capital sentencing does exist (for comprehensive reviews, see Baldus & Woodworth, 2003; Kavanaugh-Earl, Cochran, Smith, Fogel, & Bjerregaard, 2008). Despite this prevailing wisdom, data and methodological limitations in the prior research leave questions unanswered as to the true nature of this unexplained racial disparity. In this vein, while prior studies have indicated that overt race of defendant biases

are generally unfounded, two key questions regarding death penalty decision-making persist: 1) *Whether the killers of White victims are disadvantaged compared to the killers of Non-White victims in general*; and 2) *Whether cases involving Black defendants/White victims are disproportionately disadvantaged*?

To address these research questions, the current study uses data from the North Carolina Capital Sentencing Project (NCCSP) to inquire as to whether (1) being a defendant of any race and killing a White victim, and (2) being a Black defendant and killing a White victim affects jury death penalty decision-making. Furthermore, the current study approaches these research questions using a range of well-known and previously reported significant covariates for influencing death penalty decision-making (see, for example, Baldus, Pulaski, & Woodworth, 1983; Paternoster & Brame, 2003, 2008; Williams, Demuth, & Holcomb, 2007). In addition, and more importantly, the current study also incorporates a range of covariates that have heretofore not been used or available in this literature or assessed *simultaneously* in the same analysis (in both the capital and non-capital context), particularly the novelty of incorporating the type of aggravators and mitigators accepted by the

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jury alongside the total number of aggravators and mitigators accepted. Finally, the current study aims to contribute to this larger literature by assessing these linkages in a traditional logistic regression approach and then evaluating these relationships using propensity score matching, which is designed to be a more methodologically rigorous statistical approach that can yield more precise estimates.

#### *Theoretical Orientations Regarding Race and the Death Penalty*

Examinations of a “White victim effect” or a “Black defendant/White victim effect” in capital sentencing decision-making are often grounded in conflict theory’s contention that Blacks are devalued relative to Whites (Hawkins, 1987) as well as focal concerns stemming from stereotypes regarding crime and violence among Blacks as “normative” and Whites as atypical (e.g., Baumer, Messner, & Felson, 2000). According to conflict theory, the social group with the power and authority (e.g., Whites and the wealthy) create and enforce laws to protect their own interests and to control the subordinate group (e.g., minorities and the poor) (Quinney, 1970). While conflict theorists maintain that the punishment of violent crimes such as homicide does not solely benefit the powerful, they argue that the socially disadvantaged are those most likely to be apprehended and punished for the commission of violent crimes.

Further, in his extension of conflict theory, Hawkins (1987) suggested that criminal sentencing and punishment is also affected by perceptions of crime seriousness that stem from differential social value placed on crime victims according to race and perceptions of threat to the normative social order. Specifically, Hawkins (1987) argued that Black crime victims are viewed as less worthy than White crime victims, that Black victimization is seen as less serious than White victimization, and that those who harm Blacks are punished less severely than those who harm Whites. Likewise, Black on White crime, especially violent crime, will be viewed as the most serious type of harm and punished the most severely because it violates both the social norms designating White power and privilege over Blacks and the prevailing legal norms against crime and violence more generally.

While conflict theory outlines the social conditions that orient stereotypes about Black criminality and White victimization, it does not provide insight into how such perceptions are translated into the individual decision-making process of criminal justice actors (Curry, 2010). Instead, Curry (2010) suggests that the focal concerns perspective may be informative in linking the social conditions outlined in conflict theory to racial biases in sentencing and punishment. Focal concerns theory stems from Albonetti’s (1991) contention that criminal justice actors make sentencing decisions using only limited information regarding a criminal case and the defendant involved and thus must operate under “bounded rationality” (March & Simon, 1958). Ulmer and Bradley (2006, p. 634–5) further indicate that even when extensive information regarding a defendant is available, as is usual in criminal trials, “the risk and seriousness of recidivism is never fully predictable, and a defendant’s moral character is never fully knowable”. Given this uncertainty, criminal justice actors make “situational imputations” (Steffensmeier & Demuth, 2000) regarding a defendant’s character, morality, and projected future behavior (Kramer & Ulmer, 2002, 2009; Ulmer & Bradley, 2006).

Focal concerns theory contends that criminal justice actors assess these situational imputations for three related focal concerns – the blameworthiness of a defendant, their perceived dangerousness to the community, and the practical implications of sentencing (Steffensmeier & Demuth, 2000; Steffensmeier, Ulmer, & Kramer, 1998) – using both legal factors as well as extralegal factors such as the defendant’s and victim’s age, race, and sex or in other words, variables that may be colored by stereotypes and perceptions regarding defendant/victim characteristics.

In addition, more recent discussions of focal concerns theory also highlight the importance of local court community context in actor’s interpretations of focal concerns (Kramer & Ulmer, 2002; Ulmer & Bradley, 2006; Ulmer, Kurlychek, & Kramer, 2007). Court community context may impact focal concerns because courtroom actors, which in the

previous research most often refer to judges and prosecutors, share “localized social worlds” stemming from their shared organizational constraints, local politics, and norms. In this regard, we propose that the potential impact of court community context on perceptions of focal concerns may also be extended to discussions of capital juror decision-making given that they receive a unified set of instructions regarding their jury service (i.e., how to weigh aggravators and mitigators) along with their shared knowledge regarding serious violent crime in their communities, fear of crime, and any community norms/expectations regarding the sentencing of offenders who have been found guilty of first degree murder.

The focal concerns most relevant in capital juror decision-making are those of blameworthiness and protection of the community. Blameworthiness refers to the idea that a defendant’s culpability directly influences the severity of his/her sentence (Steffensmeier et al., 1998). Blameworthiness is usually associated with the notion of retribution – that the punishment should fit the crime, and in the capital context, that the most blameworthy defendants merit the death penalty versus life without parole. Relatedly, protection of the community centers upon the court actors’ responsibility to protect the community from recidivism by incapacitating and/or deterring offenders who pose a threat of future criminality. In regard to capital juror decision-making, where sentencing decisions consist of the choice between life without parole or the death penalty, the concept of general deterrence, or the idea that punishment meted out to one offender may deter other would-be offenders, may be especially germane.

Focal concerns theory maintains that the focal concerns of blameworthiness and dangerousness are mostly established by legal characteristics such as a defendant’s role in the crime (i.e., main offender or accomplice), criminal record, or the seriousness of the offense (Steffensmeier et al., 1998) in addition to the level of aggravation or mitigation. However, it is also expected that extralegal characteristics regarding defendant social status play a role in the attribution of blame and dangerousness. Specifically, Steffensmeier et al. (1998, p. 768) contend that those who are young, non-White, and male are perceived as more blameworthy and dangerous than defendants of other age/race/sex dyads because of stereotypes or imagery identifying individuals in those social groups as “dangerous and crime prone”. For example, previous research demonstrates that probation officers and judges qualitatively score young, Black males’ prior records as more serious and view them as more dangerous and less remorseful/reformable than offenders with other age/race/sex demographic makeups (Daly, 1994; Steffensmeier et al., 1998).

Further research examining the use of focal concerns in patterns of sentencing for serious offenders finds that young, Non-White males receive more severe sentences (Auerhahn, 2007; Spohn & Holleran, 2000) and are less likely to receive downward sentencing departures (Kramer & Ulmer, 2002) than defendants in other age/race/sex dyads. In addition, research on victim attributes indicates that Non-White victims are perceived as partially responsible for their victimization given perceptions that crime and violence, in the form of victimization and offending, is normative in the lives of minorities (Baumer et al., 2000). Likewise, female victims are more likely to be seen as innocent or sympathetic victims compared to male victims given their decreased involvement in crime (Baumer et al., 2000). As such, those who victimize Whites and/or women are perceived as more blameworthy than those who harm Non-Whites and/or males.

#### *Prior Research on Race and the Death Penalty*

Extensive research has documented a “race of victim effect” whereby cases involving one or more White victims are significantly more likely to result in the death penalty compared with similar cases involving Non-White victims (e.g., Baldus, Woodworth, & Pulaski, 1990; Keil & Vito, 1990; Paternoster & Brame, 2003; Pierce & Radelet, 2002; Radelet & Pierce, 1991; Williams & Holcomb, 2001). In fact, in a seminal study, Baldus et al. (1983) offered evidence that offenders who killed

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