



## The determination of victim credibility by adult and juvenile sexual assault investigators ☆, ☆ ☆



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### ABSTRACT

**Purpose:** Literature on sexual assault case outcomes has demonstrated that victim credibility is a critical component in criminal justice outcomes. Much of this literature has focused on prosecutors' evaluations of victim credibility and the role of credibility in decisions to charge. Comparatively less research has examined the specific factors that impact police investigators' evaluation of victim credibility. This study examines how sexual assault investigators determine victim credibility.

**Methods:** This study analyzes interview data collected from 44 sexual assault investigators to understand how investigators evaluate victim credibility, and victim credibility's role in decisions to arrest and present cases to prosecutors.

**Results:** Findings indicate that extralegal characteristics including victim behavior at the time of victimization and victim moral character were important factors when evaluating victim credibility. In the absence of corroborating evidence, victim credibility was considered the most critical factor in decisions to arrest and present cases to prosecutors. Finally, important distinctions were revealed between juvenile and adult investigators regarding the evaluation of credibility.

**Conclusions:** Police investigators' decisions are guided by their perceptions of the characteristics necessary for prosecutors to accept charges in sexual assault investigations. Among these characteristics, victim credibility appeared to be the most important.

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### Introduction

Research has established the importance of victim credibility to criminal justice decision makers in cases of sexual assault (Alderden & Ullman, 2012; Frohmann, 1991, 1997; Horney & Spohn, 1996; O'Donahue, Smith, & Schewe, 1998; Spohn, Beichner, & Davis-Frenzel, 2001). The majority of this research focuses on the impact of certain victim or case characteristics on decisions made by prosecutors (Beichner & Spohn, 2005, 2012; Frohmann, 1991, 1997; Spohn et al., 2001). Specifically, several studies highlight the importance of prosecutor perceptions of convictability,

or the probability of conviction by jury (Beichner & Spohn, 2012; Frohmann, 1997). Frohmann (1997) refers to this phenomenon as the "downstream orientation" of justice, in which decisions are made with "consideration of how others (i.e., jury and defense) will interpret and respond to a case" (p. 535). Other research frames the concept of convictability using the focal concerns perspective, which suggests that practitioners make decisions based on a "perceptual shorthand" of characteristics that are important to judicial decisions in criminal cases (Spohn et al., 2001; Spohn, White, & Tellis, 2014). In line with the downstream orientation and focal concerns frameworks, perceptions of convictability are shaped by both legal (e.g., the severity of the assault, quality of evidence) and extralegal characteristics (e.g., victim behavior, victim moral character) (Frohmann, 1991, 1997; Rose & Randall, 1982; Spohn & Holleran, 2001; Spohn & Tellis, 2014). These characteristics coalesce in determining victim credibility, which has been established as the most important predictor of decisions made by prosecutors in cases of sexual violence (Beichner & Spohn, 2005).

While scholars have paid significant attention to prosecutors' evaluation of victim credibility and the downstream orientation of sexual assault cases, comparatively less research examines the role played by police investigators (Alderden & Ullman, 2012; Spohn & Tellis, 2014; Spohn et al., 2014; Tasca, Rodriguez, Spohn, & Koss, 2013). This

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oversight is problematic in light of compelling evidence demonstrating the importance of police actions to outcomes and attrition in sexual assault cases (Bouffard, 2000; Gaensslen & Lee, 1996; LaFree, 1981; Spohn & Tellis, 2010, 2012; Tasca et al., 2013). Police officers are responsible for interviewing victims and suspects, and gathering adequate evidence before sending the case to prosecutors (Bouffard, 2000; Kerstetter, 1990; LaFree, 1981; Spohn & Tellis, 2014; Tasca et al., 2013). Most importantly, police officers play a substantial role in establishing victim credibility in sexual assault cases (Spohn & Tellis, 2014). As such, police officer perceptions of credibility permeate decisions made throughout the criminal justice process (Bollingmo, Wessel, Eilertsen, & Magnussen, 2007; Spohn & Tellis, 2010; Tasca et al., 2013).

Extant research measures police perceptions of victim credibility by focusing on limited aspects of credibility such as emotion management (Baldry & Winkel, 1998), victim character, gender, or victim-offender relationship (Page, 2008, 2010). Further, most studies use case reviews (Jordan, 2004; Tasca et al., 2013) or vignettes (Baldry & Winkel, 1998; Schuller & Stewart, 2000) in lieu of engaging investigators directly (i.e., via interviews). While these studies provide relevant insights regarding police perceptions of victim credibility, firsthand accounts of how police evaluate credibility and the downstream orientation of justice are sparse in extant literature. The current study seeks to fill this gap by analyzing and comparing interview data from interviews with juvenile and adult sexual assault investigators. These data are used to examine investigator perceptions regarding: (a) victim credibility and the downstream orientation of investigators' decisions, and (b) the determinants of victim credibility in sexual assault investigations. These data also provide a unique opportunity to explore differences in credibility perceptions held by adult and juvenile sexual assault investigators.

### Victim credibility and the downstream orientation of justice

Prior sexual assault research provides a basic understanding of factors imperative to sexual assault case outcomes (Beichner & Spohn, 2005; Frazier & Haney, 1996; Goodman-Delahunty & Graham, 2011; Kerstetter, 1990). Among the most important of these judgments are practitioner assessments of victim credibility (Beichner & Spohn, 2005; Frohmann, 1991). Research examining sexual assault case decisions have explained the impact of victim credibility on case outcomes using both the downstream orientation (Frohmann, 1997) and focal concerns frameworks (Beichner & Spohn, 2012; Spohn et al., 2014). First, the downstream orientation framework highlights how prosecutors label complainants as “good” or “bad” victims (Frohmann, 1991). These labels are based on assessments of convictability, or how credible victim allegations will appear to a jury (Frohmann, 1997). Accordingly, negative evaluations of credibility reduce the likelihood of case advancement (Fitzgerald, 2006; Spohn et al., 2001), while favorable assessments increase perceptions of convictability (Beichner & Spohn, 2005; Fitzgerald, 2006; Kerstetter, 1990; Stanko, 1981–82).

Similar to the downstream orientation of justice, focal concerns theory has been used to examine the factors most important to case outcomes (Spohn et al., 2001; Steffensmeier, Ulmer, & Cramer, 1998). Focal concerns is comprised of three central tenets that guide decisions made by practitioners in criminal cases: (1) the culpability or blameworthiness of the offender, (2) the need for community protection from the offender in each case, and (3) consideration of resource constraints faced by the criminal justice system (Spohn et al., 2014; Steffensmeier et al., 1998). Initially, focal concerns was used to describe decisions made by judges, however it has been adapted to explain prosecutor (Franklin, 2010; Spohn et al., 2001) and police decisions (Higgins, Vito, & Grossi, 2011; Spohn et al., 2014; Tillyer & Hartley, 2010). The framework posits that it is difficult for practitioners to fully consider the weight of all three conditions when making decisions, because during the initial decision points of criminal justice proceedings, information about the background of the accused and the availability

of evidence is often limited. As such, decisions are based on a “perceptual shorthand,” or stereotypes of case characteristics that enhance perceptions of convictability (Spohn et al., 2014). In sexual assault cases, these stereotypes are based on legal (e.g., offense seriousness, suspect criminal history), and extralegal variables (e.g., gender, race, age, victim credibility), and are used to quickly assess the likelihood that cases will move forward in the criminal justice process (Beichner & Spohn, 2005; Steffensmeier et al., 1998).

Both prosecutorial and policing researchers have found evidence of the downstream orientation and focal concerns perspectives in sexual assault cases (Beichner & Spohn, 2005, 2012; Frohmann, 1991, 1997; Kerstetter, 1990; Spohn et al., 2014). Through interviews with 28 prosecutors in Kansas City and Miami, Beichner and Spohn (2005) found that “many prosecutors . . . indicated that charging decisions are based on successfully obtaining a conviction at trial” (p. 472). Early policing research has also indicated that suspects are “more likely to be” (Frazier & Haney, 1996, p. 623) when the police believe charges will be filed by prosecutors. Additionally, a recent study demonstrated that decisions by police to unfound sexual assault cases are guided by perceptions of convictability (Spohn et al., 2014). More specifically, Spohn et al. (2014) suggest that the police consider the likelihood that a case will result in successful prosecution and “view the decision to arrest as the first step in the process of securing a conviction” (p. 167). To be sure, findings indicate that police and prosecutor decisions are based on case attributes that are potentially relevant during future decision points in the criminal justice system (Beichner & Spohn, 2005; Fitzgerald, 2006; Frohmann, 1991; Stanko, 1981–82).

### Legal and extralegal variables

To understand these findings, research has identified a variety of sexual assault case characteristics that impact case outcomes and are considered by criminal justice decision makers (Brownmiller, 1975; Campbell, 2012; Campbell, Patterson, Bybee, & Dworkin, 2009; Davies & Rogers, 2009; Jordan, 2004; Rogers & Davies, 2007; Spohn et al., 2001). Most important, research has demonstrated that police consider elements of victim credibility because they recognize that juries, defense attorneys, and prosecutors will assess this evidence when making decisions about offender culpability and convictability. Specifically, a dichotomy of legal and extralegal characteristics has been found to dictate sexual assault case outcomes and impact victim credibility (Bouffard, 2000; Spohn & Tellis, 2014; Tasca et al., 2013). Legal characteristics refer to tangible evidentiary factors that decision makers are “legally” required to consider when making decisions. Conversely, extralegal characteristics often represent longstanding misconceptions of appropriate behavior exhibited by “legitimate” victims before, during, and after victimization (Brownmiller, 1975; Frohmann, 1991; Lisak, Gardiner, Nicksa, & Cote, 2010; Stanko, 1981–82). Legal characteristics known to reinforce victim credibility in sexual assault cases include victim injuries confirmed by medical evidence (Campbell et al., 2009; Frazier & Haney, 1996), witnesses corroborating victim allegations (Rose & Randall, 1982), and the severity of the offense (Frazier & Haney, 1996; Spohn & Tellis, 2012).

Although research suggests legal characteristics are pertinent to case outcomes, some scholarship indicates that their role may be subordinate to extralegal variables (Alderden & Ullman, 2012; Gaensslen & Lee, 1996). More specifically, early qualitative inquiry revealed that law enforcement officers valued victim credibility above forensic evidence (Gaensslen & Lee, 1996). As such, decisions to arrest and prosecute may rely heavily on the presence of extralegal variables. Some examples of extralegal variables that have been found to damage credibility are demographics (e.g., age, race, gender) (Davies & Rogers, 2009; George & Martinez, 2002; O'Donahue et al., 1998), moral character (Spohn et al., 2001), voluntary victim intoxication (Beichner & Spohn, 2012; Kerstetter, 1990; Lonsway, Welch, & Fitzgerald, 2001; Schuller & Stewart, 2000), inconsistent statements (Alderden &

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