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## A propensity score matching analysis of the relationship between victim sex and capital juror decision-making in North Carolina



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### ABSTRACT

A small body of prior research has examined the impact of victim sex on jury death penalty decision-making and the majority of this research has demonstrated some evidence of a “female victim effect” such that cases involving a female victim are more likely to receive the death penalty than similarly situated cases with a male victim. However, within this line of research studies have suggested that victim sex may work in conjunction with other case characteristics. In order to further explore this phenomenon, the current study examines a near-population of death penalty cases from North Carolina ( $n = 1069$ ) from 1977–2009 using propensity score matching. Results demonstrate that once cases are matched on more than 50 legal and extralegal case characteristics, there is no statistically significant or substantive link between victim sex and death penalty decision-making. Findings suggest that it is concrete differences in the legal and extralegal factors observed in cases with female victims compared to male victims that shape jury death sentence decisions rather than a direct effect of victim sex (*before matching*: OR = 1.53; 95% CI = 1.20–1.95;  $p < .001$ /*after matching*: OR = 0.90; 95% CI = 0.66–1.24;  $p = .52$ ). Study limitations and implications are also discussed.

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Since the reinstatement of the death penalty after the *Furman* (1976) decision, a large body of literature has amassed regarding the impact of extralegal factors on the likelihood of receiving the death penalty. The majority of these studies have focused on the influence of race of the defendant, victim, or racial dyad (for comprehensive reviews, see [Baldus and Woodworth, 2003](#); [Kavanaugh-Earl et al., 2008](#)); however, more recently some scholars have turned their attention to the potential effect of victim sex on capital sentencing decisions. The limited prior research on victim sex has demonstrated some support for a “female victim effect” such that capital cases involving a female victim are more likely to receive the death penalty than similarly situated cases with a male victim ([Holcomb et al., 2004](#); [Stauffer et al., 2006](#); [Williams and Holcomb, 2004](#)). The prior research has been far from unequivocal though, and extant studies have provided evidence suggesting that the impact of victim sex may be conditioned by other case characteristics ([Richards et al., 2014](#); [Williams et al.,](#)

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2007). Thus, questions remain regarding the origin of the disparity between capital cases involving female victims compared to male victims.

To address this issue, the current study uses data from the North Carolina Capital Sentencing Project (NCCSP) and employs propensity score matching (PSM) to inquire as to whether defendants who kill a female victim are more likely to receive the death penalty compared to those who kill a male victim. In doing so, a myriad of important covariates are included that have been previously shown to be associated with assessments of the death penalty in capital murder trials (e.g., Baldus et al., 1983; Jennings et al., 2014; Paternoster and Brame, 2003, 2008; Williams et al., 2007).

## 1. Victim sex in the prior race and death penalty research

As previously stated, the collective body of research investigating the effect of extralegal variables in the contemporary death penalty process has mainly focused on the impact of race. However, several of these studies have also included victim sex in the analysis and, as such, provide relevant information for the present research. For example, Baldus et al. (1990) produced what is considered the seminal study regarding race and the death penalty in the United States. Specifically, their analysis examined 123 variables and yielded a 39-variable core model with the greatest explanatory power regarding the likelihood of receiving the death penalty. While their findings offered evidence that offenders who killed White victims were 4.3 times more likely to receive the death penalty than those who killed Black victims, they also found that the odds of receiving the death penalty were 9.58 times higher for cases involving female victims compared to cases with male victims – an effect more than twice the size produced by victim race. Despite this considerably large female victim effect, the variable measuring victim sex was not included in the core model that is reported in the widely cited “Baldus” study. Additionally, Unah (2011) analyzed North Carolina data to investigate the effect of race (and political/socio-legal factors) on prosecutor decisions to seek the death penalty and jury decisions to impose the death penalty from 1993 to 1997. His results suggested that in addition to race, victim sex was associated with risk of receiving the death penalty. Other research concerning the impact of race on receiving the death penalty has shown a significant effect of victim sex in Florida (Radelet and Pierce, 1991), Ohio (Williams and Holcomb, 2001), and Texas (Phillips, 2009) as well. Yet, these findings have been overshadowed by a concentration and focus on racial disparity.

At the same time, Lenza et al. (2005) examined race of victim effects on capital charging and capital sentencing outcomes in Missouri using Missouri Circuit Court Trial Judge Reports (TJR) and Supplementary Homicide Reports (SHR). Findings from the multivariate analyses revealed that both victim age and victim/offender relationship were significantly related to the probability of receiving the death penalty, but victim sex was found to be unrelated to capital sentencing.

Taken together, a review of the post-*Furman* research on race and the death penalty produced six studies that include victim sex in the analysis as a control variable, not as the independent variable of interest. Across these six studies, only one found no significant effect of victim sex on receipt of the death penalty. The additional five studies demonstrated a significant relationship between victim sex and the likelihood of receiving the death penalty but the odds ratios varied considerably, from 2.11 (Phillips, 2009) to 9.58 (Baldus et al., 1990).

## 2. Prior victim sex and death penalty research

The limited extant research on victim sex and the death penalty has been derived, at least in part, from focal concerns theory which suggests that criminal justice actors such as prosecutors, judges, and juries make sentencing decisions based on three inter-related focal concerns: the blameworthiness of the defendant, their dangerousness to the community, and the practical implications of sentencing (Steffensmeier et al., 1998; Steffensmeier and Demuth, 2000). Scholars suggest that defendant legal factors (e.g., prior record) are the primary determinants of these focal concerns; however, perceptions of focal concerns may also be affected by defendant and *victim* social-structural characteristics such as age, race, and sex. Court community context may also impact focal concerns because courtroom actors, which in the previous research most often refer to judges and prosecutors (for an exception see Jennings et al., 2014), share “localized social worlds” stemming from their shared organizational constraints, local politics, and norms (Kramer and Ulmer, 2002; Ulmer and Bradley, 2006; Ulmer et al., 2007). Although courtroom community context may be less relevant in discussions of jury decision-making, it is important to note that death qualified juries are selected based on similar shared norms regarding the death penalty and they receive a unified set of instructions regarding their jury service (i.e., how to weigh aggravators and mitigators). Additionally, jurors are likely to share some similar understandings of serious violent crime in their communities, fear of crime, and community norms/expectations regarding the sentencing of offenders who have been found guilty of first-degree murder.

The focal concerns most relevant in discussions of capital jury decision-making are those of blameworthiness and protection of the community. Regarding gender, prior research has shown that offenders who kill women are generally perceived as more blameworthy and more dangerous to society than offenders who kill men given the lower rates of criminal involvement among females as well as perceptions that women are weak and/or vulnerable (Baumer et al., 2000). Studies also demonstrate that disparate sentencing among those who kill females may be enhanced in cases involving female victims who closely resemble traditional feminine archetypes (e.g., wives and mothers) or diminished for cases involving female victims who deviate from accepted gender roles (e.g., women involved in illegal activity) (Herzog and Oreg, 2008; Steury and Frank, 1990).

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