Wrongful Conviction in Texas: 'Sex Assaults', False Guilty Pleas, Stranger Rape with Misidentification, and Drug Offenses[1]

Matthew Barry Johnson
Department of Psychology, CUNY John Jay College of Criminal Justice
New York, NY
U.S.A.

Janquel D. Acevedo
School of Psychology, The University of Queensland
Brisbane
Australia

Citing IP data, Johnson (2021), reported that sexual assault/rape was the most common offense associated with exoneration in the US. Also, stranger rape accounted for 72% of the entire IP database. To further examine the role of sexual assault, the current study examined all exonerations in Texas, the US state with the most sexual assault exonerations. Using NRE data, descriptive analyses, and reclassifying sexual assaults, we find drug offenses are the most common crime type associated with exonerations in Texas but sexual assault/rape accounts for a significant portion of Texas exonerations. Contrary to a common assumption, we also find that exculpatory DNA does not explain the substantial proportion of sexual assaults among exonerations. We also examine the role of stranger rape misidentification, youthful complainant recantations (perjury/false allegations) and false guilty pleas in the NRE Texas database. Finally, we discuss other patterns within the Texas exonerations and policy implications.

---

[1] This paper is dedicated to the memory and honor of ***Timothy Cole*** and ***Cameron Todd Willingham***. An initial version of this report was presented by the author at the Austin, Texas Criminal Defense Lawyers Association Meeting on February 11, 2022. The authors thank Attorney Betty Blackwell for inviting and arranging the address. A second version was presented at the Innocence Project, "Just Data: Advancing the Innocence Movement" virtual conference - November 9, 2023. Luisianna Tejada provided valuable research assistance.

I Introduction

What can exonerations tell us about wrongful conviction? Quite a bit since the record of each exoneration documents an erroneous criminal investigation and prosecution. That is, the errors of omission reflected in the failure to identify the actual offender (if there was one), coupled with the prosecution of an innocent person (an error of commission).[2]   In this way, each exoneration illustrates what went awry in the process. However, caution is warranted because what went wrong in any given prosecution may have also gone awry in other prosecutions which resulted in dismissals or acquittals.[3] Further caution is warranted because we do not know if exonerations are representative of wrongful convictions. It may very well be that the wrongful conviction processes for the exonerated are different, in fundamental ways, from the wrongfully convicted who have not been exonerated. So, we begin this inquiry with curious interest, mixed with caution.

According to Johnson,[4] in the US, sexual assaults predominate among confirmed wrongful convictions. In addition, Johnson reported that disaggregation among known wrongful convictions in sexual assault finds these convictions are disproportionately concentrated among stranger rape investigations, as opposed to the more common acquaintance sexual assaults. Seventy-two percent of the Innocence Project (IP) exoneration list are stranger rape cases. However, earlier, it was asserted the association of wrongful conviction to rape is an artifact of DNA testable samples being common in sexual assaults. Neufield & Scheck wrote in the forward of Connors et al:

> Since there does not seem to be anything inherent in sexual assault cases that would make eyewitnesses more prone to mistakes than in robberies or other serious crimes where the crucial proof is eyewitness identification, it naturally follows that the rate of mistaken identifications and convictions is similar to DNA exoneration cases.[5]

This early explanation for the prevalence of sexual assaults among exonerations is limited in several ways. It suggests the misidentification outcome is tied to 'eye-witness errors' rather than the broader criminal investigation (elaborated below). Secondly, it does not account for the

---

[2] Matthew Barry Johnson, *Wrongful Conviction in Sexual Assault: Stranger Rape, Acquaintance Rape, and Intra-familial Child Sexual Assaults* (New York: Oxford University Press, 2021).

[3] Jon B. Gould, *et al*, "Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice" (2012) 99 Iowa Law Rev, 471, online: <https://ssrn.com/abstract=2231777>

[4] Johnson, *supra* note 2.

[5] Edward Connors *et al*, *Convicted by Juries, Exonerated By Science: Case Studies In The Use Of DNA Evidence To Establish Innocence After Trial* (Alexandria: DIANE Publishing, 1996) at xxxi

frequency of wrongful conviction in sexual assault stemming from false confessions (such as the Central Park Five, the Norfolk Four, Christopher Ochoa, the Beatrice Six, Jeffrey Deskovic, Byron Halsey and others).[6] The significance of these wrongful convictions in sexual assault stemming from false confessions is often overlooked because these cases are typically rape/murders and classified as 'murders'.

We suggest wrongful conviction in sexual assault is not linked to misidentification as 'encapsulated' error, but rather to practices and dynamics of the crime investigation [7] which likely apply to wrongful conviction in sexual assault associated with false confessions as well. That is, there are offense specific obstacles to accurate identification of suspects, coupled with offense specific biases and incentives among those who conduct the investigation, identification, and prosecution that account for the disproportionate concentration of wrongful convictions among (stranger) sexual assaults. The presence of DNA tells us how the cases were exonerated, not how they were wrongfully convicted.

There have been additional questions surrounding wrongful conviction and sexual assault. Considerable attention has been focused on wrongful convictions secondary to false guilty pleas.[8] Johnson & Cunningham [9] reported 17 cases of innocent defendants who pled guilty to rape charges. Another identified contributor to wrongful conviction in sexual assault has been allegations from youthful complainants that were found to be unreliable. Johnson [10] described a number of cases (Brian Banks, Jarrett Adams, Gary Dotson, Edgar Coker) in which a young person made a fabricated sexual assault allegation, to a private confidant, which resulted in unanticipated criminal prosecution and resulting conviction of an innocent party.

---

[6] Johnson, *supra* note 2

[7] Johnson, *supra* note 2; see also Margaret B. Kovera "The role of suspect development practices in eyewitness identification accuracy and racial disparities in wrongful conviction" (2023) 18:1 Soc Issues Policy Rev, 1–23, online: <https://doi.org/10.1111/sipr.12102>; Jacqueline Katzman & Margaret B. Kovera, "Potential Causes of Racial Disparities in Wrongful Convictions Based on Mistaken Identifications: Own-Race Bias and Differences in Evidence-Based Suspicion" (2023). 47:1 Law & Hum Behav 23, online: <https://doi.org/10.1037/lhb0000503>.

[8] Allison D. Redlich *et al*, "The Psychology of Defendant Plea Decision Making" (2017) 72:4 Am Psychol, 339–352, online: https://doi.org/10.1037/a0040436; Melanie B. Fessinger & Margaret Bull Kovera "An Offer You Cannot Refuse: Plea Offer Size Affects Innocent but Not Guilty Defendants' Perceptions of Voluntariness" (2023) 47:6 Law & Hum Behav, 619, online: <https://doi.org/10.1037/lhb0000548>; Tina M. Zottoli, *et al*, "Plea discounts, time pressures, and false-guilty pleas in youth and adults who pleaded guilty to felonies in New York City" (2016) 22:3 Psychol Public Pol L 250, online: <https://doi.org/10.1037/law0000095>.

[9] Matthew B. Johnson & Sydney Cunningham, (2015) Why Innocent Defendants Plead Guilty to Rape Charges. *The Crime Report,* June 30, 2015. online: <http://www.thecrimereport.org/viewpoints/2015-06-why-innocent-defendants-plead-guilty-to-rape-charges>.

[10] Johnson, *supra* note 2

A. Why Texas?

According to NRE data, as of 2022, the three states in the United States with the most exonerations are Illinois, Texas, and New York. However, relative to Illinois and New York, Texas has the most exonerations stemming from sexual assault allegations (combining NRE classification of cases with Sexual Assault and Child Sex Abuse). Thus, summarizing and disaggregating the NRE data on Texas sexual assault exonerations may contribute vital insights into wrongful convictions stemming from sexual assault allegations.

B. Current Study

The current study explores five questions:

1. Do sexual assault/rape prosecutions predominate among the Texas exonerations?
2. Is DNA evidence the principal means of exoneration among the Texas sexual assault/rape exonerations?
3. Is eye-witness misidentification the principal erroneous evidence among the Texas sexual assault/rape wrongful exonerations?
4. Do stranger rape misidentification cases predominate among Texas sexual assault/rape exonerations?
5. Do false guilty pleas predominate among Texas sexual assault/rape, and other types of exoneration cases?

II   Methods

With the above questions in mind, we examined the record of wrongful conviction in the US State of Texas, as revealed by data published on the NRE. This data source was searched electronically to gain a descriptive account of exonerations in the State. As of March 18, 2022, there are a total 401 confirmed wrongful convictions in Texas reported on the database. The Texas cases were found by using the "Detailed View" option in "Browse Cases" tab on the NRE website. Then filtering the data by left-clicking "ST" (State) and selecting "TX" (Texas) for Texas state cases and "F-TX" for Texas federal cases, of which there were five**.** We report on the 396 Texas state prosecutions.

In our classification, we combined the NRE 'Sexual assault' cases with other prosecutions where sexual assault allegations were part of the offense/investigation (such as rape/murders) to designate the category 'Sexual Assault/Rape.' The Sexual Assault/Rape category includes cases where there was indeed a sexual assault but an innocent person was convicted (such as Timothy Cole), cases that involved false rape charges (i.e. San Antonio Four) which led to the conviction of innocent person(s), as well as cases where the formal charges did not include a sexual assault offense but sexual assault was included in the report of the crime. For instance, Anthony Massingill and Cornelius Dupree were charged with armed robbery in Dallas County, Texas in 1979. It was reported the female robbery victim was also sexually assaulted by both defendants but, according to the NRE, the prosecutors did not include sexual assault charges because it would not have

resulted in a longer sentence.[11] We designate the resulting wrongful conviction of Massingill and Dupree as 'Sexual Assault/Rape' since it involved sexual assault allegations though not formally charged as such. We compare the frequency of wrongful convictions in 'Sexual Assault/Rape' to the number in 'Murder' (w/o sexual assault), 'Child abuse', 'Drug offenses', 'Robbery', and the 'Other' category.

Lastly, we ran all descriptive analyses on Stata/SE 17.0. In addition, we provide case illustrations describing prototypical cases of the common themes within the exonerations, such as false guilty pleas, stranger rape misidentification, and youthful complainant recantations.

III   Findings

First, as presented in Figure 1, Sexual Assault/Rape exonerations account for a significant portion of Texas exonerations (26.0%, n=103), but Drug offenses (46.7%, n=185) are the most common crime type associated with wrongful conviction in Texas. Additional crime types with substantial proportions among the Texas exonerations are Murder (10.3%, n=41), Robbery (3.7%, n=15), and 'Other Crimes' (13.1, n=52).

Figure 1. Frequency of Texas Exonerations (N=396) Associated with Crime Type
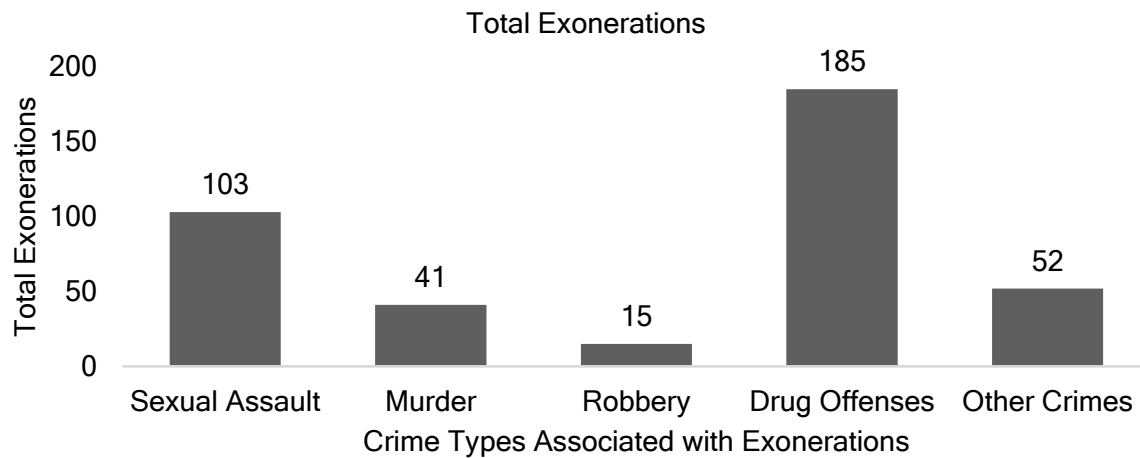
Second, Figure 2 indicates a substantial portion (46%, n=47) of the n=103 sexual assault/rape exonerations were independent of DNA evidence. This finding suggests prevalence of sexual assaults among exonerations is not (solely) an artifact of testable DNA.

---

[11] Maurice Possley *"Anthony Massingill"* (2014) National Registry of Exonerations, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4534>

Figure 2. Frequency of Sexual Assault/Rape Exoneration (n=103) Independent of DNA Evidence, 47 (45.6%)
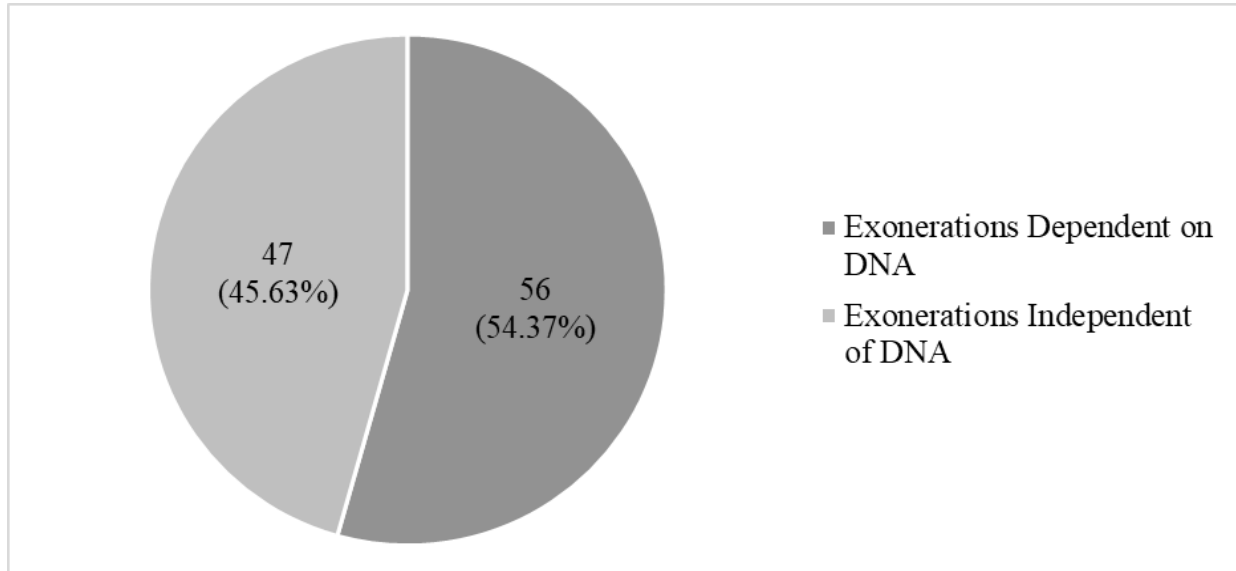
Third, Figure 3 illustrates eye-witness mis-identification was a major contributor to the Texas sexual assault/rape exonerations (50.49%, n=52), though perjury/false allegation was an equal contributor (50.49%, n=52). Other contributing features were false confessions (8.7%, n=9), false/misleading forensic evidence (32.0%, n=33), inadequate legal defense (12.6%, n=13), and official misconduct (33.0%, n=34). The total percentages equal more than 100 because most exonerations had several contributing factors.

**Figure 3.** Frequency of Wrongful Conviction Contributing Factors Among the n=103 Sexual Assault/Rape Exonerations
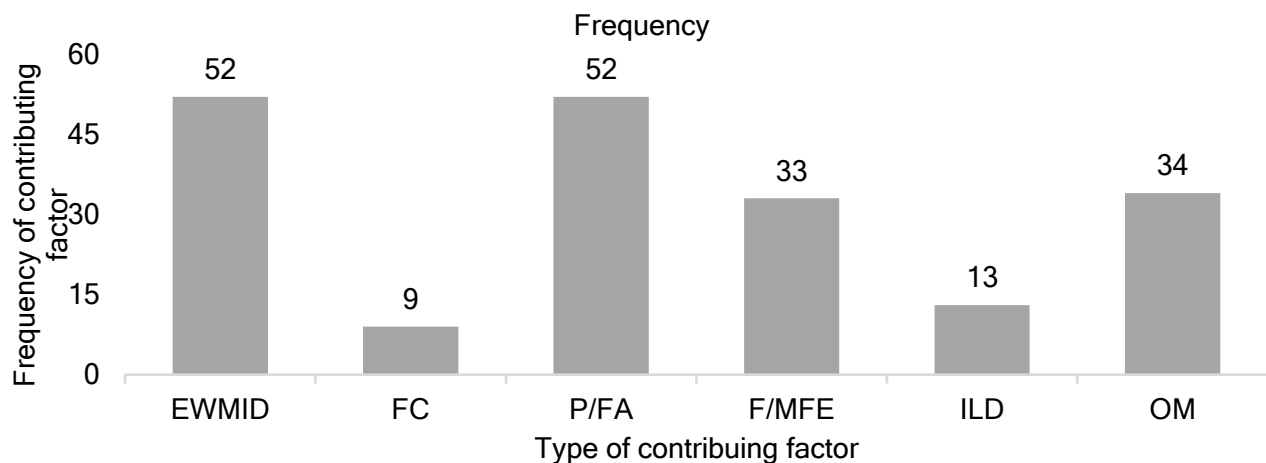
Note. EWMID = eye-witness misidentification; FC = false confession; P/FA = perjury or false accusations; F/MFE = false or misleading forensic evidence; ILD = inadequate legal defense; and OM = official misconduct. Total percentage is > 100 since each case typically has multiple (non-exclusive) contributors.

Fourth, among the 103 sexual assault/rape exonerations, stranger rape eye-witness misidentification was a prominent contributor (45.6%, n=47), accounting for almost half of the cases. False guilty pleas (27.1%, n=28) and youthful complainant recantations (25.2%, n=26) (a particular type of perjury/false accusation) were also significant contributors. Eighteen-point four percent (n=19) of the sexual assault exonerations were attributable to various other sources of error. In addition to false guilty pleas being a major contributor to wrongful conviction in sexual assault/rape, false guilty pleas occurred in virtually all wrongful convictions in drug offenses. Below, we summarize select cases to further illustrate the findings.

Figure 4. Frequency of Stranger Rape Eye-Witness Misidentification, False Guilty Pleas, and Youthful Complainant Recantations Among the n=103 Texas Sexual Assault/Rape Exonerations
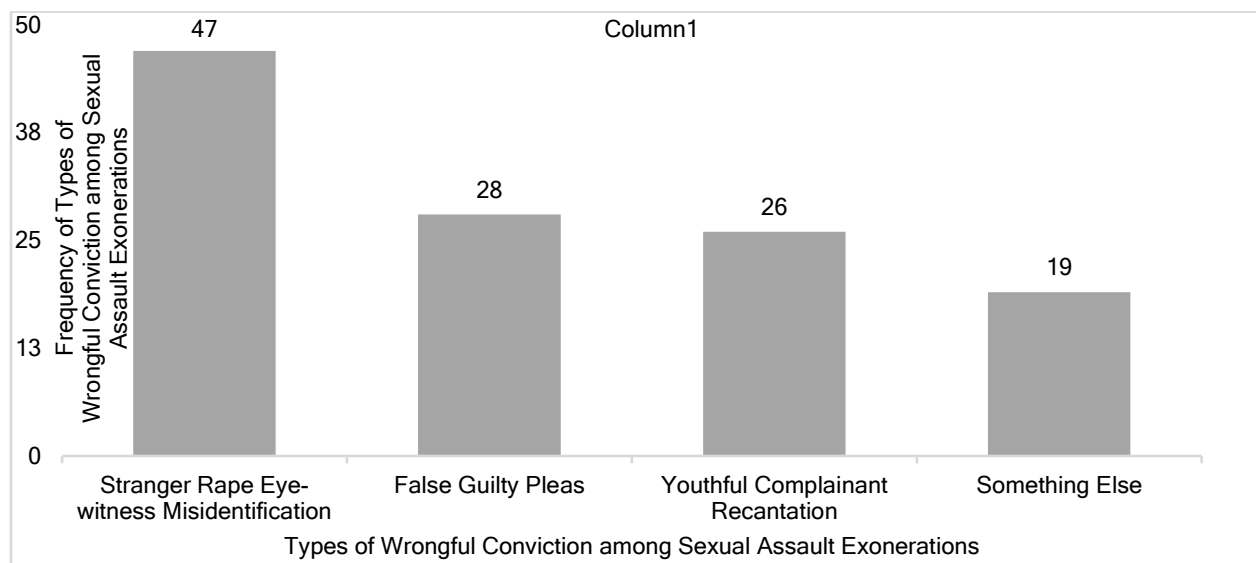
Note. There are 17 (16.50%) exoneration cases that have more than one type. For instance, there are youthful complainant recantation exonerations that have false guilty pleas as well.

IV   Case Illustrations

A. False Guilty Pleas

Johnson & Cunningham[12] presented 17 innocent defendants who plead guilty to rape charges. They noted five non-exclusive factors (1- death penalty threats; 2 - severe penalties, other than death, combined with vulnerabilities; 3 - false confessions that led to false guilty pleas; 4 - the wrongful conviction of co-defendants that led to false guilty pleas; and 5 - false rape charges) that contributed to the outcome. Below we present two cases of innocent defendants who pled to sexual assault/rape charges, among the 27 noted on the NRE list from Texas.

---

[12] Johnson & Cunningham *supra* note 9.

1. Blackshire & Johnson

James Blackshire and Antrone Johnson, Black males, aged, 18 and 17 respectively, were accused, in Dallas County, in March of 1994, of sexual assault of a 13-year-old student at the school.[13] In February of 1995, they both entered guilty pleas with "deferred adjudication", meaning if they remained arrest free for 10 years, the conviction would be vacated. They were ordered to pay fines, a monthly sex offender registration fee, and to attend sex abuse therapy. In August, Blackshire was arrested for failing to pay fees and not attending therapy. He pled again to a 40-year sentence. Ten days later, Johnson was accused in a case, similar to the original one. His probation was revoked, and he was sentenced to life. He thereafter pled guilty to the second charge. Johnson's family hired new counsel and, with the assistance of the Dallas Conviction Integrity Unit (CIU), exculpatory evidence, in the separate prosecutor's files, was identified which led to Johnson and Blackshire's exoneration. Specifically, in the first case, the prosecutor's note indicated the day prior to the initial plea, the complainant reported there was no sexual assault, the defendant had taken her in the bathroom, she did not want to do it, so they stayed in there and pretended, before leaving the bathroom. In addition, the prosecutor's file included reports by school personnel indicating the complainant was not reliable and regarded as a "great liar". This evidence was not shared with the defense. Review of the file in the second case against Johnson, which was handled by a different prosecutor, revealed the complainant reported she engaged in sex, in the school, with three other students on the relevant date. This report also was not shared with the defense. The District Attorney joined the defense motion to set aside the convictions and sentences, which was affirmed by the Texas Court of Criminal Appeals. Thus, Blackshire was exonerated for the first charge and the probation violation. Johnson was exonerated for the first charge and the probation violation, though his guilty plea to the 2nd charge was undisturbed. Thus, DNA did not contribute to the exonerations of the sexual assault charges.

2. Dahn Clary

Dahn Clary, Jr., a 41-year-old white male, was arrested on March 13, 1997 and charged with the aggravated sexual assault of his best friend's 11-year-old son, who reported multiple instances of abuse in 1996.[14] Clary pled guilty to aggravated assault on February 28, 1998, receiving 'deferred adjudication' with the condition he complete a sex offender therapy program and remain arrest-free for ten years. According to Clary, his attorney advised him a trial would likely result in a life sentence. However, Clary's deferred adjudication was revoked six years later due to his failure to attend therapy sessions and comply with the program, leading to a prison sentence. The 'victim' later recanted his claim of abuse, admitting to his mother and signing a sworn statement that he fabricated the sexual abuse accusation due to resentment toward Clary's lack of involvement in his life. Subsequently, Clary filed a habeas corpus petition, granting a writ of habeas corpus. Finally, on June 13, 2016, Clary's charges were dismissed. This illustration of false guilty pleas also illustrates a youthful complainant recantation and a sexual assault/rape exoneration, independent of DNA evidence.

---

[13] Maurice Possley, *James Blackshire,* National Registry of Exonerations, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3934>.

[14] Possley, Maurice, *"Dahn Clary, Jr."* National Registry of Exonerations, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4923>

B. Youthful Complainant Recantation

Johnson [15] discussed the matter of sexual accusations that are later recanted. Recantation may be associated with an initial false allegation but there are circumstances where actual victims recant for a variety of reasons such as pressure from defendants or others, dissatisfaction with the prosecution process, or desire to protect the defendant from legal consequences. Whether a recantation reflects a false accusation requires assessment of the specific context and situation. The series of exonerations from Texas include 26 cases where recantations from youthful complainants were deemed credible and/or corroborated, and thus noted in the exoneration. Two examples are provided.

1. San Antonio Four

The San Antonio Four (Elizabeth Ramirez, Kristie Mayhugh, Cassandra Rivera, and Anna Vasquez), Hispanic females, were 'out' lesbians, and charged with sexually molesting Elizabeth Ramirez's two nieces.[16] The prosecution considered Ramirez to be the 'ring-leader'. Ramirez was convicted first, in 1997. The other three defendants refused plea offers and were convicted together in 1998. The convictions were based on false/misleading forensic evidence (F/MFE) regarding alleged injury to one child's hymen as well as 'victim' testimony. Post-conviction investigation in 2010 found the younger victim recanted, explaining she was coerced to make the false accusation by her father who had been romantically rejected by Ramirez. After additional medical consultation, the state's original medical expert reversed her earlier trial testimony acknowledging it was mistaken, ultimately resulting in an exoneration independent of DNA. The defendants were released in 2013. In 2016, they were officially exonerated by the Texas Court of Criminal Appeals and awarded compensation. An overview of the wrongful convictions and subsequent exonerations is provided in the documentary series, "Southwest of Salem".[17]

2. Tony Hall

Twenty-Five-year-old, white male, Tony Hall was charged with fondling a 7-year-old child whom he was baby-sitting in 1992.[18] Hall denied the charges, passed a polygraph exam, rejected a plea offer, and proceeded to a bench trial. Hall was convicted of aggravated sexual assault and sentenced to 15 years in prison. While imprisoned, he endured physical and sexual assaults. Hall was routinely denied parole because he refused to admit guilt. Hall served his entire sentence, was released in 2008, and required to register as a sexual offender. Two years after his release, Hall had an encounter with this accuser, who was a young adult. The accuser reported a vague memory of the trial and no awareness that Hall had been imprisoned. The accuser reported a clear memory

---

[15] Johnson, *supra* note 2.

[16] Maurice Possley, *"Elizabeth Ramirez"* (2016) National Registry of Exonerations, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5048>

[17] Deborah Esquenazi, "*Southwest of Salem: The Story of the San Antonio Four*" (2016) Exoneration Detail List, National Registry of Exonerations, online: <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx>

[18] Maurice Possley, *"Tony Hall"* (2012) National Registry of Exonerations, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4025>

his mother had insisted he accuse Hall and physically beat him to comply. The accuser provided an affidavit. With the assistance of counsel, Hall obtained testimony from the accuser's aunt (the mother's sister) that she observed the mother physically beat the child to force him to make the allegations against Hall (who was a distant relative). Though the mother denied this, the State District Judge set aside the conviction and it was affirmed by the Texas Criminal Court of Appeals.

As described in Johnson[19], and illustrated above, youthful complainant recantations (YCRs) are a particular type of Perjury/False Allegation. A review of cases suggests different patterns. For instance, a youthful complainant may fabricate an assault and make a private disclosure without intending there will be legal consequences. However, the party who receives the disclosure, directs and/or pressures the complainant to make an official report which leads to criminal investigation and erroneous prosecution, as in the Gary Dotson case and the Brian Banks case. There are other cases, such as the Dahn Clary case, where youthful complainants fabricate the charges stemming from their own hostility toward the accused. There is also a third type where youths become pawns in disputes among adults and are persuaded/coerced to make false allegations, as in the San Antonio Four and Tony Hall cases. Regardless of how the false allegation emerged, complaints from youths generate sympathy, the youths are usually naïve to the consequences of false accusations, and youths are especially vulnerable to coercion.

C. Stranger Rape, Misidentification

As noted above, Johnson[20] reported wrongful convictions in sexual assaults were concentrated among stranger rape prosecutions which comprise 72% of all IP exonerations. In addition, Johnson described an *incapacitated victim-false confession path* to wrongful conviction as well as a distinct *capable victim-misidentification path*. In the capable victim, misidentification path, the rape victim/witness misidentifies an innocent person as the assailant. As described by Johnson, the erroneous identification is commonly associated with biased identification procedures, cross racial identification challenge, [21] and other factors (elaborated in the discussion). There are 47 prosecutions with this characteristic among the series of 103 sexual assault/rape exonerations from Texas. Since the NRE does not routinely report the race/ethnicity of the offense victim, the frequency of cross racial misidentification in this series is not apparent. A feature that clearly demonstrates the bias in the identification process is multiple eye-witness misidentification (MEM). One case illustrating cross racial misidentification is provided below, followed by a second case with MEM.

---

[19] Johnson, *supra* note 2.

[20] Johnson, *supra* note 2.

[21] Laura Connelly, "Cross- racial identifications: Solutions to the "they all look alike" effect" (2015) 21:1 Mich J Race & L 25, online: <https://doi.org/10.36643/mjrl.21.1.cross-racial>; Innocence Project "*Re-evaluating Line-ups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification",* An Innocence Project Report (2009) online: <https://innocenceproject.org/reevaluating-lineups-why-witnesses-make-mistakes-and-how-to-reduce-the-chance-of-a-misidentification/>

1. Michale Phillips

In September of 1990, a 16-year-old white teen was raped in a Dallas motel room.[22] According to the victim, in the struggle, she was able to remove the assailant's ski mask, and recognized him as (36-year-old) Michael Phillips, a Black male, and former resident of the motel. A month later she selected Phillips from a six-photo line-up. The following month, Philips accepted a guilty plea with a 12-year sentence. Philips had a prior conviction for burglary. Phillips later reported he was advised by counsel to accept the plea because the jury would surely take the word of the white victim and he would be sentenced to life. Two years after serving the 12-year sentence, Phillips pled guilty to failing to register as a sex offender. While detained, he submitted a pro se habeas motion asserting DNA testing would exonerate him. The motion was denied. In 2007 after the Dallas County CIU was established, all county sexual assault convictions where available DNA had not been tested where examined. Phillips was excluded as a contributor of the semen from the vaginal swab, and it was matched via CODIS to Lee Marvin Banks a felony offender, who admitted residing at the motel during the relevant time period though he denied committing the offense. Phillips' convictions were vacated, and he was awarded compensation.

This was a stranger rape, misidentification wrongful conviction that also involved cross-racial misidentification and a false guilty plea. Phillips was exonerated from the original rape charge as well as the violations associated with the conditions of his parole. The exoneration was dependent on DNA evidence.

2. Ricardo Rachell

On 10/20/02, an eight-year-old, Black male child, was lured with an offer to earn money by a Black male adult, riding a bicycle, in southeast Houston. The child was anally raped by the perpetrator and discovered by neighborhood adults running and crying. The child was taken home and initially reported someone had tried to kill him with a knife.[23] The child, and a six-year-old who had seen the man on the bike, described him as a Black man about 30 years old. The following day the child's mother left the house, without the child victim, and observed Ricardo Rachell in the neighborhood. She suspected the Rachell was the perpetrator. She returned home, got the child, and the child confirmed Rachell was the assailant. Rachell had a pronounced facial disfiguration from a prior gunshot injury. The police apprehended Rachell and the child again identified Rachell, seated in the rear of the police car. Later that day, the child was interviewed, the sexual nature of the assault was discovered, and a rape kit was secured. Following a police/prosecution consultation, Rachell was arrested 10/24/02 and voluntarily provided DNA samples. The DNA samples were never tested. On 11/16/02, while Rachell was in jail, another eight-year-old, Black male child was sexually assaulted in the same community, with a similar MO. Rachell was convicted 6/03/03 at trial, with the in-court identifications by the two children (MEM). Two appeals on Rachell's behalf were rejected. On 10/23/03 the Houston Police Department, Juvenile Sex Crimes Unit, behaviorally linked the 11/16/02 assault with another sexual assault on an African American boy in southeast Houston. On 4/08/04, Andrew Wayne

---

[22] Maurice Possley *"Michael Phillips"* (2014), National Registry of Exoneration, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4483>

[23] Johnson, *supra* note 2.

Hawthorne pled guilty to the three assaults and was subsequently DNA matched to the evidence from the crime scene that resulted in Rachell's conviction. However, Rachell was not released until 2009.[24] He was exonerated and compensated in 2011.

This was a stranger rape misidentification with two witnesses making the mistaken identification. MEM is not uncommon, occurring in 38% of confirmed eye-witness misidentifications.[25] Confidence in the (faulty) identification increases with the repeat presentation of the suspect, even though the reliability of the identification is tainted/compromised. The Rachell prosecution also included the conviction of an innocent for crime committed by a serial sex offender, a common feature in 67 stranger rape wrongful convictions.

D. Drug Offenses

Gross (2018) commented the Texas misdemeanor and felony drug offense exonerations, "… have the same basic plot".[26] An alleged illegal substance is seized from the search of a car. A passenger or driver is charged and arrested. If the defendant has priors, the bail is prohibitively high. While in jail, the defendant is offered a plea deal which involves release the same day or within weeks. A not-guilty plea will result in months of detention prior to trial, with an uncertain outcome. Many defendants, whether they believe they are guilty or innocent, take the plea offer so they can go home. Gross explained these exonerations were concentrated in Harris County (the Houston area), the only county that conducted post-adjudication lab testing of controlled substances. It was often found the substances were not the alleged illegal drugs.

1. Meghan Alegria

Meghan Alegria, a 20-year-old, white female, was arrested 11/18/21 and charged with possession of 'PCP' (phencyclidine) in her confiscated cigarettes. On 11/21/11 she pled to possession of a controlled substance with a 3-year parole sentence. In 2014 the Harris County District Attorney learned lab tests results from cases that had been resolved were not being forwarded to the prosecuting attorneys. The sample from Alegria's case was tested January 27, 2012 and found to be negative for illegal substance. The defense attorney was informed and this eventually led to Alegria's exoneration in 2020.

V   Discussion

We reviewed the NRE data on all exonerations in the State of Texas as of March 2022 (N=396), to determine if sexual assault/rape was the predominant crime type. Unexpectantly, we found Drug offenses (46.7%) were the most common offense type though sexual assault/rape prosecutions did comprise a substantial proportion (26.0%) of the exonerations. A considerable

---

[24] Maurice Possley, *"Ricardo Rachell"* (2012) National Registry of Exonerations, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3559>

[25] Innocence Project, *supra* note 21.

[26] Samuel Gross, "Errors in Misdemeanor Adjudication" (2018) 98:3 *BUL Rev*, at 999-101, online: <https://repository.law.umich.edu/articles/2003>

portion (46%) of the n=103 sexual assault/rape exonerations were independent of DNA evidence, suggesting the disproportionate frequency of sexual assault/rape prosecutions among the Texas exonerations was not a mere artifact of testable DNA. The leading evidence types among the n=103 sexual assault/rape wrongful convictions were eye-witness misidentification and perjury/false accusation, each occurring in about half the cases. Many cases had multiple contributing factors (such as an eye-witness misidentification and official misconduct). Among the 103 sexual assault exonerations, stranger rape misidentification was the most common pattern, evident in 45.6% (n=47) of the cases. There were also a substantial number of false guilty pleas (n=28, 27.1%) and youthful complainant recantations (25.2%, n=26). False guilty pleas also occurred in all the wrongful convictions in drug offenses.

The loss of freedom stemming from false guilty pleas ranges across different types of crimes (drug offenses, sexual assaults, and murder). The Christopher Ochoa false guilty plea to an Austin, Texas rape and murder[27] is only one of several well-known cases where innocent defendants pled guilty to serious crimes.

In the past decade there has been increased attention to the role of false guilty pleas in wrongful convictions.[28] Several remedies to reduce the occurrence of innocents pleading guilty have been advanced such as open file discovery, enhancing 'voluntariness' by increasing attorney advisement and decreasing time pressure prior to pleas, and recognizing unique due process vulnerability among juvenile defendants. We also add, increased funding for public defense (as it relates to attorney compensation, caseload size, and available resources).

As noted above, YCRs are a particular type of Perjury/False Allegation. YCR played a significant role in many of the Texas wrongful convictions in sexual assault. Also noted above, these false accusations can arise from a variety of circumstances which warrant assessment when evaluating the evidence in a given case. These accusations pose a challenge for investigators (both defense or prosecution) because thorough assessment of the complaint could have the untoward effect of discouraging victims from reporting assaults, which is also an adverse outcome. This recognition suggests a need for special training to enable investigators to remain supportive of complainants, while assessing their complaints.[29] While adults also recant complaints, the heightened vulnerability of youth recognized in other criminal investigative contexts (i.e. false confessions) warrants attention to youthful complainant accusations.

Early wrongful conviction scholar Borchard (1932) used the term 'manufactured evidence' to refer to instances where investigators (intentionally) framed suspects to seal convictions. Johnson [30] describes how the 'manufacture of evidence' can occur inadvertently, as well as intentionally. Johnson presented a 'continuum of intentionality' in the manufacture of evidence,

---

[27] Innocence Project *"America's Guilty Plea Problem Under Scrutiny"* (2017), online: <https://innocenceproject.org/americas-guilty-plea-problem-scrutiny/>

[28] Redlich *et al*, *supra* note 8; Fessinger & Kovera, *supra* note 8; Zottoli *et al*, *supra* note 8; Tarika Daftary-Kapur & Tina M. Zottoli "A first look at the plea deal experiences of juveniles tried in adult court" (2014) 13:4 Int J Forensic Ment Health 323, online: https://doi.org/10.1080/14999013.2014.960983

[29] Johnson, *supra* note 2.

[30] Johnson*, ibid.*

ranging from spontaneous misidentifications [31] by victim/witnesses that occur independent of law enforcement identification procedures on the left, to situations where police fabricate evidence and/or provide intentionally false testimony on the right. Johnson also elaborated the 'black box' character of this manufacture of evidence, where there is an absent, or limited, record of the circumstances that led to a witness identification, or a confession, or the testimony by an informant, or the opinion of an 'expert' or analyst.

With specific regard to eye-witness misidentifications, the notion these misidentifications are "encapsulated" witness errors [32] is contrary to the essential recognition of the law enforcement investigation procedures in the misidentification. We suggest there are features of stranger sexual assaults that can make eyewitnesses more prone to error. The stress/trauma and profound personal violation of the assault is one. The police and public reaction to the offense, including incentives/rewards for an arrest and conviction, is another.[33]

When the teen sexual assault victim picked out Michael Phillips from the six-photo spread, she was merely demonstrating she could distinguish Michael Phillips from the five other photos. It did not indicate he was her assailant. However, the procedures made her identification appear reliable. This is how her identification of Phillips, as her rapist, was 'manufactured', albeit unintentionally. Similarly, the two witness misidentifications of Ricardo Rachell (MEM) were manufactured by the police investigation where the rape victim's mother, who had never seen the assailant, developed a hunch the disfigured man had attacked her son. The traumatized, 8-year-old victim, concurred with his mother's impression, and identified Rachell seated in the rear of the police car. At trial the prosecution had two eye-witnesses (the eight-year-old and the six-year- old) provide the critical in-court identifications. MEM, where multiple witnesses are making the same erroneous identification, is a clear indicator of (forensic confirmation) bias in the criminal investigation.

Since the actual offender (culprit) was absent in each of these identifications, there was considerable risk an innocent person would be (mis-)identified as the assailant. Wrongful conviction eye-witness researchers [34] have observed, "…the dangers of misidentification increase dramatically when the actual culprit is not included [in the] identification procedure". Further, this research indicates the 'base rate' (or frequency) of culprit absent line-ups determines the likelihood any particular identification is accurate. Wells & Quigley-McBride calculated from available lab studies, "…if the culprit-present base rate was 75%, then the chance that an identified suspect was innocent was 9%. However, if the culprit-present base rate was only 25%, then the chance that an identified suspect was innocent ballooned to a whopping 53%" (p. 292). The researchers explain culprit absent line-ups in real world police investigation is not at all uncommon. A study of actual line-ups conducted by the Houston Police Department estimated 65% of witnesses were shown

---

[31] Matthew B. Johnson & Sydney Melendez "Spontaneous Misidentification in Wrongful Rape Conviction" (2019) 37:3 *Am J of Forensic Psychol*, 5-20, online: <https://psycnet.apa.org/record/2020-50561-001>

[32] Johnson, *supra* note 2 at 84.

[33] Johnson, *supra* note 2.

[34] Gary Wells & Adele Quigley-McBride "Applying Eyewitness Identification Research to the Legal System: A Glance at Where We Have Been and Where We Could Go?" (2016) 5:3 JARMAC, at 292 online: <https://doi.org/10.1016/j.jarmac.2016.07.007>

culprit absent line-ups.[35] Therefore, educating law enforcement and legal authorities about the inherent risk of misidentification where there is a culprit absent line-up (or show-up) has emerged as a clear policy objective.

Other researchers [36] have reported data that suggest the increased rates of misidentification of Black suspects [37]-is not (primarily) a result of cross-racial identification error but rather due to law enforcement investigators' lower threshold of evidence before placing a Black, as opposed to a white, suspect in a line-up. The recognition of these base rates considerations is not novel, nor unique, to wrongful conviction connected to eye-witness misidentification. Gudjonsson noted, "… the rate of false confessions in a given population is dependent, to a certain extent, on the base rate of guilty suspects interrogated".[38] Where the base rate of guilty suspects interrogated is high, the risk of false confession will be low, and where the base rate of guilty suspects is low, the rate of false confessions will be high.

What can exonerations tell us about wrongful convictions? Single exonerations, not so much, but the aggregate data available through the NRE and IP are valuable sources in the effort to understand, prevent, and challenge wrongful convictions. Contributions from multiple sources, archival data (such as the NRE and IP), as well as controlled lab research, social and historical investigations all advance knowledge in the field.

Two notable limitations to the data presented in this report warrant mention. First, we were unable to ascertain the frequency and proportions of criminal convictions, in the State of Texas, associated with different crime types. These data would provide a more complete picture of the relevance of exonerations associated with different crime types and features. Second, we did not measure inter-rater reliability as applied to the crime type classification and features reported. We hope to have these data available for future reports.

---

[35] John T. Wixted *et al*, "Estimating the reliability of eyewitness identifications from police lineups" (2015) 113:2 PNAS 304, online: <https://doi.org/10.1073/pnas.151681411>

[36] Jacqueline Katzman & Margaret B. Kovera, "Potential Causes of Racial Disparities in Wrongful Convictions Based on Mistaken Identifications: Own-Race Bias and Differences in Evidence-Based Suspicion" (2023). 47:1 Law & Hum Behav 23, online: <https://doi.org/10.1037/lhb0000503>; Margaret B. Kovera "The role of suspect development practices in eyewitness identification accuracy and racial disparities in wrongful conviction" (2023) 18:1 Soc Issues Policy Rev, 1–23, online: <https://doi.org/10.1111/sipr.12102>

[37] Connelly, *supra* note 21.

[38] Gisli H. Gudjonsson, "*The Psychology of Interrogations and Confessions*" (West Sussex: John Wiley & Sons, 2003) at 173.