

False Rape Allegations and Wrongful Convictions

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Editor's Note: In this article, the authors analyze how frequently wrongful rape convictions occur and describe the features characterizing such cases. The characteristics they examine include defendants' demographic variables and the relationship between the accused and alleged victim. They also consider the impact of forensic errors, police misconduct, and false confessions. The authors conclude that false rape allegations rarely lead to false convictions and are overwhelmingly dismissed from the criminal justice system.

HOW COMMON ARE FALSE ALLEGATIONS?

Every sexual assault advocate has heard that question during trainings, press briefings, or in court proceedings. Unfortunately, responding to the question often opens its own quagmire. The prevalence of false rape claims remains a matter of much debate. Estimates range widely, from as low as 1.5% to as high as 90% of all reports (Rumney, 2006; Rumney & Rumney, 2015). These vastly different rates underscore challenges faced by researchers in these

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areas. Much of the variance in how often false rape allegations occur is linked to questionable data collection or unclear definitions of what constitutes a false rape claim (Greer, 1999; Kanin, 1994; Kennedy & Witkowski, 2000; Lisak, Gardinier, Nicksa & Cote, 2010; Rumney, 2006; Saunders, 2012).

The energy devoted to the debate about how often false rape allegations occur and the methodology to collect that information means there has been little progress in answering the implicit question: How often do these false allegations lead to a wrongful conviction of an innocent person? As a result, the tangible effects of false sexual assault claims on the accused have not been well-explored. Samuel Gross and Michael Shaffer found that over a third of all wrongful convictions are for sexual assaults, but the likelihood of a false rape accusation resulting in a wrongful conviction remains unknown (Gross & Shaffer, 2012). In this study, we drew upon a sample of factually innocent defendants who were indicted to compare how often false rape allegations led to a wrongful conviction. In addition to examining how often an innocent defendant accused of sexual assault was wrongfully convicted, we also asked:

- Who are the defendants in cases stemming from a false rape allegation? Specifically, we examined defendant demographics, their relationship with the alleged victim, and their criminal history.
- What evidentiary and procedural characteristics distinguish cases stemming from a false rape allegation compared to those introduced through other means? And, finally,
- How frequently are false rape allegations associated with wrongful convictions compared to other factors, such as forensic errors, police misconduct, and false confessions?

To answer these questions, we used a subset of cases from the Predicting Erroneous Convictions Project, a multi-faceted study of wrongful convictions funded by the National Institute of Justice (Gould, Carrano, Leo & Hail-Jares, 2014; Gould, Carrano, Leo & Young, 2012). Overall, we concluded that false allegations rarely lead to wrongful convictions but are overwhelmingly correctly dismissed from the criminal justice system.

METHODS AND DATA

The Predicting Erroneous Convictions Project compared the defendant, case, and exoneration characteristics of wrongful convictions and “near misses,” cases in which an innocent defendant was indicted for a crime but was not convicted (Gould et al., 2014, 2012). The project employed a strict definition of factual innocence, which was based upon a) the inclusion of a statement of innocence made by a criminal justice official, such as a judge, juror, prosecutor, or governor, and b) the exoneration evidence being strong enough to convince a reasonable person that the defendant was innocent. This large dataset allowed us to compare the root causes of cases in which an innocent person

was convicted to those in which the criminal justice system correctly found an innocent person not guilty.

From this dataset, we drew a subset of 198 cases where sexual assault was the most severe crime—53 had ended in a near miss and 145 had ended in a wrongful conviction—for the current project. Newspaper and official court records were used to code a number of variables pertaining to each case. Some of these variables included:

- **Whether the Case Arose From a False Allegation.** To address this point, we relied upon the definition of a false rape allegation stated by the International Association of Chiefs of Police, which suggests that the designation of a false sexual assault allegation can only be made if “the evidence establishes that no crime was committed or attempted . . . after a thorough investigation [and] . . . not confused with an investigation that fails to prove a sexual assault occurred” (IACP, 2005a, 2005b).
- **Origin of Implication.** To set up an appropriate comparison, the origin of how all cases were brought to the attention of criminal justice officials was coded. Cases arose from victim or eyewitness identification (both mistaken and intentional); officer identification; third party identification (such as a tipster responding to a police sketch); physical evidence; law enforcement misconduct; or suspected as a result of criminal history. Fourteen of these cases entered the criminal justice system through either other or unknown means.
- **Case Evidence.** Information on the type of evidence collected and presented at trial was also gathered and coded, including the presence of a false confession or incriminating statements, whether forensic evidence was presented, and if invalidated forensic techniques (such as bite mark or hair analysis) were used.
- **Case Strength.** Relying upon a scale developed by the Police Foundation, we evaluated the strength of the case put forward by both the defense and prosecution, on a scale from 1 (very weak) to 3 (highly probative) (Gould et al., 2012).
- **Case Outcome Variables.** Beyond looking at whether the case resulted in a near miss or a wrongful conviction, we also considered the average number of months spent under correctional supervision (controlling for case outcome) as well as whether the defendant received compensation for wrongful indictment.
- **Defendant Demographics.** General demographic characteristics (gender, age, race, high school completion, and English fluency), as well as the defendant’s relationship to the victim, and the defendant’s criminal history were also collected. Past criminal history was reflected in several variables, including presence of a past

criminal conviction, average number of convictions, having more than three past convictions, and being previously charged with a similar crime.

Once these factors were coded, bivariate and multivariate analyses were conducted. Bivariate analysis compared the presence of these various factors between cases that arose from a false sexual assault allegation to those arising from some other means. For the multivariate analysis, a statistical model that considers the relationship of multiple factors on outcome, we examined whether a case arising from a false rape allegation impacted case outcome (wrongful conviction vs. a near miss), when controlling for other factors, including race, English fluency, prior criminal history, age, and case characteristics.

HOW OFTEN DO FALSE ALLEGATIONS LEAD TO WRONGFUL CONVICTIONS?

Sixteen percent (16.2%) of defendants in sexual assault cases were indicted as a result of a false rape allegation. The vast majority of individuals who were wrongfully indicted for a sexual assault, by any means, were brought into the criminal justice system by other means of implication, including (in rank from most common to least), victim or eyewitness misidentification, officer identification, third party identification, and suspected on the basis of criminal history.

From there, though, we witnessed that the criminal justice system often worked and was able to identify false allegations before a conviction. Less than five percent (4.8%) of wrongful convictions stemmed from a false rape allegation, compared to almost half (47.2%) of all near misses, a highly statistically significant finding. False rape allegations, then, may lead to an indictment, but seldom conviction.

Even in the rare instances that a false rape allegation did lead to a wrongful conviction, bivariate analysis suggested that the defendants serve less time under correctional supervision. Defendants who were wrongfully incarcerated as a result of a false rape allegation served on average 105 months in prison compared to 173 months among those whose cases originated via some other means. Comparably, among near misses, those who were indicted on the basis of a false rape allegation often fared slightly worse than their counterparts, spending almost 8 months under supervision compared to 4.5 months for other defendants. Defendants indicted on the basis of false rape allegations also were less likely to have received compensation. Among those whose cases did not include a false allegation, nearly 67% had received compensation, compared to just 42% of those whose cases did.

WHO ARE THE DEFENDANTS?

Defendants in cases stemming from a false rape allegation differed, often significantly so, from their counterparts whose cases were introduced through another method of implication. They were more likely to be white (50% v.

26.5%), had obtained their high school diploma (79% v. 48%), and more likely to be older (on average 31 v. 26 years). Unsurprisingly, false rape defendants often had a preexisting relationship with the accuser and were far less likely to be a stranger. Indeed, the complaining witness and the defendant were strangers in just three percent (3.1%) of false allegation cases (compared to over three-quarters of other sexual assault cases). Instead, false rape defendants were most likely to be a co-worker (50%) or acquaintance or friend (41%) of the complaining witness. In addition to having a previous relationship with the complaining witness, defendants in false rape cases were less likely to have a criminal history; less than 44% reported a criminal history compared to nearly 62% of other sexual assault defendants. These lower rates of criminal history were true regardless of whether we looked at averages or the presence of past similar criminal charges. In sum, defendants in these false rape allegation cases were privileged: they were white, educated, older, had a preexisting relationship with the victim, and were less likely to have a criminal history.

WHAT ARE THE CHARACTERISTICS OF FALSE RAPE CASES?

The evidentiary and procedural characteristics of sexual assault cases originating from a false allegation also differed from those that did not. Forensic evidence in such cases was scarce; in 30% of false allegation cases, no forensic evidence was presented (compared to 15% of cases that did not stem from a false allegation). However, in false rape cases, when forensic evidence was presented, the expert witness was more likely to present it correctly (59.4% v. 55.2%) and without errors in testimony. Similarly, none of the cases that stemmed from a false rape case included an invalidated forensic technique, compared to over 21% of other cases, suggesting a higher overall quality of evidence. Comparing the strength of the prosecution's and defense's case revealed that falsely accused defendants have a strong basis for proving their innocence at trial. This solid foundation is based on three factors. First, defendants in false allegation cases were more likely to have a strong defense. Second, they were more likely to hire a private attorney. Finally, the prosecution in these cases was less likely to have a strong case (attributable to the lack of evidence). Together, these three factors contributed to circumstances favoring falsely accused defendants.

WHAT IS THE IMPACT OF A FALSE ALLEGATION ON CASE OUTCOME?

False rape allegations were found in 5% of wrongful conviction cases, but what was the impact of these allegations on case outcome when other factors were considered? Within the multivariate analyses a false allegation was still much less likely to lead to a wrongful conviction. Even when controlling for defendant demographics and evidentiary factors, a false rape allegation was twenty to twenty-five times *less* likely to result in a wrongful conviction than

when a case entered the system through another means, making it the strongest protective factor against wrongful incarceration in several models. We also identified several other factors, including using invalidated forensic science techniques and a defendant's criminal history, which made a defendant more likely to be wrongfully convicted than found innocent.

Despite the findings within the multivariate analysis, we wanted to better understand just how common false rape allegations were within our sample compared to other notable factors associated with wrongful convictions. We compared the prevalence of false rape allegations among sexual assault-related wrongful convictions to the prevalence of forensic errors, use of invalidated forensic techniques, withholding of exculpatory evidence, alleged or substantiated allegations of incompetent defense, police misconduct, and false confessions. False allegations were present in the least number of cases overall. The most common attribute, error in forensic analysis or testimony, happened in over 40% of cases—over eight times as often as false rape allegations. Thus, in terms of being a factor associated with wrongful conviction for sexual assault, false allegations occurred in only a small fraction of cases. They were not commonly found among these cases. And false allegations, as the multivariate model demonstrates, are not a significant source of wrongful convictions.

CONCLUSION

Debates over the prevalence of false rape allegations can be a notable distraction to discussions about caring for and listening to sexual assault victims and survivors. Our findings here suggest that while such allegations do happen, law enforcement and the criminal justice systems are adept at identifying such allegations and addressing them long before a conviction. Although our study found that false rape claims do have serious consequences for the accused, overall the story which emerges from our findings is an optimistic one. False accusations of rape are less likely to result in the incarceration of innocent individuals, particularly the wrongful conviction, than most other systematic or procedural factors. Continuing research onto false rape allegations must advance to considering not their frequency but their long-term impact. Our findings suggest there are other systematic and procedural reforms—notably, reforms to forensic analysis and defense lawyering—that could better safeguard innocent people from wrongful incarceration than continued attention to how often false rape allegations are received by police.

We suggest instead that future research, and discussion, should center on the role of false allegations in leading to wrongful indictments (“near misses”). Though individuals are indicted, and then exonerated within the existing system, our research raises considerable questions about how many such indictments are acceptable. Overall we are convinced that such thorough investigation and attention to allegations is necessary to address sexual assault and supporting survivors. In our earlier research, we identified how

tunnel vision can often cause law enforcement to hyper-focus on a suspect and ignore contradictory evidence. In future research on false allegations, we suggest that similar qualitative process tracing can be issued to identify the “disruptors,” those factors or moments that break tunnel vision. Such attention to these disruptors can further inform the development of best practices for investigating sexual assault allegations and simultaneously expedite identifying false allegations when they do occur.

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