

The Good, the Bad, and the Ugly: A Review of Research on Investigative Decision-Making by Police Officers in Sex Offense Cases

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Abstract

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This chapter presents a review of the research on police decision-making in sex offense cases, before concluding with some suggested priority areas for further research. An exploration of ‘the good’ is first presented, for example how objective and effective police decision-making can be enhanced, with particular focus on current decision-making and investigative guidance provided to UK police dealing with sex offenses. Next, research on ‘the bad’ and ‘the ugly’ aspects of police decision-making in sexual offenses is presented, which reflects the abundance of research on the negative influence of cognitive bias, such as police adherence to ‘rape myths’ linked with low-reporting of and high-attrition rates in sexual offense cases. The chapter concludes with suggestions for priority areas in most urgent need of future research, if understanding of how police can approach and investigate sexual offenses more effectively is to improve.

Keywords

Police
Decision-making
Sex offenses
Rape myths

Criminal investigation

14.1. Introduction

The investigation

Police decision-making

of sex offenses is one of (if not the) most controversial areas of policing (Barrett & Hamilton-Giachritsis, 2013). Much of the controversy involves the high attrition rates of those who report such offenses against them, with, historically, victims of sex offenses considered by many to be poorly treated by police, their investigative processes, and the wider criminal justice system (e.g., Caringella, 2009; Sleath & Bull, 2017). Some have found that between a third and half of all prosecutions in the UK resulted in a conviction for rape or for a lesser offense (e.g., Stanko et al., 2007; Stern, 2010). This finding has continued, with the latest reports produced by the Crown Prosecution Service (CPS) for 2020 demonstrating only 40.8% of rape allegations result in a charging decision and of those that do go to court, 58.5% result in a conviction (CPS, 2020). It is important to outline that this is significantly lower than the average conviction rate of 83.4% that is attested in the latest CPS case outcome data (2018–2019) (CPS, 2019). The problem with sex offense processing is located further upstream in that most sex offenses are likely to go unreported to police at all, and those that are reported are unlikely to reach the inside of a criminal court (e.g., Feist et al., 2007; Kelly et al., 2005). These findings are by no means limited to the UK, with research indicating the same situation in Europe, North America, and Australasia (e.g., see Horvath et al., 2011; Kelly, 2010; Kelly et al., 2005; Lafree, 1981; Patterson & Campbell, 2010). Moreover, Horvath et al. (2011) argue that nowhere in policing has criticism been more consistent than that directed at the police's ability to fairly and successfully investigate sexual offenses:

Crimes that can fall within this category include rape, domestic violence or hate crime characterising “messy” investigations (long protracted cases where the officer may have some doubts regarding the integrity of the complaint), or unworthy of attention (the officer believes the event is not an offence but a private matter, or a trivial event) or finally the complainants fault (the officer believes the complainant contributed to their own victimisation) (Horvath et al., 2011, p. 5).

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So, just why are sex offense cases so replete with potential bear-traps and mine-fields for police decision-makers to negotiate enroute to achieving ‘just’ and reliable criminal investigative outcomes? Somewhat unsurprisingly, answering

this question is far from straight-forward as not only are there a huge number of different types of sexual offenses that need investigating, but each will have taken place in a plethora of possible different circumstances and contexts. No definitive template or blue-print for police decision-makers to follow in sexual offense cases can exist; there is, however, a growing body of research available to help inform and guide police with their decision-making, particularly in the criminal investigation of sexual offenses.

This chapter primarily serves as a review of the current state of play regarding the research literature relating to police perceptions of, and decision-making in, sexual offence cases. From the initial reporting of an offense to its possible criminal investigation, we review the body of work exploring how decisions are made by police and how they are influenced. We conclude the chapter with an urgent and heartfelt plea for more research into police decision-making in such cases. To facilitate progress we go so far as to suggest not only that it should be considered a priority area for academic research, but we also identify, based on this review, several priority areas on which future research needs to focus. Without this progress we fear that police perceptions of sexual offenses and criminal investigative practice will continue to be plagued by decision-making pitfalls that all too often constitute obstacles on the route to justice for victims and survivors of crimes of a sexual nature.

The bulk of the research relating to police decision-making in sexual offense cases to date has focused on what Kim Rossmo (2009) refers to as, ‘criminal investigative failures’, where police make wrong decisions that either lead to tragic miscarriages of justice (i.e., an innocent person is convicted) or some other unsatisfactory outcome (i.e., where the offender is not identified or convicted). In both cases there is little hope of the victims or their loved-ones obtaining justice for the crime committed, often making any kind of emotional ‘closure’ even more difficult. Most of this research focuses on ‘the bad’, for example what causes and influences erroneous (bad) decision-making by police. As we shall see, cognitive bias is often singled-out as a frequent villain of the piece in a literature replete with examples of how it can and does negatively influence investigative decision-making (Wright, 2013). One has only to recall, for instance, the now infamous investigation into the Yorkshire Ripper murders in the North of England in the mid- to late-1970’s for examples of how different types of cognitive bias, such as attribution bias, tunnel-vision, and other influential ‘heuristics’ can negatively impact the outcome of a large criminal investigation (see e.g., Byford, 1981¹; Roach & Pease, 2009; Rossmo, 2007, 2009).

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Although focusing research

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to reduce ‘the bad’ in decision-making is obviously considered an effective means by which to increase ‘the good’, increasing effective and appropriate decision-making is surely an equally important way of increasing the ‘good’ in sexual offense investigations. Put simply, we can improve the efficacy of all criminal investigations not just by reducing negative influencers, but also by encouraging and promoting adoption of good practice and effective decision-making. Compared with crime prevention, unfortunately, criminal investigation has yet to receive the spotlight of ‘Evidence-Based Policing’² and we very much hope that this chapter will play some small part in prompting a move towards a more established evidence-based program of research for police decision-making in sex offense cases.

In a spirit of optimism, we begin the chapter with a brief review of ‘the good,’ namely research on effective (as opposed to ineffective or defective) police decision-making

Police decision-making

in criminal investigations. More specifically, we show how UK police have attempted to improve practice in the investigation of sexual offenses, including rape. Hopefully, we will convince the reader of the need to understand fully how police make investigative decisions (including correct ones) in the first place, by looking at the framework within which their decisions are situated (e.g., in the case of UK police investigators, how guidance, training, and experiential learning influences the way they make decisions in investigative practice).

We offer our apologies to those non-UK based readers for what at times appears to be a UK-centric focus to this chapter. This is not out of patriotism. It is simply because two decades ago UK policing embarked on a programme to professionalise criminal investigative practice by developing guidance manuals (e.g., Core Investigative Doctrine (2005); the Murder Investigation Manual (2006); Major Incident Room Standardised Administrative Procedures (2005)³; and providing bespoke training for police investigators, within which investigative decision-making has become a corner-stone. To our knowledge, much of the policing world has yet to adopt such an approach with investigators ‘getting familiar’ with criminal investigation by ‘doing the job’ and gaining the experience. We hope that it makes intuitive sense for us therefore to focus on UK policing efforts in this regard.

14.2. A Review of Research on Investigative Decision-Making by Police Officers in Sexual

Offense Cases

14.2.1. Increasing ‘the Good’: Effective Police Decision-Making

If we are agreed that police are ‘human beings’ then an appropriate starting point is with a brief exploration of research on how us humans make decisions. There is an argument to be made that not enough of this more general ‘human species wide’ research has been imported into police decision-making, above and beyond the negative influence of cognitive bias. We merely suggest here how knowledge of human decision-making can be used to understand and better inform policing, and criminal investigation specifically. We will then move to decision-making in the context of criminal investigations and then the more pertinent area (to this chapter) of decision-making in the investigation of sexual offenses, and what might be focused on in order to advance our understanding of decision-making and investigative practice in sexual offense cases.

What leads humans to make or arrive at decisions is often (but not always) influenced by a plethora of different factors such as context, situation, personality, previous experience and levels of knowledge, to name but a few (Roycroft & Roach, 2019). Evolution has kindly bestowed us humans with brains capable of making quick decisions to initiate instant action (e.g., to ‘fight’ or ‘flight’) for obvious reasons of survival. This form of rapid, albeit often unconscious, decision-making is commonly referred to as ‘*System One thinking*’ (e.g. Kahneman, 2011), which has been shaped by the need to survive long enough to reproduce. Roach and Pease (2013a, 2013b) suggest that those predecessors who decided that the lion coming towards them was not hungry and so there was no need to flee, but who were wrong, were less likely to have passed on their genes to future generations by virtue of curtailing any future mating opportunities (i.e., dying prematurely) than those who deliberated less and acted quicker. Although the ‘lion-runners’ may have been wrong in their assessments, in this scenario at least false positives were fine as they did not decrease the chances of becoming the latest meal for a hungry lion, whereas gambling did.

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Should we wish to do so, human brains have evolved an ability to put the cognitive ‘brakes on’ and slow-down decision-making in less time sensitive situations that do not require immediate action, by employing a more conscious and deliberate process known as ‘*System Two thinking*’ (e.g., Kahneman, 2011). System two is thought to represent a capacity for ‘rational thinking’, for example deciding which university to go to or whether to go to university at all. Of course, as shall be emphasised later, this does not make us humans immune to

committing errors and sometimes making seemingly ridiculous decisions, but it generally serves us well a majority of the time.

With all this potential ‘decision-making’ noise going on it is perhaps a wonder how anyone can make a correct decision at all (Roach & Pease, 2013a, 2013b). That said, there are certain commonalities that we can work with. It suffices to say here, that understanding how decision-making occurs is highly complex and far from an exact science, perhaps exemplified no better than when attempting to study decision-making by those in an occupation as complex as policing (Roycroft & Roach, 2019). When we think about it, our modern police officer has a plethora of different concerns to deal with as well as any operationally-based decisions - for example, whether to administer a breath-test to an 85 year-old driver of a vehicle, caught travelling at 33 miles per hour in a maximum 30 miles per hour zone, and who appears to be quite upset about it. Thoughts going through an officer’s mind are likely to include: is the driver scared because they are otherwise law-abiding and so are unaccustomed to being stopped by police? Are they not scared but angry about being stopped? Do they have something to hide? Put simply, every police officer throughout the world, irrespective of rank or role, has to make a multitude of decisions on a daily basis, some based on fact, but many based on assumptions and intuition (often referred to as ‘gut-feeling’ in police circles).

Many decisions will relate to what might initially be considered trivial, innocuous or minor, such as issuing parking fines, with seemingly inconsequential outcomes such as a ‘quiet word’ with a group of youths becoming a little rowdy in a park. Such decisions may lead an officer to exercise their discretion and take the pragmatic decision to take ‘no further action’ (known as ‘NFA’ in UK policing). Some decisions, however, can unfortunately be life changing (or life-saving) for an officer, a member of the public, or for both. The two outcomes are of course not black and white as decision-making in what appears at first to be a routine situation, can actually become a situation which suddenly becomes far more serious and unpredictable. The tragic murder of two UK Police Constables, Nicola Hughes and Fiona Bone, are a sad example of how situations can quickly change. These two female officers were called to a reported burglary in Greater Manchester, England, in 2012, and were shot and killed in an ambush by a man who wanted to ‘kill cops.’⁴

Police decision-making can therefore take place in situations ranging from the routine and seemingly innocuous, through to matters of life and death, with hindsight being the only indicator of which it was. Add to this the fact that police thinking is normally influenced by a unique blend of legal, moral, and procedural demands, coupled with numerous community and public

expectations, and the complexity of police decision-making becomes ever more apparent (Roycroft & Roach, 2019). Take for example the decision whether or not to arrest a suspect, which is made all the more difficult when you anticipate that doing so is likely to lead to community anger and unrest. Roycroft and Roach (2018) suggest that if one Googles the question, ‘what is an unpredictable job?’, then being a police officer is likely to be in the top ten ‘hits’ offered.

Police officers are often then in the unenviable position of having to decide on ‘the least bad option’ (Roycroft & Roach, 2019) as would happen, for example, when making decisions about what to do with a suspected suicide bomber. The shooting of Jean Charles De Menezes by UK Police 2 weeks after the London terror attack in 2005 serves as a tragic reminder of this.⁵ So, with the chips seemingly stacked against them, how can police investigators hope to make a correct decision at all? We now look to the help and guidance on making professional decisions currently available to UK police, including those involved with criminal investigations.

14.2.1.1. The UK Police National Decision Model

There is of course no known system of decision-making which can guarantee infallibility – well not for any human beings (*homo sapiens*) we know anyway. The making of any decision often necessitates taking some element of risk as we often reason to ‘the most likely outcome’ (Bryant, 2019). Avoiding risk in decision-making, however, does not ensure success (i.e., that your decisions will always be the optimal or even most correct ones). Police actions are generally the outcome of a series of complex decisions each contingent on the previous one. Indeed, much police decision-making appears to be ‘Bayesian’ in appearance, whereby each decision taken is influenced by the available options, in a ‘if this, then that’ type process (Pease & Roach, 2017). Take investigative decision-making, for example, think of any ‘great fictional detective’ and they will no doubt adjust their hypotheses as to what happened and by whom as new data/information are acquired.

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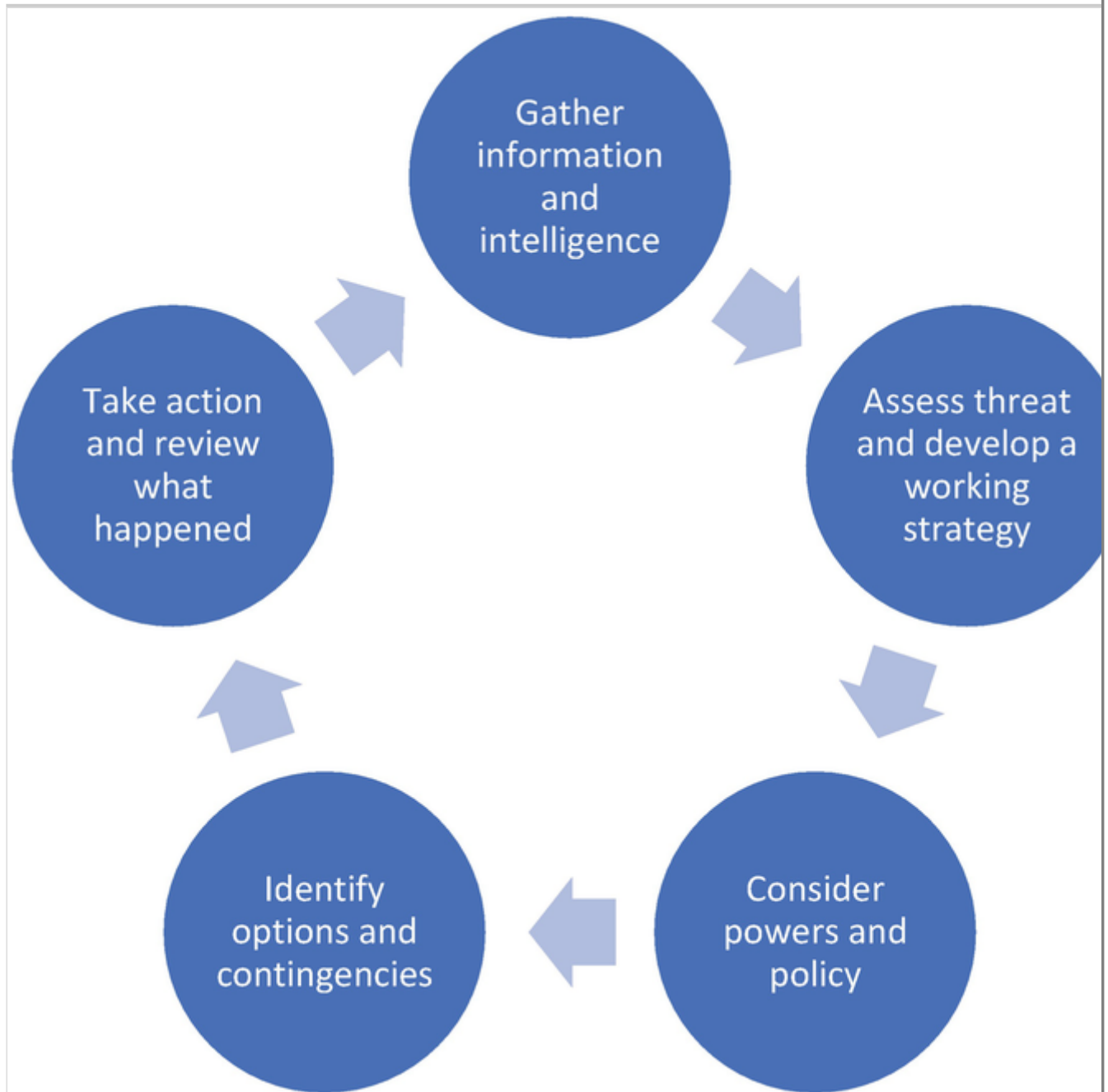
As stated, police decisions are often required and taken in difficult, often time-poor circumstances (e.g., where a suspect is presenting signs of mental illness) in a split-second using *System One thinking*. Such decision-making is often based therefore on incomplete or contradictory information, and as suggested, the product of reasoning to the most likely outcome. Likely not always being correct of course. Moreover, police are sometimes required to make decisions in circumstances where those involved deliberately try to mislead them. With all

this incompleteness and distraction is it not surprising that sometimes the decision does not achieve the best outcome?

For UK police, a decision-making framework (albeit a very general one) is made available to help them make decisions. Developed by the UK College of Policing, the National Decision Model (NDM) is shown in Fig. 14.1.⁶

Fig. 14.1

The UK College of Policing National Decision Model



As can be seen, the NDM has six key components, each highlighting an area for police to consider when making ‘operational decisions.’ The College of policing website states that:

The NDM model is suitably generic to be used in any aspect or area of police decision-making (including investigative) and although it does not proscribe what decisions can be made, it is relatively unique to UK policing. (UK College of Policing website).⁷

They go on to explain that the Code of Ethics central to the NDM includes the principles of ‘fairness’ and ‘respect’ as research has shown these to be crucial to maintaining and enhancing public confidence in policing. This Code of Ethics is comprised of:

- **Accountability** – Answerable for your decisions, actions and omissions
- **Fairness** – Treat people fairly
- **Honesty** – Be truthful and trustworthy
- **Integrity** – Always do the right thing
- **Leadership** – Lead by good example
- **Objectivity** – Make choices on evidence and your best professional judgement
- **Openness** – Be open and transparent in your actions and decisions
- **Respect** – Treat everyone with respect
- **Selflessness** – Act in the public interest

Arguably, the NDM is therefore closer to a process for UK police to use to make and reflect upon their decisions (e.g., to analyse, assess, consider actions and to reflect on their actions and their consequences) rather than an impossible guide for always making correct decisions in all police contexts and situations. We are not questioning the NDM’s utility – as we have consistently highlighted throughout this chapter, the endless unpredictability and variability of the contexts and situations in which police make decisions means that anything that helps is good with us - we simply suggest that the model constitutes more of a loose framework for considering decisions. In our opinion, if the NDM helps to increase uniformity and consistency in UK police decision-making in terms of ‘thinking more thoroughly about decisions and the options available’, that is progress. But, the model does not remove the necessity of police discretion and the role that discretion plays in police decision-making, including in the investigation of sexual offenses, a point to which we shall return in due course.

So, if we are right and the NDM is more of a framework or process for UK police to use when making decisions, what help is available to assist them when making difficult choices and decisions in sexual offense cases? We move away now from the brief discussion of the general area of police decision-making to the more specific one of police decision-making in criminal investigations, including sex offenses.

14.2.1.2. ‘Keeping an Open-Mind’: Developing an Investigative Mindset

Unlike police in many other countries, UK officers are provided with a number of guides and procedural manuals designed to aid decision-making in criminal investigations. The most notable of these is the *Murder Investigation Manual* (MIM) (Association of Chief Police Officers 2008) developed to guide Senior Investigating Officers (SIO’s) through the processes and procedures necessary to meet, for example, evidential standards, when conducting a homicide investigation. Another important guide is the *Core Investigative Doctrine* (ACPO/Centrex, 2005), which provides guidance for those conducting any type of criminal investigation. Although both publications are full of processes and procedures necessary for police investigators to follow, interestingly they both also encourage police to adopt what is referred to as ‘*an investigative mindset*’, summed up as:

- **A**ccept nothing
- **B**elieve nothing
- **C**hallenge everything

Alas, little information is given in these two guidance manuals on what exactly the investigative mindset is and how to maintain this mindset, which is often much easier said than done. There is little doubt however, that the sentiment behind the ABC advice and investigative mindset is aimed squarely at police recognising, and so not falling foul of, biased thinking that may influence their decision-making. Our suggestion is that they simply need to know more about this.

In 2009, the UK National Police Improvement Agency (NPIA) produced the ‘*Guidance on investigating and prosecuting rape*’ for police, the purpose of which is to make these investigations more robust and consistent by providing guidance on policies, legal requirements, and detailing helpful processes for those investigating rape and sexual offenses. Like its elder sister, the MIM, it does not instruct investigators about which decisions to make, but provides

valuable information and guidance on how to conduct ‘good’, effective investigations. Much of the decision-making is still therefore down to those doing the investigating, although SIO’s do have to record the investigative decisions they make in a ‘decision log’, which can then be scrutinised by those charged with reviewing cases where a successful outcome is not achieved immediately. We now briefly turn to research on objectivity in investigative decision-making.

The success of a criminal investigation (i.e., where a suspect is successfully identified, charged, and convicted) largely depends on the correct decision-making of the investigator (Fahsing & Ask, 2013). Unfortunately, we do not live in a world comprised of only optimal decision-making (Kahneman, 2011). Like most other professions, optimal decision-making in policing is often influenced by the pressures of the job, such as limited time and the competition for resources. Perhaps unsurprisingly, investigator objectivity has consistently been shown to be compromised (Ask & Granhag, 2007; Fahsing & Ask, 2013) and has led to numerous examples of miscarriages of justice (see Rossmo, 2009 for a fuller discussion). Gollwitzer et al. (1990) suggests that much human decision-making, and consequently behavior, is ‘goal directed’. That is, we humans make decisions with specific goals in mind and there is little doubt that criminal investigators are any less human in this respect. Building on Gollwitzer and colleagues’ early work (Gollwitzer et al., 1990), Fahsing and Ask (2013) tested criminal investigators’ decision-making across different stages of goal-directed behavior. They found that when investigators were in the ‘deliberative mindset’ they were more openminded and generated a greater number of hypotheses (for example about what might have happened and why) than when they adopted a more closed and narrower ‘implemental mindset’. Keeping an open mind is indeed a tough ask and, as Stelfox and Pease (2005) suggest, one of the most common investigative errors involves the decision to move from identifying suspects to building a case against a suspect too prematurely. Open-minds and deliberative mindsets are difficult for police decision-makers to maintain, particularly when desperate to get investigative results. More research identifying and explaining how better to achieve this would therefore make a significant contribution to ‘the good’.

14.2.2. The Bad and the Ugly: Errors and Bias in Investigative Decision-Making

Any difference that we make between ‘the bad and the ugly’ police decision-making is arbitrary as both roads lead to outcomes of injustice and distress. For the purposes of this chapter, we will separate both on the grounds of whether they are the result of ‘unconscious’ or ‘conscious’ biases in decision-making;

not as a means of exonerating either in terms of culpability, simply as a means of differentiating different types of bias awaiting those investigating sexual offenses. We begin with explanations for both.

14.2.2.1. Schemas and Decision-Making

A schema is a cognitive framework which helps to organize and interpret information (Brewer & Nakamura, 1984). Schemas help us to take shortcuts when trying to make sense of the large amounts of information seemingly bombarding us at any given moment. On the negative side, schemas can also influence us to exclude important information in favour of information that confirms prior knowledge or beliefs, commonly referred to as ‘confirmation bias’. Schema theory therefore can provide a framework within which to explore and identify police officer perceptions of sexual offense cases.

When police officers initially respond to a sex offense, they are likely to employ prior knowledge to interpret the victim’s/survivor’s story and to weigh-up the evidence supporting that a crime has occurred in order to make a decision about whether, for example, the allegation of rape meets their perceived legal definition. Frohmann (1991) describes a sexual assault-related schema as being a “repertoire of knowledge” (p. 217). Understanding how such police ‘repertoires of sexual offense knowledge’ develop, what they constitute and comprise, and how they influence police decision-making and investigative outcomes is therefore of great research and practical importance. For example, what constitutes this repertoire of knowledge is important because it is likely to influence the way in which an officer approaches, questions, and responds to people, which, as we shall see can be crucial to the outcome of an investigation, including whether it proceeds or does not proceed to prosecution. We turn first to what is currently the most researched area of the development and influence of schemas in police decision-making in sexual offense investigations – ‘rape myths’ (Brownmiller, 1975).

Research on rape myth acceptance and police decision-making in sexual offense investigations A main reason identified by the research is that many allegations of actual sexual offenses do not make it to trial is because of widespread, common misconceptions about how sexual offenses occur (e.g., their contexts and situations) and how victims/survivors should behave when they are offended against (Chapleau & Oswald, 2010; Horvath & Brown, 2007; Page, 2008a, 2008b, 2010; Ullman, 2010). Police officers are “gatekeepers” to the criminal justice system (i.e., they determine which cases proceed to prosecution), yet police misconceptions of sexual offenses are prevalent irrespective of officer or victim gender, whether the officers specialise in sexual

assault investigation, and officer years of service (Jamel et al., 2008; ~~Schwartz, 2010~~; Sleath & Bull, 2012).

As discussed, policing will routinely require the use of officer discretion, for example to accept a person's explanation for parking on a yellow-line and not to exercise the full might of the law. Police officers' definitions of sexual assault and their perceptions of victim credibility are important influences on their decision-making and consequently their discretion. As shall be discussed, research has highlighted that police are often sceptical of reports of sexual offenses, which can influence their decision-making (e.g., whether to pursue a suspect or arrest them for further questioning; Venema, 2014) or whether to 'unfound' (i.e., to take no further action) with a case altogether (e.g., see Jordan, 2004, 2008; LaFree, 1989; Schuller & Stewart, 2000). Co-operation and the perceived credibility of the victim, likelihood of investigation and prosecution, the presence of a weapon, and level of victim resistance have all been found to increase the likelihood of a sexual offense being investigated (Kerstetter, 1990; LaFree, 1989). Contrastingly, Spohn et al. (2014) found that sexual offense cases are more likely to be dropped (NFA) in stranger assaults if the victim had mental health issues, and if there was no sign of injury. Officer discretion therefore plays a big role in police decision-making and action in sexual offense cases.

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Unsurprisingly, even in 2020, research on investigative decision-making in sexual offenses still suggests that a majority of victim-survivors of sexual offenses do not report the crimes against them to police. A main reason continues to be that they feel they will not be believed by police because their victimisation does not match what they believe are the defining characteristics of a 'true sexual crime', common definitions and sexual assault characteristics, often referred to as *rape myths* (Brownmiller, 1975). Although rape myths are not a new challenge in police investigations they appear to be enduring. Defined by Bohner (1998, p. 14) rape myths are:

descriptive or prescriptive beliefs about rape (i.e., about its causes, context, consequences, perpetrators, victims and their interaction) that serve to deny, downplay or justify sexual violence that men commit against women.

Four main types of rape myths have been found: those that: imply only certain types of women get raped; those that blame the victim for their rape; those that exonerate perpetrators; and those that express disbelief in claims of rape (Bohner et al., 2009).

Rape myths have been identified as including police perceptions' and challenges to victim credibility where victim/survivors do not 'behave' in ways perceived to be indicative of 'real victims' (Morabito et al., 2019). For example, "real victims fight back," "real victims report abuse immediately", and "real rapes are not committed by persons who the victim knows" (Darwinkel et al., 2013). The reality is often that compliance, delays in reporting, and prior victim-offender relationships are actually more the norm than the exception (Lievore, 2003; Page, 2010; Sleath & Bull, 2012; Ullman, 2010). We shall now unpack some of these common misperceptions in the context of police decision-making.

An abundance of research has identified that it is those victims/survivors whose assaults fit with stereotypical elements closer to 'real rape myths' who are most likely to report the crimes against them to police and the most likely to be believed by police. These perceived 'indicative elements' include the lack of a prior victim-offender relationship, the presence of a weapon, the presence of illustrative injuries, the location of victimization, and specific demographic characteristics of the victim and perpetrator (Bachman, 1998; Chen & Ullman, 2010; DuMont et al., 2003; Edward & Macleod, 1999; McGregor et al., 2000; Starzynski et al., 2007; Venema, 2014). Why? It is argued here that this is likely to be what is known as the '*representativeness heuristic*', identified by cognitive psychologists and behavioral economists, whereby information of little or partial relevance is used as a basis for making decisions (Bar-Hillel, 1982; Kahneman, 2011). This is an obvious potential form of bias in police decision-making in sexual offense cases and is arguably the over-arching category in which most other cognitive bias in investigative decision-making can be placed. Rossmo (2009) offers the example of notorious serial murderer Theodore 'Ted' Bundy, who when eventually apprehended after sexually assaulting and killing over thirty women, was taken by most Americans to be 'representative' of all American serial murderers – young, clever, educated and handsome. Much of the research in this area suggests, however, that Bundy was more of an 'outlier' than an accurate representation of American serial killers as most appear to come from 'blue-collar' backgrounds (Rossmo, 2009). The reader will no doubt have already made the connection to the research on bias in sexual offense investigations and the 'representativeness' of what victims and survivors of these offenses will be. We shall return to the representativeness heuristic in due course but suffice to say its potential negative influence is important in understanding police perceptions of victims/survivors and perpetrators of sexual offenses, particularly with regard to police decision-making in such cases.

Rape myths are perhaps best explained as stereotypical beliefs about how victims of rape should behave (Brownmiller, 1975). Although the degree to

which police accept these ‘myths’ is by no means unequivocal, some have reported finding low levels of acceptance among police officers (Mennicke et al., 2014); however, alas, rape myth acceptance by police officers continues to be a prevalent finding in much of the academic research. This has obvious negative implications influencing police decision-making in the criminal investigation of sexual offences, suggesting that it is all too common for police to approach criminal investigations of sexual offenses not with an ‘open-mind’ as advocated in the guidance given to UK police officers presented earlier, but from prejudiced and discriminatory perspectives (the ugly).

In a US based study, Page (2007) reported that the biggest element of rape myth acceptance by police was that any man or women cannot be raped (93%), the next related to the behavior and specific characteristics of the victim, such as ‘dressing provocatively’ (20.1%), then that any victim could resist being raped if they wanted to (22.7%), and last, that a significant number of victims make false allegations to draw ‘attention to themselves’ (19.7%). Mercifully perhaps, lower police acceptance of other rape myths was found with regard to perceiving all rape victims/survivors as being ‘sexually promiscuous’ (6.6%), that going to the home of a date implied consent to having sex (6%), and blaming the victim if they engage in prior sexual contact with their attacker (7.1%). Sleath and Bull (2012) examined rape myth acceptance in a cohort of UK police and found, similar to Page’s (2008a, 2008b) study, that it was most common for police to accept that rape victims were lying, but they did find low levels of police blaming female victims for ‘wearing revealing clothing’ or that ‘women should be able to resist a rapist’. Javaid (2017) explored police perceptions of male rape victims/survivors and found that police were often highly sceptical of victims’ accounts. The uglier side of bias occurs when victims/survivors are considered responsible for the crimes committed against them. Let us now turn to the ‘ugly’ side of investigative decision-making in sexual offense investigations.

Victim blaming – Attributions, schemas, and police decision-making in sexual offence investigations One of the most pervasive influences of the representativeness heuristic concerns the attribution of victim blaming. In 1977, Lee Ross defined *the Fundamental Attribution Error* (FAE) as the tendency people have to overemphasize personal characteristics and ignore situational factors in judging others’ behavior, often resulting in cognitive bias and error (Ross, 1977). Perhaps in a rather innocuous context in terms of the subject matter of this chapter, if I am late several times to a lecture then I may reason away (or excuse) my tardiness on the bus being late or on my alarm-clock failing to work properly. In this case, I am likely to favour situational (external) causes to explain my poor time-keeping, over any personal failings I might have like being a poor time-keeper (i.e., internal causes). FAE can represent bias in two

directions however – although I might excuse my lateness based on situational factors seemingly beyond my control, the class of students that have been consistency punctual to my lectures may see it a different way (i.e., that I am a useless time-keeper or worse, that I am not concerned about their education at all). Either way, the outcome is the same (i.e., I was late), but the reason (or blame) depends on the view-point taken; that is, whether you are the ‘actor’ (me) or the ‘observer’ (the students). Unsurprisingly, this is known as the ‘actor-observer’ effect and displays bias from two viewpoints.

If the reader needs anymore convincing of FAE in action then simply think of the drama played-out in the theatre of the criminal court (or ‘crown court’ in the UK) where the defence team attempt to portray the actions of the accused as being attributable to ‘external’ factors, such as being raised in a household with an absent father, and not because he or she is a selfish, uncaring person that knew exactly what they were doing. Whereas the likely approach taken by the prosecution will be exactly to opposite, that – the accused knew exactly what he was doing and intended to do it. What has this got to do with investigative decision-making?

Police decision-making in sexual offence investigations is highlighted by much of the existing research as being particularly vulnerable to such attribution errors. ‘Victim blaming’, for example, has been examined in numerous studies focusing on police officer perceptions of female sexual offence victims (Davies et al., 2009; Sleath & Bull, 2012; Wentz & Archbold, 2012), but also with male victims (Davies et al., 2009). These studies have identified that police attributions of blame can be affected by different victim characteristics albeit to differing degrees of influence (Sleath & Bull, 2012; Wentz & Archbold, 2012). We now briefly review the research which has identified what these victim characteristics are. So as not to re-invent the wheel, we lean heavily here on the excellent systematic review paper provided by Sleath and Bull (2017).

The most common victim characteristic involved in police victim-blaming found to date has been the degree to which the victim is considered to have been under the influence of alcohol at the time of the sexual offense; put even more plainly, how much the victim had drunk or ingested just prior to the occurrence of the alleged sexual offence. In a US-based study, Schuller and Stewart (2000) found that the more a victim of a sexual offense (namely rape) was perceived to have been intoxicated, the more they were blamed and the less the perpetrator was. This study, however, did not explore levels of victim blaming in relation to any intoxication of the perpetrator (Sleath & Bull, 2017). In an Australian study, based on Shuller and Stewart’s (2000) study, Goodman-Delahunty and Graham (2011) found no relationship between perceived levels of victim intoxication and

victim-blaming. Possible explanations for the difference in findings are procedural differences in the research methods used, or because of the different attitudes between US and Australian participants towards women drinking alcohol.

A second common characteristic identified as influencing police victim-blaming in sexual offense cases is the existence of a prior relationship between the victim and perpetrator (Areh et al., 2009). Research has found that victims of acquaintance rape appear to be attributed more blame by police than victims of stranger rape (Sleath & Bull, 2012). Victims of 'marital rape' are most likely to be blamed for their victimisation (Areh et al., 2009).

A third characteristic identified by the research literature as contributing to victim-blaming by police is the gender of the victim. Davies et al. (2009) reported in their UK -based study that male victims were more likely to be attributed blame by police than female victims. A finding also reported by Javaid (2017).

Fourth, the gender of the police officer has been suggested as playing a victim-blaming attribution effect with, for example, Schuller and Stewart (2000) reporting that male police officers attributed significantly more blame and less credibility to rape victims than their female police counterparts. Sleath and Bull (2012) reported the same finding when a high level of rape myth is also present. Other studies, however, have contradicted these findings with, for example, Wentz and Archbold (2012) reporting no-significant statistical difference between male and police officers in terms of attributions of female victim credibility.

Fifth, the perceived credibility of a witness has also been identified as an important factor in the attribution of victim-blaming by police in sexual offense cases. In a scenario-based study with US police, Page (2008a, 2008b, 2010) found that police judgements of victim credibility depended upon what type of person the victim was described as. When, for example, the victim was described as a 'sex worker,' 44% of police participants reported that they would be unlikely to believe the victim had been raped, compared with only 19% if the victim was a married woman and 2% unlikely to believe if the victim was a 'professional woman'. The reader is reminded of the fact that these were scenario-based studies.

Sixth, attributional effects on police judgements of veracity and witness credibility in sexual offense cases have also been found in relation to how witnesses behave emotionally. For example, Bollingmo et al. (2008), in a study

with Norwegian police, found that victim credibility was affected by the emotions that a female victim displayed when giving her statement. Those displaying negative emotions were taken as indicative of an upset, presumably ‘real victim’, with more neutral (e.g., shallow affect) or positive emotions (e.g., not appearing upset) being indicative of a relaxed victim and presumably less believable. Similar findings have been reported by Ask and Landstrom (2010) with a sample of Swedish police trainees. These findings seemingly re-enforcing the existence of the ‘rape myth’ of ‘emotional and behavioral congruence’ outlined previously.

Finally, some other characteristics linked to police victim-blaming include the presence or absence of evidence. In a US study, Venema (2014) found that police perceptions of victim credibility were linked to the level of detail that they provided in their witness statement and the presence of forensic evidence (e.g., physical injury). Consistency of testimony has also been found to influence perceptions of victim credibility (Campbell et al., 2015). Those readers familiar with the research literature on lying and deception will no doubt see the parallels here with suspect interviewing, where those able to give the most consistent detail in their stories are those most likely to be considered to be ‘telling the truth’ (Vrij et al., 2017). The important question begged here is to what degree such a method for identifying ‘truth-tellers from liars’ can be applied to likely traumatised victims of sexual offenses?

There is however room for optimism as research has shown how potential bias in police perceptions of victims/survivors of sexual offenses can be influenced in more positive and objective directions. Darwinkel et al. (2013), for example, found that specialist training on the dynamics of sexual offending delivered to 77 Australian police officers specialising in sexual assault investigation was ‘able to modify officers’ victim-blaming attitudes and negative perceptions regarding likely case authorization’ (p. 895).

14.3. Police Perceptions of Sexual Offenders

Any review of the literature pertaining to police decision-making in sexual offense investigations would be incomplete without a focus on how police perceive those accused of committing such offences. However, a scan of the research literature makes it clear that the main focus to date has been placed somewhat overwhelmingly on perceptions and judgements of victims/survivors and not on those accused of committing sexual offenses. Typing in ‘police perceptions of sexual/sex offenders’ into our University Library search engine for ‘scholarly and peer-reviewed work’ received an impressive 10,665 returns.⁸ On closer inspection, however, little was found relating specifically to police

perceptions of sexual/sex offenders with most reporting the findings of either ‘*police perceptions of sex offender registration schemes*’ (e.g., see Masters & Kebbell, 2019), ‘*police perceptions of risk management of sex offenders*’ (e.g., see Hoggett & McCartan, 2019), or ‘*police perceptions of sex offender interviews*’ (e.g., Powell et al., 2014).

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Arguably, too little attention has been paid to whether police perceptions of the criminal careers of those that commit sex offenses mirror the findings of much of the research literature on the versatility of other serious criminals. Roach and Pease (2013a, 2013b) suggest that police tend to ‘over-estimate offence homogeneity;’ that is, they tend to consider serious criminals to specialise in the type of crimes they commit, with ‘burglars only burglarising’, ‘robbers only robbing’, and ‘sex offenders only committing sex offenses’ (Roach & Pease, 2013a, 2013b). Based on a study of what police officers predicted as the next likely offense that a man who at last offense had committed a certain type of crime (e.g., burglary, robbery, sex offenses), Roach and Pease (2013) found that for each given last offense type, the most likely police prediction was the same type of offense. They argue that studies of offending patterns using reconviction and recidivism data consistently indicate offenders to be far more offense versatile than specialist (Blumstein et al., 1986a, 1986b; Cunliffe & Shepherd, 2007; Farrington, 1986; Farrington et al., 2006; Gottfredson & Hirshi, 1990). Roach (2012) suggests that the perception of offenders as crime specialists is as seductive as it is misleading. If rapists really only rape and terrorists only terrorise, then both detection and understanding would be facilitated (Roach & Pease, 2013a, 2013b). What has this to do with police perceptions of sex offenders we hear you ask?

Those convicted of sex offenses are generally considered to be the most specialised type of offender, best illustrated by the way that the UK prison system has in recent decades ‘segregated’ them from those convicted for other types of crime (e.g., by bespoke policy and treatment programmes; Soothill & Francis, 1997). This has been referred to as a kind of ‘criminal apartheid’ by Soothill et al. (2000), who go on to suggest that:

The term ‘sexual offenders’ rather suggests that they are a homogenous and coherent group. In fact, while some may be, there are many others whose sexual offending is just another type of behavior they are displaying within a broad criminal repertoire (Soothill et al., 2009, p.116).

Cases involving the rape or sexual assault of women in their homes during the commission of burglaries are brought to mind. The point we are making is

simply that police perceptions of those that commit sex offenses is likely to be a similar one of offense homogeneity when it is more likely that sex offending is only one feature of their criminality (e.g., Lussier, 2005). For example, the police officer who thinks that a criminal history for stealing cars does not fit with being a likely suspect for a rape, is more likely therefore to question the veracity of the allegation of a victim/survivor. If so, then this would be another example of the influence of erroneous ‘representativeness heuristics’ in police decision-making.

We shall endeavour to finish this chapter on an optimistic note and suggest where further research might be best directed in order to advance our current understanding of investigative decision-making in sex offense investigations, with the purpose of helping to enhance current investigative practice in such cases.

14.4. Conclusion and Future Directions: Making the Good More Good. The Bad Less Bad. And the Ugly a Thing of the Past

In her research paper exploring ‘detectives’ intuition’, Wright (2013) points out that most of the research in investigative decision-making (admittedly there was not much at this time) has focused on ‘why things go wrong’, particularly how cognitive bias can lead to what Rossmo (2009) terms ‘criminal investigative failure’, and not on how police actually make good/effective decisions. Although we agree that all police decision-making can be improved by research which identifies the common bear-traps and dangers that can besiege police thinking, we feel that this represents only half of the equation, as there is an equal need to focus on what constitutes good and effective decision-making, if thinking and practice are to further improve. More research is called for on what comprises effective police decision-making in sex offense cases and how this information can be shared. Much of the existing research on different cognitive biases has either been ‘imported into research into police decision-making’, from wider psychological experimentation in laboratory settings (e.g., Kahneman, 2011) often using ‘scenarios’. Although we do not seek to underplay the importance of these approaches for increasing understanding of police decision-making, there is an equal need to observe how police make decisions in more ‘natural settings’ (e.g., when first dealing with reports of sexual offenses and in their investigation).

An overwhelming proportion of the research published to date has focused on rape investigations and the existence of ‘rape myths.’ We do not deny the continued importance of this focus, but simply suggest that it is time for other

types of sexual offenses to receive the same research attention (e.g., police decision-making in cases of child sexual exploitation and abuse). It would be foolhardy to expect that different types of sexual offense cases, of which there are many, will be subject to the same forms of potential bias in police decision-making. We therefore hope that future research will focus more specifically on police decision-making in different types of sexual offense cases.

Although there has been a welcome explosion of research into police wellbeing in recent years, there is little to date which has focused on how negative effects on wellbeing (e.g., dealing with heart-wrenching cases of child sexual abuse) can affect the emotional, physical, and psychological state of police involved in the investigation of sex offenses, and in turn how that can affect their decision-making in these cases. We hope that this becomes a keen focus of research in police decision-making, particularly how perceptions of victims/survivors and offenders can influence decision-making in these cases and how police can be supported effectively.

As stated earlier, we also believe that more research on how police perceive and treat those who have committed different types of sex offenses needs urgent attention (e.g. see Lussier et al., 2011). For example, are their identifiable common ‘sex offender myths’? The popular television and radio personality, Jimmy Savile, was only uncovered as a prolific sex-offender after he died. The British public found it hard to believe that such a seemingly kind and generous man could actually be such a monster. He did not appear to fit the common perception of a sexual predator, a perception also shared by public and police (Roach, 2016).

More research is needed on police perceptions of the criminal careers of those who commit sex offenses and whether they over-estimate their offence homogeneity (as discussed previously). More research is needed to identify how police perceptions of victims/survivors can be challenged by effective training and guidance. We anticipate that future research will increasingly need to focus more on police decision-making in online investigations of sex offenses.

Key Points

- Extant research on police decision making has overwhelmingly focused on ‘the bad and the ugly’ (cognitive bias) and less on how ‘good’ decisions are/can be made
- ‘Rape myth’ research has been the primary focus in explaining the poor reporting and attrition rates of victims/survivors of sexual offenses, with

bias for example found in police perceptions of how victims/survivors should look and behave and the ‘common circumstances’ for rape

- In the UK, police are given specific guidance on how to make decisions (the National Decision Model) including in the criminal investigation of sex offenses. This approach is not found routinely in policing across the world.
- Findings from emerging research optimistically point to the efficacy of bespoke training about cognitive bias in decision making by police in sexual offense cases. Strongly suggesting that knowledge of ‘unconscious bias’ can be used to challenge police bias.
- Much of the extant research is on rape and, although this is of course important, research now needs to focus police decision making in other types of sex offences (e.g., child sexual exploitation)
- Research is needed which focuses on police perceptions of sex offenders (e.g., on ‘offender myths’) as well as perceptions of victims/survivors

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Recommended Readings

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¹ See <https://www.gov.uk/government/publications/sir-lawrence-byford-report-into-the-police-handling-of-the-yorkshire-ripper-case>.

² See for example: <https://www.sebp.police.uk/>.

³ The reader is directed to the UK College of Policing website for further information on this investigative guidance material: <https://www.app.college.police.uk/app-content/investigations/managing-investigations/?highlight=mirsap>.

⁴ <https://www.bbc.co.uk/news/av/uk-22885344> (Accessed 29th December 2020).

⁵ <https://www.theguardian.com/uk-news/2016/mar/30/jean-charles-de-menezes-your-questions-answered> (Accessed 29th December 2020).

⁶ <https://www.app.college.police.uk/app-content/national-decision-model/the-national-decision-model/> (accessed 13.00 on 28th September 2020).

⁷ Ibid.

⁸ Accessed on the 6th January 2021.