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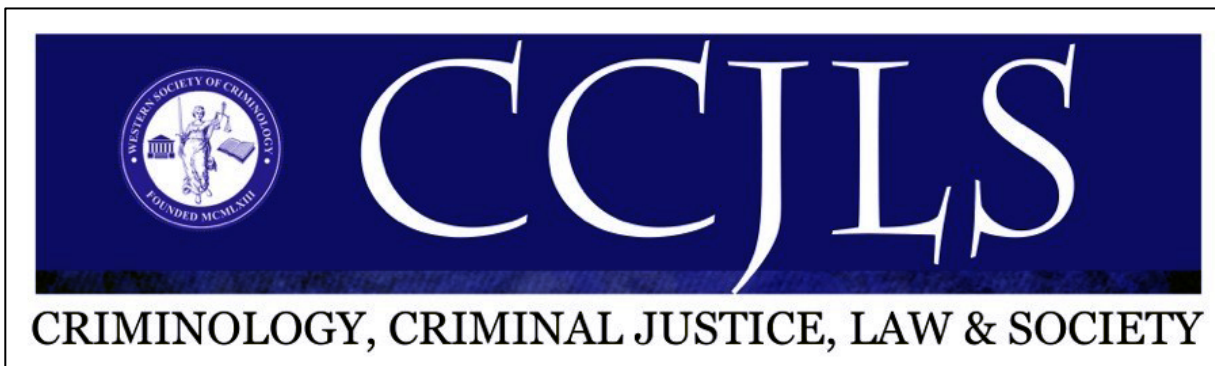
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## Evidence, Arrest Circumstances, and Felony Cocaine Case Processing

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### ABSTRACT AND ARTICLE INFORMATION

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Case evidence and situational arrest characteristics are widely speculated to influence courtroom actor decisions, yet such measures are infrequently included in research. Using new data on felony cocaine cases from an urban county in a Southern non-guideline state, this study examines how physical evidence and arrest circumstances affect three stages of case processing: initial charge type, charge reduction, and sentence length. The influence of evidence appeared strongest at the early stage when prosecutors chose the appropriate charge, though certain evidentiary and arrest measures continued to influence later decisions. Charge reductions were driven mostly by legal factors, and while guilt should be established prior to sentencing, we still observed some key associations between evidence and arrest circumstances and sentence length. Results suggest that the effect of evidence and arrest circumstances depends greatly upon the type of evidence and stage being studied. Study findings are discussed in the context of extant theory and suggested future research on criminal case processing.

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A large body of literature has studied how a combination of legal and extralegal factors influence criminal case proceedings. Much research has focused on the effect of observable factors at isolated stages of criminal case processing, such as sentencing (Baumer, 2013; Ulmer, 2012), though a growing body of recent research has sought to understand what drives decisions at earlier case processing stages and how these decisions shape final sentences (e.g., Kutateladze et al., 2014; Wooldredge et al., 2015). Moreover, information collected during arrest, such as details of the offense, arrest circumstances, and physical evidence, has long been expected to play a prominent role in decision-making (Spohn, 2000). However, relatively less scholarship has assessed the role of these factors, likely because such measures are rarely available in large scale administrative datasets due to the time, difficulty, and costs associated with collecting them (for notable exceptions, see Kutateladze et al., 2015; Kutateladze et al., 2016; Nir & Griffiths, 2018).

Nonetheless, evidence is a key contributor to courtroom actor decisions and can impact decisions ranging from initial charging to the sentencing and punishment phase. Perhaps most importantly, the presence and quantity of evidence represents case strength, which plays an important role throughout the process (Jacoby & Ratledge, 2016; Spohn, 2000). Initially, evidence can help prosecutors determine the appropriate charge. Further, to avoid the uncertainties of trial, prosecutors may offer terms more favorable to the defendant in cases with weaker evidence, resulting in variation in final outcomes (Jacoby & Ratledge, 2016). Moreover, because sentencing decisions are often made under time and information constraints (Albonetti, 1991; Steffensmeier et al., 1998), judges may rely on case evidence to reduce uncertainty in sentencing decisions (Nir & Griffiths, 2018), as well as make judgements regarding core concerns about a defendant, such as their blameworthiness and danger to the community. Indeed, recent work suggests that physical evidence yields a continued influence on final sentencing outcomes, possibly indicating that judges rely on evidence to inform assessments of guilt, even post-conviction (Nir & Griffiths, 2018).

In the current study, we draw on a novel dataset of felony cocaine offenders from a large urban county to investigate the empirical association between arrest circumstances and physical evidentiary measures on three key case processing outcomes: (1) initial charge type, (2) charge reduction, and (3) the final sentence. In doing so, this study contributes to the extant literature on case processing and decision-making in three main ways. First, a focus on physical evidence and arrest circumstances provides valuable context for understanding courtroom actor decisions.

Second, though the body of research from states without sentencing guidelines is growing (see, e.g., Koons-Witt et al., 2014; Merritt et al., 2006; Metcalfe, 2016), much prior sentencing literature concentrates on “a handful of guidelines states and federal systems, thus limiting our knowledge of sentencing in a broader selection of states” (Ulmer, 2012, p. 4). This study extends existing knowledge by examining case processing and sentencing in a large urban county in Texas, which currently uses an unstructured sentencing system and wide sentencing ranges – that is, “windows for discretion” – that provide more flexible discretion (Cirillo, 1986, p. 1309).<sup>1</sup> Third, recent research documents that discretion exists at multiple stages of a case (Kurlychek & Johnson, 2019; Kutateladze et al., 2014), though few studies include evidence or arrest circumstances in statistical models. Thus, we expand the existing literature by assessing the role of these factors over several key discretionary stages.

## Literature Review

### Evidence and Criminal Case Processing

Legal factors such as offense severity are often shown to be the most important determinant of sentencing decisions, although extralegal factors like race/ethnicity (Baumer, 2013; Mitchell, 2005; Spohn, 2000; Zatz, 2000), gender (Bontrager et al., 2013; Daly & Bordt, 1995), citizenship status (Light et al., 2014; Wolfe et al., 2011), and age (Steffensmeier et al., 1995) continue to influence case processing decisions. However, the bulk of the extant literature is often missing evidentiary measures used against defendants during criminal proceedings.<sup>2</sup> Foremost, evidence serves as a key indicator of case strength, which is crucial for prosecutors (Jacoby & Ratledge, 2016). Moreover, the impact and importance of evidence can vary substantially. Some case types have scientific or forensic evidence such as DNA, which courts and the public have placed high degrees of confidence in (Nir & Griffiths, 2018).<sup>3</sup> In some cases, law enforcement is more or less motivated to investigate and collect evidence, and characteristics of offenders and victims may affect evidence collection and use (Cooney, 1994). For example, victim and witness issues are likely key concerns for violent crimes (Baskin & Sommers, 2012), whereas in typical drug cases, objective indicia, such as paraphernalia or drug quantity, could play critical roles in assessing appropriate charges or determining fair punishments. Though it is widely understood that evidence plays a crucial role in criminal case processing, a limited number of studies (many of them recent) have assessed its role. We discuss extant research on

evidence and case processing below, in order of the typical case processing stage (i.e., we begin with charging and conclude with sentencing).

Early literature indicates that evidence plays a substantial role in decisions made by prosecutors such as charging, dismissals, and guilty pleas. Using data on federal felony cases in the District of Columbia in the early 1970s, Albonetti (1987) found that prosecutors were more likely to file charges in cases where corroborative and physical evidence were present, supporting the idea that prosecutors rely heavily on the presence of evidence as a means to reduce uncertainty in case outcomes. Albonetti's (1990) additional work finding that physical evidence increased the odds of a defendant pleading guilty further bolsters the point that "the leverage the prosecutor exerts to obtain a guilty plea arises from the almost indisputable nature of physical evidence" (p. 324). A large bulk of literature on evidence and case processing focuses on sexual assault cases. LaFree's (1980) study of rape cases from a large, Midwestern city found that the presence of prosecutor's evidence increased the likelihood of a guilty conviction, whereas the presence of defense evidence reduced the probability of a conviction.<sup>4</sup> Spears and Spohn (1997) found that evidentiary factors and case seriousness were unrelated to a prosecutor's decision to issue a charge in sexual assault cases. Rather, they found that "the *only* significant predictors of charging were victim characteristics" (Spears & Spohn, 1997, p. 501; emphasis in original), which suggests that prosecutors in the jurisdiction (Detroit) viewed victim characteristics as key for case convictability, which is tied into prosecutorial attempts to reduce uncertainty. In contrast, Walsh and colleagues' (2010) study of initial charging decisions among child sexual assault cases found that evidentiary considerations, such as confession or a corroborating witness, were predictive of charging.

A few recent studies have also assessed the role of evidence on additional crime types. Baskin and Sommers (2011) found that though forensic evidence (e.g., fingerprints, biological evidence – blood or saliva) was associated with an increase in the likelihood of arrest or referral to the district attorney's office, it was not predictive of charging or conviction for residential burglaries; witness reports were the only significant predictor of charging. This outcome of a non-significant impact of some evidentiary measures for charging and conviction was also found by these researchers in a sample of homicides (Baskin & Sommers, 2010) and assaults and robberies (Baskin & Sommers, 2012). They further note in the homicide study that "the most noteworthy finding was that none of the forensic evidence variables significantly influenced criminal justice outcomes" (Baskin &

Sommers, 2010, p. 1141). They did, however, find that victim and/or witness availability impacted case movement through the criminal justice system for assaults and robberies, indicating that "case solvability" may hinge on witnesses and victim cooperation for some violent offenses (Baskin & Sommers, 2012, p. 204). McCoy and colleagues' (2012) study of driving while intoxicated (DWI) offenders found that submitting to a breathalyzer test and evidence of blood alcohol concentration (BAC) increased the likelihood of prosecution for DWI. Notably, when BAC was included, age and race were no longer significant predictor of prosecution, suggesting that omitting evidentiary measures may lead to spurious relationships.

A series of recent studies from New York City have started to shed light on the complex role evidence plays in plea bargaining of drug cases. Kutateladze and colleagues' (2016) study on race, ethnicity, and plea bargaining in marijuana cases included several evidentiary measures, including whether the defendant was observed using drugs, whether they were selling drugs, whether they were stopped for reasons other than drug activity, currency seized during an arrest, and whether there was a witness present. Results indicated that few evidentiary variables were predictive of plea outcomes, though cases in which currency was recovered were significantly less likely to receive a reduced charge offer. Using data from the same jurisdiction, Kutateladze and colleagues (2015) assessed the influence of evidentiary factors on charge reductions and custodial sentence offers among felony drug cases. Again, few evidentiary factors were predictive of charge or sentence offers. For example, evidence of audio-visual recordings was associated with significantly higher odds of not receiving a reduced charge offer but was not significant for custodial sentence offers. However, currency recovery, again, was found to increase the likelihood of a plea offer that included a custodial sentence and not receiving a prosecutorial offer of a charge reduction.

While much research focuses on the role of evidence at earlier stages of case processing, recent work by Nir and Griffiths (2018) examined the impact of evidence type and quantity of evidence on sentence length among a sample of defendants convicted for violent offenses (aggravated assault, homicide, rape, and robbery). They categorized evidentiary measures into two categories (witness-based and physical) and also focused on the overall quantity of physical evidence. Regarding the witness-based measures, the study found eyewitness testimony did not influence sentence length, possibly because of the questionable objectivity and credibility of this evidence. However, existence of forensic evidence, such as a

laboratory report on firearms, latent prints, or biological evidence, and a higher quantity of physical evidence increased sentence length for both those convicted at trial and via plea bargain. The study authors posit that this continued significance of evidence at later stages “suggests that judicial sentencing decisions may be motivated, at least in part, by a judge’s confidence in the accuracy of the verdict” (Nir & Griffiths, 2018, p. 381).

In addition to these key findings, Nir and Griffiths (2018) further examined whether there was a penalty associated with a trial conviction (relative to plea) and whether evidence impacted both trial and plea dispositions. In their study, 67.4% of defendants were convicted via a guilty plea (Nir & Griffiths, 2018), which is consistent with the fact that the vast majority of defendants are convicted via guilty plea (Johnson et al., 2016). They found that plea disposition was associated with a lower sentence, a finding that also echoes much previous research (e.g., Johnson, 2019, King et al., 2005; Ulmer & Bradley, 2006). Their findings also demonstrated that evidentiary measures were significant predictors of sentence length even after accounting for the mode of conviction (trial vs. plea), as well as in a subsample of defendants convicted via trial disposition. It is possible that final sentences will be influenced by evidentiary measures in convictions that stem from pleas due to the prosecutor’s key role in either plea bargaining or recommending a final sentence to a judge. Indeed, the plea bargain offered to a defendant can in part be influenced by both the quantity and quality of evidence available to prosecutors. As such, cases with weaker evidence may result in a steeper reduction in charge or sentences because of a lower perceived likelihood of conviction at trial (Bushway et al., 2014; Nir & Griffiths, 2018). Alternatively, the strength of the evidence may also influence the degree to which a judge heeds to the sentencing recommendations of a prosecutor. For instance, it is likely that a prosecutor’s recommendation of a final sentence to a judge will be weighted more heavily in the face of strong evidence that supports the plea.

In sum, while evidence appears to play a key role in criminal case outcomes, relatively few studies have examined the impact of evidence across multiple stages of case processing. In addition, there is limited literature on the role of evidence in serious drug offenses, which are a case type that has long held a unique position in prosecution and sentencing (Hartley & Miller, 2010; Ward et al., 2016). Next, we discuss extant literature on relevant factors in case processing for drug cases.

## Prosecution and Sentencing in Drug Cases

Drug offenses constitute a significant proportion of the United States prison population. By year end 2016, approximately 15% of all state prisoners had been convicted of a drug offense as their most serious crime (Bronson & Carson, 2019). Because drug cases typically do not involve victims in the traditional sense and law enforcement for drug cases is “substantially and proactively shaped by institutional choices” more than other case types (Lynch, 2012, p. 177), drug prosecutions may be driven by unique factors. In addition to the two studies discussed above due to their inclusion of evidence measures (Kutateladze et al., 2015; Kutateladze et al., 2016), further prior research provides guidance on factors that are most important for prosecution and sentencing in drug cases.

Regarding earlier stages of case processing, Shermer and Johnson (2010) found that Hispanic defendants were about 20% more likely to receive a charge reduction for drug offenses than White defendants. This may be driven, however, by the higher severity of initial charges for Hispanic drug defendants, which resulted in a higher likelihood of receiving a subsequent charge reduction. Similarly, Hartley and Tillyer’s (2018) study of federal charging decisions found that that Black arrestees had their initial charge changed to a drug offense - from a different crime type such as violent or weapons offense - at higher rates compared to White arrestees. Looking to later case outcomes, Seigny and Caulkins (2004) utilized survey data on federal and state correctional facilities and found that contrary to commonly-held belief that prosecutors focused on charges against lower-level drug offenders, the vast majority of offenders fell into the middle of the spectrum between kingpins and mules. Not surprisingly, one of the most salient factors for sentence length was the quantity of drugs, as individuals who possessed greater amounts of drugs were sentenced to longer prison terms. Seigny (2009) further examined whether sentencing of drug offenders in the federal system was characterized by “excessive uniformity” in punishment due to sentencing guidelines focus on drug quantity rather than offender culpability. Using survey data of offenders in federal correctional facilities, the study found that drug quantity (the primary measure of offense seriousness) had the strongest impact on sentence length, whereas other legally relevant factors such criminal history and use of a firearm influenced sentencing to lesser degrees.

A few additional studies have also examined drug offenses at the state level and mostly find (as with

most sentencing work) that legal factors such as offense severity and extra-legal factors such as race, ethnicity, and gender impact drug sentencing. For example, Brennan and Spohn (2008) examined racial and ethnic differences in a sample of state drug offenders in North Carolina and found that White offenders were more likely to receive the lowest sentence severity (a community-based sanction) than Black or Hispanic defendants. Assessing sentencing outcomes of drug offenders in Pennsylvania, Freiburger (2009) found that several other factors increased the likelihood of incarceration: seriousness of offense, prior felony convictions, and lower education.

Beyond factors relating to the facts of the case itself, policies stemming from the War on Drugs have also been suggested to disproportionately impact racial and ethnic minorities (Alexander, 2010), and scholars have frequently examined the relationship between race/ethnicity and criminal case processing in drug cases. The results of these studies have been mixed, with many (but not all) findings indicating that minority offenders are disadvantaged. For example, past research at the federal level finds that Black and Hispanic drug offenders typically receive harsher sentences than White defendants do, net of other legal, extralegal, and contextual factors (Albonetti, 1997; Mitchell, 2005; Steffensmeier & Demuth, 2000).

Kautt and Spohn's (2002) study on racial disparities in federal drug cases found that Black defendants charged with crack offenses were not directly disadvantaged. Rather, race and drug type impacted sentencing indirectly through offense seriousness and other legally relevant factors to generate racial disparity in federal drug sentencing. Importantly, this study and much research on case processing among cocaine offenders occurs at the federal level, where sentencing guidelines differentiate between crack-cocaine and powder cocaine (United States Sentencing Commission, 2002). In contrast, most state jurisdictions do explicitly distinguish between the two.

In sum, the current state of the literature indicates that evidence yields an impact on case progression, but the effect of evidentiary measures is sometimes less than anticipated and varies across outcome and crime type. In addition, drug case sentencing largely mirrors that of other case types, though specialized elements for drug cases such as substance quantity (when available to analyze) are also noteworthy predictors of sentence length (Sevigny, 2009; Sevigny & Caulkins, 2004). These inconsistencies surrounding the role of evidence, coupled with the fact that this area of research is newly developing and has only been implemented in a few jurisdictions, highlights the timeliness of examining

evidence and arrest circumstances in a sample of serious drug cases in a new jurisdiction.

### Theoretical Expectations

Criminal case processing decisions are complex, and criminal justice actors including judges and prosecutors often make decisions in the face of constrained time, information, and resources. Given these constraints, contemporary theories of criminal justice decision-making focus on how legal actors draw on available information that provide signals about a defendant's culpability and risk to others (Albonetti, 1991; Steffensmeier et al., 1998). Past research typically focuses on the role of defendant characteristics, though it is likely that prosecutors and judges also rely on evidence and information provided by an arresting agent to formulate relevant judgements about a defendant and their punishment (Hartley & Tillyer, 2018; Jacoby & Ratledge, 2016; Spohn et al., 2001).

In particular, the focal concerns perspective (Steffensmeier et al., 1998) postulates that punishment decisions are driven by three primary focal concerns: offender blameworthiness, community protection, and practical considerations. Offender blameworthiness includes the offender's culpability and the amount of harm done. Community protection refers to whether the punishment should incapacitate the offender to protect the community from future harm. Finally, practical considerations include factors such as jail or prison overcrowding and cost. As we discuss in more detail below, we follow the lead of previous research (e.g., Shermer & Johnson, 2010; Spohn, 2001) in highlighting a critical practical concern relevant to prosecutors: case convictability. Drawing on these three considerations, judges (and other courtroom actors) develop "perceptual shorthands" based on their past experiences (Steffensmeier et al., 1998, p. 767). Because they are asked to make a large number of decisions with limited information, stereotypes and biases based on personal characteristics such as race/ethnicity, gender, age, and social class may influence case-processing decisions (Spohn & Holleran, 2000; Steffensmeier et al., 1998). Though the focal concerns perspective was originally developed to explain judicial decision-making, this perspective has also been applied to other courtroom actors, including prosecutors (Hartley & Tillyer, 2018; Johnson et al., 2016; Shermer & Johnson, 2010; Spohn et al., 2001; Stemen & Escobar, 2018). As Shermer and Johnson (2010) state, "prosecutors, like other organizational actors, are faced with uncertainty that may lead them to develop decision-making schema that incorporate past practices and reflect the subtle



influences of social and cultural stereotypes in society” (p. 402).

As mentioned above, case convictability is a key practical consideration for prosecutors under the focal concerns perspective, which affects their decisions throughout the case process (Albonetti, 1987; Eisenstein & Jacob, 1977; Feeley, 1992; Spohn et al., 2001). Moreover, in determining key decisions such as what charge to pursue, whether to offer a charge reduction, or what sentence to offer in plea negotiations, prosecutors may consider a host of legally relevant factors related to the crime seriousness, criminal history, and surrounding circumstances of the crime, in addition to the background characteristics of the defendant. Often prosecutors need to derive this information from the available evidence or information stemming from the details of an arrest (Hartley & Tillyer, 2018; Spohn et al., 2001). While drug offenses are often considered “victimless” crimes, prosecutors may use information from arrest circumstances that signal a potential harm to the community, such as whether the defendant was attempting to sell illegal drugs to an undercover officer, if the defendant was in possession of a firearm, or whether the crime was reported by a citizen. Thus, a number of factors that provide details about the circumstances of the crime and strength of the evidence likely play a key role in the decisions a prosecutor makes. In other words, “the prosecutor would be more likely to proceed with prosecution in the case of a serious offense, when there is real harm to a victim, and when the evidence is strong” (Hartley & Tillyer, 2018, p. 1200). Below, we provide more contextual information regarding the study jurisdiction and present our three research questions.

### **The Current Study: Context and Research Questions**

#### **Context: Drug Sentencing in Texas**

Drug policy in Texas can best be described as “complicated.” As a rule, Texas has taken a hard line on drugs (Martin, 2013), though not all judges and lawmakers agree that all drug offenses and offenders should be treated harshly (see, e.g., McSpadden, 2013). In recent years, Texas has seen a number of criminal justice reform efforts including a popular Justice Reinvestment Initiative in 2007 (Moll, 2012) and the decriminalization of simple marijuana possession in some urban counties. Still, there is also substantial evidence that Texas continues to hold a very punitive view towards drug crimes: for example, the lack of a needle exchange program, a district attorney who was defeated in an election following a policy to *not* prosecute trace amount drug cases, and

the continued refusal to punish many small-amount possession cases as misdemeanors (Martin, 2013). In fiscal year 2014, 16% of Texas Department of Criminal Justice’s (TDCJ, 2014) total on-hand population were drug offenses, which is comparable to the 15% overall in the United States (Bronson & Carson, 2019), though Texas is still marked by overall high rates of incarceration (Travis et al., 2014). Looking to Texas’s sentencing scheme, Texas has never operated under sentencing guidelines (Deitch, 1993; Legislative Budget Board, 2013). Since the early 1970s, Texas has undergone several comprehensive sentencing reviews, with the last evaluation in 1993 resulting in “uniform opposition from prosecutors, defense attorneys, and other groups” to guidelines, who believed that such a transfer of discretion would have disastrous consequences (Deitch, 1993, p. 141).

This study focuses on felony cocaine offenses; possession of any amount of cocaine is a felony in Texas (Texas Health and Safety Code, 481.001 et seq.). Cocaine in particular was chosen for several reasons. First, cocaine sentencing disparities have been subject to research attention at the federal level (Hartley et al., 2007; Kautt & Spohn, 2002; Lynch & Omori, 2018), but less research has occurred at the state level. Second, despite the growth in prosecution for other substances, there are still a substantial number of cocaine arrests that result in prosecution and incarceration each year. Third, cocaine possession and distribution are crimes in which the penalties vary significantly depending on quantity (as discussed below, from 6 months in state jail up to life in prison). This variation provides a rich opportunity to examine a wide range of offense severity and potential disparities that emerge during multiple stages of case processing.

In Texas, all controlled substances are classified based on perceived harm and substance quantity, and there are no statutory differences between powder and crack cocaine. Table 1 shows that offense degree and therefore potential sentence length is largely driven by the quantity of cocaine of which a defendant was in possession. The least serious felony is possession of less than one gram, which is punishable by 6-24 months in a state jail facility (SJF).<sup>5</sup> Several other categories have wider quantity ranges, including 4-200 and 200-400 grams of cocaine. There are vast ranges for punishment as well, with a first-degree offense carrying a potential sentence of 5-99 years, or life. Looking at possession with intent to distribute (WID), a similar pattern in sentencing structure emerges, and all but one offense (less than one gram) carry higher offense degrees than simple possession (Texas Health and Safety Code, sec. 481.112). In addition to these core statutes, there are

also three ways to have a sentence enhanced in Texas: Drug-free zone (DFZ) laws, prior felony convictions, and use of a deadly weapon (Texas Health and Safety Code, Sec. 481.134; Texas Penal Code, Sec. 12.42; Texas Penal Code, Sec 12.35).<sup>6</sup>

The broad substance quantity and punishment ranges embedded into Texas controlled substance laws, combined with the lack of sentencing guidelines, provide ample opportunity for the exercise of discretion in prosecution, plea bargaining, and sentencing of such cases. Though some work has examined the function of evidence and/or arrest circumstances in drug cases (e.g., Sevigny, 2009), we extend this prior research by focusing on one substance (cocaine), which has been studied in more detail at the federal level (e.g., Kautt & Spohn, 2002). Moreover, research has yet to empirically examine whether disparities exist within predefined substance quantity ranges. For instance, given the statute that specifies a charge for possession of cocaine between 4-200 grams, is an individual arrested for possession of 5 grams of cocaine punished less harshly than someone arrested with 199 grams? It would technically be within the bounds of Texas law for an individual caught with 5 grams of cocaine to be sentenced to 60 years in prison, while someone with 199 grams could be sentenced to only five. In the present study, we utilize the unique nature of sentencing in Texas to examine this presently unanswered question.

**The Current Study and Research Questions**

The focal concerns framework contends that courtroom actors (i.e., judges and prosecutors) make key case processing decisions under uncertainty. Accordingly, it is likely that these actors will draw, in part, on information related to situational arrest circumstances and physical case evidence to reduce uncertainty when making determinations about case seriousness and guilt, as well as the defendant’s culpability and propensity to do future harm. Further, prosecutors likely make decisions based upon case convictability, a critical practical concern that is closely tied to case evidence. Still, existing literature on how arrest and evidentiary information will be used to guide decisions is only in the developing stages, and conclusions of prior work tend to vary across place and crime type. The current study extends work by Kutateladze and colleagues (2015, 2016), Nir and Griffiths (2018), and others by assessing the role of arrest circumstances and evidence on case processing of felony cocaine offenders in an unstructured sentencing jurisdiction. Specifically, we investigate the following three research questions:

1. *Do substance quantity, physical evidentiary measures, and arrest circumstances predict initial charge type in felony cocaine cases?*
2. *Following the initial charge, do physical evidentiary measures and arrest circumstances predict charge reductions in felony cocaine cases?'*

**Table 1: Punishment Ranges for Felony Cocaine Offenses in Texas**

Drug Quantity	Seriousness	Penalty
<b>Possession</b>		
<1g	SJF	6-24 months in state jail; fine <10k
1-4g	Third degree	2-10 years in prison, fine <10k
4-200g	Second degree	2-20 years in prison, fine <10k
200-400g	First degree	Life, or 5-99 years in prison, fine <10k
400+g	First degree	Life, or 10-99 years in prison, fine <100k
<b>With Intent to Distribute</b>		
<1g	SJF	6-24 months in state jail; fine <10k
1-4g	Second degree	2-20 years in prison, fine <10k
4-200g	First degree	Life or, 5-99 years in prison, fine <10k
200-400g	First degree	Life, or 10-99 years in prison, fine <100k
400+g	First degree	Life, or 15-99 years in prison, fine <250k
ABBREVIATIONS: SJF = state jail felony; g = grams; k = \$1,000		



3. *Do physical evidentiary measures and arrest circumstances predict sentence length?*  
 3a. *Conditional on the charge type (e.g., 1-4 grams or 4-200 grams of cocaine), does substance quantity predict final sentence length?*

## Method

### Data Collection

There were four main steps in the data collection process. First, the Texas Department of Criminal Justice (TDCJ) provided a list of all felony convictions in “County A” from January 1, 2014-August 31, 2014. Second, all new cocaine convictions that resulted in entering into the TDCJ custody (state jail or state prison) from a new felony cocaine conviction for possession of a controlled substance and possession with intent to distribute a controlled substance were extracted from the list.<sup>8</sup> Third, a variety of supplemental sources including online case filings and police reports were obtained and utilized to collect detailed information on each case. Fourth, criminal history information was collected from the Texas Department of Public Safety. In total, the final dataset resulted in 441 cases.<sup>9</sup> Data were de-identified post collection, and Institutional Review Board (IRB) approval was obtained for data collection and analysis.

### Dependent Variables

The first outcome is a binary variable for the initial charge type. At the indictment phase for controlled substance offenses, a case may be charged as possession or possession with intent to distribute (WID). This variable is coded as 0 for possession and 1 for distribution. Approximately 47% of this sample was charged with distribution at indictment (see Table 2).

Charge reduction is operationalized as a binary variable that accounts for whether the charges were reduced between arrest and conviction either as a degree (for example, moving from 2<sup>nd</sup> degree to 3<sup>rd</sup> degree) or whether a sentencing enhancement (drug-free zone, prior felony conviction, or deadly weapon) was dropped. This variable is coded as 0 for no reduction and 1 for a reduction. Charge reductions are fairly common in this jurisdiction, as approximately 41% of cases received a charge reduction. Third, sentence length (in months) is analyzed as a continuous measure. Average sentence length is 41.3 months, with a large range of 6-720 months. To reduce positive skew, we use the natural log of sentence length in all analyses.

### Independent Variables – Evidence and Arrest Circumstances

The main independent variables in this study are evidentiary and situational arrest measures. The first independent variable is the quantity of cocaine recorded at arrest, measured in grams. We consider this variable to be related, but separate, from offense severity due to the fact that they are separate constructs. Quantity delineates the statutory severity, but it is plausible that it carries a role beyond that. For instance, within predefined statutory drug quantity bins (for example, 4-200 grams), persons with substance quantity at the higher end of this range may experience more severe punishments than those at the lower end of this range. The average amount of cocaine is 27.2 grams with a minimum of .01 and a maximum of 4,442.7. To account for the strong positive skew, we use the natural log of substance quantity.

The other four binary physical evidence measures collected at arrest include police seizure of drug-selling paraphernalia (ledger, scale, empty baggies, etc.; 23%), a cell phone (10%), cash/currency (25%), or a firearm (17%; see Table 2). We also include a total of four situational arrest circumstances. Models include two non-mutually exclusive binary variables on the reason for arrest initiation: (1) the defendant selling to the police (8%) or (2) a citizen call (22%). Binary items for arrest circumstances also measure whether evidence was in plain view during arrest (56%) or the defendant fled/tried to flee from officers (17%).

### Control Variables

We also account for several legal and socio-demographic characteristics that are often associated with case processing in prior research (Kutateladze et al., 2014; Spohn, 2000; Zatz, 2000). We control for race/ethnicity of a defendant, which has been shown to be a salient factor that can influence case processing decisions (Baumer, 2013; Brennan & Spohn, 2008; Kutateladze et al., 2014; Mitchell, 2005), particularly for drug offenses (Albonetti, 1997; Kautt & Spohn, 2002; Mitchell, 2005; Steffensmeier & Demuth, 2000). Race/ethnicity is coded into three mutually exclusive categories: White (reference), Black, or Hispanic. The sample is overwhelmingly minority, with 65% Black, 25% Hispanic, and only 9% White defendants. A control variable is also included for citizenship, given the evidence of differential punishment based on citizenship status (Light et al., 2014; Wolfe et al., 2011). Non-US-citizens (15%) are coded in a binary variable with “0” representing citizen and “1” for non-citizen. Gender is dummy

**Table 2: Descriptive Statistics**

Variable	Mean	SD	Min	Max
<i>Dependent Variables</i>				
Distribution Charge	.47	.50	0	1
Charge Reduction	.41	.49	0	1
Sentence Length (months)	41.29	61.05	6	720
<i>Physical Evidence</i>				
Substance Quantity	27.32	242.41	.01	4442.7
Cash/Currency	.25	.44	0	1
Gun	.17	.38	0	1
Cell Phone	.10	.31	0	1
Selling Paraphernalia	.23	.42	0	1
<i>Arrest Circumstances</i>				
Selling to Police	.08	.27	0	1
Citizen Call	.22	.41	0	1
Evidence in Plain View	.56	.50	0	1
D Fled/Tried to Flee	.17	.37	0	1
<i>Drug Type</i>				
Any Crack	.65	.47	0	1
Drug Type Missing	.06	.23	0	1
<i>Race, Ethnicity, Citizenship</i>				
Black	.65	.48	0	1
Hispanic	.25	.44	0	1
White	.09	.29	0	1
Non-citizen	.15	.35	0	1
<i>Extralegal Controls</i>				
Male	.92	.28	0	1
Age under 25	.18	.39	0	1
Age 25 to 34	.33	.47	0	1
Age 35 to 44	.21	.41	0	1
Age 45 to 54	.19	.39	0	1
Age 55 plus	.09	.28	0	1
Private attorney	.21	.41	0	1
<i>Legal Controls</i>				
Indicted SJF	.54	.50	0	1
Indicted 3 <sup>rd</sup> degree	.06	.23	0	1
Indicted 2 <sup>nd</sup> degree	.16	.37	0	1
Indicted 1 <sup>st</sup> degree	.25	.43	0	1
Enhancements at Indictment	.80	.90	0	3
Convicted SJF	.54	.50	0	1
Convicted 3 <sup>rd</sup> degree	.09	.27	0	1
Convicted 2 <sup>nd</sup> degree	.21	.41	0	1
Convicted 1 <sup>st</sup> degree	.17	.38	0	1
Enhancements at Conviction	.36	.67	0	3
Convicted of Distribution	.39	.49	0	1
Trial	.04	.20	0	1
Pretrial Detention	.96	.20	0	1
Active Criminal Justice Status	.41	.49	0	1
Prior Arrests	8.08	6.64	0	37

coded as “1” for males; the sample is overwhelming male (91%). Gender is controlled for given prior research showing differential punishment on the basis of gender (Bontrager et al., 2013; Daly & Bordt, 1995). Age in years is included in several mutually exclusive categories: 18-24 years (18%), 25 to 34 years (33%), 35 to 44 years (21%), 45-54 years (9%), and 55 years and above (reference; 9%). This classification of age categories is used to account for the influence of age across stages of case processing (Steffensmeier et al., 1995; Testa & Johnson, 2019). Private counsel retention is included to identify attorney representation and also as a proxy for socioeconomic status (see Johnson & King, 2017). Only 21% of the sample retained private counsel.

Offense degree (state jail felony [reference], third, second, and first degree) is included as a series of dummy variables. State jail felony is the most common degree at indictment at 54%, followed by first degree at 25%, second degree at 16%, and third degree at 6%. These figures shift slightly at conviction, providing descriptive evidence of charge reductions. State jail felonies still comprise 54% of the degree at conviction, but by the sentencing phase, second degree rises to 21%, third degree increases to 8%, and first degree lowers to 17%. As this is a sample of only convicted felony offenders, the sample has an extensive criminal history with an average of approximately 8 prior arrests, and a maximum of 37. Detention at sentencing (96%) and active criminal justice status (probation, parole, or active warrant; 41%) are also denoted with dummy variables. The high rates of detention are also likely due to the fact that this is a sample of felony offenders. On the other hand, trial rates are very similar to other samples; they are relatively rare, with only 4% of cases convicted at trial.

For models assessing charge reduction and sentence length, sentencing enhancements are included as a single variable with a potential range of 0-4 that includes prior felony enhancements, drug-free zone, and deadly weapon. Looking more closely at the enhancements, there is further evidence of charge reductions as the average number of enhancements at indictment was .80 following the initial charge, but reduces to .36 following the final conviction. Finally, to better account for previous stages of the case process, we include a binary measure of charge reduction (as described above) in the sentence length model.

### Analytical Framework

Multivariate logistic regression is used to assess the binary outcomes (initial charge type and charge reduction), and ordinary least squares (OLS)

regression is used to assess the continuous sentence length outcome. Standard errors in the charge reduction and sentence length analyses are clustered around the final judge<sup>10</sup> to account for similar sentencing patterns within judges.<sup>11</sup> Each of the covariates described above are included in models where it is appropriate based on theoretical relevance and statistical appropriateness. For instance, for initial charge type, selling to police and cell phone are excluded from the regression because they are almost perfect predictors of being charged with distribution. Substance quantity is only included as a covariate in models for the initial charge type because of its strong association with offense degree (see Table 1). For the charge reduction measure, indicators of charge severity (offense degree and enhancements) are included based upon indictment charges in order to capture the full charge severity that could have been reduced. However, for sentence length, indicators of severity are based upon those at the final conviction. Finally, the variable for gun is not included in charge reduction or sentence length models because it could be included as an official enhancement at indictment or sentencing.

### Results

The results of the initial charge type decision are presented in Table 3, Model 1. Individuals arrested with a higher quantity of cocaine are more likely to be charged with distribution compared to possession (OR = 3.68,  $p < .001$ ). If police seize cash at arrest, the odds of a distribution charge are five times higher relative to cases in which cash was not seized (OR = 5.02,  $p < .001$ ). Contrary to expectations, the additional physical evidence measures (gun and selling paraphernalia) are not significantly related to initial charge type. Among the four arrest circumstances measures, only cases in which evidence was in plain view are significantly associated with being charged with distribution (OR = 2.93,  $p < .001$ ). There are no significant differences across type of cocaine (crack vs. powder), which may reflect that Texas statutes do not differentiate between the two. Looking to demographics, important differences emerge. Black defendants' odds of a distribution charge are approximately three times higher than White defendants, though this effect is marginally significant (OR = 3.16,  $p < .10$ ).<sup>12</sup> Non-citizens are substantially more likely to be charged with distribution than U.S. citizens (OR = 7.84,  $p < .01$ ),<sup>13</sup> and those in the 35-44 age range (relative to age 55 and above) are more likely to be charged with distribution (OR = 3.91,  $p < .05$ ).

Table 3, Model 2 presents the results for charge reductions. Compared to the initial charge type decision, we observed fewer effects of evidence and

**Table 3: Regression Models of Case Processing Outcomes among Felony Cocaine Offenders**

Variables	Model 1: Distribution		Model 2: Charge Reduction		Model 3: Sentence Length	
	OR	95% CI	OR	95% CI	<i>b</i>	95% CI
<i>Physical Evidence</i>						
Log. Substance Quantity	3.68***	(2.74, 4.95)				
Gun	.94	(.34, 2.60)				
Cell Phone			.48	(.19, 1.22)	-.08	(-.268, .101)
Cash/Currency	5.02***	(2.10, 11.97)	1.27	(.66, 2.44)	.10*	(.020, .181)
Selling Paraphernalia	1.46	(.55, 3.84)	.72	(.55, 3.84)	-.06	(-.164, .052)
<i>Arrest Circumstances</i>						
Selling to Police			.37†	(.14, 1.00)	.11*	(.016, .200)
Citizen Call	.55	(.24, 1.29)	1.10	(.59, 2.04)	.10*	(.006, .199)
Evidence in Plain View	2.93**	(1.47, 5.83)	1.02	(.60, 1.75)	-.01	(-.066, .054)
D Fled/Tried to Flee	.80	(.32, 2.00)	1.08	(.55, 2.13)	-.09†	(-.188, .008)
<i>Drug Type</i>						
Crack	1.84	(.83, 4.08)	1.07	(.60, 1.91)	.01	(-.063, .085)
Drug Type Missing	.98	(.23, 4.18)	.61	(.18, 2.06)	.08	(-.202, .365)
<i>Extralegal Variables</i>						
Black	3.16†	(.86, 11.59)	2.55†	(.97, 6.68)	.01	(-.104, .123)
Hispanic	.56	(.12, 2.52)	2.33	(.71, 7.61)	.14	(-.039, .312)
Noncitizen	7.84**	(2.28, 27.00)	1.35	(.49, 3.70)	-.14†	(-.301, .026)
Male	1.28	(.40, 4.11)	.79	(.32, 1.98)	.15**	(.045, .259)
Age under 25	1.26	(.29, 5.41)	.70	(.22, 2.20)	.08	(-.078, .244)
Age 25 to 34	1.96	(.53, 7.33)	.33*	(.11, .93)	.19***	(.086, .300)
Age 35 to 44	3.91*	(1.01, 15.17)	.33*	(.12, .95)	.07	(-.037, .186)
Age 45 to 54	.73	(.18, 2.97)	.62	(.22, 1.78)	.09	(-.038, .215)
Private Attorney	.99	(.42, 2.33)	1.56	(.82, 2.97)	-.01	(-.117, .088)
<i>Legal Variables</i>						
Indicted 3 <sup>rd</sup> degree			1.15	(.42, 3.12)		
Indicted 2 <sup>nd</sup> degree			1.72	(.81, 3.66)		
Indicted 1 <sup>st</sup> degree			5.54***	(2.59, 11.82)		
Enhancements at indictment			6.19***	(4.24, 9.05)		
Convicted 3 <sup>rd</sup> degree					1.02***	(.827, 1.221)
Convicted 2 <sup>nd</sup> degree					1.36***	(1.215, 1.509)
Convicted 1 <sup>st</sup> degree					2.01***	(1.778, 2.241)
Enhancements at conviction					.59***	(.475, .702)
Convicted of distribution					.14	(-.087, .366)
Trial			.41	(.10, 1.72)	.36**	(.108, .611)
Pretrial detention			2.12	(.56, 7.97)	.16†	(-.019, .343)
Active CJ Status	.82	(.41, 1.63)	.81	(.47, 1.39)	.08	(-.035, .191)
Prior Arrests	.99	(.93, 1.05)	.95*	(.90, 1.00)	.01	(-.002, .013)
Charge Reduction					.12**	(.042, .204)
Constant	.06*	(.01, .53)	.07*	(.01, .57)	1.52***	(1.307, 1.742)
Observations	439		439		437	
Pseudo $R^2/R^2$	.58		.31		.85	

Note: Reference categories include Age 55 and older, White, Indicted/Convicted state jail felony  
 \*\*\*  $p < .001$ , \*\*  $p < .01$ , \*  $p < .05$ , †  $p < .10$

arrest circumstances at this stage as only the measure of whether an individual sold drugs to the police emerged as a marginally significant predictor (OR = 0.37,  $p < .10$ ). Several key associations for demographic and legal variables emerged. Black defendants are more likely to have their charges reduced as compared to Whites, though this association is also marginally significant (OR = 2.55,  $p < .10$ ). Important age effects also emerge as younger offenders, including those who are in the age range of 25 to 34 (OR = .33,  $p < .05$ ) and 35-44 (OR = .33,  $p < .05$ ), are both approximately 67% less likely to have their charges reduced as compared to those who are 55 and above. Among the legal variables, being indicted with a first-degree felony increased the odds of receiving a charge reduction (OR = 5.54,  $p < .001$ ), and those whose initial charges included more enhancements were also more likely to have charges reduced (OR=6.19,  $p < .001$ ). It is likely that defendants who were charged more severely at the initial stage – either through offense degree or additional enhancements – had greater room to move down in terms of offense severity. Lastly, prior arrest history was inversely associated with the odds of a charge reduction (OR = 0.95,  $p < .05$ ), as each prior arrest reduced the odds of a reduction by 5%.

The results for final sentence length are presented in Table 3, Model 3.<sup>14</sup> At this final stage, we observed the continued influence of physical evidence and arrest circumstances. Cases in which police seized cash are associated with 10% longer sentences as

those who did not ( $b = .11, p < .05$ ),<sup>15</sup> and arrests initiated by a citizen call were associated with an 11% longer sentence ( $b = .11, p < .05$ ).

A few interesting findings emerged when looking to demographic covariates. Unlike the previous two outcomes, there were no significant associations for race or ethnicity, though the non-citizen measure demonstrated a negative and marginally significant association ( $b = -.14, p < .10$ ). Males were sentenced to terms 15% longer than females ( $b = .15, p < .001$ ), and defendants in one age category – 25 to 34 years – were sentenced to significantly longer terms than those who are age 55 and above ( $b = .19, p < .001$ ). Regarding legally relevant variables, first-degree ( $b = 2.10, p < .001$ ), second-degree ( $b = 1.36, p < .001$ ), and third-degree ( $b = 1.02, p < .001$ ) offenses all increased the sentence length relative to a state jail felony. Each sentencing enhancement increased sentence length by 59% ( $b = .59, p < .001$ ), and a trial conviction resulted in a 36% longer sentence than a plea conviction ( $b = .36, p < .01$ ). Finally, charge reductions were associated with longer sentences on average ( $b = .12, p < .05$ ). This finding is somewhat unexpected, but could reflect the data distribution; people charged with serious offenses received charge reductions at higher rates than those charged with less serious offenses, but these more severe charges were still yielding longer sentences overall.

Finally, Table 4 presents the results of several models that examine the role of substance quantity in

**Table 4: Coefficient on Substance Quantity for Disaggregated Models**

Variables	Bivariate Model		Fully Specified Model	
	<i>b</i>	95% CI	<i>b</i>	95% CI
<i>Aggregated Models</i>				
Full Sample (N=437)	.36***	(.314, .414)	.06**	(.022, .107)
All. Poss. (N=265)	.27***	(.227, .322)	.08*	(.013, .137)
All WID (N=172)	.30***	(.210, .380)	.05*	(.009, .086)
<i>Disaggregated Models</i>				
All Less than 1 g (N=248)	.13*	(.025, .231)	.05†	(-.005, .110)
All 1-4g (N=86)	.02	(-.171, .211)	-.01	(-.169, .149)
All 4-200g (N=99)	-.01	(-.064, .048)	.04	(-.036, .107)

Note: Fully specified model includes all control variables in Table 3, Model 3

\*\*\*  $p < .001$ , \*\*  $p < .01$ , \*  $p < .05$ , †  $p < .10$

compared to cases in which cash was not seized ( $b = .10, p < .05$ ). Three of the four arrest circumstances also proved to be critical at the sentencing phase, though one was only marginally significant. Defendants who sold cocaine to police officers were sentenced to a term of incarceration 11% longer than

sentence length. As discussed above, the current sentencing scheme in Texas includes broad ranges both for substance quantity as it relates to offense degree and to punishment ranges within those degrees (see Table 1). Thus, for our final research question, we analyzed the relationship between substance quantity



and sentence length across several sub-samples of the data: possession cases, distribution cases, cases of less than 1 gram of cocaine, cases of one to four grams of cocaine, and cases of four to 200 grams of cocaine.<sup>16</sup>

Among each of these five sub-samples, we estimated a bivariate model as well as a fully specified model including the relevant covariates from Table 3, Model 3.<sup>17</sup> The results in Table 4 demonstrate a complex relationship between quantity and sentence length. The bivariate results show that the coefficient for substance quantity is significant for all possession cases ( $b = .27, p < .01$ ), intent to distribute cases ( $b = .30, p < .01$ ), and the less than one gram cases ( $b = .13, p < .05$ ). However, the amount of cocaine seized at arrest was not a significant predictor of sentence length for either the 1-4 gram range or the 4-200 gram range. These are, critically, the statutorily defined quantity categories that include the largest punishment ranges and thus perhaps involve the highest amount of bargaining and sentencing discretion (see Table 1). Turning to the fully specified models in Table 4, a similar pattern emerged wherein substance quantity was only significant for the aggregated models and the less than one-gram range, and the magnitude of the coefficients decreased after controlling for potentially confounding variables. While we acknowledge that the sample sizes for some of these models were relatively low, the lack of significance in even a bivariate model suggests that the results are not driven by a lack of statistical power or over-specification. Rather it appears that the quantity of cocaine is an important predictor for cases in the aggregate, but not within specific offense categories. Below, we examine these findings as a whole, explain their contribution to extant literature, and discuss limitations and future directions for research.

## Discussion & Conclusion

The present study assessed the role of physical evidence and arrest circumstances across three key decision points - initial charge type, charge reduction, and final sentence length - among a sample of felony cocaine offenders. In doing so, the current study makes three main contributions to the existing literature. First, by using a dataset with detailed measures of evidence seized at arrest and arrest circumstances that are rarely included in prior research, our findings provide additional insight into the nuanced ways that evidence characteristics influence courtroom actor decision-making. Accordingly, our study contributes to a small but growing body of literature on the role of evidence in case processing (see e.g., Nir & Griffiths, 2018; Kutateladze et al., 2015; 2016). Second, while much extant research uses data from states that operate under

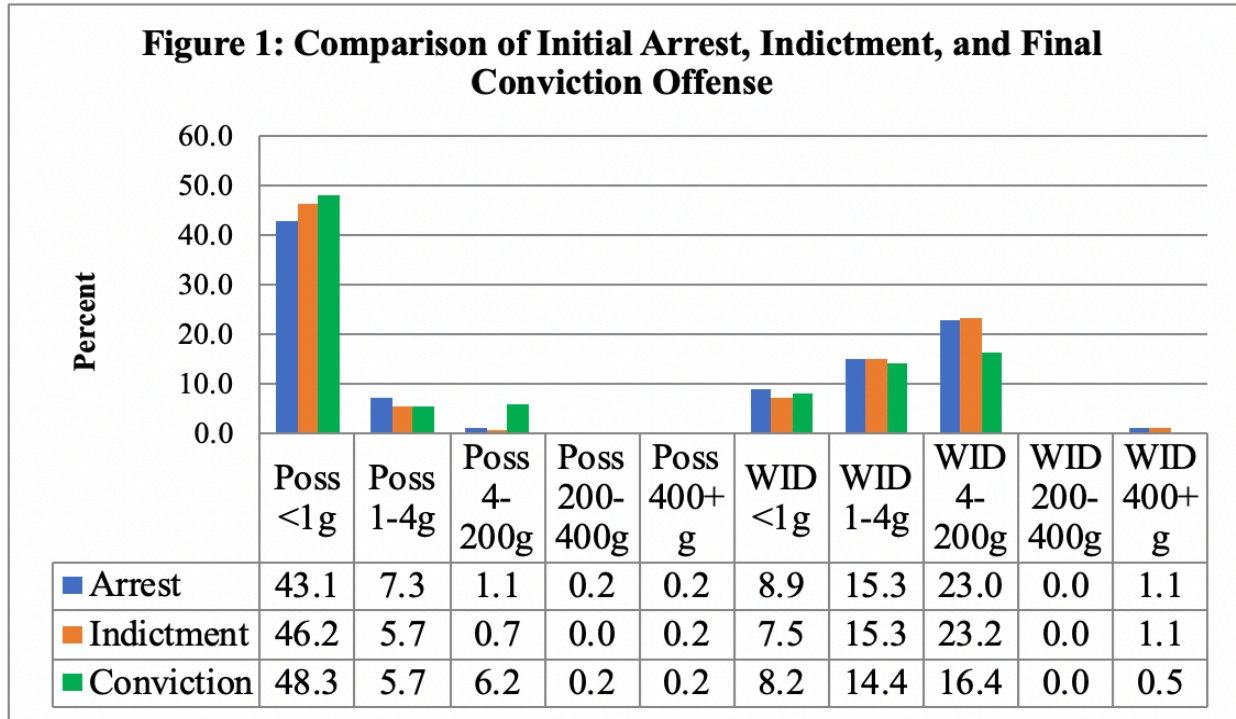
sentencing guidelines (Ulmer, 2012), data for the present study were drawn from a new, large jurisdiction that operates without sentencing guidelines and provides wide punishment ranges based upon substance quantity and offense degree. Third, by exploring the role of evidence and arrest circumstances across the multiple key discretionary points, we are able to present a detailed view of how felony cocaine criminal cases proceed across several stages of case processing.

Our findings indicate that the direct impacts of evidence appear strongest at the early stage where prosecutors determined the initial charge type, though certain measures continued to exert an influence on outcomes at later case processing stages. The finding that selling to the police is a key predictor at this early stage may be due to its evidentiary strength, as police officer testimony is likely viewed as highly credible (Spears & Spohn, 1997). This type of credible potential witness testimony would increase prosecutorial assessments of the key practical consideration of case convictability under the focal concerns framework. Moreover, many instances of selling to the police are also likely part of “buy and bust” operations, which are by their nature structured to collect high-quality evidence; there may be video or audio recording set up in advance, as well as back-up officers present.

Higher substance quantity seized at arrest also predicted a distribution charge. While this result may appear intuitive given that distribution cases typically entail higher drug quantities than possession cases, it is important to note that a person can be convicted of distributing *any* amount of cocaine in Texas, and a non-trivial portion of individuals in the sample (approximately 8%) were convicted of selling less than one gram (see Figure 1). In addition, evidence in plain view as well as cash/currency recovery also predicted greater odds of a distribution charge as opposed to possession. This finding is consistent with prior work that currency recovery increased the odds of more punitive plea offers (Kutateladze et al., 2015) and may indicate that currency is a tangible evidentiary factor that is highly indicative of an illegal enterprise when seized in combination with illegal substances. In the face of uncertainty about a suspect’s role in a narcotics offense, one explanation is that the presence of currency may serve as a signal to a prosecutor that a defendant is a particularly blameworthy offender who is involved in the sales and distribution of drugs, rather than personal drug use only (see Kutateladze et al., 2015).

Given that prosecutors in the jurisdiction under study have discretion to charge possession with the intent to distribute for any amount of drug quantity, the findings suggest that currency appears to play a





Poss=possession; WID = with intent to distribute; g = gram

key role in signaling criminal intent to a prosecutor. Seizure of currency could also signal to a prosecutor that a given defendant is a particularly serious drug offender who poses a potential threat to the community, which also supports the second prong – community protection – of the focal concerns framework (Steffensmeier et al., 1998). Consistent with prior work (Kutateladze et al., 2015), several evidentiary and arrest measures were not associated with the initial charge type, indicating that prosecutors do not weigh all evidence and circumstances equally.

The results for charge reduction decisions highlight that the importance of evidence is highly dependent upon the case processing stage, and at this decision point, legal factors were generally more predictive than evidentiary measures. Results indicated that selling to the police was inversely associated with the likelihood of receiving a charge reduction, whereas no other evidence or arrest measures yielded an impact on receiving a charge reduction. As with the initial charge type, this result is likely related to the fact that cases with a police officer who is able and, in fact, required to testify represent cases with high evidentiary strength to prosecutors and further highlights the importance of witness credibility in prosecution and convictability assessments (Spears & Spohn, 1997). Consistent with prior research, charge reductions were more likely in cases that are more serious at the initial indictment phase and when the defendant has a longer criminal history record

(Piehl & Bushway, 2007), which is also related to the fact that there is increased room to move down if charges begin as more severe.

Lastly, consistent with recent work by Nir and Griffiths (2018), our results found that some evidentiary measures yielded a significant influence at the sentencing phase. As almost all of convictions in this sample (91%) are the result of a negotiated plea<sup>18</sup> (which are seldom rejected by judges), these findings may be viewed in light of prosecutorial discretion exercised when bargaining over plea terms. Although judges are the ultimate decision-makers regarding final sentencing, sentences may be influenced by the recommendations put forth by prosecutors. To the degree that evidentiary measures influence the plea bargaining process and reduce prosecutorial uncertainty, these measures may influence both the prosecutor’s recommendations for a final sentence, as well as the judge’s decision-making on how much weight to give to that recommendation. Cash seizure, selling to the police, and the initial police contact being initiated by a citizen call were all significantly associated with longer sentence terms. Under a focal concerns framework, cash seizure may be indicative of a particularly successful criminal drug dealing operation, which provides signals about the blameworthiness of an offender and their potential harm posed to the community. The continued importance of selling to the police supports previous extensions of focal concerns to prosecutors, with a

focus on “convictability” (Spohn et al., 2001). In addition, because sales were to undercover police officers - who the offender perceived to be a citizen - this measure may also be indicative of prosecutors and judges attempting to protect the community from direct harm. The finding that citizen call predicts longer sentences suggests that prosecutors consider the key focal concern of community protection, as citizen reports of a crime may signal that a defendant’s illicit activities pose a serious and direct threat to community members.

Finally, as substance quantity is a major driver of the offense degree (see Table 1), we stratified the sample into relevant offense categories to determine whether larger substance quantities differentially influenced punishment severity across levels of offense severity. This question is particularly relevant for the current study given the wide ranges of quantity within the offense categories (e.g., 4-200 grams), as well as wide punishment ranges (e.g., 5-99 years for a first-degree offense; see Table 1). Moreover, from a focal concerns perspective, it is likely that individuals who are at the higher end of the quantity of a given offense categories (i.e., a person with 150 grams versus 5 grams) could be seen as a more serious and blameworthy offender, as well as a person who poses a greater threat to the community. However, our results demonstrated that after the sample was disaggregated into offense categories based on quantity, the amount of cocaine was generally not significantly related to sentence length, particularly for cases involving four or more grams. These results suggest that prosecutors primarily use substance quantity to determine the initial charge type and offense severity and that this, in turn, drives the final punishment decision. Conversely, variation in substance quantity *within* these charging categories does not substantively influence final sentence length. This result is somewhat unexpected and raises potential fairness concerns. While it is possible that prosecutors are taking into account additional relevant factors beyond substance quantity such as the role in the offense (see Sevigny, 2009), it is slightly worrisome that quantity is not a significant predictor of sentence length for this sample, particularly given that those with 5 and 150 grams are in the same offense category.

As with any empirical research, there are limitations to this study. First, the study was based upon a sample of felony cocaine offenders sentenced to a period of incarceration. Accordingly, the sample excludes other offense and drug types, as well as those with an initial felony cocaine charges that were dropped or that resulted in a non-custodial punishment. Consequently, the current sample likely over represents older offenders with more criminal

history. There also may be more cases with physical evidence in this sample than in the general drug arrest population because those lacking in important probative physical evidence could be less likely to be charged or more likely to have a case dismissed. Thus, the findings of the impact of evidence are likely underestimated. This body of research would be strengthened by future work including non-convicted cases. Second, only felony cases in one urban county were examined, thereby limiting the generalizability of these findings to other jurisdictions, as well as to less serious drug offenses. Third, there are likely nuances in measurement that are not captured by our binary indicator (see, e.g., Johnson & Larroulet, 2019; Metcalfe & Chiricos, 2018) that could be explored with future research. Fourth, our findings are consistent with the theoretical propositions of focal concerns, but as with much quantitative research, we are unable to observe the underlying mechanisms of the theory. As we discuss below, qualitative work may be better suited to this task. Lastly, while this study improves upon existing work by including evidentiary variables, there were relevant measures that could not be accounted for, such as a defendant’s role in a drug enterprise, gang membership, or direct measures of witness testimony.

We continue with suggestions for potential avenues of future research. First, future work using larger samples can examine whether the importance of evidence varies depending on case disposition, offense type, or defendant characteristics. The vast majority (91%) of the current sample is resolved with a negotiated plea, and the impact of evidence may differ between trial and plea cases. Nir and Griffiths (2018) have explored this issue somewhat, but a larger sample (and perhaps one that over-samples jury cases) would shed more light on how juries view evidence. Based upon previous research finding that jury sentences are more unpredictable than judge sentences (King & Nobel, 2005), it is entirely possible that the impact of evidence would also be more unpredictable. It is also important to note that the plea offer, in part reflects the perceptions of likelihood of conviction at trial – that is, the “shadow of the trial” model – (Bushway et al., 2014). Accordingly, the mechanisms determining the impact of evidence and arrest characteristics may differ in sentences stemming from plea bargains, relative to guilty convictions stemming from trial. In the latter case, the impact of evidence and arrest characteristics are predominately post-conviction, whereas in the former, the impact stems from complex plea negotiations that are intrinsically tied to the evidence available to a prosecutor.<sup>19</sup> Thus, a fruitful area for future research is to further assess the differential role of evidence quantity and quality on sentences that stem from a plea versus trial conviction.

With regards to specific case types, it is possible that women who possessed a firearm or a much larger amount of cocaine may be viewed in a more negative light than men in similar situations (Chesney-Lind, 1989; Tillyer et al., 2015). Similarly, certain types of evidence may have differential impacts across race and ethnicity, especially given the impact of the war on drugs on racial/ethnic minorities and the possibility that evidentiary measures could reinforce racial stereotypes linking minority suspects to violent crimes (Steffensmeier et al., 1998). Second, future research should expand to other jurisdictions, and future data collection procedures should consider the influence of specific jurisdictional policies on case processing. For example, the District Attorney in New York has a clear policy for plea offers: The first offer given to a defendant will always be the most favorable (Kutateladze et al., 2016). In the current study jurisdiction, there is no such requirement. Unique policies like this doubtless have an impact on plea bargaining and negotiation in a particular jurisdiction. Using this information, future research can build a greater understanding of how local policies influence inter-jurisdictional differences in case processing. The results of this study also showed that evidence and situational arrest variables were most important for some key decision points, namely the initial charge type. Qualitative research, such as Frohmann's (1997) nuanced ethnographic examination of how prosecutors' convictability assessments are constructed, would be particularly beneficial to build upon these findings to gain greater insight into how courtroom workgroup members use evidentiary factors and arrest circumstances to guide their decision-making across various stages of case processing. This type of in-depth and nuanced analysis would further allow for a deeper examination of both theory and causal processes.

In sum, the role of physical evidence and arrest circumstances in criminal case processing is inherently complex. While it has long been theorized that evidence plays a central role in the prosecution and sentencing, limited research has empirically assessed this association, relative to examinations of other predictors such as race/ethnicity or gender. The present study utilizes a focal concerns framework and extends prior research by examining novel measures of physical evidence and arrest circumstances on several discretionary decisions throughout the case processing of felony cocaine offenders in a new jurisdiction with unstructured sentencing. Certain measures such as selling to the police were critical across multiple stages, while others, such as seizure of a cell phone, carried limited weight. Future research on case processing of drug offenders should continue to investigate the role of these measures, as the

findings of the current study suggest that ignoring the role of evidentiary measures and arrest circumstances could result in an omission of key variables relevant to multiple stages of criminal case processing.

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### Endnotes

<sup>1</sup> Only 17 states, the District of Columbia, and the U.S. Federal Court system currently follow sentencing guidelines in some form (Robina Institute, 2018).

<sup>2</sup> “Evidence” refers to physical evidence (drug weight, drug type, paraphernalia, etc.). “Arrest circumstances” refers to the environment surrounding the arrest, including the reason for initiation of contact (citizen call) and whether the defendant directly sold to police.

<sup>3</sup> Importantly, Nir and Griffiths (2018) point out that while courts and the public often view forensic evidence as objective, many forms of this evidence are subject to subjective opinions and weak scientific backing (see also Saks & Faigman, 2008).

<sup>4</sup> LaFree (1980) notes that some evidence will favor the prosecution, and some will favor the defense: “For example, a polygraph examination indicating that the defendant lied was coded as expert testimony for the prosecution while a polygraph examination indicating that the defendant answered truthfully was coded as expert testimony for the defense” (p. 838). Thus, our terminology of “prosecution” and “defense” evidence matches the coding of variables in the original study.

<sup>5</sup> State jails are a crime type and facility unique to Texas and are intended to serve as an incarceration option for lower-level offenses.

<sup>6</sup> DFZ enhancements increase the minimum sentence term by 5 years. Prior felony enhancements and weapons enhancements have the effect of increasing a penalty to the next highest offense degree. Any offense type can be included as a prior enhanceable felony, but for first, second, or third-degree felony offenses, only prior state *prison* felonies are eligible for enhancement. For a state jail felony to be enhanced, the individual must have two prior state jail felonies, and, in that instance, the punishment will be increased to a third-degree offense. If there is an affirmative finding of a deadly weapon while committing a state jail-level cocaine offense, defendants can also have their terms enhanced in the same way described above for prior felony convictions in that they will be punished as a third-degree felony (Texas Penal Code, Sec. 12.35). For first, second, or third-degree cocaine felonies, use of a deadly weapon will enhance the punishment to the next highest degree.

<sup>7</sup> As described below in the methods section, substance quantity is not included in charge reduction models or aggregated sentence length models due to its association with offense degree. We include it in our analyses of sentence length for RQ3a (see Table 4).

<sup>8</sup> Unlike other datasets that include each offender only one time by a “controlling” offense, this list included each individual offense.

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<sup>9</sup> Fewer than 15 cases were removed because of missing vital document (e.g., a police report).

<sup>10</sup> The exact number of judges is not disclosed here to avoid identifying the jurisdiction, but there are between 10-20 permanent judges in the jurisdiction.

<sup>11</sup> In this jurisdiction, the initial screening/indictment charge is made by screening prosecutors who are not situated within a courtroom the same way that other prosecutors are. There is no information available on the grand jury or prosecutors at this stage.

<sup>12</sup> A model including an interaction of Black\*crack cocaine was not statistically significant. Interactions of Black\*male\*age were also not significantly related to the dependent variables.

<sup>13</sup> Models were re-estimated without the Hispanic measure, and the magnitude and significance of the non-citizen coefficient remained substantively similar. Likewise, in subsequent models removing non-citizen measure, the Hispanic coefficient remained statistically non-significant.

<sup>14</sup> In assessing model fit, we identified two cases that were extreme outliers with high leverage potential with regards to sentence length, and they were excluded from the analytic sample at this stage. One involved a case with a relatively high quantity of cocaine as well as sentencing enhancements, which received a relatively short sentence in comparison. In the other, an individual arrested with less than 3 grams of cocaine was charged with possession of 1-4 grams with no enhancements and was sentenced to close to 20 years.

<sup>15</sup> We re-estimated the model without the “Sell to police” variable, and “conviction for distribution” did not reach statistical significance.

<sup>16</sup> Four cases fall into the 200-400 or 400+ categories and were thus excluded from the disaggregated analysis.

<sup>17</sup> Certain legally relevant characteristics were omitted from these models if they were perfect predictors of the outcome. For example, the variable “convicted for distribution” was excluded in the model for all distribution cases, and the variable “convicted for first degree” is excluded from the model for less than one gram.

<sup>18</sup> Approximately 4% of cases were resolved with an open plea.

<sup>19</sup> We would like to thank an anonymous reviewer for this helpful suggestion.