

# Transgender Victims and Offenders: Failures of the United States Criminal Justice System and the Necessity of Queer Criminology

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**Abstract** The purpose of this article is to highlight the experiences of transgender people within the criminal justice system as both victims and offenders. We contend that queer criminology is both needed and can assist in exploring the experiences of this unique population who face discrimination within the US criminal justice system and who are often ignored within criminological research. The article will provide an overview of transgender people's general experiences within the criminal justice system and explore influences of cultural stereotypes about transgender people by examining the cases of three transgender victims of violence—Brandon Teena, Gwen Araujo, and Cece McDonald. This article highlights the importance of concepts such as sex, gender, transpanic, transphobia, victim-blaming, and the responses by key players in the criminal justice system (police, courts, and corrections) to transgender victims and offenders.

## Introduction

The relationship between queer criminology and critical criminology should be obvious to those who are familiar with both sub-disciplines; after all, critical criminology was developed as a response to existing mainstream criminology that did not meaningfully focus on marginalized individuals and groups. Thus, critical criminology and its many subfields highlight how race, class, gender (and on occasion) sexual and gender identities, can impact the relationship individuals and groups have with the criminal justice system. There have been some discussions within criminology and sociology about sexual and

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gender identities that focused on the deviance associated with one's gay or lesbian identity. It was the sexual deviant that caused social anxiety, i.e. the men and women who loved another of the same socially assigned sex were, quite simply, to be feared or at the very least to be identified as deviant or criminal (see e.g. Becker 1963; Lemert 1972; Lombroso 1871; [Gibson and Rafter 2006]).

There is a long history of criminalization of same-sex sexual, and gender variant, behavior and mistreatment of lesbian, gay, bisexual, transgender and queer (LGBTQ) people by the criminal justice system in the United States. As territories became states, anti-sodomy laws were created across the country which effectively targeted people of color and non-native born white citizens and immigrants up to the late 19th century when same-sex sexual and gender variant behavior was medicalized<sup>1</sup> (Eaklor 2008). The industrial revolution, increasing urbanization, and eventual increased freedom for women in the 1920s created an opportunity for many men and women with same-sex sexual desires and gender variances to leave rural communities and familial surveillance for increased freedom in cities, which led to the emergence of new gay communities (Stryker 2008). Even though there is a difference between one's sexual orientation (to whom one is sexually/emotionally/romantically attracted) and one's gender identity (how one identifies one's own gender; how one identifies/sees one's self as a man, woman, transgender, gender queer, etc.), there is an intricate link between gay, lesbian, bisexual, transgender, and queer-identified people that has existed since these identities were developed (Wilchins 2004). As scientific theories on sexual and gender deviance developed in the late 19th and early 20th centuries, homosexuality was defined as a "gender inversion, in which a man who was attracted to men was thought to be acting like a woman, and a woman who desired women was considered to be acting like a man" (Stryker 2008: 34). Gender transgressive behaviors became illegal in many cities in the 1850s through municipal ordinances that outlawed dressing in "opposite" sex clothing. These types of laws targeted people who desired to live as a gender other than the one assigned to them at birth, as well as anyone whose gender expression differed from the status quo, including masculine lesbian women, and feminine gay men. Police frequently raided bars and other public places that catered to queer clientele, often targeting people of color, poor people, and gender-variant people (Stryker 2008). Throughout the 20th and 21st centuries gay, lesbian, bisexual, and to some extent transgender people have slowly gained more social and political power in the United States, but multiple problems for LGBTQ people remain within the criminal justice system, further necessitating a need for queer criminology today (see e.g. Peterson and Panfil 2014).

Some may point to the current wave of pro-gay legislation in the last few years as evidence that opinions of LGBTQ people as deviant or criminal have been disproven. However, we argue that while there has been some significant social and legal support for certain populations that fall under the queer criminology research umbrella (gay, lesbian, and bisexual folks), transgender people are still facing enormous challenges to equal rights and protection under the law and within cultural norms. It is a queer criminology that is needed to properly address these deep-seated problems that remain within our culture and, in turn, impact the lives of transgender people.

In this article we will address some examples of injustice unique to the transgender community, including how legal classifications and cultural understandings of transgender people influence their experiences within the criminal justice system, particularly as

<sup>1</sup> The medicalization of these characteristics provided an alternative to jailing non-normative gender and sexual behaviors, but did nothing to combat the associated stigma.

victims of violent crime. Further, we conclude that more research is needed to contextualize the position of transgender individuals within the criminal justice system in order to create a more just and equal legal system for all people regardless of gender identity. While there has been some research on LGBTQ populations in feminist and cultural criminologies, (see e.g. Belknap and Holsinger 2006; Ferrell et al. 2008; Renzetti 1992) much of the field of criminology, including critical criminology, has largely ignored this vulnerable population. We contend that much more research is needed on the experiences of LGBTQ people in the criminal justice system.

We also believe that the foundation of queer criminology, the inception of which is often attributed to Nic Groombridge's (1999) article, *Perverse Criminologies: The Closet of Doctor Lombroso*, is rooted in both critical and radical criminology—we believe this because of the importance that radical criminology has placed both on intersectionality, social relationships, cultural influence, and, in turn, “finding the root of things” (Lynch et al. 2000: 14). As researchers within the fields of sociology and criminology, we believe a queer criminology is a necessary addition to the field; not only for the sake of knowledge, but also for the lives of those in the LGBTQ community impacted by injustice in the criminal justice system. Therefore, we agree with the early radical criminologists “who challenged the status quo distribution of wealth and *power*, and use this analysis to assist movements seeking to transform structural arrangements in ways that enabled the less powerful to gain greater control over their lives and destinies” (Lynch et al. 2000: 5, our emphasis).

### **Transgender Identities and the Criminal Justice System: Legal Classifications and the Gender Binary**

In the US penal system, inmates are consistently classified based on the gender assigned to them at birth. For example, if they have not had genital reassignment surgery, female to male transgender (FTM) prisoners are most often incarcerated in women's prisons and male to female (MTF) transgender prisoners are most often incarcerated in men's prisons (Broadus 2009). The system responds to crimes based on the laws of our society, but it would be remiss of us to fail to consider the potential influence personal beliefs and cultural norms can have on decisions made within the criminal justice system. We argue that personal beliefs and cultural norms often play a part in legal decisions, particularly those regarding transgender criminal cases.

Transgender people are often believed to be deceiving others about their “real” gender—that which was based on the sex assigned to them at birth. Transgender women are often described as “men in dresses,” or as “really men,” which indicates the value placed on sexed bodies over individuals' gender identities (Bettcher 2007). Gender norms in our society tell us that gender is connected to a person's sexual organs in that people with penises are male, will identify as men, act in a masculine manner, and are attracted to females, and vice versa. Our ideas about gender are some of the most highly internalized social norms in our society, so when someone disrupts the normative gender binary there are often negative consequences for that person (Butler 1990; Lorber 2009). US society is increasingly becoming more comfortable with those who break the normative binary in certain places, such as those who break at the attraction level (sexuality), but transgender people who break the normative gender binary at the identification level (gender identity) continue to face negative consequences (Bettcher 2007).

Within the criminal justice system there are multiple examples of officials' mistreatment of transgender individuals that have been documented by transgender rights organizations and researchers. The National Transgender Discrimination Survey, a groundbreaking study about transgender discrimination that included 6,450 transgender and gender non-conforming participants from around the United States and its territories asked participants about their interactions with the criminal justice system, particularly including, police, judges, court officials, and prisons. They found that 20 % of respondents were denied equal treatment by police officers, 29 % harassed or disrespected, and 6 % reported physical assault by a police officer. The NTDS study found white transgender women reported higher incidents of *respectful* treatment from police officers than transgender people of color and transgender men or gender non-conforming people (Grant et al. 2011). Once in prison or jail, physical and sexual assault is a significant problem for many transgender inmates, particularly African-American transgender inmates and transgender women overall (Grant et al. 2011; National Center for Lesbian Rights (NCLR) 2006). Given the above information it is not surprising that 46 % of NTDS respondents reported being uncomfortable seeking assistance from the police (Grant et al. 2011).

One of the many ways the current mainstream LGBTQ rights movements have addressed crimes against people based on their real or perceived sexuality and/or gender identity/expression is through the enactment of hate crime legislation. Mainstream LGBTQ rights organizations celebrated when President Obama signed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, which expanded the federal hate crimes legislation to include sexual orientation, gender, and gender identity as federally protected identities (Grant et al. 2011). However not all transgender rights organizations believe that hate crime legislation is the best way to address anti-transgender violence and harassment.

Strout (2012) has identified at least two different transgender rights groups [Black and Pink and Sylvia Rivera Law Project (SRLP)] who have been vocal about their dissent towards hate crime legislation. These groups argue that the legislation does nothing to prevent hate crimes or to protect potential victims of hate crimes, particularly transgender victims. Researchers have shown that many transgender people are wary of police interactions due to the potential for victimization or revictimization by police (Grant et al. 2011; Mogul et al. 2011; Stotzer 2009; Xavier et al. 2007). For example, because transgender individuals may be forced into illegal work to survive in an economic environment that does not protect gender identity in non-discrimination ordinances, this can increase transgender people's chances of negative interactions with the police (Grant et al. 2011; Stotzer 2009). Furthermore, transgender people, particularly transgender women and people of color who engage in sex work for economic survival have reported higher rates of verbal and physical abuse by police officers than cisgendered sex workers (Cohan et al. 2006; Nemoto et al. 2004; Valera et al. 2000). The National Transgender Discrimination Survey (2011) found that transgender people of color and transgender women in particular had the highest rates of sex work (44 % African American, 28 % Latina/o, and 15 % MTF people), and thus were at higher risks for abuse by police than white transgender or cisgender sex workers (Grant et al. 2011). As described above, whether or not transgender people—particularly transgender women and people of color—are breaking or following social laws, they face heightened risks of abuse and mistreatment by police officers. Therefore, organizations such as Black and Pink, and the SRLP maintain that hate crime legislation “may expose our communities to more danger—from prejudiced institutions far more powerful and pervasive than individual bigots” (SRLP et al. 2009 para.5).

The argument presented by these groups is not without merit; laws do not prevent and have never prevented someone from committing a crime. As Strout (2012: 519) contends, “what the law says will not change the condition of vulnerability.” Transgender people face multiple challenges within the criminal justice system that continuously puts them in vulnerable positions. As shown above those who are charged with upholding the law are often part of the problem, through engaging in harassment and violent crimes against transgender people in their custody. Additionally, in a study of 38 federal and state court cases with transgender litigants whose gender identity classification was relevant to the outcome, Meadow (2010) argued that the law both possesses the power to create more flexible gender categories, and is “a coercive force that constricts individual behavior, based on its own ideology” (Meadow 2010: 818). He also found that courts often rely on medical experts when trying to determine definitions of maleness and femaleness, but no single definition had been consistently applied. However, even though almost half of the courts Meadow studied were somewhat flexible in allowing changes in gender status, often transgender people had to prove they have undergone some kind of medical procedure (gender reassignment surgeries, hormone replacement treatment, etc.), which are often too expensive for many transgender people who desire those procedures to afford (Meadow 2010). Transgender people are put in a vulnerable position when they cannot afford gender affirming medical treatment, or do not desire medical treatment, and thus are not legally assigned the gender they present (Grant et al. 2011).

Stein has argued that “categories for describing people...can be used in the law in ways that can both oppress or liberate.” (2011: 822). What we see happening to transgender individuals within the criminal justice system is unfortunately, much more oppressive than liberating. Gender transitions are highly personal and varied processes that can often be awkward, strange, and/or difficult for transgender people. Cisgender (those whose gender identities are consistent with their gender assigned at birth) people may have trouble understanding because as Lloyd has indicated gender transition is often seen as outside of “the normal.” In relation to the criminal justice system she goes further by indicating that “the law acts in the service of a self-affirming idea of ‘the normal’ when deployed to dehumanize transgender people...the law makes his or her identity so impossible, invisible, and monstrous as to be outside of the laws of protection” (Lloyd 2005: 152).

The gender norms of our society do not allow for the existence of transgender people as part of how we understand humanity. Our legal classifications of gender exclude the possibility for the existence of transgender people through adherence to the rigid gender binary of male and female (Spade 2008). Not only do our social institutions exclude transgender gender statuses and create substantial barriers to changing legal gender, but the high instances of violent crime and discrimination against transgender people also indicate an overall hostile climate for transgender people in our society (Grant et al. 2011; Spade 2008; Stotzer 2009). In addition to the discrimination and police hostility outlined above, transgender people also experience higher levels of poverty, employment discrimination, and homelessness than cisgender people (Grant et al. 2011). Further, Stotzer (2009) found that transgender people, particularly youth, report a high rate of sexual and physical assault by strangers and/or someone they know.

The focus that the law places on biological sex characteristics works in tandem with the gender norms ingrained in society and results in transgender people being viewed as “other than human” (Lloyd 2005). As previously mentioned, Lloyd’s (2005) discussion of “the normal,” which was based on concepts from Freud, Bersani, and Butler, highlights the way in which society operates based on stereotypes that we have developed about others who are unlike the majority. To further explore Lloyd’s (2005) interpretation of Butler (1990)

we look to the concept of *performativity*. Butler states that individuals perform gender through various influencing factors of society, acting and performing gender in relation to their sex. However, biological sex is often conflated with societal constructions of gender, such that the distinction between biological sex and performing gender roles is often misunderstood in mainstream society. For example, there is a common expectation that people who present themselves as masculine (e.g. traditional stereotypes of what a “man” is, for instance, tough, independent, rational, stoic) would be born with a penis, and in direct relation to our criminal justice system’s treatment of transgender people “we regularly punish those who fail to do their gender right” (Butler 1990: 78). Thus, transgender people are outside the criminal justice system’s understanding of gender and instead are “legally nonexistent intermediaries” that “literally fall outside of the only categories the court recognizes as human” (Lloyd 2005: 155).

Historically, in order to medically transition or change their gender marker on legal documents, transgender individuals had to be diagnosed with the mental condition *gender identity disorder*.<sup>2</sup> The stigmatizing language of the diagnosis purports that there is something wrong with them; that they are outside the norms of society’s gender binary and thus must be medically diagnosed as a mental disorder. Shelley (2009: 387) notes that “clinical discourses and diagnostic criteria actually reflect in a negative sense, the social injustices that trans people face...” GID related diagnostic criteria included “cross-gender identification,” “desire to live as a member of the other sex”, “discomfort about one’s assigned sex”, “wish to get rid of one’s natal sex characteristics”, and other symptoms that pathologized all gender nonconformity behavior as a one-dimensional disorder (Cohen-Kettenis and Pfafflin 2009: 7). The use of the term “disorder” further stigmatized all gender nonconforming people as mentally ill because they identified outside the social gender binary. However, not all people who wish to live as a member of another gender experience distress over their gender nonconformity, even if they wish to change aspects of their body to better match social expectations of gender. This is what led to the development of the new diagnostic label, gender dysphoria. Even though there has been a change, it is important to note that the new terminology and associated connotations will take time to work themselves into the wider social realm of so-called “common knowledge,” and into normative processes within social institutions, such as the criminal justice system.

The resulting anxiety to become involved in the criminal justice system, coupled with the information discussed above speaks volumes to the way in which transgender people are treated within the criminal justice system. The idea that our legal system “doesn’t know what to do with these people” rings true when transgender people are not taken seriously as victims and are treated unequally within the criminal justice system. As we have seen above, the criminal justice system has a long history of disavowing transgender people. The unique position of transgender people in the criminal justice system is not

<sup>2</sup> Gender identity disorder (GID) was defined as “people who experience intense, persistent gender incongruence” in the 4th edition of the Diagnostic and Statistical Manual (DSM-IV) (American Psychological Association [APA-1] 2013). The most recent incarnation of the psychological disorder that pathologized gender incongruence was recently amended in the 5th edition of the DSM published in 2012. The diagnosis of GID has been replaced with gender dysphoria (GD), which “will be used to describe emotional distress over ‘a marked incongruence between one’s experienced/expressed gender and assigned gender’” (American Psychiatric Association [APA-2] 2013). Rather than stigmatizing the new gender nonconformity, this new diagnosis aims to remove stigma from gender nonconforming individuals and places the emphasis on the symptoms of stress related to gender incongruence in US society, while creating a respectful diagnostic label to ensure transgender and genderqueer people are able to access appropriate medical care (APA-2 2013).

unknown to all of those within the system. For example, citing the Eighth and Fourteenth Amendments, which protect US citizens from cruel and unusual punishments and guarantees due process and equal protection under the law, Leach argued the criminal justice system should reform its protocol regarding LGBTQ inmates. Leach (2007) wrote a guide for criminal justice officials explaining how some police departments have attempted to mitigate the unique challenges presented by the incongruence between LGBTQ offenders and the hetero/cis-normative criminal justice system. One of the issues Leach focused on was safely housing transgender prisoners within gender-segregated prisons and jails (2007). He states that transgender prisoners are often placed in protective custody, often without choice, to avoid violence and/or sexual assault by other prisoners. Shah (2010) describes protective custody as nothing more than the same solitary confinement that is used to punish our most violent and dangerous criminals who are in a cell without human contact for 23 hours a day, thus effectively further punishing transgender inmates.

Much of the existing literature about transgender people's experience with the criminal justice system focuses on their interactions with police officers as offenders, the legal classification of gender, and their experiences in jail and/or prison. However, there is a noticeable lack of research about how transgender people are treated by police and courts when they are the victims of violent crimes. In the sections that follow we will explore how cultural stereotypes about transgender people influence their experiences as victims of violence within the criminal justice system by exploring the cases and stories of Brandon Teena, Gwen Araujo, and CeCe McDonald.

### **The Influence of Cultural Understandings: The Art of Deception Arguments**

Johnson (2010) argues that, "crimes committed against transgender persons serve as grim illustrations of the effects of pervasive discrimination" (162). We have seen this pervasive discrimination in two cases portrayed in popular media. Brandon Teena, a FTM transgender man, and Gwen Araujo a MTF transgender woman, who were both murdered because of their gender identity.

Brandon Teena was a 21-year-old pre-operative, transgender man who was raped and later murdered by his "friends" John Lotter and Tom Nissen after they discovered he was assigned female at birth. In December of 1993 they attacked Brandon,<sup>3</sup> drove him to the Nebraskan countryside and raped him. Despite filing a police report, and physical evidence from a rape kit, there was no immediate response from the local sheriff, Charles Laux. Records revealed Sheriff Laux's insensitive treatment of Brandon when he initially reported the rapes, including: asking him if he put a sock in his pants and pretended to be a boy to kiss girls, asking if he had helped his rapists get an erection, and referring to him as "it" (O'Hanlon 2001; Olafsdottir and Muska 1998). Approximately a week after the assault and rape, Lotter and Nissen found out Brandon had reported the crimes to the police and subsequently they murdered him along with the two witnesses to the crime (Olafsdottir and Muska 1998). Gwen Araujo, a 17 year old pre-operative transgender woman was beaten to death with fists and a shovel at a party, by four of her "friends" who then buried her in a remote Californian wilderness. Gwen was forced to expose her genitalia in the bathroom to prove her "real sex," and afterwards was savagely beaten and strangled by four men, Jaron Nabors, Michael Magidson, Jose Merel, and Jason Cazares (Bettcher 2007).

<sup>3</sup> In order to respect the transgender people we focused on, we have decided to refer to them by their first names, as those names were chosen to best represent their personhood and identity.

In both cases the victims were at least partially blamed for the crimes committed against them. In Brandon's case, Sheriff Laux's initial reluctance to obtain arrest warrants seemed to stem from his disbelief of Brandon's account of being beaten, kidnapped, and raped. The questions Sheriff Laux asked him during the report filing focused on trying to establish Brandon as a participant in sexual activity and discuss his sexual and gender identities, rather than about the relevant circumstances of the rape. Sheriff Laux also indicated his disregard for Brandon's humanity by referring to him as "it" (Olafsdottir and Muska 1998). While being interviewed for the documentary *The Brandon Teena Story* former deputy sheriff, under Laux, Jon Larsen stated,

You have a girl... You have a person, who first says she's a boy and then turns out to be a girl. Who has, you know, done some forgeries with her friend's checkbooks and stuff, and has been in trouble with the law before. And then all of a sudden comes up and says 'This guy and this guy raped me'. Well if we did that in society, we'd have half...well we'd have a lot of men locked up.

Brandon had forged checks in the past, and it is clear that Sheriff Laux saw that past brush with the law and what he believed to be Brandon tricking women into sexual activity, as discrediting his story enough to be a reason to delay getting arrest warrants issued for the two men who raped and later murdered him. Despite the abundance of evidence brought forth, the criminal justice system failed to protect Brandon (Suffredini 2000). Given Laux's line of questioning and dehumanization of Brandon, Larsen's statement, and the inaction of the police in the face of mounting evidence against Lotter and Nissen, it is clear that they did not take Brandon's accusations seriously. We believe that Brandon's non-normative gender identity, along with his past brush with the law, caused the police to view him as deceptive and untrustworthy, and not obtain arrest warrants in a more timely fashion.

The defense for Madgidson and Merel, two of Gwen's killers, argued that Gwen deceived Madgidson and Merel about her "real sex," which was an enraging challenge to their sexuality and masculinity after her genitalia was exposed. Called the "trans panic defense," the defense relies on a cultural understanding that transgender people are so reviling and shocking that any reasonable person would be provoked to lash out against them after any sexual encounters or advances. In this case the defense also attempted to argue that Gwen had deceived her murderers by not disclosing her transgender status (Bettcher 2007). Ultimately, while the first jury was split on whether the defendants were guilty of first or second degree murder, the second jury ruled that Madgidson and Merel were guilty of second degree murder, and did not believe the hate crime enhancements were necessary. Cazares, the only other person charged with first degree murder initially, pleaded no contest to voluntary manslaughter after both juries failed to reach a verdict on his role in Gwen Araujo's murder.

California law includes gender and sexuality as protected statuses and has a variety of hate crime-based sentencing enhancements (Los Angeles County District Attorney's Office 2013), none of which the final jury found in favor of in Madgidson and Merel's case. This indicated that they did not believe Gwen had been killed because of her transgender identity. It is ironic that the final jury saw no hate crime committed, seeing as the defense essentially argued that any reasonable person would also fly into an uncontrollable rage after finding out they had had sex with a transgender woman. The jury ruled Madgidson and Merel guilty of second degree murder, which is an intentional killing that occurs without premeditation and deliberation by the perpetrator (Davoudian 2003). This verdict came after evidence shown during the trial that Magidson and Merel both knew Gwen was transgender before the murder, as they both had previously had sexual relations and

discussed her gender identity (Bettcher 2007). However, both juries in this case ruled out premeditation or deliberation, and thus seemed to agree that the two men's emotional responses to all the partygoers finding out Gwen was transgender were understandable, even if their subsequent actions were not.

Transgender murder victims have, deservedly, received quite a bit of attention within transgender-focused literature and news outlets (Bettcher 2007; Chestnut et al. 2013; Nichols 2012; Stotzer 2009; Xavier 2000); however, there is a notable lack of research that examines transgender defendants in criminal cases, particularly those who claim self-defense in homicide cases. Our interest in this subject was struck by a recent court case that involved a young, African American transgender woman, CeCe McDonald, in the 2011 death of Dean Schmitz.

CeCe McDonald walked by Schooner Tavern in Minneapolis on June 5, 2011, with a group of her friends, all young, African American, LGBTQ folks, when several bar patrons (including Dean Schmitz) hurled racist, homophobic, and transphobic slurs at them, calling them "niggers," "faggots," and "chicks with dicks" from outside the tavern. Schmitz's ex-girlfriend broke a beer bottle across CeCe's face, resulting in 11 stitches in her cheek and a punctured salivary gland, this initial act seems to have been the catalyst for a group fight (Lamont 2012). CeCe, no stranger to anti-queer and racist violence, attempted to leave the scene as the two groups began fighting, and when Schmitz followed her, she pulled a pair of scissors out of her purse for protection. The details of the ensuing scuffle are unclear but Schmitz was mortally stabbed during the exchange (Pasulka 2012). In spite of the variety of violence that occurred that night only CeCe was arrested. Despite evidence that Schmitz and his friends had initiated the seemingly race/gender/sexuality-based verbal and subsequent physical assault against CeCe and her friends, the prosecutors dismissed CeCe's self-defense plea (Lamont 2012; Mannix 2012). Ferzan (2011) describes self-defense under Minnesota law as valid when acting to repel a real or perceived threat of bodily harm, because the actions of the aggressor legitimate a defensive response from the defender. According to her defense attorneys, CeCe had reason to believe that Schmitz intended to hurt her on that summer night, but the prosecutors claimed CeCe escalated the situation by brandishing the scissors. After the rejection of her self-defense plea, CeCe agreed to a plea bargain of second degree manslaughter and is currently serving 41 months in a male prison (Lamont 2012).

CeCe's experiences with violence are not uncommon for transgender people, particularly many transgender women of color due to the intersectionality of oppressed identities. Kenagy and Bostwick (2005) found that 56 % of their MTF and FTM participants felt unsafe in public based on their transgender identity. Additionally, 40 % of all participants expected to have shorter than normal life-spans, in part due to violence against the LGBTQ community (Kenagy and Bostwick 2005). Crimes against transgender people tend to be excessively violent (Stotzer 2009), such as beheadings, multiple stabbings, being bludgeoned to death, and having their bodies burned just to name a few (Abernathy 2012). The National Coalition of Anti-Violence Programs' (NCAVP) yearly queer violence study found that transgender women and people of color were the most vulnerable to violence in the LGBTQ population for the last three years. In 2012, transgender women constituted 50 % of all reported anti-queer violence (2013).

Returning to the McDonald case, given CeCe's personal experiences being physically assaulted throughout her life because of her gender identity, and the well-established fact that transgender women of color are at an increased risk for violence, it can be convincingly argued that CeCe McDonald had legitimate reasons to fear for her safety.

Evidence pointed to Dean Schmitz's violent past, racist beliefs, and transphobic attitude, including a criminal record with arrests for fifth degree assault and domestic assault among other small financial crimes. A toxicology report showed methamphetamine, opiates, cocaine and Benzoyllecognine in his system, and Schmitz had a swastika tattoo on his chest. However, all of the aforementioned was contested by the prosecution at the pretrial hearings, and everything but a toxicologist discussion of the overall potential effects of the types of drugs found in Schmitz's system, was inadmissible as evidence in the trial (Mannix 2012). Despite the court's refusal to admit Schmitz's violent criminal record, the prosecution was able to introduce CeCe's only prior criminal conviction, writing a bad check in her late teen years, as evidence against the credibility of her self-defense argument (Weiss 2012). The prosecution attempted to use evidence of one past incident of deception as proof CeCe was lying about acting in self-defense, which plays into the cultural (mis) understanding of transgender people as deceptive and untrustworthy. The state was able to effectively downplay aspects of Schmitz's past by blocking the introduction of evidence that the defense saw as relevant to his propensity for violence, racism and transphobia.

The court also refused to allow expert testimony about the heightened risk of violence against transgender individuals, or even testimony describing transgender terminology to the jury (Pasulka 2012). Transgender identities, lives, and experiences are not well known in our society, so it is unlikely that a jury would be able to fairly understand CeCe's position and situation without context about anti-transgender social stigma and violence. By refusing to acknowledge that a person's intersecting identities may influence what they perceive to be a legitimate threat, based on prior experiences or knowledge about trends of violence in their population, the court set a potentially dangerous precedent for future cases involving transgender defendant's attempting to argue self-defense.

### **Conclusion: A Call for Further Research**

In this paper we have argued that the US criminal justice system is clearly unprepared to justly interact with and equally include transgender people either as offenders or victims. The reliance on biological determination of sex and gender are continuously causing issues for transgender people who do not fit into the predetermined categories. Cultural (mis) understandings that transgender people are being deceptive, and lying to those around them about their "real sex" seem to influence transgender peoples' experiences with the criminal justice system. As CeCe's case shows, there is a lack of understanding of the importance of contextualizing the reactions of transgender victims of violence.

Given the circumstances that have been reported in CeCe's case, contextualized within the current social climate for transgender women, it can be argued that she acted in self-defense. As Lamont (2012: 1) indicated "CeCe McDonald and her friends (all of whom were LGBTQ youth or allies) were the targets of hate and violence on the night of her arrest. By ignoring the evidence against her attackers, police reinforced the notion that violence against the Black transgender community is not a significant concern for law enforcement."

We argue that more research is needed about the influence of legal gender distinctions and adherence to the gender binary, coupled with cultural understandings of transgender people as deceptive, and a more contextualized understanding of the social position of the population as a whole on transgender defendants' ability to use self-defense as a legitimate defense in homicide cases when relevant. There are multiple research angles to be further

examined in these veins. The differences between MTF and FTM transgender people in regard to the credibility of their self-defense claims may lead to a more nuanced understanding of the power, influence, and intersections of patriarchy and misogyny. An analysis of any racial disparities that occur in acceptance of transgender self-defense claims in murder trials would also add to the literature. At this point, criminology and criminal justice researchers need to thoughtfully include transgender individuals in their research and continue to add to the knowledge of the entire LGBTQ population—this is indeed the reason why there is a need for queer criminology. As the LGBTQ community in the US slowly but surely marches forward towards full equality, the transgender community has become more vocal and demanding of full inclusion in society. Eventually the criminal justice system will need to catch up to society in terms of having appropriate accommodations for interacting with transgender people at all levels of the system.

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