



## 'I'm Not at All Protected and I Think Other Women Should Know That, That They're Not Protected Either': Victim-Survivors' Experiences of 'Misidentification' in Victoria's Family Violence System

**Ellen Reeves**

Monash University, Australia

### Abstract

The misidentification of women as predominant aggressors has emerged as a topical issue in family violence research, with feminist scholarship suggesting that such trends may be attributed to a range of factors, including incident-based policing and a misunderstanding of the ways in which women use violence against their partners. Where existing research has primarily focused on policing practices in relation to misidentification, this article explores the impacts of misidentification on the lives of women victim-survivors of family violence in Victoria (Australia), a jurisdiction that has recently seen significant reforms to family violence systems in the wake of the Victorian Royal Commission into Family Violence (2016). Using data from interviews with 32 system stakeholders and survey responses from 11 women who have experienced misidentification in Victoria, this study explores misidentification within the family violence intervention order system. It demonstrates that being misidentified as a predominant aggressor on a family violence intervention order can have a significant impact on women's lives and their access to safety, highlighting the need for improved policing and court responses to the issue beyond existing reforms.

### Keywords

Family and domestic violence; policing; gender; court system; misidentification.

*Please cite this article as:*

Reeves E (2021) 'I'm not at all protected and I think other women should know that, that they're not protected either': Victim-survivors' experiences of 'misidentification' in Victoria's family violence system. *International Journal for Crime, Justice and Social Democracy*. Advance online publication. <https://doi.org/10.5204/ijcjsd.1992>

Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use with proper attribution.  
ISSN: 2202-8005



## Introduction

The Victorian Royal Commission into Family Violence (RCFV 2016) signalled a shift in family violence (FV) responses and offered 227 recommendations for systematic change, with many of these recommendations now marked as 'implemented' by the state government. There have been specific reforms regarding the policing of FV, with an emphasis on improved training and risk assessment processes. The misidentification of women as predominant aggressors was a concern raised in the RCFV (2016: vol. III, 17–21); it refers to situations where police officers respond to an FV incident, are unsure which party is the predominant victim-survivor and which is the predominant aggressor, and criminally charge or apply for a family violence intervention order (FVIO), Victoria's civil protection order, against the 'wrong' party. The report, while acknowledging that this may happen to men, suggests that misidentification primarily affects women victim-survivors (RCFV 2016: vol. III, 37). Misidentification may be a manifestation of 'systems abuse', the term used to describe a pattern of behaviour engaged in by perpetrators whereby legal and other systems are utilised as a tool of abuse against the victim-survivor (Douglas 2018; The Australian Institute of Judicial Administration 2017).

While previous Australian research has examined misidentification (Mansour 2014; Nancarrow et al. 2020; Reeves 2020; Ulbrick and Jago 2018), there has been a limited focus on the impacts of misidentification as experienced by women victim-survivors of FV. This article seeks to address this gap by exploring the experiences of 11 women who have been listed as respondents on FVIOs; this data is complemented by interviews with 32 Victorian service stakeholders<sup>1</sup>. Analysis suggests that being misidentified as a predominant aggressor can compound negative experiences in the court system, affect mothers' relationships and access to children, result in criminal charges and contribute to (re)traumatisation following abuse. There is a need for a greater policy focus on this particular shortcoming of policing and court responses, and it is critical that the relevant RCFV recommendations being marked as 'implemented' is not confused with the problem of misidentification being 'solved'. Misidentification is a phenomenon that has been documented in multiple jurisdictions, and the issues explored throughout this article hold relevance in Australian and international contexts.

## Background

Foundational to discussions of the misidentification of predominant aggressors is the concept of 'systems abuse'. Systems abuse is the term used in the *Australian National Domestic and Family Violence Bench Book* (2017) and, therefore, the chosen terminology in this article; however, others have also referred to it as 'legal systems abuse' (Douglas 2018) and 'paper abuse' or 'procedural stalking' (Miller and Smolter 2011). In defining this specific manifestation of coercive controlling behaviour, the *Bench Book* (3.1.11, para. 3) highlights that:

Perpetrators of domestic and family violence who seek to control the victim before, during or after separation may make multiple applications and complaints in multiple systems ... in relation to a protection order, breach, parenting, divorce, property, child and welfare support and other matters with the intention of interrupting, deferring, prolonging or dismissing judicial and administrative processes, which may result in depleting the victim's financial resources and emotional wellbeing, and adversely impacting the victim's capacity to maintain employment or to care for children.

Systems abuse presents a unique harm to victim-survivors of FV. It is a form of abusive behaviour that exists within an extra-legal framework, whereby 'it can easily be overlooked and justified as individuals' legitimate attempts to exercise their legal rights' (Miller and Smolter 2011: 641). Research on systems abuse has primarily focused on the family law system.<sup>2</sup> It has been widely documented that the family law system consistently fails to respond appropriately to allegations of FV, operates on gendered assumptions about mothering and fathering and serves as a key source of secondary victimisation for victim-survivors seeking to use the law to gain protection for themselves and their children (Australian Law Reform

Commission 2019; Laing 2017; Roberts, Chamberlain and Delfabbro 2014). Systems abuse goes beyond the tactics utilised by a perpetrator, being also enabled by the systems and structures themselves (Douglas 2018).

Research on systems abuse outside the family law system has examined the issue of misidentification, with a specific focus on the policing of FV and the unintended consequences of pro and mandatory arrest (PMA) policies. PMA policies arose at an intersection between the successes of the battered women's movement, the 'law and order' politics of the US in the 1970s and 80s and the Minneapolis Domestic Violence Experiment (MDVE), conducted in 1981–1982 (Berk and Sherman 1984). The MDVE served to evaluate the effectiveness of arrest on FV recidivism, and the initial results suggested that it is an effective preventative tool (Berk and Sherman 1984). Consequently, nearly all states in the US implemented PMA arrest policies, which either strongly encourage or oblige officers to arrest those they suspect have committed FV (American Bar Association 2014). However, follow-up studies shed light on the core limitations of the MDVE, noting that arrest is predominantly effective for white and employed offenders (for a discussion, see Binder and Meeker 1988). The policies also came under scrutiny for limiting victim-survivor autonomy and ignoring the range of non-legal help-seeking processes with which victim-survivors may engage based on their own assessment of risk and concerns with engaging with the legal system (Bailey 2010).

PMA policies have also resulted in the dramatic increase of women arrested for FV (Deleon-Granados, Wells and Binsbacher 2006), as the policies fundamentally ground policing responses within a gender-neutral framework of single incidents rather than ongoing patterns of abuse and coercive control (Miller 2005). Organisational imperatives encourage police to arrest anyone who has used violence, ignoring the context in which the violence was used (Miller 2005). Consequently, it has been argued that women victim-survivors who use self-defence or retaliatory violence are commonly misidentified as predominant aggressors (Busch and Rosenberg 2004; Dasgupta 2002). Researchers have also found that manipulative behaviours (e.g., self-inflicting wounds) engaged in by genuine perpetrators at the time of the police response play a key role in misidentification (Dichter 2013; Miller 2005).

An area that has received less attention is the misidentification of women as predominant aggressors within civil protection order systems. The use of civil protection orders emerged in Western jurisdictions alongside the introduction of PMA policies as an alternative to an immediate criminal justice system response. The orders serve to limit the behaviours and movements of perpetrators and, when breached, perpetrators may be criminally sanctioned. Key advantages of civil protection orders are their low proof threshold and the ability of victim-survivors to tailor the order to their own safety needs (Douglas 2008). In countries such as the US, civil protection orders are predominantly sought by complainants directly through the courts; however, in Australia, approximately two-thirds of applications are initiated by police (see e.g., Crime Statistics Agency 2020; Queensland Courts 2020). Therefore, Australia presents a unique policy context, whereby the utilisation of civil protection orders can be examined within the context of FV policing rather than a solely judicial process. Looking to Victoria specifically, civil protection orders (called FVIOs in Victoria) are fundamental to the police response, which is informed by The Family Violence Protection Act (2008) (Vic) and the Victoria Police Code of Practice for the Investigation of Family Violence ('The Code'; Victoria Police 2019). Under the latter, police must take action on any reported FV incident and are encouraged to use the 'options model', following a risk assessment (also known as an 'L17 form'), which requires police to take one or more of the three options available: criminal, civil and referral. Within this context, FVIOs, as part of the 'civil options', have served as a key tool for officers responding to family violence (Crime Statistics Agency 2020).

Several Australian studies have highlighted that civil protection orders may be used against victim-survivors of FV by their abusers; further, poor policing responses may create this opportunity for systems abuse to occur (Mansour 2014; Nancarrow et al. 2020; Reeves 2020; Ulbrick and Jago 2018; Wangmann 2009). Women's Legal Services Victoria (2018) recently found that, of applications for FVIOs made against their clients over a five-month period in 2018, approximately two-thirds were believed to be instances of

misidentification. Of the limited research that is available on the misidentification of predominant aggressors within civil protection order systems, most highlights that misidentification may be an issue primarily faced by marginalised populations, including Aboriginal and Torres Strait Islander (ATSI) women (Mansour 2014; Nancarrow et al. 2020), women living with disabilities and culturally and linguistically diverse (CALD) women (Mansour 2014; Reeves 2020; Ulbrick and Jago 2018). These experiences may also intersect with women's experiences of substance use, homelessness and use of self-defence (Reeves 2020). Such findings correlate with the conclusions of key organisation and government reports that policing responses to marginalised populations are often inadequate and based on discriminatory attitudes, which has significant impacts on women's access to safety—particularly women that are at a higher risk of experiencing FV (RCFV 2016: vol. III; Special Taskforce on Domestic and Family Violence in Queensland 2015: 8.3.5).

Recent reforms may also be inadequate. This study is particularly concerned with Recommendation 41 of the RCFV (2016: vol. III, 38), which advises: 'ensure Victoria Police have guidance for identifying FV primary aggressors', encouraging that The Code be amended to provide such guidance. However, The Code's list of predominant aggressor indicators remains vague. For example, it encourages police officers to consider which party is more fearful (Victoria Police 2019), but does not expand on how fearfulness may present, thus allowing responding officers to make assumptions about fearfulness and victimisation that may be in line with gendered stereotypes of women. Similarly, defensive injuries are noted as indicators, but no description of what defensive injuries actually *are* is provided. Therefore, The Code may be limited in its effectiveness in the absence of thorough and appropriate direction and training. The Code also reflects contradictory sentiments about who the predominant aggressor should be. It states that officers should examine patterns of control and intimidation, as well as a history of FV, which suggests that the predominant aggressor is viewed as the dominant abuser in the relationship over time. However, The Code also states that, if officers are unsure, they should nominate the Affected Family Member (AFM) as the person who 'appears to be most fearful and in most need of protection', which reflects an incident-based approach that could see the predominant victim-survivor being misidentified. Therefore, it is vital to consider the meaning of predominant aggressor within the context of this research. This is a label used in the police risk assessment (L17 form) process that can mean a person whom the police have deemed to be a long-term abuser who holds the majority of power and control in a relationship, or a person who might be the predominant victim-survivor, but who has, at the time of police call-out, been deemed to be the most dangerous party.

Ambiguous policies such as this may have unintended consequences for victim-survivors, especially victim-survivors from marginalised backgrounds whose experiences of violence may be ignored or misinterpreted by frontline officers who assess the situation and women's possibly aggressive or violent behaviour at face value—failing to understand the broader contexts of victimisation and women's use of violence, which is often fundamentally different to men's (Dasgupta 2002). The current article extends existing knowledge of misidentification in Australia and elsewhere by examining the impacts of being misidentified as a predominant aggressor on the lives of women victim-survivors of FV.

## Method

### *Interview and Survey Design*

Interviews with service stakeholders were semi-structured and comprised questions about system processes, including policing, the court system and the impacts of the RCFV (2016) on responses to misidentification. Survey questions focused on similar themes but were grounded in the women's personal experiences with these processes and the circumstances in which they were listed as respondents. Survey questions were designed in three blocks. The first asked participants about the circumstances in which they came to be identified as a respondent on an FVIO (e.g., interactions with police). The second asked about participants' experiences in court. Finally, the last block encouraged participants to reflect on how the FVIO application or final order made against them has affected their lives. This section included questions relating to family law and visa matters. The survey was comprised predominantly of qualitative

response questions; however, it also included several multiple-choice questions for demographic purposes.

The survey was written in easy English, and qualitative questions were kept broad to allow participants to share their experiences without significant narrative constraints. One woman, given the pseudonym Katherine, also partook in a follow-up interview after the survey. Rather than asking Katherine to expand on questions already asked in the survey, the open-ended interview asked Katherine to recount her experience of being listed as a respondent through her own narrative. This offers a juxtaposition to Katherine's experience of misidentification, whereby she felt that her version of events was never heard by the legal system.

### *Survey Respondent Demographics*

The survey did not specifically target women who had been misidentified as predominant aggressors, instead including a criterion of women who had ever been listed as respondents to an FVIO. Of the 11 women who responded to the survey, seven completed the qualitative component and shared experiences that align with existing understandings of misidentification, identifying themselves as the predominant victim-survivors in their relationship with the other party and believing that the order made against them was not reflective of the true nature of their relationship.

While the survey sample was small, demographic data reveals a diversity of experiences, with one survey respondent identifying as ATSI, two respondents as being from a CALD background and one respondent as living with a disability. Over half (six) the respondents reported having mental health issues, three reported living in a rural or regional area and one as currently facing homelessness or unstable housing.

All respondents, excluding one woman, Christine, who described experiencing adolescent FV, described being in heterosexual relationships with the party listed as the AFM. While anecdotal evidence does suggest that misidentification is an issue that also presents in same-sex relationships (No to Violence 2019), this was not the purview of the current project.

### *Data Analysis*

Stakeholder data and survey respondent data were thematically coded using NVivo Qualitative Analysis Software, and an inductive approach was utilised. Qualtrics was also used in the analysis of survey data. The data from the two sets of participant groups were analysed separately and then assessed together to reflect common themes. Due to its focus on the impact on women who have been misidentified as predominant aggressors, the current article primarily focuses on the survey data, with service stakeholder data serving a complementary role. This is a deliberate focus of the analysis to ensure women's voices are privileged and centred throughout the analysis.

### *Limitations*

A key limitation of this study is the sample size of women respondents to FVIOs. However, it is recognised that victim-survivors of FV are generally a hard-to-reach population; further, those listed as perpetrators represent another specific subgroup of victim-survivors. Service stakeholders in this study, as well as other researchers, have largely framed misidentification as an issue of key concern to marginalised groups, such as ATSI women (see Nancarrow et al. 2020) and CALD women (see Ulbrick and Jago 2018). The researchers faced challenges in directly accessing these populations through engagement with relevant support services, primarily due to under-resourcing and time constraints that exist for these specialist organisations. Despite these limitations, this paper is the first to solely examine the impact of misidentification on women in an Australian context. Therefore, the sample, though small, lays critical groundwork for future research.

Another limitation relates to the sample of service stakeholders. While many key players are represented, an absent voice is that of Victoria Police, a key focus of the research. The study sought to interview members of Victoria Police; however, this request was denied. These voices would have added greater balance and understanding to the research and may have offered a clearer direction regarding how misidentification may be addressed moving forward.

## Findings

### *The Court Process*

A core theme in survey responses was victim-survivors' experiences with the court system and how these experiences shaped the legal outcomes of the FVIOs or criminal charges made against them. As detailed below, survey respondents had mixed experiences; this aligns with the perspectives of service stakeholders who frequently described Victoria's FV system as 'inconsistent'. The inconsistency of court responses to misidentification was most evident in survey respondents' experiences with court and legal professionals, including lawyers, registrars, police prosecutors and magistrates, as captured in the following excerpts:

The lawyer was rude to me and was quite obviously judging me and my situation. The rest of the court staff ... acted appropriately (Imogen).

My own lawyers told me to give him access to our daughter or I would be called an 'access bitch'. The magistrate ended up getting to know me really well (!) – country town – and I could trust her (Ashlea).

While some victim-survivors had mixed experiences, others described their interactions with court professionals purely in negative terms. For example, Christine described the court process as 'horrible', stating that she was allocated an extremely young lawyer who 'knew nothing'. Katherine also cited experiences with a 'negligent' lawyer.

Jordan expressed concern that the court registrar, who was involved in the issuing of a cross-application against her, did not check if a previous application had been made against Jordan's former partner on Jordan's behalf (such an order did exist), which may have been an indicator that the present application was a form of retaliation. Instead, the registrar took it at face value when Jordan's partner misled them, stating that there was no order listing him as the respondent. Regarding experiences with police prosecutors, Jordan also had extremely negative interactions. This was due to the same police prosecutor, who was acting on her behalf regarding the order that Jordan applied for against her former partner, later deciding to support the cross-application made by her former partner *against* Jordan. She had initially felt supported by the police prosecutor; however, this was undermined when the prosecutor decided to support her abuser. Katherine, in contrast, was impressed by police prosecutors working for the Sexual Offences and Child Abuse Investigation Team (a specialist policing team within Victoria Police) and felt that their bringing a range of criminal charges against her former partner, charging him with 'recklessly causing injury via mental health' under *The Crimes Act 1958 (Vic)* reflected the ongoing nature of the abuse that she had endured.

In reflecting on interactions with magistrates, survey respondent experiences were again mixed, with some victim-survivors (Sarah) finding them to be supportive, and others (Kim) finding them to be 'biased'. Katherine, in particular, felt that the magistrate had been dismissive and was unwilling to believe her claims of victimisation. This contrasted with the views of service stakeholders, many of whom suggested that magistrate responses to misidentification had drastically improved in recent years, including Legal Practitioner 7, who reflected as follows:

I think that at our court, at least there's becoming much more awareness of it. I think probably a couple of years back ... people were starting to become aware of it but it wasn't such a big issue.

By comparing this data to existing research on victim-survivor's experiences with the court process, significant parallels can be drawn. First, the present study highlights that the responses and attitudes of key legal professionals, including lawyers, police prosecutors and magistrates, are largely inconsistent. While this study was looking at these responses primarily in regards to women's experiences of misidentification, there exists a wealth of research supporting the contention that legal responses to FV lack uniformity (George and Harris 2014; Hunter 2008; Special Taskforce on Domestic and Family Violence in Queensland 2015). Compared to previous research (Reeves 2020), the present study suggests that, regarding magistrate responses to misidentification, there are indications of growing awareness and recognition of this form of systems abuse within the judiciary. Whereas legal practitioners interviewed in Reeves (2020) placed a strong emphasis on inconsistent magisterial approaches, and highlighted some particularly dismissive responses, service stakeholders interviewed in this study suggested that magistrates currently serve as an effective safety net for women whom the police have misidentified. However, this is not necessarily reflected in victim-survivor data, suggesting a potential disparity between the views of legal professionals and the experiences of FVIO respondents. This may partly be attributed to some victim-survivors' limited understanding of the legal system and the role of magistrates, possibly leading to disproportionate expectations of magistrates' capacity to provide unfettered redress in FVIO matters.

Survey respondents also expressed surprise and frustration about the time it took for them to go through the court system. For Katherine, who had multiple hearings regarding the FVIOs made against her by her former partner, as well as facing charges for breaching the orders in place, had been involved in the court process for two years at the time of the interview and found the process to be frustrating and unnecessarily time-consuming, describing times when she thought that the process would be over, but her case was once again pushed back to a later date.

Legal Practitioner 16 was among several service stakeholders interviewed to comment on the longevity of the court process, even where it was 'obvious' that a victim-survivor had been misidentified as a predominant aggressor. They reflected on the whole-of-system resourcing issues and the impacts thereof on misidentified parties:

They are still forced through the same court process that everybody goes through I suppose, and that's why sort of, I think it does come to a resourcing issue because everything takes longer and there's not enough offices, there's not enough courts, there's not enough magistrates, there's not enough duty lawyers.

Victim-survivors who have been misidentified may enter the court system hoping that the case will be resolved swiftly, with it quickly becoming known that the police have made a mistake. However, even where mistakes are rectified by the court, either in a first hearing or a later contest hearing, delays in court processes represent a longer period in which not only is that party labelled as a perpetrator but also they are left unprotected from violence. These experiences mirror some of the experiences captured in existing FV research, particularly regarding the impact of the longevity of the court process, as well as victim-survivors' feelings of insecurity when engaging with the process (see, e.g., Gillis et al. 2006). Such experiences may construct the court process as one associated with trauma and re-victimisation.

### ***Access and Relationships with Children***

The process of misidentification may begin with issuing a FV safety notice, which is a temporary order in place before parties can attend court; a condition of that order may be exclusion from the home. In metropolitan areas, the case will usually go to court within 24 hours. However, in rural and regional areas, where resourcing is scarcer, this may take up to a week. Legal Practitioner 9 made a note of this,

recognising the significant impact that this may have on mothers and their relationships with their children. If a final order is then made against the mother, there is a heightened risk that child protection will become involved or that the family court will deem that the child(ren) should live with the father-abuser. Consenting to an FVIO involves 'consent without admission', meaning that the respondent accepts the order without the court ruling that they are guilty of the allegations listed in the application. The family court is instructed to recognise that no guilt is established in the FVIO; however, having an order listed against you may still be considered in family court decisions (Family Law Act 1975: (Cth) s 60CC(k)). Therefore, it is unsurprising that multiple survey respondents spoke of losing their children or of fear of losing their children.

Ashlea described feeling 'like my experience of family violence was made up and he was going to be believed and it was the first step of having my baby daughter taken away'. She also spoke about how the order made against her strengthened her partner's case in the family court, whereby he was able to convince court psychologists that 'mutual violence' existed in the relationship, resulting in her child being removed from her care. Imogen, at the time of the survey, was about to engage in the family law system and, although her former partner is currently serving a prison sentence for FV against a new partner, she still expressed fear that the FVIO against her will undermine her case.

When Katherine spoke about the impact of being misidentified as a predominant aggressor, she primarily spoke about her relationship with her two children. Katherine felt as if her former partner had successfully manipulated both child protection—and the children themselves—into believing that she was abusive and an inadequate mother:

My life has been turned upside and my relationships with my children put in jeopardy. I haven't seen my oldest son for over two years and I live with the pain and agony of this every day. I have only been a loving caring mother to my kids, totally devoted to them and they have been my foremost priority, yet my life as a mother has been destroyed. It is like a nightmare that I still can't wake up from.

Katherine breached the FVIO against her multiple times—each time to try to see her children and to ensure that they were safe from her former partner and that the youngest was being properly supported in his disability. The more Katherine attempted to protect her children, the greater the legal case against her, and she simultaneously faced a series of criminal charges. She also felt that, due to the breaches, child protection refused to investigate her case properly. Thus, Katherine's case serves as an example of how, once listed as a predominant aggressor, various aspects of the system may work against you, and it becomes increasingly difficult to overcome the label of 'perpetrator'. It also demonstrates how her need to act as a dutiful mother trumped her need to adhere to the conditions of FVIO, which subsequently compounded the system's perceptions of her as both dangerous and an unfit mother.

These findings highlight how misidentification may affect both women's relationships with and access to their children, a consequence that has received limited attention beyond the US context (Miller 2005; Miller and Smolter 2011).

### *Facing Criminal Charges*

As detailed by both survey respondents and service stakeholders, misidentification on FVIOs often exists concurrently with criminal charges. This may occur when the police who initiated an FVIO application against a victim-survivor also file for criminal charges such as property damage or assault. Criminal charges may also arise when a final FVIO order is made and subsequently breached by the respondent. While several stakeholders suggested that the police usually dropped criminal charges, this was often after quite a lengthy period and, thus, continued to cause significant distress to victim-survivors who had been misidentified. Legal Practitioner 13 reflected on this:



That charge gets withdrawn down the line but the whole experience of being charged and having to go through the process of being interviewed and appearing before a criminal court and having to tell humiliating and traumatic stories to a court for those charges to later be withdrawn, is in itself punishment and it's punishment that's unwarranted if you're not the person who's committed the family violence.

Such reflections are supported by the experiences of two survey respondents, Imogen and Katherine. Imogen was charged with resisting arrest and is currently on a good behaviour bond. She described her experiences of arrest:

When the police arrived they separated us and I was so scared I didn't want to talk or listen, I just wanted to hide. I was in disbelief of what was happening and tried to walk away. Five police officers then violently tackled me to the ground and I struggled because of past abuse I'd endured. Being held down was a massive trigger for me and I just wanted to get away. They threw me in the back of the police car and, as I was still struggling, they doused me in pepper spray. They then took me back to the station and left me in a cell until 6am.

Imogen continued to express how she felt that her mental health issues, which often manifest through panic attacks, were never considered by the court. Katherine, as noted earlier, faced several charges for breaching the FVIO that her former partner had against her. As described by Katherine, some of the breaches occurred when she tried to see her children, such as an incident where she went to her former partner's house, found the door unlocked and proceeded to enter the house. Despite her sincere intentions to see her children and check on their safety, she did know that she was wrongfully breaching the order. However, she described other incidents where she felt that her former partner had unnecessarily reported breaches as a way of controlling her and worsening her legal situation, which would subsequently worsen her chances of regaining custody. She described one incident where she had confronted her former partner in his car during child handover about some forms regarding where her eldest son was to attend high school:

I was just trying to say, 'this is what's going on with school. Can you talk to me about it?' I was like, 'just all I want from you is just an agreement that you will talk to me before any decisions are made'. He was like, 'get away, get away'. And I, so I left like in shock from that encounter and then I get the police calling me saying I breached the IVO ... I tried to explain to the police officer what happened and I went to the police station and I tried to explain to this police officer that this was a situation and he just thought I was some, I guess crazy person. And I guess I was like pretty emotional. So I maybe wasn't making total sense, but [the police officer] basically said to me, 'you're never gonna [sic] see your kids again'.

Service stakeholders also spoke of how perpetrators may leverage a finalised FVIO and use it to threaten and control the victim-survivor, a tactic identified in early research on civil protection orders (Topliffe 1992). Legal Practitioner 1 discussed this issue in terms of the significant implications of duty lawyers encouraging respondents to consent to orders that they have been misidentified on. While it may present a quick and easy way to get that victim-survivor out of the court system, it can easily be used as a tool of further abuse by the perpetrator. She commented that perpetrators may 'lure' the victim-survivor to breach the order. Notably, Wangmann (2009) illuminated a common narrative in the civil protection order space—that women who are listed as AFMs will deliberately encourage perpetrators to breach the order, resulting in them being criminally sanctioned. However, the present study suggests that, in a misidentification context, male perpetrators may utilise this tactic.

### ***(Re)traumatisation and Loss of Faith in the System***

A prominent theme in the data collected from both victim-survivors and service stakeholders was a loss of faith in the legal system due to experiences of misidentification. When victim-survivors of FV are incorrectly identified as predominant aggressors, their own victimisation experiences are minimised and

dismissed, which may result in victim-survivors being reluctant to contact the police in future. Survey respondents described feeling retraumatised by their experiences of misidentification, which may compound feelings of distrust towards the system.

Katherine is on the Autism spectrum and finds it difficult to talk to the police and other court officials, describing 'shutting down' within this context. This shutting down, she argued, contributed to her misidentification because she could not articulate her own experiences of victimisation at the hands of her former partner. However, she notes that, due to continuous and lengthy interactions with the legal system, these feelings of fear and distress have been compounded, and she now suffers from post-traumatic stress disorder (PTSD) and paranoia. Ashlea also cited experiences of PTSD after being misidentified and argued that the experience was humiliating, particularly since she never 'hurt or threatened' her former partner. Imogen spoke about the impact that her trauma has had on her education and employment:

I couldn't attend work for 2 weeks due to mental instability. My panic attacks got much worse for months after the event. I was studying sociology at university to become a social worker and now I am too scared to continue as I feel I will not be accepted in my chosen field. I feel as though my trauma is irrelevant and now I am just a monster.

Similarly, Kim mentioned that she had to notify her work about the FVIO made against her, which she felt was humiliating and 'caused a lot of emotional stress to my children and myself'. Conversely, Jordan cited her work colleagues and managers as a key part of her support network after being misidentified, but nevertheless described it as 'stressful'. For Jordan, her feelings of traumatisation were from the legal process itself and the conditions of the FVIO made against her. The order stipulated that if she was in the vicinity of her former partner's workplace, which was frequently required of her, she had to send him a text message to let him know. This meant that she had to unblock his number, which made her 'feel sick'. She described this experience:

Subsequently, I sent my abuser a number of text messages prior to attending work meetings near his office. I felt anxious that he therefore knew where I would be ... I could not believe the magistrate applied such conditions. It further traumatised me.

This experience demonstrates how misidentification can lead to disregard of the genuine victim-survivor's own safety needs. When the premise of the order is that the genuine victim-survivor is the perpetrator, the system does not necessarily allow for considerations of this party's own safety concerns.

Katherine spoke about the impacts of not being believed by the court system. At the time of the interview, Katherine was being encouraged to try again to pursue charges against her former partner; However, she was unsure if she wanted to do this:

I feel he'll just get away with everything anyway, so not sure whether there's much point in going through the court system again and trying to get some justice or not. Cause I just feel like every time you go through that process and you feel like people don't believe you, it's really hard (Katherine).

Ashlea made similar remarks about how the process made her feel as though she had lied about her experiences of victimisation and that, no matter what, 'he was going to be believed'. Service stakeholders were particularly concerned about how the system's devaluing and discrediting of women's experiences may lead to distrust of the system:

I've had many clients say to me at the end of it all, 'I will never call the police again, no matter what happens', you know and that's terrifying to think about because we know what we know about family violence perpetrators, and these women could be at risk from that violent partner

for a really long time after that but they're never going to feel safe to call the police (Legal Practitioner 12).

The current study supports existing research regarding secondary victimisation and the court system, highlighting the ways in which victim-survivors may find the process to be long, confusing and unsafe (see, e.g., Gillis et al. 2006; Laing 2017). While this research does not compare the experiences of women who engage with the system as victim-survivors with women who engage as perpetrators, it can be assumed that these experiences may differ. Given the low burden of proof for FVIOs, the court process is predominantly one-sided, with the AFM (or the police on their behalf) being charged with detailing their reasons for seeking an FVIO against the other party. Unless the order is contested, which is not commonly the case (Douglas and Fitzgerald 2013; Nancarrow et al. 2020), the respondent is not given a platform to voice their own concerns and experiences. Thus, the court process for women who have been misidentified may be more disempowering and traumatic, as they engage with the process with the stigma of 'perpetrator' attached.

### **Implications and Conclusion**

Explorations of 'misidentification' in the civil protection order space are limited; only in recent years has Australian research begun to grant this issue greater attention. This may be partly explained by the growing role of police in issuing protection orders, as well as the increase in initiated applications across some Australian jurisdictions, Victoria included (Crime Statistics Agency 2020). Scholarly attention to misidentification beyond the Australian context has been extremely limited, beyond the US-based work examining the unintended impacts of mandatory policing policies. In recent years, Australian research has endeavoured to examine some of the causes of misidentification and the role of police in incorrectly labelling victim-survivors as predominant aggressors (Mansour 2014; Nancarrow et al. 2020; Reeves 2020; Ulbrick and Jago 2018; Wangmann 2009); however, the impacts of misidentification on women have largely been neglected. The present study has sought to shed light on such impacts, utilising a small sample of Victorian women and service stakeholders. Such impacts include, but are not limited to, the court process as a site of further abuse, losing access or contact with children, facing criminal charges and a loss of faith in the legal system.

Victoria serves as an important focal point in misidentification research, given the RCFV (2016) meriting the issue specific attention and recommending that reforms to Victoria Police practice and policy reflect a need for increased awareness around misidentification. However, while the RCFV (2016) highlighted that misidentification is a key shortcoming of the current FV system, it did not explore how misidentification is felt by women victim-survivors of FV. The present study has offered useful, albeit provisional, insight into the experiences of misidentification, informed by 11 Victorian women and complemented by the professional views of 32 service stakeholders. While utilising only a small sample of victim-survivors, this article establishes that misidentification has significant consequences for women's lives and serves as an important prompt for further examination of this key issue. This research also indicates that, despite the substantial reforms arising from the RCFV (2016), and specific recommendations relating to misidentification being marked as 'implemented', it is an issue that persists. This serves as a reminder that reform should go beyond 'ticking a box' and moving on—it requires constant re-evaluation and education to best serve victim-survivors of FV and their individual safety needs.

*Correspondence:* Ellen Reeves, PhD Candidate and Research Officer, Monash Gender and Family Violence Prevention Centre, School of Social Sciences, Monash University, 20 Chancellors Walk, Melbourne, Victoria 3800, Australia. Email: [ellen.reeves@monash.edu](mailto:ellen.reeves@monash.edu)

<sup>1</sup> This research was funded by the Australian Research Training Program government stipend.

<sup>2</sup> In Australia, the family law system operates at the federal level; conversely, its family violence systems operate at a state and territory level.

## References

- American Bar Association (2014) *Domestic violence arrest policies*.  
[https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/Resources/statutorysummarycharts/2014%20Domestic%20Violence%20Arrest%20Policy%20Chart.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/statutorysummarycharts/2014%20Domestic%20Violence%20Arrest%20Policy%20Chart.authcheckdam.pdf)
- The Australian Institute of Judicial Administration (2017) *The national domestic and family violence benchbook*.  
<http://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>
- Australian Law Reform Commission (2019) *Family law for the future – An inquiry into the family law system, final report*. Canberra: Australian Government.
- Bailey KD (2010) Criminal law: Lost in translation: Domestic violence, “the personal is political,” and the criminal justice system. *Journal of Criminal Law and Criminology* 100: 1255–1689.
- Berk R and Sherman L (1984) The specific deterrent effects of arrest for domestic assault. *American Sociological Review* 49(2): 261–261. <https://doi.org/10.2307/2095575>
- Binder A and Meeker JW (1988) Experiments as reforms. *Journal of Criminal Justice* 16(4): 347–358.  
[https://doi.org/10.1016/0047-2352\(88\)90021-9](https://doi.org/10.1016/0047-2352(88)90021-9)
- Busch A and Rosenberg M (2004) Comparing women and men arrested for domestic violence: A preliminary report. *Journal of Family Violence* 19(1): 49–57. <https://doi.org/10.1023/B:IOFV.0000011582.05558.2e>
- Crime Statistics Agency (2020) *Family violence data portal*. <https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/>
- Dasgupta SD (2002) A framework for understanding women’s use of nonlethal violence in intimate heterosexual relationships. *Violence Against Women* 8(11): 1364–1389. <https://doi.org/10.1177/107780102237408>
- Deleon-Granados W, Wells W and Binsbacher R (2006) Arresting developments: Trends in female arrests for domestic violence and proposed explanations. *Violence Against Women* 12(4): 355–371.  
<https://doi.org/10.1177/1077801206287315>
- Dichter ME (2013) “They arrested me—And I was the victim”: Women’s experiences with getting arrested in the context of domestic violence. *Women & Criminal Justice* 23(2): 81–98.  
<https://doi.org/10.1080/08974454.2013.759068>
- Douglas H (2008) The criminal law’s response to domestic violence: What’s going on? *The Sydney Law Review* 30(3): 439–469.
- Douglas H (2018) Legal systems abuse and coercive control. *Criminology & Criminal Justice* 18(1): 84–99.  
<https://doi.org/10.1177/1748895817728380>
- Douglas H and Fitzgerald R (2013) Legal processes and gendered violence: Cross-applications for domestic violence protection orders. *The University of New South Wales Law Journal* 36(1): 56–87.
- George A and Harris B (2014). *Landscapes of violence: Women surviving family violence in regional and rural Victoria*. Victoria: Deakin University School of Law’s Centre for Rural Regional Law and Justice.
- Gillis JR, Diamond SL, Jebely P, Orekhovskiy V, Ostovich EM, Macisaac K, Sagrati S and Mandell D (2006) Systemic obstacles to battered women’s participation in the judicial system: When will the status quo change? *Violence Against Women* 12(12): 1150–1168. <https://doi.org/10.1177/1077801206293500>
- Graham H (2011) A marriage of (in)convenience? Navigating the research relationship between ethical regulators and criminologists researching ‘vulnerable populations’. In Bartels L and Richards K (Eds.) *Qualitative criminology: Stories from the field*: 95–105. Annadale, NSW: Hawkins Press.
- Hunter R (2008) *Domestic violence law reform and women’s experience in court : The implementation of feminist reforms in civil proceedings*. Amherst, NY: Cambria Press.
- Kaye M, Stubbs J and Tolmie J (2003) Domestic violence and child contact arrangements. *Australian Journal of Family Law* 17(2): 93–133.
- Laing L (2017) Secondary victimization: Domestic violence survivors navigating the family law system. *Violence Against Women* 23(11): 1314–1335. <https://doi.org/10.1177/1077801216659942>
- Mansour J (2014) *Women defendants to AVOs: What is their experience of the justice system?* Sydney: Womens Legal Service NSW.
- Miller S (2005) *Victims as offenders: The paradox of women’s violence in relationships*. New Brunswick, NJ: Rutgers University Press.
- Miller SL and Smolter NL (2011) “Paper abuse”: When all else fails, batterers use procedural stalking. *Violence Against Women* 17(5): 637–650. <https://doi.org/10.1177/1077801211407290>

- Nancarrow H (2019) *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities*. Cham: Palgrave Macmillan.
- Nancarrow H, Thomas K, Ringland V and Modini T (2020) Accurately identifying the "person most in need of protection" in domestic and family violence law. *Research report, 23/2020*. Sydney: Australia's National Research Organisation for Women's Safety.
- No to Violence (2019) *NTV discussion paper: Predominant aggressor identification and victim misidentification*. Melbourne: No To Violence.
- Queensland Courts (2020) *Queensland Courts' domestic and family violence (DFV) statistics*. <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>
- Reeves E (2020) Family violence, protection orders and systems abuse: Views of legal practitioners *Current Issues in Criminal Justice* 32(1): 91–110. <https://doi.org/10.1080/10345329.2019.1665816>
- Roberts D, Chamberlain P and Delfabbro P (2014) Women's experiences of the processes associated with the Family Court of Australia in the context of domestic violence: A thematic analysis. *Psychiatry, Psychology and Law* 22(4): 1–17. <https://doi.org/10.1080/13218719.2014.960132>
- Royal Commission into Family Violence (2016) *Royal Commission into Family Violence: Report and Recommendations, Parl Paper No 132*. Melbourne: Victorian Government Printer.
- Special Taskforce on Domestic and Family Violence in Queensland (2015) *Not now, not ever: Putting an end to domestic and family violence in Queensland*. Queensland: Department of Communities, Child Safety and Disability Services.
- Topliffe E (1992) Why civil protection orders are effective remedies for domestic violence but mutual protective orders are not. *Indiana Law Journal* 67(4): 1039–1065.
- Ulbrick M and Jago M (2018) "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria. *Policy Paper 1*. Melbourne: Women's Legal Service Victoria.
- Victoria Police (2019) *Code of practice for the investigation of family violence, Edition 3 V4*. Melbourne: State Government of Victoria.
- Wangmann J (2009) 'She said...' 'He said...': Cross applications in NSW apprehended domestic violence order proceedings. PhD Thesis, University of Sydney, Australia.
- Women's Legal Services Victoria (2018) *Snapshot of police family violence intervention order applications*. [https://womenslegal.org.au/files/file/Snapshot%20of%20Police%20Family%20Violence%20Intervention%20Order%20applications%2029.10%20\(002\).pdf](https://womenslegal.org.au/files/file/Snapshot%20of%20Police%20Family%20Violence%20Intervention%20Order%20applications%2029.10%20(002).pdf)