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Stories of Injustice:

**The criminalisation of women
convicted under joint enterprise laws.**

November 2020

Becky Clarke and Dr Kathryn Chadwick

Acknowledgements

This project would not have been possible without the participation, support, friendship and expertise offered by a range of individuals and groups. Firstly, we would like to thank and dedicate this report to the women participants and some of their families who took part in the project. You shared the most personal of stories with us, recounting the processes that led to your wrongful convictions and the devastating impact this has had on your lives and that of your families. Your narrative accounts fill the pages of this report and provide us with evidence to fight for the justice you deserve.

Secondly, we would like to extend our thanks to our amazing Advisory Group members (listed in full below). Throughout the research and in the writing and redrafting of this report you have been our 'critical friends', advising, challenging and steering us when required. The project has been shaped by your expertise and the generosity of your time.

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Joint Enterprise: Not Guilty by Association (JENGbA) is a grass roots campaign launched in 2010 by families wanting to highlight the harms and injustice of the Joint Enterprise doctrine.

<https://jointenterprise.co/> @JENGbA



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Stories of Injustice: Key Findings

Joint enterprise (JE) is a set of legal principles grounded in common law and originating from Victorian times, allowing for the collective punishment of multiple defendants for a single offence. There has been a re-emergence in their application in the last two decades (Clarke and Williams, 2020). This research examines the impact of the use of JE with female defendants.

- There are at least 109 women (and likely more) convicted in England and Wales under JE. The convictions stretch back to 2004. Sixteen of these women have been convicted, since the 2016 Supreme Court ruling.
- The majority of the women subject to JE punishments in this research have convictions for serious violent offences, with over three quarters (77%) for murder or manslaughter offences. As a result most are serving long or indeterminate prison sentences (average prison sentence = 15 years). Almost half the women (47%) are serving life sentences with tariffs of 16 years or more, and 20 women have tariffs of between 21 and 30 years.
- The overwhelming majority of women convicted under JE (90%) engaged in no violence in relation to the events related to their JE conviction. In no cases did the women use a deadly weapon, such as a knife or bottle, the type of implements that were common causes of death of the victim.
- Women were often marginal to the violent event, with almost half not present at the scene and almost all never having engaged in any physical violence. Yet in most cases women were criminalised and punished for the most serious offence.
- The prosecution strategy in the cases we examined is to develop a case story that constructs women as the facilitators of violence, drawing on a range of arguments and narratives to infer her intent or role. Analysis reveals how the prosecution characterise and present women in the courtroom, relying on myths and stereotypes and gendered narratives, further layered with class stigma and racism.
- There are a number of critical moments, decisions and actions, or omissions, in the process of criminalisation, that lead to these convictions of women under JE laws. For example, in addition to the prosecution strategy to infer intent, the earlier actions of the police and CPS are significant in their decisions to charge women. The evidence here also reveals that the particular action, or inaction, of defence teams and Judges contributes to the outcomes in these JE trials.
- We contend that the current criminal justice system is inadequate in ensuring justice, accountability, addressing harm and preventing further violence. That so many of the women who are subject to these punishments are marginalised and have been failed by state institutions at an earlier point, whether in relation to protection, care or support, requires that any response to this evidence pushes beyond legal reform to a reimagining of justice for women.

Introduction

'Although the justice system brought me to justice, it has not served me justice' (Freya)

Joint enterprise (JE) is a set of legal principles grounded in common law and originating from Victorian times. They have re-emerged in the last two decades allowing for the collective punishments of many hundreds of people (McClenaghan et al, 2014). Through principles of common purpose, foresight and intent multiple individuals can be convicted for one offence, without taking account of the differing roles played; that some may not have participated or been present when the incident occurred; and were not aware that the offence was likely to happen. Despite repeated calls to report on their use, the extent to which the laws are employed, and against whom, remains hidden (Jacobson et al, 2016). Challenges regarding the legitimacy of JE laws have gathered volume over the last five years, largely driven by grassroots campaigners (notably JENGBA) with the support of a network of legal, academic and political allies¹. Whilst contributions have examined the process of criminalisation rooted in racialised policing and prosecution strategies (Williams and Clarke, 2016), to date, little previous research exists which examines the gendered use of the laws (Hulley et al, 2019). This project sought to redress this deficit in knowledge.

This report uncovers new data related to the use of JE against women and significantly, presents qualitative accounts of the experience, harms and impact of such JE laws on women. The convictions of the women in this research begin in 2004, with a few cases each year before the first 'peak' of 10 in 2008. In the five year period 2011-2015 there are 35

women's cases recorded, with 2012 being another peak of 10 cases, this average of 10 each year is maintained during 2015 and 2016. In the last three years (including during the time of the study) women continue to be convicted under JE - 6 in 2017, 4 in 2018 and 6 in 2019. These most recent 16 cases reflect women convicted after the 2016 Supreme Court ruling.

In addition to adding weight to calls to end the use of joint enterprise, the voices of women subject to JE convictions have much to offer current debates regarding women's criminalisation and imprisonment. In examining how and why women become convicted in these JE trials, the research exposes and challenges the particular gendered narratives of women, in criminal justice practice, policy and the media that likely impact on wider attempts to reduce women's imprisonment.

Throughout this report, we argue that the current criminal justice system is inadequate in ensuring justice, accountability, addressing harm and preventing further violence. The loss of life and trauma is the backdrop to these JE convictions, however the use of JE law and the failures of state institutions, that prioritise securing a conviction not only lead to the injustices for the women centred in this report, but also ensures that the needs of bereaved families and victims are side-lined and deprioritised.

¹ Hansard - Backbench Business: Motion: Joint Enterprise. 25 January 2018, Volume 635, Column 447. <https://hansard.parliament.uk/commons/2018-01-25/debates/00389B37-64AA-4AC8-BBBB-BE6B98F9C5C1/JointEnterprise>

House of Commons Justice Select Committee (2014) Joint Enterprise: Follow up. Fourth Report of Session 2014-2015. House of Commons. <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/310/310.pdf>

UK Supreme Court Ruling (2016) Judgement R v Jogee. <https://www.supremecourt.uk/cases/docs/uksc-2015-0015-judgment.pdf>
Cite HOCSC 2014 / Legal challenges and Supreme court ruling 2016 / Lucy Powell parliamentary questions 2018

Methods

The Research Aims

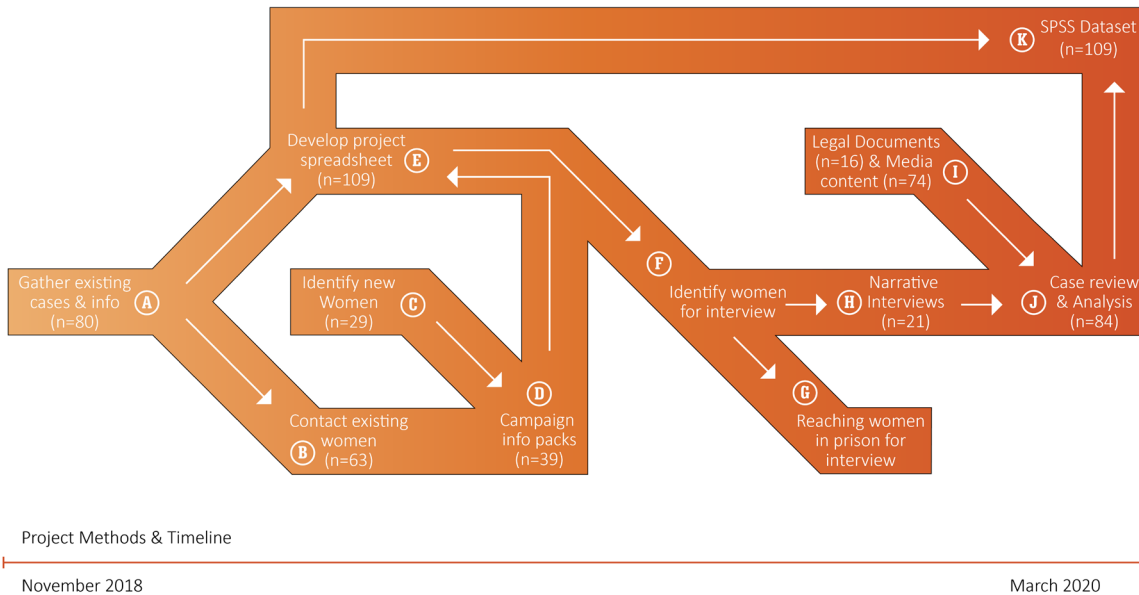
Two central aims shaped the research project:

- To identify and hear from women who have been subject to joint enterprise punishments.
- To investigate gendered processes of criminalisation and prosecution in the context of joint enterprise.

The Project Team

This project is the product of a collaboration between the researchers, the JENGBA campaign team and the women subject to JE punishments. Given the hidden nature of JE, it would be impossible to identify and engage JE prisoners without the decade long commitment of JENGBA to identify, maintain contact, build trust and support these inside campaigners (JE prisoners) and their families.

The project has also benefited from the support of an advisory group, comprising individuals from campaigning, policy and politics, academic and legal backgrounds, as well as a small number of released and serving women criminalised under JE, who gave feedback at key stages of design and reporting.



The Research Process

There were a number of key steps to the research project, these are outlined in the diagram Left and moving from left to right they reflect the timeline of the project and iterative nature of some of these steps.

A. Gather Existing Cases and Info (n=80)

Our starting point for this project was identifying the existing 80 women on the JENGBA campaign caseload, gathering together and reviewing this information. 41 of these women had provided quite detailed information via questionnaires JENGBA had issued previously.

B. Contact Existing Women (n=63)

Alongside JENGBA we attempted to re-establish contact with the 63 women for whom we had a prison address, and for the 5 who had been released at last known home address.

C. Identify new women (n=29)

We undertook a range of activity to find unidentified women subject to JE punishments, including circulating postcards to women in prison with a freepost JENGBA address. During the 6 months these activities were running 29 'new' women were identified.

D. Campaign Info Pack (n=39)

JENGBA requested that all women we made contact with complete a campaign information pack, to gather a consistent set of key information. We received 26 completed packs from existing women and 13 from the 'new' previously unidentified women.

E. Develop Project Spreadsheet (n=109)

A project excel spreadsheet was developed to capture all the information gathered from the women, including a record of our project activity and contact with them.

F. Identify women for interview

This spreadsheet and the accumulating information was used to shape our sampling approach to selecting cases for narrative interviews.

G. Reaching women in prison to interview

Sampling women for interview was inevitably an

iterative process, shaped by the response (or lack of) from Prison Governors and underpinned by an access agreement from HMPPS.

H. Narrative Interviews (n=21)

A total of twenty narrative interviews were planned, sixteen took place with the remaining four undertaken by correspondence:

We identified 15 women in three women's prisons. Seven narrative interviews took place in prison A and four in prison B. The final set of four interviews were scheduled to take place in prison C in late March 2020 but were cancelled due to the prison COVID lockdown, we engaged in written correspondence with these women.

We also interviewed 3 women who had been released and 3 family members

I. Legal Documents (n=16) Media sources (n=74)

We gathered legal documents for those women where these were available and conducted a search of online media content. Some legal documents (from trial, sentencing or appeal) were located for 16 women and online media content for 74.

J. Case Review and analysis (n=84)

A detailed case review took place with these 84 cases using an in-depth thematic framework, piloted and developed using twelve cases in dialogue between the two researchers. A central focus here being to capture the women's voices through key verbatim quotes from the data into analysis and report writing stages.

K. SPSS Dataset (n=109)

An SPSS data set was developed, merging the excel spreadsheet with the consistent campaign information on all cases, and inputting data reflecting the thematic analysis captured via the 84 case sheets. This supported further quantitative analysis across cases.

Ethics and Access

The research team worked hard to consider and respond to a range of ethics and access challenges, this included engaging with ethical approval from our home institution (MMU) and Her Majesty's Prison and Probation Service (HMPPS), to enable interviews with women in prison. Access in prison took time and was conditional on Governor approval, some did not respond to our request and careful negotiation was required with others. Across a number of stages of the project it was sometimes difficult to locate women or establish contact, as they moved between prisons and / or did not receive mail.

When gathering and processing the data, particularly in selecting relevant quotes from the women, the

team took great care to ensure a level of anonymity and confidentiality and ensuring that mechanisms were in place to support women prior to, during and after data collection.

By centring the voices of women subject to JE punishments this project seeks to open up debate in order to support change, it is interventionist in its goals. Reflecting key principles of critical social research, the research questions the dominant discourse that underpins legislation, policy reform and professional practice related to women's criminalisation and punishment, and acts to uncover and disrupt harm. (Scruton, 2007; Walters, 2009; Clarke et al, 2017).

Bearing Witness to Harms of JE

Of the 73 women we know have children or not, 70% of them are mothers. Most commonly, they have two children (31% of the mothers) with nine women having four or more children. In total across these 73 women there are 117 children impacted by their mother's JE conviction. Some of these will be adult children, but many are not. It is recognised that the imprisonment of mothers impacts children disproportionately (Minson, 2019). The women reveal how their convictions have often led to the fragmentation of family, meaning many of these children were taken into local authority care. For 70% of the women the sentence will mean their children being rehomed, with only a handful of women indicating that children would remain at home with their other parent or older sibling.

In cases where we were able to hear from women and understand something of the impact of the JE trial process and subsequent wrongful conviction and prison sentence the impact for many (85%) was deeply traumatic. Struggling with emotions, a strong sense of pain and trauma as a result of the conviction (both trial and prison experience) is most keenly felt by those women with longer prison sentences. In particular, once the sentence tariff exceeds 15 and 20 years. Crewe, Hulley and Wright (2017) report that women experience particular pains of imprisonment more acutely than men. The women's accounts confirm their findings, that gendered pains for women centre on: loss of contact with family; psychological well-being and mental health; and issues related to power, autonomy, control, matters of trust, intimacy and privacy. Many women convicted under JE felt abandoned, lost in a system, with a long road back, and trying to find anyone willing or able to listen and address what has happened to them. The research sought to hear and understand, and in doing so it bears witness to this pain.

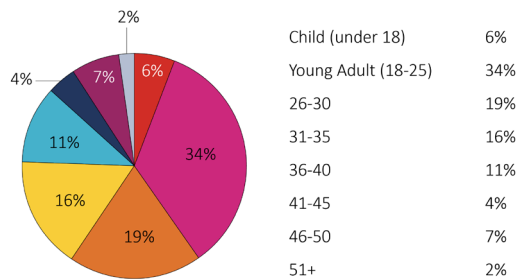
Who are the women convicted in JE trials?²

Age

Girls and women convicted under JE are all ages, with the youngest charged as a child at 13, and the oldest woman serving a JE sentence currently 68 years old.

The majority (34%) were young adults (18 – 25 years old) when charged, with a further 7% (6) children under 16 at charge. Due to the length of time spent in prison, the current age profile is older with only 16% still young adults. Most women (58%) are now between 26 and 40 years old, there are also a group of 13 (15%) aged 51 and older.

Age at Charge (n=90)



Ethnicity

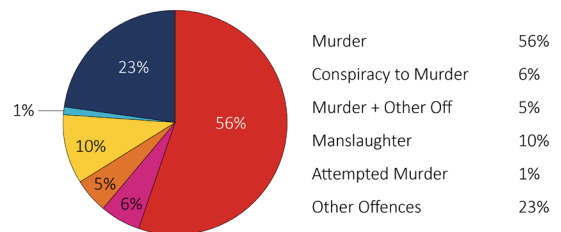
The women represent a range of ethnic backgrounds, with women self-defining the terms we capture here. Whilst the majority (76%) identified themselves as 'White British', the research includes the voices of women who are 'Black', 'Black African' or 'Black Caribbean' (6.3%), 'Arabic' (1%), 'Middle Eastern' (1%), 'Asian' or 'Pakistani' (3.1%) and 7.3% indicating they are of mixed heritage (most often 'White and Black Caribbean').

In relation to age at charge, women from Black, Asian or other minoritised groups are younger at charge with almost half (48%; n=10) girls or young adults under 25, compared to just over a third (38%; n=27) of the white British women.

Offence

As is captured in the table below, the majority of women convicted under JE from this research are charged with serious violence offences related to murder and manslaughter. Comparative analysis on ethnicity reveals however that women from minoritised groups were less likely to be convicted of the most serious violent offences – less than two thirds (62%) compared to over three quarters (83%) of White British women. This difference in the use of JE for minoritised women is important, analysis reveals that the women subject to this process of racialisation have similar sentence lengths to the 'White British' women (average length of 14.6 and 15.01 years respectively), an indication of the use of JE and harsher punishments for a less serious profile of offences.

Offence (n=90)



The remaining women are convicted of a wide range of offences, including other conspiracy charges (n=3), such as 'to endanger lives' 'to pervert the course of justice' 'to supply drugs'. There were two other women with drug convictions, one which we don't know the detail of (just recorded by her as 'drugs') and one woman convicted of 'importation of controlled drugs'.

There are a group of eight women who were convicted of a range of other violent offences, such as false imprisonment (and kidnap) (n=2); attempted robbery or robbery (n=3); and a range of GBH convictions (including 'with s18' or 'with intent') (n=3).

² Note: the changes in 'n' numbers across different data items is reflective of the coverage of data across the women. This may reflect at what stage they have been in touch with the campaign and / or whether they have been able to stay in contact as they move around the prison estate and receive JENGbA correspondence.

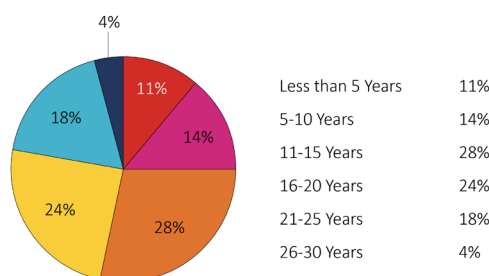
In the cases of five women included in this research, the victim who dies is the small child or baby of the convicted women. In two of these cases, the woman was convicted of murder. In the other three cases, the conviction is for ‘causing or allowing death of a child’.

Only a very small number of women were convicted of ‘assisting an offender’ (n=2) ‘perverting course of justice’ (n=1), when considering the lack of presence and violence, in addition to acknowledged lack of involvement (including by Judges / prosecution in some cases), this is surprising. It is important to note there may be more women convicted of these offences in JE cases, who are not in touch with the campaign due to lesser sentences and perceptions of legitimacy.

Sentence Length

Many of the women are serving extremely long custodial sentences. The mean sentence length is 15.01 years. Nearly one-third of the women (28%) are serving between 11 and 15 years, and just one in five serving less than 10 years. This includes women with determinate sentences who may be released part way through their sentence. However, many with indeterminate life sentences have long tariffs, half of these women with tariffs of 21-30 years to serve before parole is considered ³.

Sentence Length (n=90)



Research Findings

On the margins – women’s non-engagement in violence

In 90% of these cases, the women convicted for serious violent JE offences have not engaged in any violence. In this section we further establish the non-violence prior to examining how and why women’s convictions for serious violent crimes occur given this non-violence.

Of the seventy cases where we have the detail within the case information, there are just seven cases (10%) where the woman engaged in some physical exchange with the victim. In these cases, these women’s descriptions of their involvement match those of the police or prosecution captured in the legal or media documents. In all these cases it is a low level of seriousness or harm: a ‘push’, ‘shove’ or ‘slap’ in five cases, and in the further two cases this involved a ‘punch’ or ‘hit’ (in one of these two cases, with a broom handle). In no cases did women use a deadly weapon, such as a knife or bottle, the type of implements that were the most common

causes of death of the victims in these cases.

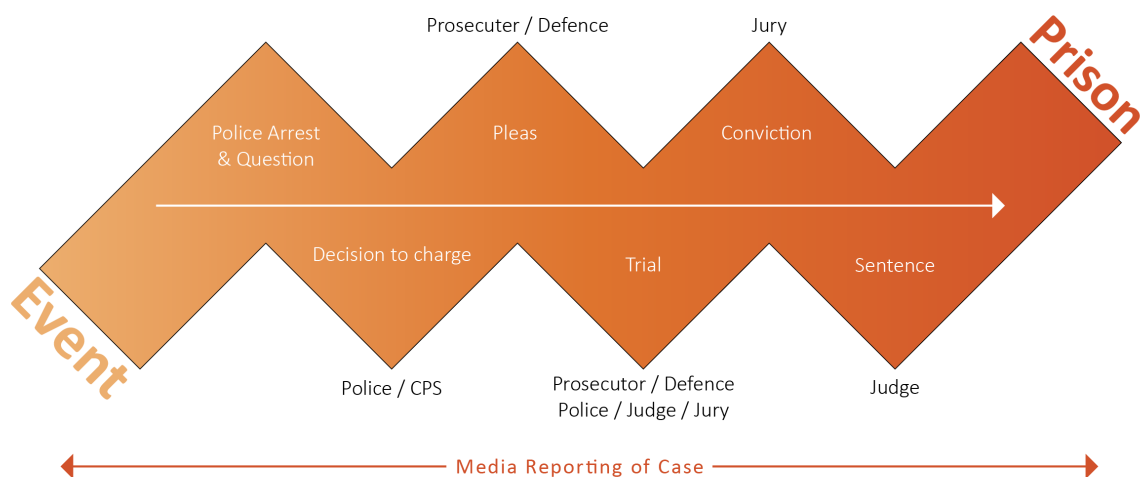
In three out of these seven cases where the woman engaged in a direct interpersonal and physical exchange with the victim this occurred in a separate incident prior to the event, which could mean days or even months before the fatal event. For the remaining four women it was in the early stages of the event, with three of these women then withdrawing from the scene ahead of the fatal incident.

It is clear then from the features of these JE cases that the women are often marginal to the violent event, yet they are convicted and punished in the same way as those who are violent. Given this lack of involvement in violence, the focus of this report is to examine how and why women are convicted and punished for serious violent offences.

³ With an indeterminate life sentence there is not a fixed length of time the prisoner must serve. Instead a ‘tariff’ is set by the Judge, that indicates the minimum amount of time the woman will spend in prison before they’re considered for release.

Examining the Process of Criminalisation

In order to examine, through the women’s accounts, how this happens we use the concept of the process of criminalisation. This enables us to focus on the critical points in the legal process that are significant in the women’s experiences of JE convictions. The chart below illustrates this process.



For all the women this process begins with police questioning, for some as witnesses initially or others immediate arrest and charge. The crown prosecution service (CPS) and police confer and ultimately it is the CPS who govern the charging decision, determining the offence for which the woman will stand trial. Plea bargaining is used by the CPS in some cases, where defendants (the women or their co-defendants) via their legal teams are approached by the prosecution to plead guilty as part of a deal. In the majority of cases, women maintain their innocence and the case goes to trial, where the prosecution and defence draw on

a range of strategies (arguments and narratives) to present their case. In the courtroom, the women are on trial and subject to judgement by the Jury and the trial Judge. Due to the serious nature of many of these cases, media reports often highlight the female defendants. In some cases, this media coverage begins at arrest and continues throughout the trial, for nearly all women convicted under JE their trial and sentence appears in local and / or national media. The remainder of this report follows the women’s experiences of this process of criminalisation.

Police and Crown Prosecution Service (CPS) responsibility for drawing women into JE cases

The first step in any legal process is contact with the police, with the decision to charge an individual with an offence taken by the CPS. This research presents new evidence regarding the impact of the police and CPS actions in the initial stages of the legal process in JE cases. The women’s experiences of time in police

custody, the charging decisions and any subsequent plea bargaining reveals the significance of these agencies actions in their subsequent convictions. In around one third (35%) of these cases the women reported their contact with the police in the JE case as problematic. For some, this related

to their experiences of being in police custody, their treatment as evidence was gathered or facing harassment and unfair treatment by the police.

'I was pressured into saying things that were incorrect' (Julia)

'Too many police interviewing me, it was scary' (Athena – a 20 year old with autism)

'The police made their own story up, they harassed my co-defendant until he made a false confession' (Yasmin)

'I was being difficult with the police, because I didn't want anything to do with it and I didn't want to send my brother to prison. I didn't know what had happened. The police and prosecution both indicated I was innocent of murder... I was guilty of perverting the course of justice, trying to protect my brother, I slowly came to see that that was wrong' (Elena)

Family members, recalling the early stages of the investigation, further reveal some of the women's confused and contradictory experiences.

'She was a witness at first, protected by armed police' (Yasmin - family)

'She was arrested and then NFA'd (no further action). The police officer hugged her, and said to us that she didn't do it. They wanted her as a prosecution witness. This changed, the police created a different story. She was rearrested.' (Jenna - family)

The women's experiences reveal the impact of police questioning tactics for women, some initially arrested as witnesses. In many cases the police have not been able to establish who is responsible, as one police source quoted in the media shows, 'it is not easy to piece together exactly what happened in the house' (Hazel). In such cases where the pressure is on police forces to investigate and detect crimes involving serious injury or death, the police may

use a strategy of charging to expedite information, or encourage witnesses or those charged to turn Queen's evidence (become a formal witness for the prosecution). Where there is a lack of clear evidence, or the police fail to investigate the crime effectively, a JE charge may offer the police and CPS a way of maintaining the momentum of the investigation and successful conviction.

The opaque nature of charge decisions taken by the police and CPS means that to date it has remained an unexplored stage in the use of JE. More recently, in a 2019 CPS charging policy document ⁴, the CPS states that when applying the evidential test in cases of secondary liability the full test code must apply. The document explicitly warns about spontaneous and multi handed acts of violence plus cases where children or young people are being considered for charge:

'..inference must be approached with particular care because of the real possibility that the spontaneous situation, or the age, nature or condition of the person, might mean that they did not have such foresight, which will contribute to the decision about their intention.' (CPS, 2019)

One feature of the charge policy in JE / secondary liability cases is conditional intent, where the defendant receives a charge as a secondary party because they encouraged or assisted the primary offence. The policy document acknowledges that in the vast majority of cases a lesser charge, or even no charge at all, is appropriate.

In the vast majority of cases there is likely to be an appropriate lesser charge available. However, in the unlikely event that no lesser charge is available, prosecutors must weigh carefully the merits of proceeding with a charge for the serious offence, or not proceeding at all. (CPS, 2019)

These dangers of over-charging in JE cases are exposed in the following case study.

The Case of Carrie: Drawing women into the JE net

Carrie was 15 years old, following an afternoon and evening spent with her boyfriend on their way home in the early hours, walking with her boyfriend's mum and her partner, a fight broke out with another group of local young adults who had also been drinking. One of the other group was killed by an injury caused by a bottle. During the early stages of this spontaneous and drunken fight, Carrie was the victim of an attack. Someone glassed her face with a bottle.

In summing up the case the Judge acknowledges Carrie was 'so drunk, not had the ability to join in a fight', also warning that 'mere presence is not enough there must be some form of participation'. In fact, the most significant discussion about her in the lengthy summing up focusses on her interaction with the police, something the prosecution had prioritised in their case theory.

'Carrie accepts that she lied in [police] interview when she said she had taken no drugs all night... Carrie says that she lied because she was scared of her father knowing the extent of her drinking and the fact that she smoked joints. Now if you think this is or may be true then you will ignore it, in this case given her father was present in the interview you may think her explanation is likely to be true. However, that is a matter very much for you to decide' (Carrie) - Judge summing up p22/23

Charged with murder, during the trial judgements about Carrie's character (not her actions) become central to a prosecution argument of her guilt. In court then, the reference to her in the summing up focusses almost exclusively on her interaction with the police, this serves to remind the Jury that she is a teenage girl who drinks alcohol and smokes cannabis.

The Judge directs the Jury as follows:

'In this case we know that a bottle caused the fatal wound. We know who caused the fatal wound because [The partner of Carrie's boyfriend's mum] admitted it... In the case of Carrie the evidence shows that she was too drunk to form the necessary intent or had the necessary foresight....Carrie, as you know, claims to have been a victim and did not participate at all in the attack...'

The offence was committed by a 35 year old man, and had taken place whilst Carrie was 'too drunk to stand' and forensic evidence confirmed by the A&E consultant had a '12cm incision' in her left cheek. The Jury finds the man guilty of murder. Carrie, 15 years old at the time of the event, is found guilty of manslaughter.

There are many examples where women report having wanted to take responsibility for a related but lesser crime, one they believe reflected their intent and involvement in events.

'My drug dealer made me ring another dealer to come so he could rob him. I pleaded guilty to conspiracy to rob because I knew he was gonna rob him, but not that he was gonna get killed.' (Gabriella) [Manslaughter determinate of 11 years]
'The prosecution case was weak so they used me to

convict my co-d's [co-defendants]. I offered to plead guilty to conspiracy to rob, I was not there I didn't know they would kill him. I accepted my wrong doing, I'm not portraying myself as a victim.' (Freya) [Manslaughter determinate 16 years]

'They offered to him to go guilty and they would drop the charges on me. Nothing was offered to me.' (Kyra) [Murder AND Pervert course of justice Life 18 year tariff]

⁴ CPS: Secondary Liability: charging decisions on principals and accessories. Revised: 04 February 2019 | Legal Guidance. Following the Jogee Ruling in 2016, the guidance sets out how charging decisions are to be approached in cases involving persons who assist or encourage another to commit a crime. These persons are known as accessories or secondary parties.

The women's experiences of plea-bargaining is significant, further demonstrating how the police and CPS over-charge in order to create pressure on defendants to plead guilty at the plea bargain stage. There are multiple cases where the coercive tactics and strategies of the CPS reflect an understanding that the woman is not guilty of the serious violent offence, often murder, but is used in a process of securing a guilty plea and conviction.

In the few cases where women take a guilty plea, they often report pressure to do so. Conversely, some women follow their legal advice against the plea and go to trial.

'They got me to go guilty so they would NFA [no further action] my mum. I had kids I needed to think of and couldn't have mum go to jail too.' (Isla) [Perverting course justice – 4 years]

'I was scare mongered, my co-defendant threw in an early guilty plea and my defence said I must do the same. I wasn't saying I wasn't guilty of anything I wanted to tell the truth. They said you're being done under joint enterprise if you go not guilty and he's gone guilty he is saying it's happened and you've no choice...I was in the cells under the court, I was scared.' (Evelyn) [S18 kidnap + other robbery offences. 12 years minus 4 for guilty plea]

'My plea was an equivocal one, made under duress. I was forced by my legal team to make a false confession by pleading guilty' (Akemi) [Importation of drugs – Life 14 years tariff]

'We were offered conspiracy to rob but advised not to take. The defence said not to, they said 'they'll never find you guilty'. If we were to take the deal we would get 10 years, and was scared would lose the kids.' (Iona) [Both female co'd murder – life and tariffs of 22 years and 23 years]

'I was naive and trusted them [defence], I was given a lesser plea and my defence said no. I wanted to take the section 18 charge, to hold my hands up I'd hit him.' (Sienna) [Murder life – 18 year tariff]

The CPS policy unequivocally challenges such charging tactics and strategies:

Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one. (CPS, 2019)

The perverse outcome in these JE cases is that, due to the reduction in sentence for guilty pleas, the women seeking to maintain their innocence can receive a longer sentence than her co-defendant who accepts the culpability for the violence through the guilty plea.

'The one that did the murder got less because he went guilty for manslaughter' (Ciara)

'My Co-d who committed the murder got less than me.' (Ellie)

The evidence outlined in this section of the report, especially when considered in light of the revised charging policy, poses a serious challenge as to the use of JE and secondary liability in charging decisions, in many of these cases women have been convicted as secondary parties but for the principle offence.

Criminal justice policy and responses to 'crime' are always underpinned by a wider social, political and economic context, the re-emergence in the use of JE requires some consideration in relation to this. Women's experiences of policing, charge and pleas in these JE cases reveal how the criminal justice system prioritises securing the convictions, even when the police are unable to determine who is responsible or know what has happened, offering evidence of a 'crime control' strategy. A 'punitive turn' and 'tough on crime' agenda (Garland, 1996, Faulkner, 2007) may drive the use of collective punishments from charge through to sentencing, disrupting the 'due process' of the law and obligation to protect innocent defendants in the delivery of justice (King, 1981; Davies, Croall & Tyrer, 2015). Calls for greater transparency in JE charges and for changes of charging practice and recording (Jacobson, Kirby and Hunter, 2016), which would allow greater scrutiny of such practices, remain unanswered.

Damned if you do: Defence advice and the silencing of women

The women's concerns about their defence counsel extend beyond the issue of pleas, with over half of the women (55%) reporting concerns about the way in which their legal team represented them during their trial. Only 5% of the women were 'very confident' about their legal team. Some concerns related to more systemic issues such as about the preparedness, defence team approach, support in understanding process, outlined below by the women.

'My team were so inexperienced, they'd never even done a murder trial.' (Kaylee)

'The [defence] QC changed ten days before trial started, he never spoke to me. There was a mix up with the witnesses. They did more harm than good.' (Dalia)

'I didn't know what was happening, I couldn't hear or understand and no one explained or advised me' (Anyia) 13 year old child

'Felt so unprepared, I'd not seen my brief while I was on remand.' (Demi)

'My QC did not believe in my innocence. I just wanted some challenge' (Yasmin)

'Didn't use the important evidence and fight for me' (Lena)

The final quotes above reveal the impact of not giving women a voice in court, particularly regarding their experiences of domestic abuse and violence. Many women identified the ways in which the context of events, related to their own experiences of violence and victimisation and / or deteriorating

mental health, were rendered invisible in the courtroom. A background of domestic abuse is relevant in 38 of the cases in this research where women are convicted under JE.

The thematic case study of silencing state failures exposes how the adversarial nature of the legal process and the focus of the prosecution creating a case theory to drive their argument, rather than the facts of the case, mean that both the inclusion and exclusion of context and history to events serves to further stigmatise and criminalise the woman. Here, women find themselves in a double bind. For those who have histories of violence, abuse and trauma, if this is not disclosed by the defence, these histories are rendered silent. Conversely, if past events are disclosed, this then allows space for the prosecution to exploit this context in order to strengthen their case theory. As is explored in the case study above, the prosecution focus on choice and intention, rather than examining the voluntariness and control women were able to exercise or the potential significance of coercion and control by male co-defendants.

One third of the women convicted under JE (33%) report that they requested a change of legal team, for the majority of women this was not possible or granted. What these experiences reveal is that women have little choice and agency in what happens in their own trial, whether in terms of selecting their legal representation, or the approach taken to defend them in the court. Thus, the police charge and trial reproduces the coercion inherent in the interpersonal violence and control some women are experiencing before and during the trial.

Silencing State Failure

In this thematic case study, we acknowledge the significance of the silencing of women's voices in these JE trials and argue that this contributes to the wider silencing of the failure of state institutions to protect and care for girls and women.

In focussing on the woman's role in a 'gang of three' (Georgina), as a 'love rival' (Glenda) or 'honey trap' (Lisa), prosecution strategies actively de-contextualise events from the impact of women's experiences of violence or abuse. In one case, a 15 year-old girl constructed as the 'honey trap' obscures the reality revealed in her own narrative 'I was weak and mentally unstable so I accepted all his abuse. I had no support system.' (Lisa).

Women also reported their defence teams actively discouraging disclosure of violence and health issues in court:

'Needed to argue stronger, show how my CoD was aggressive and violent.' (Aria)

'Said not to use the DV stuff' (Nisha)

'Not used the medical stuff, the reports that had been prepared. Didn't make sense to me.' (Iona)

The impact of this silencing during the trial reproduced a sense of interpersonal risk and trauma for those girls and women.

'I didn't think that me and my CoD should have been in the same waiting area and court room. I felt I couldn't talk due to all the domestic violence and what would happen to me. I felt I had to keep my mouth closed, I was under duress.' (Dalia)

'Handcuffed to a man and everyone staring at me with the two male CoD in dock I felt very unsafe.' (Chloe)

The women's narratives capture clearly the failure of both the welfare and justice state institutions. Therefore, central to this report is the need to scrutinise the power of the state to protect or punish.

Failure to Care and Support

Women reflected how poor mental health is often not responded to, with visits to the GP leading to little or no help. The women's accounts captured a range of support needs, from bereavement of a parent or sibling as a child, the removal of their children by social services, and / or experiences of being in care as a child themselves. Two thirds of the women report experiencing health issues. Most often, this relates to their mental health (diagnoses of psychotic episodes, personality disorder, paranoia, and experiencing breakdown or mental health sectioning) and in some cases to ongoing alcoholism or substance use. For some alcoholism and other coping strategies started as children. Some women also live with learning disabilities, such as autism, dyspraxia etc. These are not only relevant context to the event but also their experience of the criminal justice process.

Failure to Protect

In this research, almost half of the women disclosed that their daily life when the offence occurred was marked by domestic violence, for a larger number they have experienced violence or abuse as adults and children often over time. In most of these cases (87%), the perpetrator of this violence is the co-defendant(s). In just 5 cases the violence has been perpetrated by the victim in the JE case. As girls and women some have been exploited or 'pimped out', and controlled through fear. Women reported experiencing threats and harassment, of themselves but also of their children. Being subject to and witnessing violence as an 'everyday part of life'. For some women these experiences begin in childhood and are present right up to the event. For others violence and abuse is in the past, yet the women reveal how it continues to shape their fear and sense of safety.

The women's accounts capture the repeated failure by the police and other agencies to protect women from violence or respond to their health needs. As we have argued elsewhere, there is an urgent need to critically examine the 'hidden role of institutions, legislation, policies and practices, of social services, local authorities, health services, the police, the

courts and the prison. These shape women's lives and reproduce ongoing economic marginalisation, racism and experiences of loss, abuse, trauma, under protection and domination' (Clarke and Chadwick, 2018: 64). By silencing the women's voices in these JE trials, the prosecution and defence enable the further silencing of state failures in women's lives.

Damned if you do

'My mum died when I was 13, it was a really hard time in my teens I had depression was on pills from 15 or 16. I didn't want to admit it, my dad was depressed too, an alcoholic, but it was all taboo.. I was very lonely, for a long time I was just on my own. Alcohol was my coping mechanism...I left him but he never left me. He would follow me, wait for me and threaten to kidnap [my daughter]. I tried to move on but he had a hold over me... The time he broke my jaw I called the police that time, and he plead guilty. He got a 3 month suspended sentence. ... It was used against me, being strong and going to the police that time before. I'd asked for help and it was used against me. They used it as the motive, in court it was all just used against me. I did feel being a single mother who was on benefits and having been in an abusive relationship was used as a negative. ... I was on anti-depressive pills, heavy stuff in prison it made me feel like a zombie. I'd get my meds in the morning in prison then go to court. I felt so spaced out I couldn't follow or represent myself. (Sienna)

'She had no friends, well just boys, older males. They were offering her money, drugs and alcohol for sexual favours. She'd disclosed a rape, she was in foster care then away from the area. He was harassing her [the 81 year old man accused of raping her] and she was 15, every time anything happened we would tell the police and they would put it on the system. Purely boxes being ticked and time kept going on, after a year I chased the police up. They had not even filed it with the CPS.' (Mum of Jenna)

'My abuse was used by the prosecution to paint a bad picture of me. I think also when used by the defence it didn't help. I just don't think they believed me.' (Jenna)

Damned if you don't

In a handful of cases where the victim is a baby or child, there is evidence brought to trial and reported in the media (including in one case a video of a police call out for domestic violence), that police and other social services professionals knew of the male co-defendant's history of violence. In one such case, where a young mother who was given a 10 year prison sentence for 'allowing the death of her baby', a quote from the local Safeguarding Board reported in the media illustrates this:

'The mother's partner had a history of violence, substance abuse and mental ill-health, and it was known to some professionals that he was in a relationship with a pregnant woman.' (Violet)

In a similar case:

'No mention of his violence, the domestic violence to me, the [defence] QC said it would affect my case...I was disgusted I sat in the same dock as the man who hurt my daughter. They truly believed I knew or saw something. They didn't think hard enough, they didn't believe me' (Savannah)

In these cases, the failure of these services remains hidden. It is the mother and her 'failure to protect', even where she has sought professional help or safety, that leads to her criminalisation and punishment.

Damned if you don't: Prosecution arguments used to convict

As indicated above, central to women's concerns about their experiences of being in a JE trial is the 'case theory' used by prosecution teams in their trial, with almost all the women in this research (93%) challenging the arguments and narratives used to convict them of the serious violent offences

As has been established already, the overwhelming majority of the women did not engage in any violence, yet many are convicted of serious violent offences. In the absence of material evidence the principles of JE and secondary liability allows the prosecution to draw on inferences about the women's intentions. This requires the prosecution become storytellers, developing a theory about the case and building a strategy to make this effective in securing conviction.

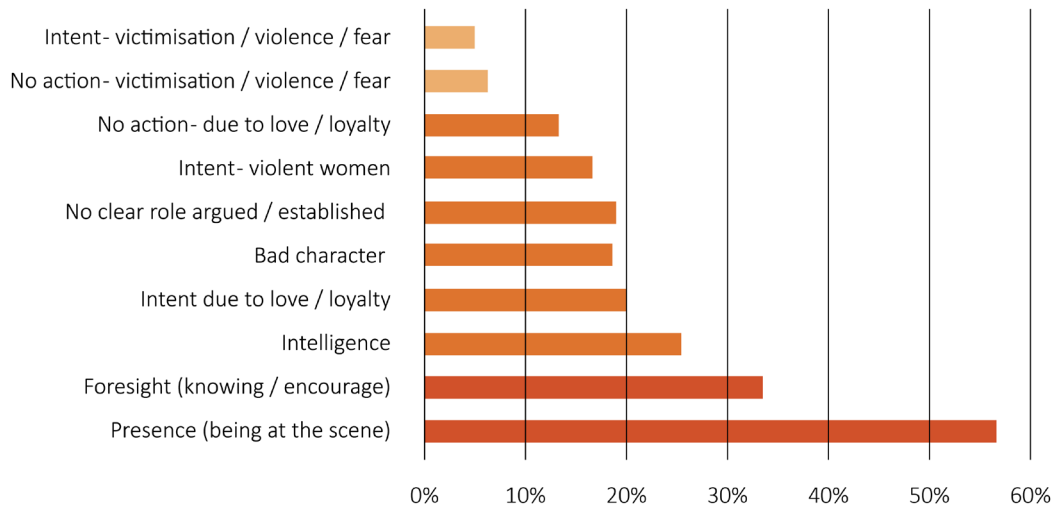
The following chart reflects the prosecution arguments used in these cases. The analysis demonstrates that there is no single argument used across all cases. Furthermore, the data shows that in four out of five cases (83%) prosecution teams draw on a combination of two of these arguments. In a

third of cases (31%) this increases to three of these different prosecution arguments grounded in the language of joint enterprise.

The woman's presence at the scene is the most common argument used by the prosecution, used in just over half of the women's cases. The argument least likely to be used, present in just a handful of cases relates to the women's experiences of victimisation, violence or fear. Whilst only present in a handful of cases the women's quotes in the thematic case study above reveal the dangers of bringing experiences of fear or violence into the courtroom. Women are 'damned if they do'. The prosecution strategy used to construct women, coupling such abuse alongside class stigma signalled by single parenting, claiming benefits, girls using drugs or alcohol, means they garner no sympathy and instead their victimisation contributes to their criminalisation.

Placing the women at the scene of the crime, often, fatal violence, as inferring intent or encouragement, was central to the prosecution strategy in just over

% of JE Women where prosecution argument is used to convict (n=64)



half the cases reviewed. Most of the women (n=27) reflect in their own accounts that they were present when the victim was fatally injured. Only a handful of women challenge this assertion by the prosecution, in two of these three cases presence is the only line of prosecution argument. A further four women report that they had left the scene before fatal injuries were inflicted, in three of these cases the event involved a drug deal.

'They said I was a look out. I wasn't present at the crime' (Bella)

'I wasn't at the scene I had called to purchase cannabis from the victim' (Samara)

'Argued at the scene that I stood and watched, but forensics said I would be plastered in blood and so would my car.' (Ellie)

Prosecution teams often use the concept of foresight alongside presence, also combining with other strategies to secure the woman's conviction, in particular establishing the women's 'bad character' *'Foresight was why I got convicted, the forensics proved that I wasn't involved.'* (Georgina)

'I should have foreseen what would happen, known what would happen before I agreed to go to the

victims house...They made me out a bad mum cos kids already taken away' (Poppy)

'They said 'In it together, scruffy and unkempt'' (Ada)

'Prosecution said I knew the victim would be seriously hurt or killed...My lifestyle working for escort agency and that I was on drugs.' (Kaylee)

'We were called a gang, I do not agree I was the only female, a mother and studying to be a midwife. They over-highlighted me to keep my presence in mind [of Jury]' (Lillian)

'It was based on texts and phone calls, apparently lured him to be murdered. I was not aware of possession of the knife.' (Lisa)

In one case, involving children as defendants, a Criminologist was used as a prosecution expert witness to determine what the girls were thinking in the weeks ahead of and on the night of the event. This appeared to support the claims about the girls' character.

'The girls did not care about the consequences.' (expert witness – Criminologist) (Anya)

'In court much was made of a message sent five weeks before where the younger girl [13 years old] referred to the older girl [14 years old] as her partner in crime and proclaimed we will be with each other through thick and thin' (Anya - media report of the prosecution argument at trial)

The prosecution often argued that due to feelings of jealousy, anger, hurt, she must have encouraged or intended the actions of the co-defendant. This use of women's feelings to infer intent is present in a range of cases.

'It was entirely foreseeable say the prosecution, that anyone taking part in such a risky venture would arm themselves with a knife...the prosecution say that all five defendants, whatever their different roles, are therefore guilty not only of conspiracy to rob, but also guilty of murder.' (Iona)

'The three pathologists in my case all agreed that I didn't cause any injuries to the victim, so the prosecution argued JE' (Brook) + 'You started the matter. You have previous for drunken loutish behaviour' (Judge remark for Brook)

'I plead guilty to conspiracy to rob. It was a proven fact I was not present, so how am I guilty of manslaughter. The prosecution used me, made out the planning was by me' (Freya)

'My role in the crime was deemed to be as this woman full of hate who somehow managed to convince everyone to end up fighting...the focus was on me and the fact I was a woman' (Willow)

In reality Jenna was 19 and since the age of 13 years had been drinking on a regular basis.

'She had no friends just boys, well older males. It was all drugs and alcohol. Men trying to collect her from school, she was 15 he was 20. Cars picking her up from the care home.' (Jenna - family)

'Said foresight, you must have known. I didn't know him [victim] never seen him. Called me an infatuated girlfriend.' (Ishbel)BUT 'Despite XX very real attempts to save his life as [CoD] ran away.' (Judge sum up)

The prosecution also use a woman's non-action, failing to stop something happening or intervening either during the event or in the immediate aftermath, as argument for intent and encouragement.

'I was present when the crime happened but I didn't do anything. It was a very traumatic experience. I felt anxious sitting in dock with CoD. I was a foreign national, ex-drug user with not much English.' (Lena)

'In summing up they said although you didn't have intention to kill you still caused serious harm by blind loyalty to my CoDs' (Lucy)

'They said because he was violent to me that I would have known that he would hurt the baby. They believed I knew. CoD was on the stand less than a day I was on for two days, more. I was an easy target they used my breakdown as a weakness against me. I was disgusted I was sat in the dock with the man who hurt my daughter.' (Savannah)

In the above cases, the prosecution infer the women's intent by whether they took 'reasonable' steps to withdraw from the situation. Yet without acknowledgement, in many cases, of the wider context of harm and control in women's lives, the judgement of 'reasonable' is at best limited at worst entirely flawed.

Yet there are also many other cases, almost half of those in this research, where the prosecution are not arguing that the woman was present at the scene of the event. In these cases, the principles of accessory liability stretch further, with arguments resting purely on inferences about her state of mind and intention as central to her role in events.

'They tried to say that I knew what they were thinking.' 'That I was protecting my brothers' (Karen)

'Trying to prove I conspired. The car belonged to me. I should have foreseen what he was going to do as he was my partner' (Jayla)

'They found me guilty on what I must have known, because he was my partner and his brother...said not involved in killing but allowed house to be used as safe house for the killers' (Georgina - got 21 years)

When women are not at the scene it is police intelligence, often through use of mobile phones and cell site evidence, that the prosecution are able to connect women back to events and the scene.

'How could the Jury decide I intended harm or death by a few texts I didn't even send' (Karen)

'I was not present, I was sending texts on a phone to a Co-D when it happened' (Melanie)

'Said I made the phone calls to the Co-Ds, that I organised it with my husband' (Sofia)

'Over text messages they argued the two of us had been having an affair' (Ruby)

'They said I associated with gang members. It was all phone calls between me and one CoD. I didn't know the rest of them before the night.' (Aliyah)

As is evidenced here, the prosecution strategy is opportunistic in nature, in some cases her presence at the scene is central to constructing her role, in other cases the prosecution seeks to establish foresight to infer intent. The selection and application of arguments is underpinned by the multiple and complex options available to prosecution teams in JE cases. A cursory review of

the 2019 CPS 'secondary liability' policy document reveals the vast range of options therein (for example: participation, withdrawal, conditional intent).

In one case, despite the prosecutions lengthy questioning of the female defendant (she spent two days in the dock) we see the shifting arguments regarding her roles and intention:

'Pendulum kept swinging – you're very naïve but then say but you're not naïve are you, you're not going to be manipulated. The brains but then couldn't make that fly, so a relationship gone too far. Wanted to hit every button they could' (Scarlett)

What emerges as central to prosecution strategies in these cases is the combining of such arguments with a wider narrative around 'bad character'. It is important therefore to consider how judgements about the female defendants are constructed. In the next section, we examine how prosecution teams combine the arguments outlined above with gendered narratives about the women and their lives, to secure the conviction of distinct groups of women.

Women on Trial: Judgements about female defendants in the courtroom



The evidence in the previous two sections reveals the women's experience of defence and prosecution legal team strategies in their trial. These reveal frustrations at feeling silenced and allowing prosecution claims to go unchallenged. Women told us that their defence teams often: instructed them not to take the stand; failed to use potentially relevant medical reports; and where they gave evidence to avoid discussing any wider context in relation to their life, health or relationships.

'I'd had two psych reports prepared by the solicitor but the [defence] QC just destroyed them and said they'd go against me.' (Poppy)

'Not used the medical stuff, the reports that had been prepared. Didn't make sense to me.' (Iona)

'None of my DV or mental health or addiction was really brought up in the trial, the harassment and DV from the victim, his drug use the fact that he pimped me out. I was just made out to be this manipulative jealous ex' (Kyra)

'I was told [by defence] not to give evidence, or dispute what the surgeon said even though what he was saying was wrong. Said it would make me

look like a liar, as who would they believe me or a surgeon.' (Ada)

'I was told [by defence] not to give evidence, but the prosecution said things that weren't true and the Judge just allowed it all.' (Medina)

Defence counsel may argue that they are advising women well, if the defence is concerned that the Judge and Jury will not view her as a credible witness. They are no doubt keenly aware that the woman will be on trial in the courtroom in multiple ways, in relation to the crime and also her character and lifestyle.

Women defendants report this feeling as being 'looked down upon'. There was no single aspect that all women felt judged on, with most women indicating that between two and four of the following features were significant in judgements about them in the courtroom during their JE trial.

Almost half the women reflected concerns about the Jury. For some women these related to concerns with procedural fairness, Jury selection or the engagement and ability of the Jury to undertake their role in the trial effectively. Most often though, these manifested in a perception that the Jury were so different from them, as individuals or a group of defendants in the dock, and would not understand the context of their lives.

'I felt that the Jury were from a different world and that they couldn't understand the situation I was in.' (Elena)

'Jury did not take kindly to me because I was an addict' (Hansa)

'They just didn't seem like people who would understand us, we were judged on being travellers.' (Bella)

'There were a lot of older men and women on the Jury, they wouldn't understand my gender status' (Demi)

Related to these issues of judgement is the more specific issue of Jury's representing those in the dock, whether that be in terms of the age, or as was most often reported the ethnicity of the Jury.

'There was no black Jury members and no one from a lower class' (Iona)

'All white except for one man, did not understand the Pakistani culture and what had happened.' (Nisha)

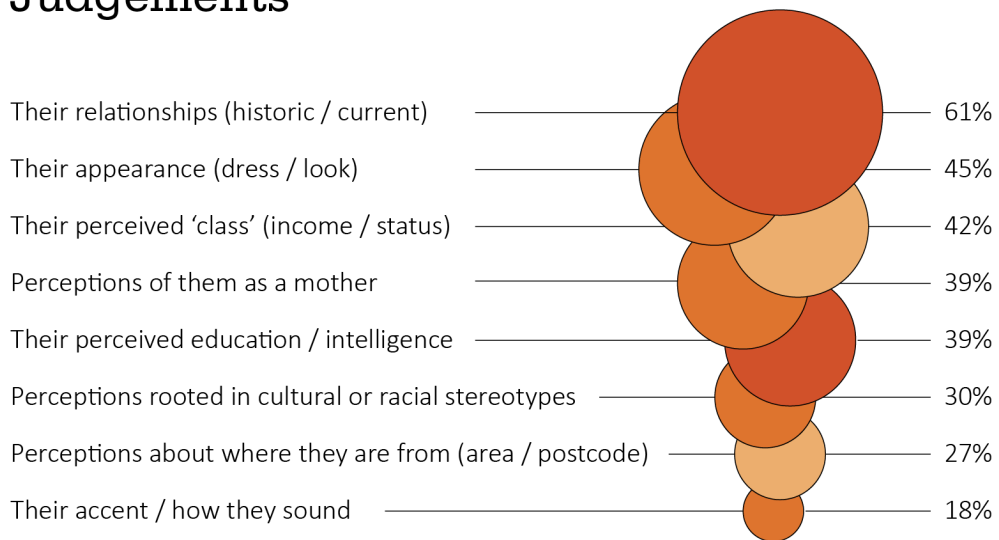
'It was an all-white Jury, but all the defendants were black or brown' (Sofia)

Women sense this judgement at trial, by the Jury, the Judge and their own defence team as gendered, particular to them as women, and the roles, expectations and norms placed on women.

'I think I was judged more harshly because I was a woman. Intelligence was equated with ability to deceive and manipulate... and I was judged on my lifestyle and my addiction.' (Willow)

An examination of the language used by the Judges to describe women in these JE cases demonstrates further this dynamic of judgement. The research team had access to legal documents in sixteen cases. These included the Judge's Summing Up of the case at the end of the trial before the Jury went to deliberate, the Sentencing Remarks which the Judge delivers post-conviction ahead of passing sentence, and the Judge's comments from Appeal processes, where these have been taken forward by women. What is evident from this documentation is how varied Judges' are in their treatment of the women and their exercising of discretion and power. In analysing these cases, we highlight again that the law is not administered neutrally, but relies on a cumulative series of judgements and decisions fundamentally underpinned by stereotypes, bias, discretion and power.

Judgements



Judge's influence: Condemnation

In some cases the Judge's perceptions of the women is central to the construction of them as blameworthy. Of focus in the Judge's summing up or sentencing remarks in these cases are not the women's actions in terms of the offence and any engagement in violence, but judgement of their character and behaviour as girls and women. Women report this as a personal dislike - 'The Judge made it clear pre-trial that he hated me and went out of his way to get me convicted' (Karen)

In one trial with two female co-defendants (on trial with three men) the Judge makes a personal attack on the young women as mothers:

'...a feckless mother of X unfortunate children... mercifully will not be burdened with you for their upbringing...your child who will be protected from you... the state picks up the pieces of your fecklessness'.

Importantly, two of their three male co-defendants are fathers, one to a child of the female defendant, yet they are not judged at all in relation to their parenting of their children.

These oratory styles and narratives often focus on gender and age, and draw on class prejudices. The case study on CPS charge reveals how young women

may be judged more for their wider behaviours such as drinking or smoking, rather than evidence of involvement in the offence. Such judgements of the girl or woman as deserving punishment are symbolic of perceptions of their responsibility for a wider malaise in society:

'XX is a stark example of the problem of drunk young people out of control arming themselves with knives and going out intent on fighting' (Emily).

In other cases, the Judge's emphasis was on the prevalence of alcohol, violence and young people with the Judge frequently connecting into these perceived wider societal problems. Calling the female defendant 'Lairy, mouthy' and inferring her guilt as related to 'previous for drunken loutish behaviour' and representative of a wider 'problem of drunk young people'.

In another case, the Judge describes the defendants as 'base and desensitised' implying their perceived laziness, 'expect something for nothing...none of you worked, none of you put anything into society. All of you felt entitled to drain the community of what you could'. In these cases, we see specific public, and politicised, issues expressed and addressed through JE punishments.

Judge's influence: Sympathy

Yet in other cases the intervention of a Judge, whether during the trial or at sentence, may indicate a level of sympathy for the woman who finds herself in a JE trial. There are multiple cases, where the women report feeling the Judge was sympathetic towards them: 'he was very much for me' (Savannah – manslaughter 6 years); 'he had sympathy, thought Judge believed me' (Ellie – murder 28 years). There is also further evidence of the Judge questioning the women's place in the dock 'if joint enterprise were not used XX would probably not be convicted' (Caitlyn – murder 17 years), ruling the evidence or argument inadmissible and advising the Jury as such (e.g. murder 22 years), and emphasising the women's

good character (e.g. murder 21 years).

In one case, the Judge used sentencing remarks to speak in detail about his understanding of the female defendant's role in the case 'If I was looking for stereotypes...hugely gifted. You were infatuated with [CoD], a blind spot. I reject the suggestion you were the brains....a fall from grace'. In this case the convictions were multiple, for Assisting an Offender, Perverting the Course of Justice and Drugs Supply. The initial sentence given was three and a half years. Following an upheld appeal by the prosecution post-trial this was increased by two years.

Yet even with these perceived views and in some cases interventions of a Judge, the Jury determine the woman's guilt. The procedural aspects of the latter stages of the trial – the routes to verdict and sentencing guidelines – mean there is an inevitability to the conviction and long sentences. This was further revealed in the examination of two routes to verdicts documents prepared by two different Judges who appeared to have copied and pasted identical words and paragraphs from sentencing guidelines ensuring the inevitability of outcome in these cases.

There are a handful of other women, now out of touch with the JENGBA campaign, not convicted because at an earlier point in the trial the Judge intervened and determined that the female defendant had no case to answer. These cases are not necessarily distinct from other JE cases in terms of the basis for charge or prosecution argument, but reveal the power of the Judge to avert the criminalisation and punishment of women in JE cases.

The cases discussed in this section point to a need to examine further, how discretion works and the contradictions this raises in practice, specifically when evidence is lacking and inferences are low. Why are no case to answer submissions not being used by Judges in more cases? The evidence presented here further demonstrates that the law and its application are not neutral. In JE cases more so than any other, where the evidential bar is lower, the prosecution's story and Judge's partiality shape both likelihood of conviction and severity of the punishment. The possibility of judicial influence in cases of women charged with serious violence is complex. As Ballinger (2007) warns, rather than use simplistic notions of leniency versus harshness we should instead see the different responses as reflections of the 'state's role in the production and reproduction of the gendered social order' (p.476). Reminding us that these trials sit in a wider context of structural relations that shape women's lives, relations reflective of gender, class and economic relations and racism within society.

Women on Trial: Gendered narratives as a prosecution resource

The evidence establishes that in JE trials involving women the prosecution infers that the co-defendants were 'in it together', arguing that the woman's presence, an action or even a non-action, facilitated the violence that happened. Given the lack of direct involvement of the women, their non-engagement in violence and for almost half the cases the acknowledgement that the woman charged was not at the scene, prosecution attempts to construct the women as blameworthy rely heavily on stereotypes and myth. In this final section, we examine the significance of gendered narratives, representations of women used in JE trials, captured in the media and legal documents.

It is important to note then, that these narratives about women do not only exist in the courtroom. The women's accounts alert us to the significance of local news media reporting, with all but two of the women named in the media in relation to the trial. The story from the courtroom travels, often echoed and sometimes exaggerated by a range of media.

'Everyday local paper reporting all account of the day's trial' (Lillian)

Some women's cases featured in magazines as 'real crime' stories, or television 'fly on the wall documentaries'. One woman convicted under JE recalls being 'filmed from the second of being arrested without any consent. Told it was up to the desk [police custody sergeant].' (Dalia). These wider forms of media, beyond the trial, further structure and amplify the mediated understanding of 'criminal' or 'killer' women.

Gendered narratives about 'deviant' women exist in wider societal discourse and reflect judgements against expectations and standards of femininity. In seeking to convict women in these collective punishments the gendered narratives drawn on engage in judgements of a woman's character, 'where a good woman may attract the sympathy of the court, a positively censorious approach may be taken to women thought to be bad' (Naffine, 1990:142). The expectations around femininity

and gender, such as motherhood, sexuality and relationships, how processes of racialisation and the application of class stigma shapes the criminalisation of women (Carlen, 2002) are all present here in the JE trials involving women. The accounts of women captured earlier and below are instructive as they point to a realisation about the significance of such judgements about them during their trial. In this section, we examine how these gendered narratives are a key component of prosecution strategies in convicting women in JE cases.

There is a limited but extremely valuable existing literature on gendered narratives applied to criminalised women and we draw on that in our analysis here. This includes the academic work of Yvonne Jewkes' (2015) framework of 'standard narratives' about deviant women and the significance of misogyny in media discourse. Annette Ballinger's (2012) instructive detailed historical case analysis, opening up an understanding of the silent strategies of silencing women in murder trials and similar work around historic representations of women who are convicted of murder by Lizzie Seal (2010). In addition to this, Charlotte Barlow's

more recent work in 2016, further develops these ideas through the analysis of four notorious cases of 'criminal women'. There is also the unique record of legal casework captured by Baroness Kennedy QC in her two books 'Eve was Framed' and 'Eve was Shamed' (1992; 2018). Kennedy 'catalogues the persistence of misogyny and stereotypes' in courtrooms and their impact on trials involving female defendants (p11). These give us a number of conceptual frameworks from which to examine and compare the experiences of and narratives about women in JE trials.

The women convicted of JE in this research are not women who kill. Yet they are criminalised as if they are responsible for the harm caused to the victim. The representations of women drawn on in these JE trials vary, yet they all reflect the use of gendered narratives used as a strategy to construct meaning and importantly infer blameworthiness. It is precisely because these are 'stock stories' (Morrissey, 2003), drawn from long-standing gendered narratives, that they can be used to signal a much wider set of ideas and meanings to the Jury.

The dominant gendered narrative – Women as the facilitator of violence

The central gendered narrative, present across so many of these JE trials involving women is their role as a facilitator of violence. The prosecution infer that they are to blame as they are responsible for encouraging or in control of the actions of the violent co-defendant, almost, always male. There is a spectrum for this role of facilitator, from a bystander who fails to act, to a woman whose presence is encouragement, to an active role emboldening or 'egging on' the co-defendant. Finally, to a more active role of planner, the ultimate being constructed as the 'mastermind'. These are all variations on the same theme of women influencing or manipulating those involved in the violence.

Lucy: 'You envisaged no more than GBH...you assisted the police...what is clear you realised the impact of sexual allegations on the behaviour of XX [coD] and that you could use such allegations to

manipulate him to act violently.' (Judge)

'Manipulated, delighted in sense of power' (Judge cited in Media)

Athena: 'Lured to her flat' 'manipulative and threatening figure' (Media)

Olivia: 'Wicked' 'psychopathic' (Judge cited in Media) 'Ordered by co-d to help carry body, she feared him' (Media)

Willow: 'She encouraged him, urged him on say we the crown' (Prosecution) 'Egged co-d on like a banshee' (media)

Jenna: 'They kept saying in it to kill together, that I used men, how long it took me to get ready that I was a party girl'

Evelyn: 'Mother of two jailed' 'Woman of good character and valued member of the community' (Media)

'I was the baddie, I was manipulating' 'Older than co-d and put me down as being more educated' 'Said I was the puppet master, the mastermind'

Scarlett: 'Love story gone wrong' and 'robust direct and calculating role' (Media – reflects contradictory representations/narratives)

'[prosecution said] you're deceitful, shadowy...an unknowable character'

Developing the gendered narrative – Misogyny, class stigma and racism

In the JE trials the construction of the women as blameworthy through their role in facilitating the violence is reinforced through the utilisation of a number of other gendered stereotypes. These reflect some of the mediated narratives of 'criminal women' captured in Jewkes (2015) typologies, such as 'mythical monsters', 'evil manipulators', 'non agents', 'mad cows', 'bad wives' or 'bad mothers', and those myths and stereotypes Kennedy (2018) frames in her work such as 'the Other woman', 'girls, girls, girls', 'wicked women'. In a number of cases the women in these JE trials are constructed as monstrous and evil, referring to the violence that occurred (regardless of her non-participation) to define her in these terms.

Anya: 'Brutal, senseless, motiveless'(Media)

Dalia: 'Defiant to the end.' 'Evil monster of the North East' (Media)

Evie: 'Heartless' 'feral' (Media)

Demi: 'Evil killer' 'Monster' 'perverted and sadistic' (Media)

Ciara: 'Called me a monster. Top 10 dangerous woman. Said I was an escort too! They lied so much.'

Historical analysis of cases involving women accused of murder reveals how such representations can be dichotomous, with women constructed as ruthless or pathetic (Seal, 2010). Yet, as Seal suggests such narratives can also be contradictory, in these JE trials women can be constructed as both manipulative and non-agent at once, demonstrating the paradoxical nature of representations of criminal women.

Similarly, there are features of women's lives that can be used contradictorily in the courtroom as either aggravating factors for the prosecution and at the same time as mitigating factors for the Judge. The women described below cannot win, the prosecution argue that their presence is encouragement, they are 'egging on', whilst the gendered narrative constructs them as 'damaged' or 'vulnerable'.

We have seen how simplified representations of women's behaviours, their relationships, their lifestyles often linked to addictions are central in courtrooms and mediated narratives. Often, constructions of vulnerability become significant in the Othering and criminalisation of women. This is illustrated in the case of Ishbel who was described by the Judge as 'a vulnerable person who had suffered a hard life. She was living a chaotic lifestyle as an alcoholic.' Despite the event (a violent attack by her male lodger) described as 'very sudden and utterly lethal' and her actions in the situation as 'very real attempts to save his [victims] life', it is this depiction of her 'chaotic lifestyle' that is the focus of the prosecution strategy in her case.

The construction of her as vulnerable is therefore significant in her criminalisation. Rather than her actions, it is her perceived vulnerability and 'chaotic lifestyle as an alcoholic' that shapes why she is in the dock in this trial. Furthermore, this description is something the women contests - 'I was described as a vulnerable and small alcoholic living a chaotic lifestyle which I felt was untrue. I refer to self as a functioning alcoholic, fully in control of my life.' This case illustrates a key finding of the research, how such narratives are central to the criminalisation

of women. For other women, the realities of living with poor mental health, learning difficulties, abuse and victimisation are simultaneously hidden, yet references of being damaged or troubled are reflected in the narrative in ways that are stigmatising.

There are multiple examples of women described as having an 'alternative lifestyle' or 'chaotic life'. These signal to the Jury that she is not in her expected role or place in the home or in work, alongside references to alcohol and drug use, prostitution, and being 'transient' or homeless. In some cases at sentence the Judge acknowledges these as mitigating factors. Similarly, media articles describe them as 'vulnerable' or 'damaged'.

There are a number of other cases where this narrative of a 'calculating' or manipulative woman is coupled with the story of a jilted or angry (ex)-lover, of misplaced loyalty or love triangle / affair. It is her sexuality, role as a wife or girlfriend, that becomes a feature of the narrative inferring her blame.

Yasmin: 'Cruel...cold, calculating and chilling' 'Wife had tired of him' (Judge quoted in media) 'Lovers jailed for shotgun murder' 'Cruel wife' 'cheating wife' 'Ruthless' (Media)

'[Prosecution] Said I let him in, said I was having an affair and wanted rid of [husband]. He [Judge] said you're very clever'

Iona: 'Ex-girlfriend hires hitman' 'Embittered mother of two sent hitmen to murder ex-lover' (Media)

Nola: 'Murderess comes from evil family of crime' 'Calculating, manipulating and devious young woman' (Media)

Kyra: 'Love triangle.' 'Scorned woman' (Media)

Ishbel: 'Infatuated girlfriend (Media)

Additionally, these can include references to sexual deviance or explicitly sex work and prostitution, without any of the wider context of exploitation or violence that the women have experienced. Instead, women are objectified.

Kaylee: 'Crack addict prostitute guilty of murdering

rich client' 'hooker and boyfriend' (Media)

Gabriella: 'Another unnecessary death linked to gang activity in XX' (Judge in Media) 'Prostitute and teenagers jailed for killing' (Media)

Poppy: 'From beauty to the beast' (Media)

Mariah: '[prosecution said] Bad one, in control to get drugs'. 'Drug addict turned to prostitution in exchange for drugs' (Media)

Lynn: 'Honey trap thief, guilty of using sex to lure vulnerable man' 'Pregnant drug addict' (Media)

The women's status as mothers is repeatedly central to media reports, and is often a focus of statements made by the prosecution and in some cases defence. The opportunity to refer to women as single parents, or having children by multiple fathers is rarely missed.

Sienna: 'A sadistic single mum, tortured ex-boyfriend' (Media)

Melanie: 'Her defence said she had 3 children under 5 by different fathers' (Media)

In a number of these cases it is the mother of grown up children who is deemed responsible for her adult son's behaviour, in one case the victim is her other adult son and in a further one sisters. In these cases the demonising of families as 'problem' or 'primitive' also features in the narrative.

Eleanor: 'Drug dealer mother' 'A single mother and her family jailed' (Media)

'Focussed on my life, as a mother'

Mia: 'Family lacked morality and displayed primitive pack solidarity' (Judge reported in Media) 'Family from hell' (Media)

In six of the JE cases involving women the victim is an infant. In all but one of these cases the woman's own baby. Here the prosecution argue that she should have foreseen, it is her failure to know or act as expected of a mother that are central to the prosecution and media narratives. The women are constructed as failed mothers, and with references

to ‘wicked’ and ‘cold’, they are constructed as blameworthy for the co-defendants violence against the child.

Savannah: *‘Evil mother’ ‘Immature, damaged and vulnerable’ (Media)*

Maryam: *‘The woman who killed her brother over witchcraft’ (Media)*

Alana: *‘Mother who tried to blame new boyfriend’ (Media)*

Hansa: *‘Mum jailed for causing death’ ‘selfish and manipulative couple’ (Media)*

‘I couldn’t protect my son, I failed as a mother but I am not guilty of allowing his death. I did not know.’

As is captured in the case study (Page 13) silenced from these cases in court, but glimpsed in some of the media and reflected by the women in their responses is the wider context and history. In all these cases, there is evidence of domestic violence in relationships with the male co-defendant, often coupled with social isolation, and recent or current involvement of social services or the police. Once again in these constructions of ‘failed mothers’ there is the significance of objectifying the woman whilst simultaneously silencing the failures of others to protect both her and her child.

There are a small group of girls, teens or very young adults convicted under JE, the youngest just 13 when convicted and the oldest 22. In three of these five cases, the co-defendants (who are not part of our research) are also teenage girls. The main prosecution argument is the presence of the girl or young woman at the scene, and her non-involvement in the violence noted by the Judge or reported in the media. The prosecution establish their blameworthiness in relation to them being out of place – failing to be or behave as a teenage girl should.

Anya: *‘Roaming the streets, drinking, smoking, not typical teens’ (media)*

Brook: *‘You have previous for drunken loutish behaviour’ (Judge)*

a ‘lairy, mouthy’ ‘17 year old binge drinking killer’ ‘ex-public schoolgirl’ (Media)

Lillian: *‘Pony-tailed xx’ and ‘from XXX’ [neighbourhood] (Media)*

By obscuring the detailed context and drawing on simple stereotypes of women and girls, their class or cultural background, is either ignored or objectified. Five of the women who are subject to this narrative identify their ethnicity as ‘Asian’, ‘Asian Pakistani’, ‘Asian British’, ‘Arabic’ and ‘Middle Eastern’. In none of these cases is a racialised narrative explicitly employed by the prosecution or the media, instead the same narrative of ‘scorned woman’, ‘wife’ or ‘love triangle’ is used but with references to ‘wives’ or ‘dishonour’.

Sofia: *‘One of XX wives planned the attack’ ‘her knowingness and manipulation’ ‘Dangerous organised crime’ (media)*

‘I was judged because I was the only woman. They said I made phone calls’

Nisha: *‘Anger at his infidelity and the dishonour that his behaviour brought upon her and her family’ (Prosecution quoted in Media)*

‘Anger at his infidelity and the dishonour that his behaviour brought upon her and her family’ (Prosecution quoted in Media)
‘Evil Wife seeking divorce’ (Media)

‘They didn’t understand Pakistani culture...the defence didn’t want to use, skipped over briefly’ ‘Lured to her flat’ ‘manipulative and threatening figure’ (Media)

For women who report their ethnicity as Black, whether ‘Black British’, ‘Black Caribbean’, or ‘Black African’ and three of the women as mixed race ‘White and Black Caribbean’, the narratives refer to the ‘honey trap’ or the woman ‘luring’ men to violent situations. American literature examining the representations of Black and Latina women in contact with the criminal justice system reveals similarly racialised tropes of women as sexually dangerous or ‘jezabelled’ (Slakoff and Brennan, 2019; Slakoff, 2020).

Freya: *'Honey trap killing'*

'I feel that although the Jury was told not to listen to press coverage it was widely covered and I feel it was detrimental in my case'

Courtney: *'Acted as bait' 'Set up the boys deal' 'drug feud' 'gangs' (Media)*

Aliyah: *'woman who lured man to his death' (Media)*

'They said I associated with gang members'

Lisa: *'Honey trap girl' 'Good riddance honey trap killer' 'girls in gang culture' 'gang violence' (Media)*

'I was mentally weak and unstable so I accepted all of his abuse. I was unaware of their criminal activity that he had a knife. I apparently lured my boyfriend to be murdered.'

Shanice: *'Arranged the flat, not at the scene' (Prosecution quoted in the media) 'The gang' 'replica guns' (Media)*

'It was argued at court that although I did not personally cause harm to anyone I was guilty by association to those who did'

Jayla: *'Gun toting thugs' 'Pair do shooting' (Media)*

Racism and Joint Enterprise

Existing research on JE has demonstrated the racial disparity in its use (Crewe et al, 2015). In the 2016 Report *Dangerous Associations* Patrick Williams and Becky Clarke examined the significance of a racialised 'gang' narrative in explaining this over-representation of black and mixed-race defendants in JE convictions. This evidence reveals how these strategies serve to punish those on the periphery through the attribution of racialised criminal markers (Clarke and Williams, 2020).

This research confirms that prosecution narratives, echoed in the media, draw on a number of these long-standing tropes of the 'Black criminal Other' in the JE trials involving black women. In JE cases involving black and mixed-race women, the narrative of the racialised 'gang' – the 'youth' or 'street gang', 'drugs gangs', 'guns', 'thugs' or 'kidnap' and 'extortion', was

evident in seven of these eight women's trials.

This process is arguably more subtle, but remains present, in the cases of other minoritised women convicted under JE. For example, those from traveller communities whose lifestyles is constructed as 'alternative', or women of Pakistani Asian heritage whose culture is either objectified or ignored. How we understand the innocence or guilt of women, whether they are 'worthy of leniency' is ultimately shaped by racialised and classed characteristics (Brennan and Vandenberg, 2009).

These racialised narratives serve as powerful strategies to convict groups of defendants in JE trials, with the girls and women in this research subject to both gendered and racist narratives in their criminalisation and punishment.

The work of gendered narratives: Othering of women in JE cases

What is significant in the prosecution strategies that surround these cases is the treatment of the 'facts' in the case (Edwards, 1996). Particularly, what aspects are actively obscured and silenced by both prosecution and defence, and how what is revealed about women's lives is objectified rather than contextualised. As Kennedy's work, spanning 25 years argues:

'All the legal reforms have produced only marginal advances. [Gendered] Myths and stereotypes still pervade the courts' (Kennedy, 2018:317)

Kennedy points to women's struggle for credibility as witnesses, defendants and victims. In these JE cases, the prosecution teams exploit these dynamics and draw on strategies of Othering to secure conviction.

'Representing the Other is always a process of dominance and control, in which the person represented is reduced to an object.' (Krumer Nevo and Sidi, 2012:299)

In examining the process of Othering women, Krumer-Nevo and Sidi (2012) reveal how it is precisely through mechanisms of objectification, de-contextualisation, de-historicisation and de-authorisation of narratives about women's lives that women are constructed as the 'Other'. The findings of this research have repeatedly revealed these mechanisms of Othering as central to the process of criminalisation of women in JE cases.

Reducing aspects of their lives to portray a simplified stereotype, whilst simultaneously silencing important information about the context of the event, or their personal histories. The judgements are echoed by multiple actors (prosecution QC; Judge; Media) yet the narrative is de-authorised, emanating from wider 'stock stories' or standard narratives. That a prosecution QC or Judge can signal such narratives with ease, without any reference to the facts of the case, and remain unchallenged by the women's defence teams, reveals their influence.

Conclusion

The detailed examination of the process of criminalisation for women convicted in JE trials allows us to see a series of critical moments, decisions and actions, or omissions, which lead to the wrongful conviction of women under JE laws. These findings therefore also have the potential to reveal why these women in particular are criminalised in this process, that criminalisation is ultimately a structural and political process shaped by patriarchal forces, racism and class stigma (Chadwick and Little, 1987; Clarke and Chadwick; 2018).

The evidence demonstrates the significance of the actions of the police and Crown Prosecution Service. In particular, the decision to charge women with serious violent crimes, as a joint principle, in these cases regardless of their lack of involvement in violence or in some cases presence at the scene. This is possible by the continued injustice of the legal principles underpinning JE and secondary liability.

Once in a JE trial the prosecution strategy is invariably to develop a case theory – ‘this is what we the Crown say happened’ - positioning the woman as

a facilitator of violence. Without sufficient evidence, this story relies on inferences about a woman’s intent or role that draw heavily on myths and stereotypes, gendered narratives that are further layered with class stigma and racism. In many cases, the women are marginal to the event with almost half not present at the scene and almost all never having engaged in any physical violence, as such the gendered narratives drawn on are central to the prosecution strategy as they construct her role in a serious violent crime. The evidence here also reveals that the particular action, or inaction, of defence teams and Judges contributes to the wrongful conviction of women in these JE trials.

We contend that the current criminal justice system is inadequate in ensuring justice, accountability, addressing harm and preventing further violence. That so many of the women who are subject to these punishments are marginalised and have been failed by state institutions at an earlier point, whether in relation to protection, care or support, requires that any response to this evidence pushes beyond legal reform to a reimagining of justice for women.

What would justice look like?

We can see in these stories that women have experienced injustice at multiple levels both within and out of state institutions. In her persuasive writing on (in)justice, penologist Barbara Hudson encourages us to reimagine justice (2006; 2008). To ‘extend rights and protections to groups who have been marginalised and excluded from discussions of justice’ (Hudson, 2008:276). Her vision for a discursive approach to justice, through a focus on principles which are relational and reflexive, would ensure ‘events be seen in all their circumstances...

looking at concepts of justice and injustice beyond the narrow confines of legal categories’ (p284). She asks us to consider, ‘what would justice be in this case?’ This question is fundamental to the lives of women convicted in JE trials. As one of our participants Freya prompts us to consider - What is necessary to serve women convicted in JE trials justice?

‘Although the justice system brought me to justice, it has not served me justice’ (Freya)

Critical Concerns - Calls for Intervention

This report reveals the clear possibility of wrongful convictions for women in cases where Joint Enterprise (JE) is used. This demands an urgent political and legal response. We must work towards ending the injustice women face before, during and after joint enterprise trials.

- 1. Call for an independent review of Crown Prosecution Service (CPS) decision making** in cases involving female defendants in multi-offender trials (identifiable via Crown Court data). This review would examine the CPS application of the two-stage code test. Specifically, whether the decision to prosecute at all, or charge the female defendant with the most serious offence where lesser and more appropriate charges are available, was most appropriate given the evidence and public interest tests in these cases.
- 2. Call to instigate a Police Super-complaint**, with the support of a designated body and for consideration by the Independent Office for Police Conduct (IOPC), into the police investigation process and initial charge advice in cases where women face charges under JE / secondary liability charging policy.
- 3. Call on a Parliamentary Select Committee (SC) with appropriate jurisdiction to scrutinise** the issues raised in this report. A SC inquiry would examine the challenge to delivering justice for women in the context of state institution's repeated failure to protect, the harm caused by these wrongful convictions and punishment, and the potential human rights violations that have occurred.
- 4. Call for funding and support for a 'People's Panel'** to examine the use of joint enterprise with women defendants. This independent and community based panel will provide a space for dialogue and the recording of narratives. The panel would reflect a range of professional expertise and lived experience, and hear evidence from those impacted by the use of JE as well as those involved in its application.

Addressing these injustices cannot rely on individual women advancing redress through the existing appeal system. However, there are immediate reforms that may halt the use of JE, and support redress for existing wrongful convictions, as we move to dismantle the harms of the existing system.

We call for a moratorium on the use of joint enterprise and secondary liability with women.

- Where charges are brought under JE / secondary liability, we recommend Judges consider whether they can further apply the legal test of exercising their discretion by rejecting those cases where alleged 'plans' are based on weak circumstantial inferences involving women.

We call for the removal of existing barriers to legal appeals for individual women.

- Provide access to transcripts of women's trials for defence teams where key evidence needs to be re-examined, in support of out of time appeals or petitions for mercy to be prepared.
- Abolish the substantial injustice test, which prevents women from seeking leave to appeal out of time.
- The Criminal Cases Review Commission must be encouraged by the evidence in this report to keep referring JE cases involving female defendants for appeal, and consider whether these cases require collective review to address systemic injustice.

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