



# **JOINT ENTERPRISE, BAME GROUPS AND GANG NARRATIVES**

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## **Abstract**

This study critically analysed the extent to which the doctrine of joint enterprise criminalises young BAME individuals and how gang narratives contribute to the prosecution of BAME groups. By conducting three semi-structured interviews with academics and a campaign coordinator, it was discovered that the process of prosecution of young BAME groups is underpinned by a gang narrative which is fuelled by racist stereotyping. The findings suggest that from the combination of gang databases, prejudiced policing in black communities, the use of gang narratives in court and the medias' perpetuation of gangs, young BAME groups are criminalised through joint enterprise. The legitimacy of whether joint enterprise is fair and just was also brought into question highlighting the lower evidential threshold in these cases, harsh sentencing practices and the problems with secondary liability. Recommendations are made regarding the criminalisation BAME youth who are labelled as gang-involved and the necessity for research that probes into the lives of BAME groups in their communities to prevent gang stereotyping and reduce the impact of joint enterprise on BAME individuals.

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## Chapter 1: Introduction

### 1.1.Introduction

Joint enterprise is a common law doctrine developed by the courts for cases where numerous individuals are prosecuted for the same offence (Williams and Clarke, 2016: 5). Little significant research as to how defendants are convicted of joint enterprise exists (Crewe et al., 2015). Much of the focus on joint enterprise has been around the aspect of parasitic accessorial liability which forms the part of the law covering the secondary element of criminal liability (Smith, 1999, Burchell, 1997, Krebs, 2015). Joint enterprise has been defined in three ways, one of which is joint parties committing the same offence, the second, an accessory to the fact who assists or encourages the principle to commit a substantive offence, and the third, a departure by the principle from a ‘common purpose’ (Crewe et al., 2015 :1). Joint enterprise has also been applied in a way that criminalises individuals for the actions of a group based on the foresight of risk (Williams and Clarke, 2016), which has effectively caught more vulnerable individuals into the investigative process in what has been described as a criminal dragnet (Okocha, 2018). The use of joint enterprise has arguably been applied as a gang prosecution strategy focusing on incriminating youth on the grounds of their associations (Bridges, 2013). Although there are several definitions of the “gang”, the Eurogang definition has been adopted in this study. It defines “the gang” as a ‘delinquent youth group of three or more youths’ who are defined by ‘at least one structural feature (name, an area, a leader, or rules)’ and have ‘engaged in delinquent or criminal behaviour together in the last 12 months’ (Home Office, 2006 cited in Cottrell-Boyce, 2013 :194).

While the Supreme Court in *R v Jogee* (2016) identified the problems in the law of joint enterprise, little attention was given to the effects of this law on ethnic minority groups (Okocha, 2018: 129). Therefore, the characteristics of minorities as a penalised population, have arguably been built into the criminal justice system which can be forwarded as evidence for how joint enterprise has been unduly dispensed on BAME groups (Hudson, 1993: 164). The media reproduces racist discourse in which black youth are poised as a threat to social order (Williams, 2015). Sharing this view is Beale (2006) who argued that the media sensationalise and circulate coverage on youth and gang violence which form public and criminal justice responses. Howell (2008), likewise implies that the media support intensive and profile-based policing of minority communities (Howell, 2008).

### **1.2 Justification of this study**

Research focus on joint enterprise has been limited, mainly adopting a quantitative approach (McClenaghan et al., 2014). There is an abundance of research on the issues of secondary liability element of joint enterprise; however, when it comes to the racial composition of those serving sentences for joint enterprise, this dynamic has been overlooked in literature (Okocha, 2018). It is crucial to understand how and why there are more BAME groups subject to prosecution under joint enterprise (Williams and Clarke, 2016). By engaging in a critical qualitative analysis of how young BAME groups are prosecuted under joint enterprise, this may enable a closer focus on its use and implication within the criminal justice system.

### **1.3 Research aim**

This study aims to assess if the doctrine of joint enterprise has been administered haphazardly to criminalise young BAME groups.

#### **1.4 Research question**

1. To what extent does the application of joint enterprise criminalise young BAME individuals?
2. How do gang narratives contribute to the prosecution of BAME groups in joint enterprise cases

#### **1.5 Structure of the study**

The literature review provides a brief overview of the policy and practice of the joint enterprise doctrine, young people and their association to gangs, constructions of the gang and BAME groups, the use of gang narratives and finally the role of the media in reinforcing gang narratives. A subsection under the theme of young people and their association with gangs will include joint enterprise as a criminal dragnet. The third chapter presents the methods employed within this study, first providing critical social research philosophies of research methods and the type of stance adopted in the present study. This section will then discuss how data was collected and is broken down into two subsections; purposive sampling and semi-structured interviews. The next section presents how the data collected was analysed using thematic content analysis and then go on to consider the limitations and ethical considerations. The following chapter presents the findings of the study and engages with a discussion of the existing literature to contextualise how the doctrine of joint enterprise has been used to criminalise young BAME groups. Finally, the last chapter of the study summarises the key findings and provides recommendations for future research.

## Chapter 2: Literature Review

### 2.1 Joint enterprise policy, practice and implication

Joint enterprise has been an area of criminal law raising sharp criticisms as to its principle and practice by lawyers, academics and policymakers (Jacobson et al., 2016). Joint Enterprise is established through common law but is controversially a doctrine which permits the prosecution of two or more defendants for the same offence even where the suspects have played varying roles (Danner and Martinez, 2005). Inherent to the application of joint enterprise is the principal aspect of common purpose or parasitic accessorial liability established in the case of Chan Wing-Sui, which provided that two or more individuals can be charged for offences committed by a member of the group during a criminal venture irrespective of the individual who has committed the conduct element of the offence (Bridges, 2013). Williams and Clarke (2016) posited that an individual could be held liable for another person's action based on the foresight of risk, though it may not have been intended for the offence to occur. The turning point in the Joint enterprise doctrine observed in the case of R v Jogee (2016), concluded that the law had taken the wrong turn since the case of Chan Wing-Siu, correcting this rule so that foresight is merely evidence of intent to assist or encourage, which is the proper mental element for establishing secondary liability. This was deemed to be 'a serious and anomalous departure of the basic rule resulting in an over-extension of the law' (Okocha, 2018: 122). The House of Commons (2014), support this idea of the over-extension of joint enterprise by considering that joint enterprise is operating unjustly and according to Crewe et al., (2015), allows the doctrine to be administered in a haphazard way against the

value of due process and instead producing an ambiguity in the way that the doctrine is interpreted. Previous studies have reported that four hundred individuals have felt the injustice of joint enterprise (Greene and McGourlay, 2015) and its arbitrary use which burden jury members to convict those peripherally involved in an offence (Bridges, 2013). However, a significant problem with this kind of application of the law is that it has been used in a racialised and discriminatory way (Squires, 2015). Bridges (2013: 13), argued that joint enterprise had been used with increasing frequency to target those who are alleged to be criminally associated with a group or gang violence. To determine the foresight of risk or the common purpose required for joint enterprise, language such as the 'crew' have been evoked by the prosecution to become suggestive of youth groups and gang behaviour (Okocha, 2018: 134).

## **2.2 Young People and their associations with gangs**

Squires (2016), indicates that the doctrine of joint enterprise has been applied to underpin the process of gang prosecutions in the UK allowing an increasingly punitive approach to confronting the perceived problems of gang violence (p.940). Pitts (2014) analysis of joint enterprise has suggested that in cases where it has been proposed that a gang committed an offence, the prosecution can find an individual engaged in the crime because they are associated with gang members and by means of this association, are committed to the aims and purposes of the gang. The 'gang' label has thus been adopted to gain several convictions under joint enterprise which has embarked on the amplified application of the gang label on youth groups (Okocha, 2018). There has been questioning surrounding youth groups which are labelled as gangs which create institutional implications for the misattribution of the label, particularly for those who live in crime hot spot areas (Sharp et al., 2006). In contrast to this idea, Sarnecki (2001) found little evidence of group offending in his analysis of violent offenders in crime hot

spot areas, reinforcing Pitt's (2015), view that the criminalisation of youth for their associations, reduces them to a set of de-naturalised risk factors that annexe peer groups to gang associations. This appropriates the reality of youth culture in criminological research as a set of contextualised variables which have been misunderstood to routinely apply gang labels to individuals who have connections between particular areas, or housing estates (Pearson, 2006). BAME groups are being oppressively policed with draconian penalties which influence the prosecution of young people from ethnic minority communities who have peripheral, minor or non-existent involvement in crime (House of Commons, 2014: 13). This is supported by Williams (2015), who describes that there is an ideological potency to connect youth and race as a fragment of social instability and moral panic.

Statutory sentencing enhancements policy such as the Ending gangs and youth violence strategy (EGYV) (HM Government, 2011), has contributed to techniques of harsh policing which perpetuate prejudice and implicit bias in a net-widening of youth from already marginalised areas (Decker and Pyrooz, 2015: 533). Cottrell-Boyce (2013), has contested the EGYV strategy proposing that it poses a fundamental problem as it relies on data which is harvested from agencies which employ various gang definitions to obtain their figures of youth violence. Marshall et al., (2005: 7) challenges the ambiguity of gangs as a concept and its tenuous links to criminal behaviour which has merely concentrated on behaviour which drives the focus of youth and gang policy as inefficient. This according to Densley and Mason (2011: 14), has substantiated government policy around gangs as being developed without proficiency with the real issue of youth crime. Williams (2015), attests that police adopt the gang definition as previously mentioned, and this is key to informing policing responses to the gang.

### ***2.2.1 Joint enterprise: A dragnet for youth***

The potential for joint enterprise to sweep up a number of young people based on associations is a continuing concern (Kirby et al., 2016). The Prison Reform Trust has revealed that joint enterprise can act as ‘a dragnet, bringing individuals and groups into the criminal justice system’ unnecessarily (Jacobson et al., 2016: 3). Bridges (2013) has also described the doctrine as unfair and discriminatively charging everyone involved in the gang or associated with it (p.35). However, research has shown that these studies fail to include any mitigating or aggravating factors for joint enterprise convictions under gang prosecutions. Traditionally, researchers have subscribed to the belief that joint enterprise has merely acted as a crime control mechanism on the regulation of feral youth (McGourlay, 2015) which supports Goldson (2000) view that joint enterprise has propagated with it a type of fast track punishment which would shame young people in youth courts through punitive escalation and deter young people from gangs.

Similarly, joint enterprise has been observed as a deterrent strategy to tackle an alleged youth crime epidemic in England and Wales (Agnew, 2016: 25) or deter affiliates about the perils of gang involvement (Pitts, 2014). This idea is contested by data which proposes that youth incarceration has fallen, but for the demographic of young BAME individuals, incarceration is increasing (Home Affairs, 2007). Pitts (2015), draws on this by identifying that BAME youth are significantly overrepresented in prisons and young offenders’ institutes as they are the most susceptible to criminal victimisation. In contention to this, Corrigan (1979), proposes that the susceptibility of falling into the criminal justice system for youth could involve a mixture of being in a public space as a group and idling. However, Pitts (2014), has suggested that the

reality of young people who live in gang-affected areas, live over-lapping lives and due to hanging around on the streets, are prone to be evoked as gang involved.

### **2.3 Construction of the ‘gang’ and young BAME groups**

It is important to look at the doctrine of joint enterprise in the context of race as statistics have come to illustrate that a disproportionate number of minority groups have fallen within the remit of joint enterprise law (Okocha, 2018). The over-representation of BAME groups convicted of joint enterprise is a national scandal emerging as a feature of dominant criminal justice discourses and narratives (Phillips 2012; Alexander 2008). Some critics have argued that this is a result of how the term gang has permeated a social meaning that express concern for violent crime that is powered by ‘race-based stereotyped distortions’ (Alexander, 2008 cited in Gunter, 2011:7). What we know of joint enterprise is largely based on empirical studies. However, Feilzer and Hood (2004), say there is the discriminatory treatment of minorities across the criminal justice process. The Macpherson Report (1999), accepted that an element of disparity within the criminal justice system was due to discrimination whilst Williams (2015), shows how constructed signifiers such as race unfold as a mechanism of “othering” groups who are deemed a threat to social order. This underpins how the system of criminal justice accommodates institutional sites whereby race is rendered ‘intelligible as intractable problems of crime and social pathology’ (Williams, 2015: 23). Gunter (2011) shares this view that the pathologisation of black youth culture has been reprimanded to overly define the alleged social problem of gangs. Gutzmore and Crewe (2015) suggest that there is a long history of a special category applied to young black men which legitimise the development and application of punishing penal apparatuses marking the implementation of joint enterprise of as an indiscriminate ethnic vacuum which is creating a daunting reality in joint enterprise

figures for ethnic minorities. Disproportionate numbers of 37.2% of young BAME men are serving long offences for joint enterprise which was found to represent eleven times the proportion of Black/Black British people in the general population and almost three times as many in the overall prison population (Crewe et al., 2014: 3). Furthermore, gang violence has been highlighted as a problem which is specific to black communities which reinforces how youth in these communities, are faced with the blunt force of joint enterprise prosecution and unfair criminalisation (Bridges, 2013:34). Williams (2015), study suggests that the disproportionate impact of joint enterprise on the BAME community is due to the over-representation of ethnic minorities and the normality of congregating in groups which strengthen the gang label and underwrites the racist policing conducted within the BAME community. This is a shared agreement with Okocha (2018), who states that the composition of a gang is likely to mirror the composition of the area which means that the police perception of gangs is observed as a BAME problem in a similar way to the history of discriminatory stop and search practices in the black community. Joint enterprise shares an institutionalised rhetoric as studies of police culture have consistently demonstrated racial prejudice as a key feature of their work (Reiner, 1992; Bowling and Phillips, 2003). In recent times, the increase of police stops and search in black communities has amplified the misuse of these practices despite searches of black people being less likely to detect crime than in white (Taylor, 2019). Howell (2015), submits that the police construction of gangs rationalises policing practices of minority communities. The over policing of minority groups is contradictory to evidence provided by Phillips and Bowling, (2007), who highlight that the patterns of crime amongst ethnic minority groups is inherently flawed and limited to ethnic monitoring data which depicts crime as being predominantly committed by black minorities despite indication that crime is committed at a similar rate to the white majority. Written evidence by Crewe et al., (2015), asserts that black

and mixed-race men are considerably over-represented in those serving long sentences for joint enterprise which Tyler (2007) identifies as relating to procedural biases in the criminal justice system. This supports Phillips and Bowling (2007) assertion that biases in the way criminal justice is administered, reflects a skewed reality. This is a supported assertion by the House of Commons (2014) who describe the tendency for prosecutors and juries to build the dangerous association that being a young ethnic minority male, being in a gang, and being involved in forms of urban violence appear to co-exist. The way minority groups are policed is reflective of this inherent bias as 80 percent of individuals arrested by police are recorded as white, yet black and mixed-race men represent a disproportionate reality of those imprisoned which expose the direct and indirect discrimination and criminalisation of BAME groups (Phillips and Bowling, 2007). Findings from the HM Government (2011), Ending gangs and youth violence programme, showed that though white young people in their sample perpetrated 79 percent of severe incidents of youth violence, 89 percent of BAME individuals were most likely to be identified as gang-involved (Clarke et al., 2012). Member of British Parliament (MP) David Lammy, labelled the doctrine of joint enterprise as a miscarriage of justice which eroded trust in the criminal justice system and is racist in its enactment since using the term gang when discussing groups of black men, (Expressandstar, 2018), has been used as an apparatus of social control both created and sustained by operating criminal justice entities (Williams and Clarke, 2018).

#### **2.4 Gang narrative**

The ethnic overrepresentation of gang narratives and its nexus to joint enterprise violence is often silenced (Williams and Clarke, 2018). Gang narratives have the power to trigger biases, 48 percent out of 20,000 individuals added to the gang database between 2003 and 2013 were

identified as black (Howell, 2015). Okocha (2018) identifies that the gang matrix is over-representative of BAME individuals despite no evidence to affiliate certain crimes as being unique to particular demographics. Contrastingly, evidence has highlighted that BAME individuals constitute a small proportion of youth violence committed (Williams, 2015). Squires (2016) and Pitts (2014), contextualise this misattribution of gang labels being considered a race-specific problem by highlighting how the gang matrix is created from intangible and circumstantial evidence of gang relation. Additionally, Williams and Clarke (2018) found evidence of an explicit taxonomy of descriptors of gang involvement being used to assist police, prosecution teams and judges. A report on social network analysis of street gangs revealed that gang rhetoric was applied by the police to regulate a network of gang nominals to legitimise joint enterprise as a risk management tool which produces racialised responses to young black males in crime affected areas (Gunell et al., 2016). Joint Enterprise is rightly acknowledged as a de facto anti-gang statute targeting adolescents allegedly involved in gangs (Pitts, 2014). Though Pitts, 2014 expresses concern for what is Gang ‘myth-making’ by young people, he fails to appreciate the significance of everyday encounters and interactions between young black men and the police, which may exacerbate the prosecution narrative of young BAME gangs. Christie (2001 cited in Hallsworth and Young, 2008 : 185) asserts that gang narratives provide a readymade ‘suitable enemy’ for the public by classifying BAME groups as gang members which problematises a label which is already criminalised and holds certain connotations (Hallsworth and Young, 2008). Hallsworth and Young (2008) research also imply that gang labels are not a neutral descriptive, but it adopts with it, a dangerous ideological baggage in which race is articulated and serves a stigmatising function for BAME groups. This idea is articulated by Garland (1996), who submits that the abuse of gang narratives is peddled by the construction of the “criminological other” which has been

historically riddled by racialised responses to gangs. 79% of respondents in Williams and Clarke (2016) study of dangerous associations established a theme of gang rhetoric in court against 39 percent of whites' who were twice as likely to note that little evidence of gang associations was applied in their cases.

Dehumanising language such as a 'pack of animals' to describe black defendants is rampant and has been argued to provide a distorted picture to jurors for linking BAME groups with gang activity (Okocha, 2018: 134). Gaffney (2018) podcast with Criminology lecturer Becky Clarke, discusses a racialised gang narrative that was used in eight out of ten BAME groups compared to four out of ten white prisoners during joint enterprise prosecutions. References to communities with a concentration of minorities peddled by gang labels were said to gain convictions in these instances (Gaffney, 2018). Hallsworth and Young (2008), acknowledge the prevalence of how racial bias is used within linguistic cues for defendants who wear black faces which is similar to the inclusion of links between social media and rap videos, which are used to build reference of negative associations and criminal behaviour of minority groups (Pitts, 2014).

## **2.5 Role of the media**

Gang narrative has been driven by media and political discourse which sensationalised gangs, causing an institutionalised practice that permits a severe application of the law on BAME groups (Phillips, 2011). The media produce symbols and cues concerning minority groups whose behaviours, lifestyle and culture are presented as posing a threat to the norms of society (Williams and Clarke, 2015: 21). Okocha (2018) likewise suggests that the media distortion of minorities is likely to influence the conviction process under joint enterprise. In contrast,

Hallsworth and Young (2008), describe how journalistic-over kills of new stories aggravate gang narratives within the court arena for black defendants. Media discourse on urban crime cement concrete links between violence, BAME communities and gangs (Sveinsson, 2008). In recent times, the media have been able to facilitate and rehearse links between youth gang violence and drill music (a style of trap music) (Allen, 2018), which corroborate narratives in court as gang-related and forge a consensus that the immediate problem reported is the problem of gangs (William and Clarke, 2018: 183).

## Chapter 3: Methodology

### 3.1 Introduction

This chapter explains the research methods used to guide the current study. It firstly addresses research and critical social research philosophies used to underpin the collection and analysis of the data. Additionally, there is a discussion of the research design detailing the use of purposive and semi-structured interviews. Thirdly, how the data was collected, transcribed and analysed will be presented. Finally, limitations of the chosen research designs and proposals for future research and replication of this study will be referenced marking some of the few ethical considerations for this study (Easterby-Smith, 2008). Seale et al., (2004), emphasises the importance of explaining the rationale for the research, its aim, what is known of the subject matter and why qualitative methods are necessary. Furthermore, how sampling is conducted and the process of gaining access to participants should be stated and justified followed by the process of data collection and analysis all in the context of the research question and its implications on findings (Easterly smith et al., 2008). This study belongs to the qualitative school of thought relying on critical social research objectives which focus on an interpretivist social stance as individuals are most receptive to research based on qualitative procedures (Zedeck, 2003: 3). Traditional research practices for studying issues such as race is informed by an interpretivist stance which rejects the artificial experimental setting in which a social distance is created (Atkinson and Delamont, 2010). Qualitative research methods have been adopted in Scott (2018) study on gangs and race which therefore suggests a qualitative inquiry poses a suitable fit for the current study. The present study aims to find out whether a process of racialised criminalisation of young BAME groups occurs in joint enterprise cases using gang narratives. Accordingly, a qualitative approach is open to eclecticism and powerfully supported

by philosophical influence (Hammersley and Atkinson, 1983:7) and since research should be led by knowledge in developing the research process (Bryman, 2016), this study employs a qualitative approach into how gang narratives are used in the process of prosecution for young BAME groups in joint enterprise cases.

### **3.2 Critical social research philosophies**

Critical social research is applied in this current study to promote engagement with an alternative discourse which questions the relationship between institutes of power, process and legitimacy which share a commitment to voice a view from below (Scraton and Chadwick, 1991). Institutional factors are argued to influence research methodology in several contexts; with an assessment of the quality of qualitative research dependent on the relationship between institutional and technical factors (Easterby-Smith et al., 2008). Methodological practices which inform research responses to challenging issues are often silenced. This may allow the continuity of destructive policies and practices which further ostracise particular groups. Therefore, taking a qualitative approach to the subject area can provide a voice to the concerns amidst young BAME groups which reinforces an interventionist approach which can 'recast research as a form of resistance' to provide an oppositional agenda to the power of institutes and systems (Scraton, 2007: 17). Belonging to an ethnic minority group as a researcher is important as Hooks (1992), demands that those studying cultures require a critical and reflexive interrogation of their position and beliefs as a means of acknowledging the lens through which the research is analysed. The stance of the researcher is important in order to exercise power as an academic, and this constructs narratives about issues or communities as the power of representations and the researcher's role in constructing regimes of truth, are central to critical social research (Clarke et al., 2017). Knowledge and understanding of belonging to a group

affected by inequalities as a researcher can, therefore, 'extend and enrich emotions as a form of data' (Sloan and Drake, 2013: 24). However, the problem with critical social research can be that research is exposed to biases according to the researchers' values or interests. This study worked to the principles of critical social research as it provides opportunities for academics to interject, to work in or support of, and in service to campaigning groups resisting injustice to reduce any implicit biases (Clarke et al., 2017).

### **3.3 Data Collection**

Qualitative research was collected using primary data in the form of semi-structured interviews from a combination of two academics and one campaign coordinator using purposive sampling. The use of semi-structured interviews was also adopted as this would provide this study with rich data as social phenomena cannot be understood in terms of causal relationships or subsumption of the social world (Atkinson and Delamont, 2010). This ruled out the use of quantitative methods as the existing literature implies that the emotions manifested in qualitative research are natural in the context and this would be greater suited to sensitive subject areas (Morse et al., 2008). The literature review included several primary and secondary sources, evoking a contextual analysis of journal articles, books and some newspaper articles which were selected through a standard 'Google Scholar' search and 'Jstor'. Alongside this, databases such as 'Royal Holloway E-books catalogue' was used to find secondary data for the current literature review. This was done by using search terms associated with the subject matter such as 'Joint enterprise', 'gangs' and 'youth'. The interviewee's responses were collected using a voice memo application on a mobile device and then transcribed.

### **3.4 Purposive sampling**

This research adopted purposive sampling with the awareness of the subject matter and the population of academics who research the area as a means of finding knowledgeable and reliable informants (Snedecor, 1939). Purposive Sampling is a tool for informant selection, it is non-random and based on the qualities the informant possesses irrespective of underlying theories or a set number of informants (Gill et al., 2008). The researcher sets requirements, to find those willing to provide the information by virtue of their knowledge or experience (Bernard, 2002). In this way, purposive sampling can be more realistic than randomisation in terms of time, effort and cost needed in finding informants while also pursuing the subject matter in depth (Tongco, 2007). McDonald et al., (2003) supports this adoption of informant selection suggesting that participants can be taken from knowledgeable people or previous studies. For this study, two academics and one representative from a campaigning group were recruited through industry and academic contacts who were willing to share their knowledge on the subject matter (Bernard, 2002). By way of email, the information and consent forms were sent to all participants detailing the research question and purpose of the study. This shaped an informal setting whereby correspondence for any questions and clarification of the research topic could readily be achieved before the completion of the consent form. Selecting the manner of obtaining data should be conducted with sound judgement, especially since no amount of analysis can make up for improperly collected data (Bernard et al., 1986). The intentional bias of purposive sampling is advantageous for strengthening the method and producing its efficiency through reliable and robust data from knowledgeable people (Bernard, 2002).

<b>Table 1: Respondent description key</b>	
<b>Profession</b>	<b>Respondent reference</b>
Senior Lecturer in criminology	A
Campaign coordinator	B
Lecturer in Criminology and criminal justice	C

### *3.4.1 Semi-structured interviews*

The adoption of semi-structured interviews allows flexibility which provides the topic while remaining relevant, responsive and ‘directed to specific areas of inquiry’ (Seale et al., 2004 cited in McIntosh and Morse, 2015:2). For the application of this interview style, research principles are neither ‘de-contextualised or abstracted from the research itself but appear as assumptions and are reflected in the methodological strategies used’ (McIntosh and Morse, 2015: 2). Questions such as ‘the extent to which secondary liability should be limited’ was asked since it related to the issues which were outlined in the existing literature on Joint enterprise. The use of semi-structured interviews included probes which enabled a full expression of the participants' stance and providing qualities which yield pertinent and produce rich data (Berg, 2001). In conducting face to face interviews, it allowed complex or unscheduled prompts which elicited more concise and elaborate responses (McIntosh and Morse, 2015: 7). McIntosh and Morse (2015), suggests being sensitive to the needs of the respondent offering a break if necessary or emotional support which is an approach supported

by ethical qualitative research and the sensitivity of some of the issues covered in the interviews such as racism.

### **3.5 Data analysis methods**

Data were analysed using an inductive approach to contextualise the raw data the semi-structured interviews provided (Thomas, 2006). Data was analysed in conducting a full transcription of interviews responses. The respondents were anonymised and assigned alphabetical synonyms (A, B, and C). Due to the nature of purposive sampling from participants within the academic field, and the rich data they provided, conducting a thematic content analysis was appropriated to delve into the most critical issues and qualitative richness obtained from the data (Kreuger and Neuman, 2006). This method allowed a means of ‘identifying, analysing and reporting nuanced patterns within the data set’ (Braun and Clarke, 2006: 79).

Through analysing the narrative material of the responses by breaking up the data set into the themes of: ‘young BAME groups’, ‘policing in black communities’ and ‘the gang matrix’ which include subsections on ‘the gang narrative’ and the ‘medias perpetuation of the gang’. Additionally, the following theme of ‘legitimacy’ considering the ‘low evidential bar’, ‘secondary liability’ and ‘harsh sentencing’ was able to submit the findings into a descriptive treatment which answers the research question (Vaismoradi et al., 2013). Themes which were race or youth-related were important to select since this remains as close to the data and is representative of the phenomena under consideration (McIntosh and Morse, 2015). Participants’ responses were all equally compared through full transcription by item as they were provided with the same line of questioning within the same order which enabled a

consistent sorting and summarising of the informational content of the data. This was produced using a standardised coding procedure highlighting the critical themes, words and phrases and any inferential information relating to the subject matter within each response such as race-related issues and youth violence (Miles et al., 1994). The coding procedure remained broad, to begin with, and was categorised according to the prevalence of similarities within each response and then subdivided into smaller categories which reduced the data to speed up the analysis (Miles et al., 1994). Synthesis of each category and subcategory was finally developed, and in doing so, the semi-structured interviews were able to constitute detailed summaries which are valuable as end products in confirming the existing data or secondarily as contributions for future research (McIntosh and Morse, 2015:9).

### **3.6 Limitations /Ethical considerations**

#### ***3.6.1 Data collection limitations***

Data collected only represents a small part of the whole providing strong external validity for the subject matter (Bernard 2002, Godambe 1982, Snedecor, 1939). The study may be replicated for confirmation within a different population to increase validity over a larger population (Bernard 2002). This contrasts research which notes a conscious bias with purposive sampling which must be regarded with caution (LoBiondo-Wood and Haber, 2005 cited in McIntosh and Morse, 2015). Corti and Fielding (2016), suggest that small purposive sampling methods are limited in ensuring the anonymity of the community studied. In overcoming this, consent forms provided for the participants detailed the anonymity of the study, their right to withdraw and the voluntary nature of the study. When conducting the content analysis, names

mentioned relating to real cases, historical or existing research currently being undertaken by the participants were excluded from the transcription.

### ***3.6.2 Semi-structured interviews***

The limits associated with conducting semi-structured interviews include the replicability of the research considering interviewer techniques. Irvine et al., (2013) suggests that this is most problematic for the validity of research since there is a lack of consistency surrounding: prompts, the phrasing of questions, and information provided for clarification of questions. However, this can be best challenged in its replication by conveying the equivalent meaning of the question for all participants according to (Denzin, 2017). A further disadvantage of the interviews was the imposition of double ended questions where two questions were asked at once, and this could have contributed to a tacit assumption as to the responses expected from the participants creating a misleading answer (Berg, 1989). For future research, a structured set of prompts which remain close to the original line of questioning should be produced so that data is more reliable, and data is equally reviewed across all participants.

### **3.7 Ethics**

In qualitative inquiry little is known about the risks (Gunwales et al., 2007; Lincoln, 2005; Lincoln and Tierney, 2004 cited in Morse et al., 2008). Some researchers have instigated that consent issues to remain a prominent aspect of qualitative research in that institutional formalities can interfere with researcher-participant relationships (Van den Hoonaard, 2002 cited in Morse et al., 2008). This is questionable since the purposive sampling of the study from the academic realm remains consistent with practices and critical research philosophies.

## **Chapter 4: Findings and Discussion**

### **4.1 Introduction**

This chapter contains a thematic content analysis of qualitative data obtained from three semi-structured interviews. A thematic content analysis was employed to bring into context several themes which arose from the interviews. A discussion of the findings which relate to existing literature has been broken up into the following themes; the criminalisation of young BAME groups, policing of black communities, and the gang matrix and legitimacy. Two subsections discuss the gang matrix while considering the use of the ‘gang narrative’ in court and the media perpetuation of the gang. Next, under the theme of legitimacy, low evidential presumptions, secondary liability and harsh sentencing will be discussed. Finally, additional findings are presented to conclude whether there is a process of racialised prosecution of young BAME groups under the joint enterprise doctrine.

### **4.2 Young BAME groups**

The doctrine of Joint Enterprise disproportionately affects young people, more specifically young BAME individuals. Joint enterprise has therefore represented a compounded over criminalisation of young people and a pattern of racialised injustice (Squires, 2015). Respondent C described how the doctrine is “forced most harshly on people who are young” which suggests that the doctrine of joint enterprise is used to criminalise young people who operate in groups. This finding is substantiated by respondent A, who referenced a study

focusing on “long term prisoners” which was “reflective of some very particular characteristics around age and ethnicity”. This finding confirmed Crewe et al., (2015) study, of long-term prisoners which was found to have an over-representation of black and mixed-race men. This would suggest that joint enterprise forwards an implicit bias towards the young BAME community. Furthermore, the overt criminalisation of young BAME youth groups occurs because of the police’s misconceptions of young people. This was alluded to when respondent A described that the police have an “assumption” as to the “nature of the relationships” between young people, particularly “young black minority groups who hang around on road” whereby the police build a connection between the “nature of their friendships” and the “nature of their offences”. This implies that black youth culture and its misunderstanding has become a part of a vindicating police practice which overtly criminalises young BAME individuals in assuming that the nature of their relationships is criminal. This misconception according to respondent C, is a demonising action taken by the police in which “no allowance for any reality” is permitted. Okocha (2018), supports this assertion in highlighting that a limited understanding of minority groups and the stigmatisation of elements of black culture are carried into the prosecution process where certain aspects of black youth such as ‘hanging around on the street or the road in their free time’, becomes negatively associated as gang-related (p.135). Squires (2016), supports these findings in addressing the tendency of police officers to over-define the problems of black youths who are persistently labelled as gang-related, Squires furthers this view in suggesting that the association between gang-related behaviour and young black males have justified the cycle of ‘racialised delinquency amplification’ of black youths (p.941). Okocha (2018), contradicts the racialised application of crimes being perpetrated by a particular race but highlights that there is evidence that reveals individuals are likely to co-offend with people from their race.

Youth group dynamics are arguably perceived as not fitting within the realm of moral behaviour as respondent A, described how the nature of youth groups are considered “immoral”, which exacerbate the experiences of young BAME groups with the police. Respondent A provides an example that “the process of criminalisation (over-prosecution and over-incarceration)” is made difficult by a set of “assumptions” of “human behaviour” which is made “tricky” by the set of stereotypes that the behaviour of young BAME groups is “not clean”. There is evidence to suggest that this is accurate because legislative action has been argued to have been implemented in response to steering the control of young black men who were out of place, unattached or antisocial (Demuth, 1978 ; Squires, 2016). SUS law (1824) before the PACE act (2003) initiated a response to the control of black youths allowing stop and search procedures to occur based on suspicion which has long been associated with the perceived “dangerous other” of black youths (Krebs, 2010). Furthermore, the ending gang and youth violence strategy in 2011, was a response to the alleged cause of the London riots in 2011 which depicted a suitable enemy arguably the black criminal other which allowed the criminalisation of innocent black young people rather than solving the wider or structural root of youth violence in urban neighbourhoods (Cottrell-Boyce, 2013). Findings in this existing study equally support the fundamental problem of creating the connection between violent crime and urban areas with the generally applied ‘Eurogang’ definition of a “gang” as three or more youths alongside a structural feature such as area, which can be easily applied to any group of friends from a neighbourhood (Cottrell-Boyce, 2013: 194). Respondent A alludes to this in noting that the “lives that young people live” is somewhat misunderstood. This underpins current literature which assumes that youths are being criminalised for their associations with little indication as to their offending behaviour (Sarnecki, 2001), which reduce youth to a set of de-naturalised risk factors that annexe group and peer relations to gang

associations which appropriate the reality of youth culture as contextualized variables (Pitts, 2015). For this reason, the revelation from respondent A surrounding youth groups demonstrate that youth culture is implicitly being socially controlled by punitive policy and the policing of young people in a “very draconian way”. This finding is supported by existing literature which notes that joint enterprise has acted in a way that serves a crime control mechanism for stray youth dragging them into the criminal justice system (Garland, 2001). However, these findings are contradicted by evidence which shows that even though youth violence is reducing, there is a significant proportion of young black boys who are entering young offenders’ institutes (Home affairs, 2007 cited in Williams, 2015). The “assumed” nature of peer group relations can arguably be deemed as an illegitimate and an unfair way of policing young BAME groups who consequently, succumb to represent a clear majority of prisoners serving sentences for joint enterprise related crimes (Williams and Clarke, 2017). Similar findings are echoed by respondent B who protests that statistical evidence demonstrates that the doctrine of joint enterprise has been used most extensively on the “demographic of young BAME individuals”, who are targeted and most affected by the joint enterprise doctrine. The respondent notes that the doctrine is “definitely targeting them” therefore producing inequality in the types of groups’ joint enterprise affects in comparison to their white counterparts. This finding reinforces how crime committed by young black people are the construction of ethnic monitoring data as crime has been evidenced to be committed at a similar rate to the white majority (Phillips and Bowling, 2007). This was also anecdotally referred to in the respondent B answer where she provides an experience between the police and her white son that had resulted in her son merely receiving a “slap on the wrist” for a petty crime compared to his black friend, who was “put [straight] into the criminal justice system” based on him being “black” and “hanging out with the wrong people”. Though the literature has suggested that secondary parties can be found

liable for the actions committed by the primary offender based on association (Pitts, 2014), respondent A submits that race is the most powerful instrument in the criminalisation of joint enterprise cases. The respondent references a case where a group of young white men were fighting in a field, and an individual was subsequently stabbed, “[none were convicted under joint enterprise]” and this is because they were “all white kids ...and they're all in a field in a community whereby they're being policed very differently” she described. This rightly complements the statistical evidence on Joint enterprise prisoners who are disproportionately black and mixed race (Williams and Clarke, 2015).

#### **4.3 Policing black communities**

Respondent A puts forward how policing strategies vary depending on the supposed problems of communities and often its histories which have become an objective of how policing can occur “very differently”. Furthermore, respondent A, states that the concentration of BAME groups in specific areas or the associated “crime problems” that have been attached to particular groups and certain communities’ has become a “policing resource”. This implication suggests that policing has been responsive to stereotypes or myths associated with specific areas which subsequently underpin the policing of the expected problems within that area. Okocha (2018), asserts that racialised stop and search practices within the BAME community are led by a lack of understanding that police have of minority groups, which highlight how prejudice beliefs are synonymous to policing in BAME communities. According to respondent A, this may account for “a lot of fishing that goes on in certain communities” which can contribute to “over polic[ing]” which creates a policing to courtroom pipeline that is substantiated by a “historical narrative” of certain communities and the ethnic composition of it. Respondent A posited that “information is being gathered from communities at a much higher rate and becomes a rich

resource in the courtroom to give signals off to the jurors”. The respondent refers to an area of Manchester being branded in the courtroom as “Gunchester”. This is relevant to how the gang label becomes applied to an area or housing estate (Pearson, 2006) and this becomes a resource for the prosecution of BAME groups within specific communities. The respondent notes that she observed a senior officer outside a courtroom discussing the historical background of a community as a means of tutoring a new police officer in the present case. Respondent A also noted that the senior police officer said, “the case was connected to a period in history” and “these young people were born into it” despite no evidence being presented as to “any connections” of the historic case. Respondent A affirms how the “historical narratives about particular communities [essentially becomes used] in the courtroom to tell a story to the jury” which contribute to the net-widening of youth from deprived areas within the criminal justice system (Decker and Pyrooz, 2015: 553). In policy and practice, crime hotspot areas are constructed by police which creates a false application of gang-involved behaviour (Sharp et al., 2006). The historical narratives of black communities become a ‘canteen cultured’ aspect of policing which is based on ‘white beliefs’ (Macpherson, 1999). These connotations are embedded in the policing strategy whereby responses such as Operation Trident (1998), or as respondent A mentions, “Xcalibur”, which is an anti-gang unit in Manchester, have contributed to various experiences of policing in different communities which are led by the intention of solving black on black crime. Respondent C notes that “community punishment, i.e. stop and search” needs to be replaced with “more community engagement” which implies that specific policing practices are targeted at a demographic, area or behaviour marking the application of joint enterprise on young BAME groups, as racialised and biased. Literature has suggested that specific communities are associated with urban violence due to the settlement of minority groups and this serves as a policing tool in these types of communities (House of Commons,

2014). The proposed definitions of institutional racism support this identification of predisposed policing in black communities as the Macpherson report highlighted that police service delivery could be influenced by race in an unconscious form which becomes evident in the systematic tendency of racially prejudiced actions which “can occur through a lack of understanding” in police officers’ dealings on the street with young black people (Macpherson, 1999).

An additional finding from this respondent painted how the doctrine of joint enterprise, appears to criminalise “certain behaviour... more than others [and] particular groups” as opposed to punishing sheer criminality. The respondent notes that there is a “criminalisation of childhood” in young people that have become “particularly racialised”. This reveals that generally, additional research into how childhood is perceived within the UK criminal justice system is required; however, a far deeper understanding of the criminalisation of young black children is necessary. This is substantiated by previously mentioned findings which provide evidence that black youth culture is overtly interpreted as criminal in section 4.2. Society must also aim to “decriminalise communities [and] young people who've been looked after by the state” as this may mitigate the circumstances of their engagement in crime, everyday lives or associates of crime within the communities they reside in. This is also implied by respondent C who says that “there is an aspect of people’s lives that need to be acknowledged and what they have experienced in their lives which contribute to their engagement in crime”. This is supported by Gaffney (2018), who notes that many of the mothers of young BAME individuals on a joint enterprise case were being cast as a “bad parent[s]” just because they were from Moss-side and the black community as an implication of their children’s involvement in the crime. Okocha (2018), contextualises this in noting that some young people have grown up accustomed to

violence which means that their lives require a deeper evaluation and analytical reasoning as to their perceived and observed criminality.

#### **4.4 The Gang matrix**

Respondent A articulates that the gang matrix has been used as a policing strategy to assist the police in the “criminalisation of young people” who operate in groups (Gaffney, 2018): The gang matrix is disproportionately used in a neighbourhood where gang narratives can help the prosecution. The matrix has come to represent according to respondent C “80-90% of male black minority” and according to existing literature, 48 percent of black individuals between 2003 and 2013 (Howell, 2015). This is evidenced in respondent A’s answer where it was noted that the gang matrix is a “tool” which “strongly assist” the police in their work of “incit[ing]” young BAME individuals who are on the gang matrix. This was argued by respondent C to be used ineffectively and inaccurately because it is “harming” a lot of young people in being used “incorrectly” and is “problematic “because the “term gang, as it is manifested ...has synonymously been associated with young black men”. Therefore, since its inception, the gang matrix has been adopted to implicate young black youth into joint enterprise prosecutions as living within gang-affected neighbourhoods are likely to be representative of minority groups (Pitts, 2014). This finding is indicative of a database (the gang matrix) which is formed from intangible evidence of gang relation (Squires, 2016) and circumstantial data which produces the application of the gang label (Pitts, 2014). Okocha (2018), supports this by suggesting that the shortcoming of subjective police intelligence was held when conducting gang investigations and because the gang matrix is over-representative of BAME individuals, evidence-based policing is indeed discriminatory in policing young BAME groups subjectively rather than factually. This is reinforced by data on the gang database in Manchester where 89%

of BAME individuals were flagged as gang members, yet only 23% of the individuals on the database had a history of youth violence (Okocha, 2018). This is indicative of respondent C, assertion that the gang matrix “is a lens into what's happening on a much wider scale... in terms of the targets of [police] practice”. William and Clarke (2018), state that the gang label has served as a political function to criminalise BAME youth groups. This assertion confirms Clarke et al., (2012) study which found that 89% of BAME joint enterprise prisoners were identified as gang-involved at trial. As well as negatively affecting young BAME groups, the gang matrix has operated as a criminal dragnet (Kirby et al., 2016). Respondent A says that the gang matrix “does entrap a lot of people, drawing more people ...into the investigated process”. This echoes Gaffney (2018) findings that Joint Enterprise can cast a net over a group of people in the hope of catching one person. Squires (2016), conceptualised this type of criminalisation of uninvolved people, ‘precautionary criminalisation’ which merely facilitates a targeted risk strategy of trying to gain successful prosecutions of gang-affiliated crime. Respondent B indicates the periphery nature of building criminal liability by labelling the gang matrix as “a nonsense” and is subsequently presumptive that criminal liability can be presumed by making ‘causal inferences [that] if it looks like a gang and especially if the police call it a gang, it is a gang’ (Hagedorn, 1988 cited in Squires, 2016: 940).

#### ***4.4.1 Gang narratives***

The issue of an ethnic overrepresentation of BAME individuals under the gang narrative and its nexus to joint enterprise have been under researched (Williams and Clarke, 2018). The process of prosecution for joint enterprise cases are agreed by all participants in the study to be exacerbated by a gang narrative, for example, respondent B, says that “if you put a group of young BAME men in a dock, they use language such as the gang narrative... they are not just

kids you know... they're dealing drugs ....obviously they're a gang they're not just kids". These connotations are said to "definitely embolden the Crown's case" (Respondent, B). Respondent A also makes similar inclinations when she revealed that she witnessed a case where the prosecution "brought images of the Bloods and Crips in L.A." to provide a "wider context of this case". Furthermore, respondent B implies that specialised language is used to sway the jury into amplifying the joint venture of crime and that the gang "acted as one". The respondent describes how the prosecution uses animalistic imagery such as "Moved like a pincer" to pry the jury into making associations between the defendants' race and their criminal behaviour. Williams and Clarke (2018), emphasised this by signifying that the police, prosecution and judges are assisted by a classification of gang descriptors which often provide dehumanising connotations such as a 'pack of animals' about a BAME group of defendants (Okocha, 2018: 134). These descriptors are arguably held to distance the jury from reality and prompt them to link BAME groups and gang-related behaviour (Okocha, 2018). Respondent B describes an instance where "they absolute painted them as a gang... they were a group of friends who knew each other...the police called it the abattoir gang and this narrative was used because it suits their purposes". This approves Hallsworth and Young's (2008) view that the gang narrative creates a suitable enemy in a society which further problematise groups who are marginalised in society, therefore, amplifying the gang label. Respondent C revealed that these narratives become an "over resource in the courtroom" providing a "scary a reality ....to the jury". Often the reality given to the jury is based on the 'subconscious and misinformed stereotypes about different subcultures' (Okocha, 2018:135). These stereotypes strengthen with it the misconceptions of young BAME individuals and are, therefore, a strategy used to push the prosecution of Joint Enterprise for specific groups.

Another area of the data revealed by respondent A, is that young BAME groups are often challenged with “ineffective defence teams” who are reluctant to question specific evidence. Respondent B lightly touched on the impact of “all-white juries” for joint enterprise cases implying that this can have an adverse result on the outcome of young BAME defendants. This is referenced in Gaffney (2018) podcast where she addresses that youth culture may be unusual or unknown to jury members over the age of 30 and 40 which can allow some of the prosecution signals such as the gang narrative to construct the individuals as criminal without evidence of criminal activity. Furthermore, when black men are placed against a jury of white peers, an automatic misunderstanding of black youth culture is likely to produce various signals which could result in a criminal conviction.

#### ***4.4.2 Media perpetuation of gang narratives***

The media often propagate the view that certain crimes are race-specific. Respondent A says that the “media can shape and frames violence that is done by young people in different ways...particularly in relation to young black boys to demonise that group”. In Fekete (2012) observation, it was posited that racist media portrayals of BAME groups, replicate stereotypes which tag young black men as gang-members and this is likely to misguide jurors. References to place and names have also become synonymous with stories of the black community which are mediated and rehearsed to allude to gang membership within the context of the court (Williams and Clarke, 2012). Barkas (2014), asserts the significance of misinformation or gang talk suggests that the media amplifies associations with no intelligence. For example, the portrayal of Mark Duggan as a violent gangster was sensationalised and cemented through media gang-speak which allow the media to conjure the black other within the consciousness of the jury arena (Williams and Clarke, 2018: 327). The Manchester Evening News reinforces

how gang narratives can be used to criminalise young BAME individuals, the article covering the joint-Enterprise murder of 18-year-old Abdul Wahab Hafidah used language such as “the pack”, “hunting “, “attacking” and “herding the victim before he was captured” (Scheerhout, 2017). The Independent newspaper reporting on the same incident coined the killing of the victim as gang-related commenting how the “gang who hunted down and killed [the victim] strayed into a rival gang’s territory” (Dearden, 2019). Bridges (2013), rightly suggests that gang violence is therefore perceived as a problem of minority communities which fund the criminalisation of youth (p.34). Respondent B describes how the media often encourage harsher punishments. Respondent B presented a newspaper article and noted that the “media were all over that” and how critics were debating about bringing back the “death penalty”. Respondent C agrees with respondent B’s reference to populist media by advising that the media “in a wider context, is demanding a punitive response”. As a result, the media are complicit in reinforcing gang discourses and cementing ‘political and media discourses on urban crime problems’ in the minds of the public (Sveinsson, 2008 cited in Phillips, 2011:186).

#### **4.5 Legitimacy: is Joint Enterprise fair and just?**

##### ***4.5.1 Low evidential bar***

The doctrine of joint enterprise has allowed the prosecution of these cases to rely on low evidential presumptions. Respondent C attests that “evidential presumptions in Joint Enterprise cases are just very low.” These presumptions are often held based on known gang associations which are peripheral, lack intelligence and uncorroborated as there remains no settled definition of gang identification yet police intuition is led to be ‘disguised as evidence-based decision-making’. (Williams, 2015 cited in Okocha, 2018: 129). Respondent A notes that the lives of

young people are being used in a way to criminalise them detailing how prisoners she interviewed “were telling [her] how photographs of them with a co-defendant taken on a family holiday three years previously was being used in [the] courtroom”. Further evidence is provided by respondent A when she describes how “family, social [and] community-based connections” ... become indicative of criminal behaviour or culpability within the courtroom. This use of social media has allowed the prosecution to rely on weak evidence to build known associations to signal to the jury that an individual is committed to the aims and purposes of the gang (Pitts, 2014). The respondent advocates for a greater understanding of peer- relations amongst young people and “social media should be recognised as space where people construct a reality”, and this is likely to be a false depiction of the reality and should not be used against them. Most recently, drill music has been deliberated as a factor which incites gang relations and youth violence. The Sun newspaper described how police officers within the Notting Hill area had monitored social media for two years compiling evidence of alleged gang members ‘glorifying violence with lyrics intended to taunt rivals’ (Allen, 2018). As a result, the realities of young BAME groups, social media and music can be used as strong evidence of their alleged criminal engagement with gangs despite the fact that social media is a cyber construction of an ‘ego identity’ and is therefore a false reality of young people and should not suffice as probable evidence of criminality (Michikya et al., 2015: 54).

Okocha (2018), says that the lines between genres of music such as hip hop have become blurred with criminal culture and this is based upon the subconscious misinformed stereotypes held by the prosecution towards the BAME community and subcultures. These prejudiced stereotypes hold entirely negative and stigmatised connotations which permit black youth culture to be taken as evidence of criminal involvement or gang activity. In 11% of cases for

BAME youth compared to 2% of white youths, rap videos were used in the prosecution of Joint enterprise cases (Williams and Clarke, 2016). These aspects should be accepted as mere pastime within the communities BAME youths reside where there are limited activities for them to do instead in joint enterprise cases, the prosecution can categorise certain behaviours as criminogenic, marking the overall misunderstanding to the cultural entertainment of black youths entirely discriminatory and illegitimate as evidence of criminality (Okocha, 2018). Respondent A brings this into context in highlighting that the use of social media as evidence in the prosecution of joint enterprise has been used as an “over resource”.

Similarly, respondent C acknowledges that social media has been used as a “powerful set of resources to tell a convincing story [when] there's no police evidence”. The gang matrix in these instances has also been seen to lack the legitimacy of sound judgment of gang involvement as it is a measure of risk rather than actual criminal involvement. Respondent A submits that “you can’t criminalise people because they are at risk, you have to do something else”. Consequently, joint enterprise allows the prosecution to paint loose causal associations between individuals to lower the evidential threshold (Jones, 2018) this according to Krebs (2010), results in ‘lazy and unprincipled determinations for the inculpatory role of joint enterprise which departs from the basic principles of criminal responsibility’ (pp. 590-596).

#### ***4.5.2 Secondary liability***

The secondary element of liability under the joint enterprise doctrine has been deemed unfair and unjust and should be altered so that individuals are held liable for the actions they committed. All three respondents acknowledged the area of secondary liability which is

seemingly creating new victims in the administration of justice. Respondent C says that the parents of those charged under joint enterprise “just want them to [be] charge[d] accordingly”. Respondent A describes how a group of young white kids were fighting in a public space and were charged with a “largely appropriate level of accountability”. Respondent C notes that there should be a system where people should be punished “proportional to their involvement” as the current way the secondary liability element of joint enterprise is operating is “quite broad”. These findings suggest that Joint Enterprise is being used in an arbitrary manner that places individuals into the criminal justice system who are very minimally (Bridges, 2013). This has sparked commentators and legal practitioners to describe the doctrine as unfair and discriminatively charging everyone involved in the gang or associated with it (Bridges, 2013: 35). Respondent C says that there needs to be a “prosecutorial process” where the criminal justice system adheres to the values of “due process”. This is supported by literature findings which state that joint enterprise has been enabled to operate in a haphazard way regarding; legitimacy, due processing and interpretation of the law (Crewe et al., 2015). Respondent B equally addresses the lack of due process involved in joint enterprise mentioning that “if you’re tried as a group” you are presumed guilty before you are innocent which seemingly acknowledges the unjust nature of joint enterprise (House of Commons, 2014). Furthermore, many of those convicted under joint enterprise lack an understanding as to how the culpability of their offence was reached, respondent A says that many of the prisoners she interviewed felt as though they had been done an injustice and found “themselves enclined to understand the substantive offence they feel they have very little involvement in”. This means that the doctrine of joint enterprise is in disarray and has created a prosecutorial over-reach (Krebs, 2010).

#### ***4.5.3 Harsh sentencing***

The doctrine of joint enterprise has resulted in a draconian type of law on young people which imposes harsher sentencing. Respondent C describes how she learned that the doctrine of Joint Enterprise was necessary and made increasingly “draconian” to tackle the perceived problems of “gun culture and gun crime” which reveals that “there's no accident as to how these laws are... [and how] the proceeds of criminalisation [is]...targeted”. Squires (2016), agrees that the doctrine of Joint enterprise has been applied punitively as a type of deterrent to confront perceived problems of gang violence (p.940) and the perils of engaging with gangs (Pitts, 2014). These findings are contradicted by evidence provided by Okocha (2018), who suggests that the proposed aim of imposing harsher sentences involving young people as a deterrent is ineffective as it is merely observed by the affected communities as unjust and a ‘hindrance to the aim of deterring crime’ (p.128).

BAME joint enterprise prisoners are punished more harshly than white people revealing that because there is a misconception that black youths are what constitutes a gang, the harsh sentencing of joint enterprise is targeted at young BAME groups. A survey data reviewing UK gang policy revealed that BAME individuals convicted of joint enterprise had an average sentence length of twenty-two years, whilst white groups had an average sentence length of nineteen years (Okocha, 2018). Hopkins (2016), noted a higher rate of custodial sentencing for ethnic minority men compared to white people, though this study did not include variables of mitigating or aggravating factors such as gang involvement. This paints a morbid reality that joint enterprise is disproportionately affecting BAME groups which are alluded to in respondent A’s response. Respondent A says that joint enterprise “allows [individuals] to be held for more [time, causing prisoners to feel] that they have been unjustly penalised”. Respondent B

mutually implies that it is typical in joint enterprise cases for the judge to impose sentences which far exceed the years of young people describing how “they give them longer than they’ve been on the planet” and how locking people up for “mandatory life sentences [is] not understandable”. Therefore, a recipe of harsh sentencing and the low eventual threshold for joint enterprise cases are problematic and have enacted an unfair criminalisation of young BAME groups which is observed as operating unfairly (House of Commons, 2014).

## **Chapter 5: Summary and Recommendations**

### **5.1 Summary of findings**

The findings of this study have revealed that the doctrine of Joint enterprise disproportionately affects young BAME groups. Firstly, political discourse can be argued as enabling a landscape in which the criminalisation of youth has adopted an entirely punitive approach aimed at deterring them from the perils of gang involvement and apparent youth violence (Squires, 2016; Pitts, 2014). The problem of criminalising young people for their associations, gang-related behaviour or living within gang-affected neighbourhoods (Pitts, 2014), has resulted in a racialised application of joint enterprise (Cottrell-Boyce, 2013). This has occurred due to misconceptions of black youth culture which are deemed criminal and hence contribute to a policing to prison pipeline. The BAME communities in which black youth reside has been policed in a way that their activities such as loitering on road are subconsciously observed as gang-related and creates an amplified presence of punitive policing in the communities they reside in (Okocha, 2018).

A significant number of black and mixed-race men are being affected by joint enterprise compared to their white counterparts (Hulley, 2016). The ambiguity of the Eurogang definition of the gang, as constituting three or more individuals characterised by a structural feature, carries with it a vulnerability in being unfairly applied to youths who live within minority communities as mentioned in this study (Pearson, 2006). The gang label is excessively applied to BAME youths which is substantiated by gang databases such as the gangs' matrix which allow the synonymous association and false application of the gang label on black and mixed-

race youth (Sharp et al., 2006). This underpins the prejudiced and cultured policing that occurs in BAME communities which are emblematised by police strategies such as Operation Trident (1998). Operation Trident is a specialist unit which was formed as a direct response to black on black crime, urban and gun violence which arguably continues a penal application of the law on BAME groups.

To drive the prosecution of joint enterprise cases, the courts influence the jury with language which makes implicit references to race, places and sometimes the historical narratives of specific communities to provide a broader context of gang culture. Christie (2001) cited in Hallsworth and Young (2008), describes how the media feed the public with a suitable enemy in which the problems of black youths is likely to demand more punitive responses due to the misinformed stereotypes and stories told to jury members (Okocha, 2018). A key feature in the submission of the gang narratives surfaced in the findings to be led by a media rhetoric of black youths as gang members (Fekete, 2012) and dramatisation of black youth violence. This is likely to be joined with the encouragement of increasingly punitive measures to be administered not only on youth generally but black youth who are a demonised group, augmenting their evidenced harsher punishments (Bridges, 2013).

The general legitimacy of joint enterprise has equally come into question as lower evidential presumptions, such as the use of social media to build affiliations of gang involvement, is submitted to the jury as viable evidence. The misunderstanding of youth culture within the court context has essentially allowed young people to face the jury arena for their behaviour as young people such as home-made rap videos which allude to criminal behaviour as opposed to sheer criminality (Williams and Clarke, 2016). The secondary element of criminal liability is also operating as a criminal dragnet which brings several young people into an investigative

process (Kirby et al., 2016) whereby individuals become liable for the actions of another. Accountability is, therefore, a facet of joint enterprise which needs reconfiguring so that individuals are charged appropriately and adhere to the values of due process (Crewe et al., 2015). Joint enterprise is, therefore, being administered in a haphazard way both in the criminalisation of young BAME groups and appropriation of fair justice. Harsher sentencing practices are not understood in the cases of joint enterprise and can, thus, be settled as operating unjustly (House of Commons, 2014). BAME groups are faced with a harsher force of the law through the application of gang labels and more stringent sentencing measures (Hopkins, 2016). Overall, joint enterprise represents an unfortunate reality of criminalising young BAME groups.

## **5.2 Contribution to literature**

This study has been consistent with some of the existing literature in a number of ways. Primarily as to how joint enterprise has been distributed within particular demographics and reasons for disparities in its use (Bureau of Investigative Journalism 2014, Jacobson et al., 2015, Williams and Clarke, 2016, Hulley, 2016). Furthermore, the contemporary and ‘qualitative dimension of this study provides a rare insight’ into how young BAME groups are unfairly subject to harsher policing practices (Hulley, 2016: 1). The gang narrative is a significant driver in the prosecution of young BAME groups who due to the historical narratives of the communities in which they reside, are caught up against white jurors who solely misunderstand the nature of their relationships and nature of youth culture.

### 5.3 Recommendations

Though these findings have been substantiated by existing literature, it would be beneficial to repeat within a context which is out of academics to trace whether the racialised prosecution of young BAME groups is shared universally or whether there is an awareness of the discriminatory application of joint enterprise. This will increase the population validity of the study and provide an alternative discourse as to why joint enterprise affects young BAME groups. In respect to producing codifiers of semi-structured interviews, it is integral to ensure additional researchers code data which will determine the reliability of this study (Campbell et al., 2013).

To tackle the problems within black communities, more community engagement is necessary to reshape the preconceived stereotypes of young BAME groups and communities. The lives of black youths should be taken into consideration in court as mitigating evidence since their intersectional experiences of being a youth and being black pertain to how they are policed within their communities. A critical social research method which is entirely collaborative, and interventionist (Clarke et al., 2017), would be ideal in providing a voice to these communities' exposing intra-community problems and the impact of joint enterprise within BAME communities. Additional research should also focus on understanding why joint enterprise has not affected BAME women or why it has not represented a much older demographic of men to establish whether joint enterprise has been used to criminalise certain behaviours or whether joint enterprise aims to administer impartial, appropriate and legitimate justice.



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**Appendix A: Interview guideline**

1. What is your understanding of the term guilty by association?
2. Do you think Joint enterprise targets one group more than others?
3. To what extent do you think the scope of criminal liability should be limited in JE cases?
4. what role do you think the police play in policing young people?
5. Have you heard of the gang matrix/what do you know of this?
6. Do you believe the police are over policing gangs?
7. Do you think social media has a role to play in this?
8. Do you think JE highlights inequality?
9. What about the BME community?
10. Do the Police frame a narrative of what they want people to see in court?
11. have you been aware of more bad character applications in the prosecution of JE cases
12. How is Cell site used in JE cases ?

## Appendix B: Information and consent form

### Information Sheet

Research institution: School of Law, Royal Holloway University of London

Name of study: The way in which gang narratives are constructed in the process of JE cases.

Researcher's Details: Shenee Nash / Mobile :07568532111

Supervisor's Details: Anne Brunton / Email: [anne.brunton@rhul.ac.uk](mailto:anne.brunton@rhul.ac.uk)

I am conducting this study for my third-year research project as part of my degree programme at Royal Holloway, University of London. The purpose of this study is to gain information about participant's views on/experiences of how gang narratives are constructed in JE cases and to what extent this discourse is extended to criminalise ethnic minorities.

Your participation in this study is entirely voluntary. If you choose to take part, the interview will take roughly one-hour dependent on the depth of your responses and will take place in a setting comfortable and familiar to yourself. I will record our conversation and transcribe the interview at a later date. The recording and transcript completed will be stored securely and destroyed after 1 year. Participation will be anonymous, and all personal data will be held and processed in the strictest confidence, and in accordance with the Data Protection Act (1998). If you choose to take part, you will be asked to sign a consent form, which will be stored separately from your responses to ensure confidentiality. You can decide not to answer any questions if you prefer not to. You can also withdraw at any time without giving a reason.

You can retain this information sheet for reference and contact the researcher with any queries.

[If you feel you would like support regarding any of the issues raised in this study, please contact: [anne.brunton@rhul.ac.uk](mailto:anne.brunton@rhul.ac.uk)

**Consent Form Template**

Research institution: School of Law, Royal Holloway University of London

Name of study (understandable to lay person)

Researcher's Name:

Please indicate:

- I have read the information sheet about this study (YES/NO)
- I have had the opportunity to ask questions (YES/NO)
- I have received satisfactory answers to any questions (YES/NO)
- I understand that I am free to withdraw from the study at any time, without giving a reason (YES/NO)
- I consent to my personal data, as outlined in the accompanying information sheet, being used for this study. I understand that all personal data relating to volunteers is held and processed in the strictest confidence, and in accordance with the Data Protection Act (1998). (YES/NO)
- I agree to participate in the study (YES/NO)

Signed.....

Name.....

Date.....

NB: This Consent Form will be stored separately from the responses you provide.



**Appendix C: Ethical approval**

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**From:** Brunton, Anne  
**Sent:** 19 November 2018 11:04  
**To:** Nash, Shenee (2015)  
**Subject:** Ethics Application RHUL

Dear Shenee,

I am writing to inform you of the result of your ethics application. I am delighted to inform you that your proposal has received a **favourable ethical opinion** from the School of Law **subject to the following minor changes**. I would ask that you make an appointment with me and I can sign these off. Once this has happened then you will have full ethical approval to continue your study.

**Appendix A. Name: Shenee Nash.**

**Pg 10 under methods make bullet point 2 more general.**

**Appendix B: Debriefing is for when material is sensitive. Is this necessary here? They are professionals but JengBA is potentially relying on people with personal knowledge and hurt.**

**Meet with your supervisor to tweak your interview questions.**

In addition I would like to take this opportunity to remind you of your responsibilities as a researcher. You must ensure that:

- All of your data is appropriately protected and stored, and is only accessible to you and your supervisor. This data should be managed in accordance with the Data Protection Act 2018 and Royal Holloway's Data Management Policy.  
See <https://intranet.royalholloway.ac.uk/research/documents/researchpdf/royalhollowayresearchdatamanagementpolicyjune2014.pdf>

[Research Data Management Policy -  
intranet.royalholloway.ac.uk](https://intranet.royalholloway.ac.uk)

[intranet.royalholloway.ac.uk](https://intranet.royalholloway.ac.uk)

Appendix D: Supervision Log

Supervision Log

Date	Items for Review (make notes on what you want to discuss)	Actions from Review Meeting (record your next steps)	Supervisor Comments/Signature
19/05/2018	Intro Dissertation question Ideas - What works / doesn't work	Have a think about dissertation topics, what are interested in	[Signature]
27/08/2018	Follow up on proposed research questions.	Anne recommended some sources to look at, how I want to go about beginning to read	[Signature]
23/11/18	Ethics form	Have a think about whenever a debate is necessary	[Signature]



Date	Items for Review (make notes on what you want to discuss)	Actions from Review Meeting (record your next steps)	Supervisor Comments/Signature
6/12/12	Literature Review Comment	Improved literature review and changed structure. - Have a clear idea of research question first	Aue Su
11/15/11	Stephen Lawrence inquiry readings	- Have a structured research question, is it an institutional racism?	Aue Su
11/16/11	Findings and discussion section	- Ensure this section fits with my literature; keep going at the pace I am	Aue Su

**Appendix E: Semi structured interview respondent description key**

<b>Table 1: Respondent description key</b>	
<b>Profession</b>	<b>Respondent reference</b>
Senior Lecturer in criminology	A
Campaign coordinator	B
Lecturer in Criminology and criminal justice	C