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## Body Map Storytelling: Exploring identity with lifers convicted of murder using the doctrine of 'joint enterprise'

Dr Susie Hulley is a Senior Research Associate at the Institute of Criminology, University of Cambridge and Dr Tara Young is a Senior Lecturer in Criminal Justice and Criminology, at the School of Social Policy, Sociology and Social Research, at the University of Kent.

[The label of 'murderer'] does matter to me because it the worst thing that someone can do is kill someone and I haven't killed anyone. (Michael, convicted of murder using the doctrine of 'joint enterprise')<sup>1</sup>

### Introduction

Being convicted of murder can shatter an individual's sense of identity, as they question who they are if they are capable of 'this' and struggle to weave the offence into the fabric of their life story.<sup>2</sup> This psychological tumult occurs against a cultural backdrop in which the label 'murderer' 'obliterate[s] all other dimensions of the person'.<sup>3</sup> The process of reconciling the conviction with one's sense of self is more complicated for those who have been convicted of murder as a *secondary party*.<sup>4</sup> Such convictions are made possible by the law of complicity (commonly referred to as 'joint enterprise'),<sup>5</sup> which allows a person to be convicted of an offence perpetrated by someone else (the principal party), if they 'assisted or encouraged' them.<sup>6</sup> In practice, prosecutors can charge multiple individuals with an offence even where it is not possible to identify who the principal party is. In England and Wales, estimates suggest that thousands of people have been prosecuted for homicide in cases involving multiple defendants since 2005,<sup>7</sup> and research shows that a disproportionate number of men convicted of serious violence using joint enterprise are Black or Mixed Race.<sup>8</sup>

While joint enterprise has been justified on retributive and deterrent grounds, academics, lawyers, campaigners and individuals convicted of murder using the doctrine have criticised its legitimacy. For example, questions have been raised about the fairness of the law and the extent to which it satisfies

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<sup>1</sup> 'Michael' is a pseudonym for one of the artists discussed in this paper.

<sup>2</sup> Crewe, B. Hulley, S. and Wright, S. (2020) *Life Imprisonment from Young Adulthood: Adaptation, Identity and Time*. Palgrave Macmillan.

<sup>3</sup> May, H. (2005), "'Murderers' Relatives" Managing Stigma, Negotiating Identity', *Journal of Contemporary Ethnography*, 29(2): 198-221, p.205.

<sup>4</sup> Hulley, S. Crewe, B. and Wright, S. (2019), 'Making sense of 'joint enterprise' for murder: Legal legitimacy or instrumental acquiescence?' *British Journal of Criminology*, 59: 1328-1346.

<sup>5</sup> Currently, the correct legal term is 'secondary liability' or the law of 'complicity'. However, 'joint enterprise' is a more broadly recognised term that is often used by prisoners and prison staff. It also reflects the law prior to 2016 when many prisoners were convicted. It is for these reasons that we primarily use the term joint enterprise throughout this article.

<sup>6</sup> Crown Prosecution Service (2018) '*Secondary Liability; Charging Decisions on Principals and Accessories*', available online at <https://www.cps.gov.uk/legal-guidance/secondary-liability-chargingdecisions-principals-and-accessories>. Accessed 23 May 2018.

<sup>7</sup> Bureau of Investigative Journalism (2014), *Joint Enterprise: An Investigation into the Legal Doctrine of Joint Enterprise in Criminal Convictions*. The Bureau of Investigative Journalism. P.7.

<sup>8</sup> See n.4; Williams, P. and Clarke, B. (2016), *Dangerous Associations: Joint Enterprise, Gangs and Racism*. Centre for Crime and Justice Studies.

the legal principles of fair labelling and proportionate punishment.<sup>9</sup> Such concerns were expected to be alleviated by the Supreme Court's abolition of one aspect of joint enterprise in 2016 (in *R v Jogee* [2016] UKSC 8 [87]), which effectively raised the threshold at which a secondary party could be convicted for an offence perpetrated by another. Specifically, 'foresight' of the offence committed by the principal party was no longer sufficient to convict a secondary party of that offence. Instead the prosecution had to demonstrate that the secondary party 'intended to encourage and assist' the principal party, although foresight could be used as evidence of intention.<sup>10</sup>

Despite the alteration to the law, research with police and Crown Prosecution lawyers suggests that there have been limited changes to the way it is applied in practice.<sup>11</sup> 'Complicity' or 'secondary liability' continues to allow multiple individuals to be convicted of murder and receive a sentence of life imprisonment for a homicide committed by another person. In addition, many secondary parties convicted of murder prior to 2016 remain in custody with limited scope for appeal. Such individuals are ascribed the label 'murderer', in the same way as the person(s) who committed the fatal act, and as a result, are 'reduced in our minds from a whole and usual person to a tainted, discounted one'.<sup>12</sup>

Such labelling is important, since what other people think often matters to an individual's sense of self. Self-identity - that is, 'people's concept of who they are, of what sort of people they are and how they relate to others'<sup>13</sup> - is forged in interactions between individuals and groups. As Erving Goffman notes, when forging a credible social identity, people reflect on their surroundings and engage in impression management tasks to create an identity that allows them to 'fit in' with others and the socio-cultural system into which they are born.<sup>14</sup> Within a given society, identities that conform to broad societal norms are valued and accepted while others (particularly those viewed as 'deviant' in some way), are *stigmatised*, marking out those who deviate from these norms as somehow 'tainted' and, thus, lesser human beings.<sup>15</sup> In response, a person labelled as 'deviant' or 'criminal' may attempt to 'correct' the problem by reversing, repairing, or renegotiating the applied label by contesting, complicating and historicizing who he or she 'really is' in view of how they have been framed.<sup>16</sup> Such actions are particularly relevant to people convicted of murder, many of whom spend years working hard to integrate who they were prior to the offence and what they have done into their conception of 'self'.<sup>17</sup> For individuals convicted as secondary parties, additional psychological labour is required to 'make sense' of being labelled a murderer for a homicide that they did not commit, or for which their personal culpability is contested, as illustrated in Michael's quote at the start of this paper.<sup>18</sup>

Drawing on 'body maps' created by prisoners serving life sentences for murder, in which the doctrine of joint enterprise was used at trial,<sup>19</sup> this article illustrates the difficulties young people face in

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<sup>9</sup> See n.8. Also Hulley, S. and Young, T. (in preparation), 'Justifying joint enterprise: The problems of (un)fair labelling and (dis)proportionate punishment'.

<sup>10</sup> See n.6.

<sup>11</sup> See n.9.

<sup>12</sup> Goffman, E. (1963), *Stigma: Notes on the management of spoiled identity*. Prentice-Hall Inc. P. 12.

<sup>13</sup> Hogg, M. A., & Abrams, D. (1988). *Social identifications: A social psychology of intergroup relations and group processes*. Taylor & Frances/Routledge. P.2

<sup>14</sup> Goffman, E. (1959), *The Presentation of self in everyday life*, New York: The Overlook Press.

<sup>15</sup> See n.12, p.2.

<sup>16</sup> Presser, L. (2008), *Been a Heavy Life: Stories of Violent Men*. University of Illinois Press. P.6.

<sup>17</sup> See n.2.

<sup>18</sup> See n.4, p. 1339.

<sup>19</sup> While the correct legal term is 'secondary liability', 'joint enterprise' is used to explain the context of the convictions of the men in the study, as they were convicted prior to 2016 when this was the term most commonly used. It is also the name that people convicted in this way tend to use to explain their conviction.

reconciling their sense of who they were with the identity imposed on them by the criminal justice system. The body maps (and excerpts from the artists' narrations of them) illustrate the ways in which these individuals attempted to manage and resist the negative label attributed to them, by critically reflecting on who they *really* were and comparing this to how they felt they were constructed by the criminal justice system. In doing so, they drew attention to their ethical selves – of the 'goodness' within – and of the ways in which they had psychologically developed from the person they were, in order to distance themselves from the immorality that the label of 'murderer' imbued in them. The article goes on to outline some of the benefits that creative methods can offer, both in supporting individuals in prison to make sense of their own experiences, and to develop practitioners' understandings of young people's experiences of being convicted of murder using secondary liability.

### **The study: body maps and the art of narration**

The body maps presented here were created as part of a broader study which examined the application of joint enterprise in cases of serious violent crime, the nature of young people's friendships, and their understandings of the law. Body maps are life-size images that 'visually represent' the artist's life experiences. They are 'a way of telling stories, much like totems that contain symbols with different meanings, but whose significance can only be understood in relation to the creator's overall story and experience'.<sup>20</sup> Creative and arts-based methods like body maps have become part of the contemporary researcher's methodological 'toolkit' and have been applied in studies seeking to empower people from marginalised groups, who may feel *subjects* of other research techniques.<sup>21</sup>

The creative workshop at which the bodymaps were created was initially attended by five male residents at a Category B prison in England, although one participant later dropped out because of a medical issue. The workshop ran over a three-day period in 2019. The participants were provided with an information sheet summarising the project's aims and objectives, what the research involved and the themes to be explored in the session. They were asked to reflect upon: a) who they were prior to the offence (including how they were viewed by significant others) and b) how they were depicted during their trial.

Once the bodymaps were completed, the artists were asked to record a 'testimonio'. This is 'a first-person story narrative that provides a broad description about a person's life and gives context to the body map'.<sup>22</sup> Limited editing was carried out on the testimonios, to ensure that the artist's lived experiences were represented as authentically as possible.

In this article, we present the body maps of two men convicted of murder at trials in which the law of joint enterprise was used. They were both serving long life sentences. While the testimonios are a central part of the artwork produced, it has not been possible to reproduce them in full in this article due to limited space. However, we have drawn on them throughout this paper to explore the artists'

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<sup>20</sup> Gastaldo, D., Magalhães, L., Carrasco, C., & Davy, C. (2012). *Body-Map Storytelling as Research: methodological considerations for telling the stories of undocumented workers through body mapping*. Available online [https://ktpathways.ca/system/files/resources/2019-02/Body-map\\_storytelling\\_as\\_research\\_HQ.pdf](https://ktpathways.ca/system/files/resources/2019-02/Body-map_storytelling_as_research_HQ.pdf). P.5.

<sup>21</sup> van der Vaart, G., van Hoven, B., and Huigen P.P.P. (2018), 'Creative and arts-based research methods in academic research. Lessons from a participatory research project in the Netherlands'. *Forum Qualitative Social Research*, 19 (2). Available online <https://www.qualitative-research.net/index.php/fqs/article/view/2961/4227>. See also: McNeill, F. and Urie, A. (2020) Collaboration before collaborative research: the development of 'Distant Voices'. *Methodological Innovations*, 13(2), pp. 1-11.

<sup>22</sup> See n.20, p.17.

experiences, using dialogical narrative analysis, which takes as its focal point the context and content of a story and the effects this has on people.<sup>23</sup> We embed our analysis in the literature on the ways in which individuals create and nurture their self-identity and on the impact that stigmatisation has on a person's sense of self.

### ***Narrating the self: pre-offence versus court imposed***

In the body maps presented in Figures 1 and 2 (below) both Zachery and Michael foreground their essential goodness, in spite of their convictions for 'murder'. Powerful visuals emphasise their decency, kindness, leadership, and sense of humour. In his testimonio, Michael explains that the wings on his bodymap represent his grandma calling him 'her angel'. He also describes himself as a leader ('not a gang leader'), to whom younger children would come to for advice, and a 'Robin Hood' figure, extending help to anyone in need (even a lady who 'called me racist names'). Zachery draws on notions of 'calmness' and a closeness with his family prior to his imprisonment. He populates his body map with images that explain his engagement in crime and violence as rooted in social factors (i.e., living on an estate) and in his testimonio describes his adherence to the codes of the street,<sup>24</sup> where claiming allegiance to an area and gaining respect and status were key to survival. His critical self-reflection ('I come from a good home, but I just went down that road') enables Zachery to look back on his former, 17-year-old self and acknowledge the difference between who he was at the time of the offence ('I wasn't perfect, but I was young and naive') and who he is now. In this way, he makes sense of being labelled a 'murderer' within the context of his youth and immaturity at the time of the offence.

**Figure 1: Body map by Michael (Black British) – convicted of murder aged 19, received a tariff of 25+ years.**

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<sup>23</sup> Brookman, F. (2015). 'The Shifting Narratives of Violent Offenders'. In L. Presser and S. Sandberg (Eds). *Narrative Criminology: Understanding Stories of Crime* (pp. 207–235). New York: New York Press

<sup>24</sup> Anderson, E. (1999). *Code of the street: decency, violence, and the moral life of the inner city*. New York: Norton.



A commitment to conveying a 'virtuous self' is common amongst people convicted of murder, as they try to offset the label of 'murderer' and its moral implications.<sup>25</sup> Like the men in Presser's study,

<sup>25</sup> See n.2.

Michael and Zachery attempt to distance themselves from the stigmatised identity of 'murderer' and in doing so make a claim to moral decency in both their present and past selves,<sup>26</sup> although Zachery's body map and testimonio does not make his feelings regarding his culpability for the offence clear in the way that Michael does. Instead, he frames the offence within a broader pattern of offending during a period of youthful development, drawing on the narrative of his pre-offence self as gullible and puerile in comparison to his current, more mature and 'better' self.<sup>27</sup> Thus, Zachery contests the relevance of the characterisations of himself in court by putting temporal, emotional and psychological distance between the (immature) person he was back then and the person he is now: 'Basically, fighting for [the hood] was very stupid when you look back on it'. In this way he is historicizing his sense of self, as a way of making sense of the label attributed to him back then, which he must continue to live with in the present.

When reflecting on their trial experience, Michael and Zachery tell strikingly similar stories of stigmatisation and dehumanisation. Michael describes being called 'evil', a 'cold blooded killer' and (with his co-defendant) likened to a 'two-headed snake'. This fits with homicide 'scripts', which present murder as 'the purposive seeking and killing of an 'innocent' victim by 'murderers' who are evil, cold-blooded and predatory'.<sup>28</sup> Similarly, Zachery's body map is peppered with words 'the court system threw at me' that refer to his 'stupidity', 'immorality' and 'pack mentality'. The characterisation of Michael and Zachery as 'evil, predatory animals' highlights the 'blemishes of individual character' that can stain *all* those drawn into a trial in which joint enterprise is used, signalling that they are perceived as 'not quite human'.<sup>29</sup> Such characterisations of groups of young people as 'wolf packs' and 'dangerous other[s]' is common in this context and justifies 'exceptional punishment'. It often goes hand-in-hand with a gang narrative, which is disproportionately applied to young Black and brown men, as in Michael and Zachery's cases.<sup>30</sup> There has been much commentary on the racialisation of the gang narrative, with critics arguing that criminal justice practitioners fail to grasp the nuances of serious violence among young people and make assumptions about gang involvement and riskiness based on race.<sup>31</sup> Michael was keen to distance himself from the gang label; in his testimonio, he emphatically stated that was not a gang leader and argued that the characterisation of him as gang-involved was racialised ('there's certain people out there who just see me as a race, they don't look at me as an individual'). It was this characterisation, he felt, which had cemented his (unfair) conviction, for a murder he was not physically involved in:<sup>32</sup> 'When I was in the dock and I just felt like, I knew in my head that I didn't do it [but] I felt like, every time I closed my

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<sup>26</sup> See n.16. Thank you to Dr Serena Wright for her insightful comments on this point.

<sup>27</sup> See n.2, p. 273.

<sup>28</sup> May, H. (1999), 'Who killed whom?: victimization and culpability in the social construction of murder. *British Journal of Sociology*, 50 (3): 489-506. p. 494.

<sup>29</sup> See n.12, p. 14-15.

<sup>30</sup> Green, A. and McGourlay, C. (2015) 'The wolf packs in our midst and other products of criminal joint enterprise prosecutions', *The Journal of Criminal Law*, 79(4): 280-297. P. 295. It is significant that Zachery is Mixed Race and Michael is Black and that both were teenagers when they were convicted. Zachery was 17 years old when he received a life sentence for murder with a minimum tariff of more than 20 years; Michael, was 19 years old when he received a minimum tariff of over 25 years.

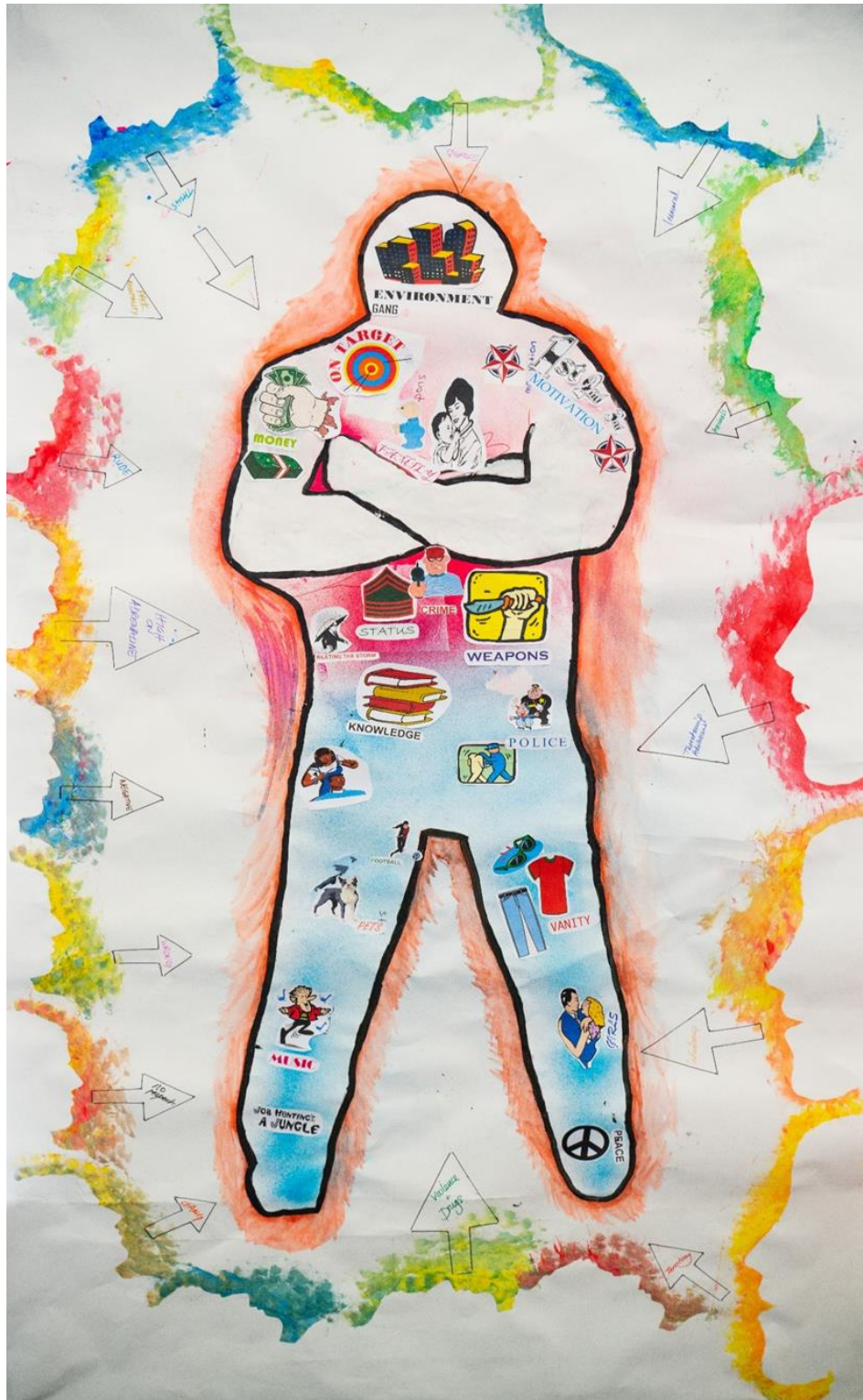
<sup>31</sup> See Hallsworth, S. and Young, T. (2008) 'Gang talk and gang talkers: A critique', *Crime Media Culture* 4(2): 175- 195; Aldridge, J. and Medina, J. (2008) *Youth Gangs in an English City: Social Exclusion, Drugs and Violence*. Full Research Report ESRC End of Award Report, RES-000-23-0615. Swindon: ESRC. Young, T., Hulley, S., and Pritchard, G. (2020), 'A 'Good Job' in Difficult Conditions: Detectives' Reflections, Decisions and Discriminations in the Context of 'Joint Enterprise'. *Theoretical Criminology*, 24(3): 461-481.

<sup>32</sup> At the time Zachery and Michael were convicted, people charged as secondary parties need not have actively engaged in the substantive offence of murder but could, nevertheless, be held accountable for it as the threshold for conviction was significantly lower than for defendant(s) identified as the actual killer(s).

eyes, I could see black and white hands saying, “You’re this, you’re that”. [...] And the stigma that [the judge and jury] have of me is that because you were part of a gang you deserve to do life; we sympathize that you might not have done the murder [but] you deserve to do life because you are part of a gang’. The deep injustice that Michael felt at being labelled a murderer was rooted in his self-perception of being innocent of the crime and essentially a good person. Zachery identified himself as being ‘gang involved’ but he emphasised that he was *more* than this and described how in court ‘the young boy who loved playing football’ had been replaced by the stereotypical image of a gang member. In this way, he believed that his decent, true and naive self was obscured in court to suit the prosecution’s case.

**Figure 2: Body map by ‘Zachery’ (Mixed race – White and Black Caribbean) – convicted of murder at age 17, received a tariff of 20+ years.**





Research has shown that secondary parties to murder very often deny that they are guilty of the offence for which they were convicted, rejecting the 'murderer' label.<sup>33</sup> Confronting false suppositions of the self, formed by others, can result in ontological insecurity (anxiety caused by being unable to predict and trust what we know about ourselves)<sup>34</sup> and leave an indelible stain upon an individual's

<sup>33</sup> See n.4.

<sup>34</sup> Vaughan, B. (2001), 'Handle with care: On the use of Structuration Theory within criminology', *British Journal of Criminology*, 41: 185-200.

identity.<sup>35</sup> Shaking off the stigma and accepting oneself as ‘normal’<sup>36</sup> can therefore be incredibly difficult for secondary parties. It is noteworthy that, nearly ten years after his conviction, Michael believes that people in the community and in prison view him as a killer, despite his co-defendant recently confessing to killing the victim:

There’s certain people who think I still done [the murder], there are certain people who know I didn’t do it so it’s just, it makes you feel negative. You are in prison *and* they are judging you for what you are in for, and you know that what you are in for *you didn’t do*.

In this way, being convicted of murder using secondary liability felt deeply unjust and against the legal principles of fair labelling and proportionate punishment. The perceived injustice of the conviction had had a significant impact on Michael’s mental health: ‘I have become more of a negative person because of everything I have gone through, what I have got convicted for’.

### **Conclusion and the benefits of using creative methodologies in understandings of identity**

The body maps presented here were created by prisoners convicted of murder in which the legal doctrine of joint enterprise was used at trial. The process of constructing a body map provided an opportunity for incarcerated young men to tell the story of who they felt they *really* were at the time of the offence and conviction. The aim was not to find some objective truth in their constructions of self, or negate the seriousness of the offence they were convicted of, but to foreground the complex process of reconciling their personal identity with an identity that was imposed on them at trial, as ‘evil’ subhuman murderers, despite the fact that as secondary parties they need not have killed anyone.

However, the label of ‘murderer’ sticks, often serving to overshadow all other aspects of the self. As Michael explains above, years after his conviction he continues to be judged in this way, despite his proclamations of innocence. In this context, then, the body maps beautifully depict Michael and Zachery’s calls to recognise their ‘goodness’, despite the label. Michael and Zachery used them (and their testimonios) to construct *their* narrative of themselves and of their convictions, which speaks to the loss of innocence and childhood rather than ‘cold-blooded’ and ‘evil’ *killers*.

To finish, we want to briefly outline some of the benefits that creative methods such as body-mapping can bring, not only to an individual’s understanding of who they are but also to practitioners’ understandings of young people’s experiences of secondary liability. Over the three day workshop, the men who took part spoke enthusiastically about their involvement in the project. They felt able to express themselves creatively and relished the art room as an escape from the prison wing and from their day-to-day routine. They appreciated being able to talk freely about their experiences in a non-judgemental setting,<sup>37</sup> free from the stigmatising gaze of prison staff and other prisoners who may not understand. They also offered a welcome alternative to more common research methods, such as interviews. One participant described how ‘the body maps allow you to express your feelings easier [than interviews] as sometimes words cannot express how you feel’. He then went on to say, ‘it was helpful for me to think about my troubles and let them out on paper’, while another artist said that the workshop ‘changed my life’.

The body map workshop also had an impact on prison education staff who came to observe the workshops. One stood talking to Michael as they explored his body map. He described his experience

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<sup>35</sup> See Levins, A. (forthcoming 2023) *The Stains of Imprisonment: Moral Communication and Social Relationships in a Prison for Men Convicted of Sex Offences*. Berkeley, CA: University of California Press.

<sup>36</sup> See n.12.

<sup>37</sup> See also Thomas and Sadie, this issue.

of who he was prior to his imprisonment and his experience of, as he saw it, being wrongly convicted as a result of joint enterprise. The member of staff turned to him and said, 'I have never seen you in this way before Michael'. For that staff member, the artwork provided a way of connecting, of getting to know Michael and contextualising his angry outbursts in prison, within his experience of receiving a conviction for murder and very long life sentence that he felt to be deeply illegitimate.

The broad reach of such artistic work has also enabled these young men to contest the label of 'murderer' to a broader audience and to seek recognition of their experience and of their humanity from individuals within the communities from which they have been banished. The body maps featured in this article and full testimonios have featured in an online exhibition entitled 'Power: Freedom to Create' hosted by the National Justice Museum (in partnership with Koestler Arts). The original artwork has also been exhibited at the National Justice Museum in Nottingham. This endeavour has provided a rare opportunity for these incarcerated men to reach out beyond the prison walls and to seek a form of fulfilment for themselves, and a sense of pride from the feedback of others. In a letter, Michael wrote: 'I must say I'm actually proud of myself. For me it's a huge accomplishment to have my artwork placed in the National Justice Museum. I told my family and it's the first time my mother has ever said she's proud of me'.