

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Neutral citation No. [2023] EWCA Crim 932

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO: 2023 01666/01668/01669/01673 A4

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 19 July 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE BUTCHER

MRS JUSTICE CUTTS

Reference by the Attorney General under s.36 Criminal Justice Act 1988

REX

v

BRIKEL PALAJ

RADIAN LIKA

NIKOLA PALAJ

Computer Aided Transcript of Epiq Europe Ltd,

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MS ALISON MORGAN KC appeared on behalf of the Solicitor General

MR MICHAEL IVERS KC & MR ALEX ROSE appeared on behalf of the Offender Brikel Palaj

MR IGNATIUS HUGHES KC appeared on behalf of the Offender Radian Lika

MR COLIN AYLOTT KC & MR JULIAN WINSHIP appeared on behalf of the Offender Nikola Palaj

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an application for leave to refer sentences to this court which His Majesty's Solicitor General considers to be unduly lenient. It is also the hearing of an application for leave to appeal against sentence on the part of Brikel Palaj.
2. Brikel Palaj is a 33-year-old man. Radian Lika is a 36-year-old man. They were convicted of murder, and Nikola Palaj, a 29-year-old man, was convicted of manslaughter, following a trial which was heard over the period of 16 January to 9 March 2023 before Saini J and a jury in the Crown Court at Bristol.
3. On 21 April 2023 Brikel Palaj and Radian Lika were sentenced to life, with a minimum term of 20 years less 326 days spent on remand in the case of Brikel Palaj and 20 years less 324 days spent on remand in the case of Radian Lika, and Nikola Palaj was sentenced to 5 years' imprisonment.
4. It is submitted on behalf of the Solicitor General that the sentences first, failed to reflect the context of organised criminal activity on the part of the defendants. Secondly, that the terrifying nature of the incident for members of the public who witnessed it and heard it was inadequately reflected in the sentence. Thirdly, that the judge's treatment of self-defence ignored the timeline because it could never be acceptable to do what the first and second defendants had done, which the third defendant had effectively joined into.
5. It is submitted on behalf of Brikel Palaj, Radian Lika and Nikola Palaj that the judge had regard to the criminal activity leading up to the offence, and that this implicitly or expressly featured in the sentencing remarks. The judge referred to the criminal gang and the fact that they targeted empty premises as their way of working, but also found that they did not intend to use violence. The judge had referred to the effect of the violence on the public. The weight to be attached to each factor was plainly a matter for the judge. These were immensely long sentences in any event, and the self-defence was properly reflected by the judge in his sentencing remarks.
6. On behalf of Brikel Palaj it is submitted that the judge should have reduced the sentence

imposed on him further on the basis of his findings about self-defence because the knives were only taken to the scene because of that self-defence, and although that justifiably led to a 25-year starting point, the increase of 10 years from the usual starting point meant that there needed to be more of a reduction made to the sentences imposed.

7. We are very grateful to Ms Morgan KC, Mr Ivers KC, Mr Hughes KC and Mr Aylott KC, and their respective legal teams, for all their helpful written and oral submissions.

The factual circumstances

8. In May 2022 the offenders (and I will refer to them as the “offenders” rather than go through their names each time) were part of a group planning to steal cannabis cultivated by another criminal group who were at a residential address in Bristol. When the plan became apparent to the other group, which was referred to throughout the trial as “Group A”, that other group (Group A) surrounded the third offender, Nikola Palaj, threatening serious violence. The first and second offenders left the scene to arm themselves with knives. They returned and there was an escalation in the violence, during the course of which the deceased was stabbed twelve times. He died shortly after the incident as the emergency services were taking him to hospital.
9. The violence took place on 24 May 2022. Group A were cultivating the crop of cannabis at 13 Bloomfield Road in Bristol. That is a small, terraced house in a residential street which is a cul-de-sac and the road runs from a Sainsbury's supermarket at one end to a dead-end at the other.
10. Group A included the deceased, Aranit Lleshi, his brother, Sadik Lleshi (who was also prosecuted for his murder) and Artur Bici. The cannabis that was being grown was estimated by the police to be worth about £95,000. A previous crop had been stolen from the address at the point of harvest some two to three months before the events on 24 May 2022.
11. Members of Group A were particularly concerned to ensure that the subsequent crop reached the market. They gathered in Bristol from their London homes to ensure that the crop was cut and dried. They arrived a few days before the incident. It is also apparent that

some of the cutting had occurred before the murder and that they were determined to find out who was supplying information to others about their cannabis growing.

12. "Group B" included the first, second and third offenders, together with others. They were all Albanian. The first and second offenders had lived in the United Kingdom for some years. The third offender had only come to the country a few months before the incident.
13. The first and second offenders gave evidence at the trial to the effect that they had been engaged in the theft of cannabis in various different cities from cannabis houses over the preceding 12 months. They stated they acted on behalf of others who were responsible for planning. Their actions involved staking out a house and keeping it under surveillance to know who was coming and going, and to be able to get in and out of the properties quickly. The judge described both of the groups involved in these incidents as "criminal gangs" in his sentencing remarks, a description which was plainly justified. The offenders did not accept their activities involved violence on previous occasions, but they did accept that they were carrying out their activity as part of a larger organisation. The judge sentenced the offenders on the basis that it "was a lucrative business, but I find that, as far as Brikel Palaj and Radian Lika were concerned, it did not involve violence." The judge made specific reference to the Group B members targeting empty premises.
14. On 24 May, Group A were in Bristol, partly preparing to process the crop but it also seems partly preparing to find out who was targeting their crop. The offenders were all in Manchester carrying out surveillance on a different property where cannabis was being grown. They did not find an opportunity to break into that house in Manchester because it was occupied and they left. That they were trying to avoid confrontation appears to have been confirmed by various text messages.
15. Although messages had been exchanged over the previous few days between the offenders and others about cannabis in Bristol, the first and second offenders claimed that the decision to go to Bristol from Manchester was taken as they drove south. The judge observed that the first offender had stolen a crop of cannabis from Bloomfield Road before, and, having been unsuccessful in Manchester, they travelled to Bristol having received a tip off from

someone within the growers' gang that the property in Bristol would be unlocked and vacant. Whether they were being set up was not a matter that was ever finally determined on the evidence.

16. It follows that the accepted purpose of travelling to Bristol was to carry out the theft of cannabis from a property. There was a dispute between the parties as to whether this could be properly described as “organised criminal activity”, and there was evidence that the offenders were under pressure from others to carry out a successful theft.
17. Group A had become suspicious that a theft might take place and they were there in numbers. It seems that some had also travelled down from London to start cropping the cannabis, and they were in the area of Bloomfield Road on the afternoon and evening of 24 May.
18. Once they had arrived in Bristol, a member of Group B drove straight to Bloomfield Road. That, as it turned out, was the start of their discovery by Group A. The offenders drove to a nearby shopping centre where they were joined by another member of Group B, who had driven a van down from London. The van was to be used for carrying the crop once it had been stolen. It also contained a number of tools or weapons to be used in the raid for the purposes of cutting the cannabis, but the judge concluded: "I find that the sharp instruments taken by the gang were cutting equipment and not for violent use in confrontations." None of the items in the van were used during the course of the violence that took place. The van also contained balaclavas in the back of it.
19. Members of Group A also went to the shopping centre and saw some of Group B, who they identified as being Albanians and identified, correctly, that they were intending to steal cannabis from the property in Bloomfield Road. This led to concern that Group B's presence was to carry out the theft, and when members of Group B left the car park, they were followed by Group A.
20. The car containing the first and second offenders pulled into the Sainsbury's supermarket at one end of Bloomfield Road. This detour meant that some members of Group A arrived back at Bloomfield Road before the offenders. The Group B van, containing the third

offender and another member of Group B, parked in that area at the top of Bloomfield Road slightly out of CCTV coverage. The Group A car also turned into the same parking area, blocking in the Group B van. The occupants of the Group A car got out and went over to those in the van. At this point it seems threats were made and violence was used against the third offender by members of Group A, who was seeking to identify the person who had given information to Group B. Shouting was heard by neighbours, and at some point during this stage in the confrontation the other member of the Group B ran away because of the violence. It seems he was chased for a bit.

21. It follows that the start of the confrontation began before the first and second offenders were present. Neighbours gave accounts of hearing shouting and angry voices. The first and second offenders were seen to drive down Broomfield Road towards the end of the road. Their vehicle paused for 10 seconds. They then concluded that the third offender was being held by people who appeared to be Albanian. They then left the road and they went to obtain weapons of some sort in order to procure the release of Nikola Palaj.
22. The first and second offenders drove to Sainsbury's. The first offender got out of the car and walked into the shop. He was followed by the second offender. They went to the kitchen utensils section, where the first offender selected four of the largest knives, two of which were handed to the second offender. They went to the tills where they had to wait behind a person; and we heard details of that from Mr Ivers in his submissions this morning. They went to the tills, and the second offender walked over to the exit and looked out into the car park. He saw a car of a similar style to the Group A car. The two men went directly then to the customer toilets, where they took the knives out of the packaging. Each placed two knives within their clothing and returned to the vehicle.
23. They then drove back to Bloomfield Road. The first offender got out of the car before it was parked by the second offender. He had a knife in both hands and immediately engaged with and chased members of group A. The second offender parked the car and got out. He was also holding two knives. He entered the turning circle. It seems that the second offender was struck down fairly immediately by members of Group A, and in fact he was

stabbed in the back. Very significant violence then ensued between the two groups. Shouts and screams, which the judge described it as being of a "horrifying nature", were heard by neighbours. They described the violence as being very significant, screaming as of animals, fighting between a number of individuals on different parts of the road. The fighting caused, not surprisingly, very significant fear to those who saw it.

24. During the course of this fighting, the deceased was stabbed twelve times to the face, torso and limbs. The fatal wound was a stab wound to the right arm, which penetrated to a depth of 13 cms and which severed the arteries. The stab wound led to significant bleeding, followed by unconsciousness and then cardiac arrest.
25. It was not possible to say who inflicted the fatal stab wound. The judge concluded he could not be sure that either the first or second offenders had been responsible for inflicting that wound, but he was sure that both had used the knives that they had purchased earlier. In relation to the third offender, the judge concluded that although he was an active participant in the fighting, he could not be sure that he used any weapons. The judge did conclude that the third offender had joined a fight when his group had arrived with weapons.
26. The second offender was stabbed in the back using one of the knives which he had in fact brought with the first offender from Sainsbury's earlier, showing again the dangers of carrying knives to the people who carry them, and the third offender sustained a punctured lung alongside other injuries.
27. The deceased was bundled back into the Group A car by members of his group. He was driven away, but it was clear he was bleeding heavily. He and his brother were dropped off at the side of the road so that they could get help while the rest of Group A made their escape; and in fact they fled back to Albania, it seems, from the evidence. The emergency services were called, but the deceased had lost too much blood to be saved.
28. The prosecution's case on count 1 was that the offenders were part of a joint attack on the deceased which went far beyond any required act in self-defence. The prosecution's case was that the arrival of the first and second offenders from Sainsbury's, armed with four knives, changed the nature of what was happening between the two groups and dramatically

changed the level of violence involved. The judge observed in relation to the issue of self-defence: "The verdicts and the evidence are in my judgment consistent with the jury having found that they fell short of this defence because of the use of excessive force in the situation they faced."

The sentence

29. A victim personal statement from the brother of the deceased described the impact of his death on the family.
30. Brikel Palaj and Nikola Palaj had not been convicted of any offences before this offence, but it is obvious from the materials advanced at trial that they had been part of a group who were targeting houses which were empty to steal cannabis.
31. Radian Lika had two convictions for four offences: possession of Class A drugs and a bail offence, but he had also been sentenced to 9 years' imprisonment for false imprisonment and blackmail in 2013.
32. A pre-sentence report on Nikola Palaj, who had not given evidence at trial, showed that he was involved in the thefts of cannabis and showed that he was questioning how he had contributed to the death. However, it stated that he was sorry, but there was what was described as an "undertone of victim blaming" in the pre-sentence report.
33. In sentencing, in addition to the matters set out above, the judge said that he was not satisfied that the offending justified the starting point of 30 years for the first and second offenders which had been submitted on behalf of the Crown. He concluded that the murder was not committed in the furtherance of a robbery but in an attempt to obtain the release of Nikola Palaj. He was satisfied that the offending required a starting point of 25 years as it involved taking knives to the scene.
34. In relation to the first offender, he did not consider that there were any statutory or non-statutory aggravating factors. He took into account the earlier involvement in the drug thefts. He concluded that there were powerful features in mitigation: (1) the absence of an intention to kill, the context being excessive force in self-defence or defence of others which led to unintended escalation, and that the acts of Group A had "features of an ambush"; (2)

the absence of premeditation; (3) the absence of previous convictions, and his conclusion that the first offender was not a man of violence; and (4) there was also remorse. The judge concluded that those factors justified a significant movement downwards, leading to the minimum term of 20 years less days spent on remand.

35. In relation to the second offender, the judge adopted very much the same approach. The judge observed that the earlier convictions were not for offences of violence and were rather old. He concluded that there were also powerful matters in the second offender's favour: no intention to kill; real reluctance to return to Bloomfield Road a second time when armed with knives; excessive force in self-defence or defence of others; life-threatening injuries; and the acts of Group A had "features of an ambush".
36. The judge concluded that those were features justifying a significant movement downwards from the starting point of 25 years to 20 years.
37. In relation to the third offender, who was convicted of manslaughter, the judge indicated that he was satisfied he had been the victim of violence at the hands of Group A, including the deceased, before the return of the first and second offenders armed with their knives from Sainsbury's. The judge approached the offending on the basis that the jury:

"Rejected your self-defence or defence of others' pleas, and they were sure you assisted and encouraged the fighting which led to [the] death, and that you intended at least some harm, short of very serious harm. I bear in mind that the incident was over in about 1 minute and there were extreme and life-threatening acts of violence against you by members of Group A. You suffered very serious injuries. As in the case of your co-defendants, I proceed on the basis that ... there are elements of excessive force in self-defence or defence of others in your conduct, at least until the later stages of the fighting."

The judge concluded that the offending fell within category C of the offence specific guideline for manslaughter. The judge concluded that a downwards adjustment should be made on the basis of self-defence to a starting point of 5 years. He considered that aggravating and mitigating features balanced one another, and so the final sentence was 5 years.

The relevant sentencing provisions and the guidelines

38. Schedule 21 of the Sentencing Act 2020 provides at paragraph 4(1)(a) and (b) that if

an offender took a knife or weapon to the scene intending to have it available to use as a weapon the starting point for the minimum term should be 25 years.

39. Relevant mitigation set out in the Schedule includes an intention to cause serious bodily harm and not to kill, lack of premeditation, and the fact that the offender acted to any extent in self-defence.
40. The offence specific guideline for a manslaughter has four categories: A, B, C and D. Category A is very high culpability and it involves an extreme nature of category B feature or a combination of category B features. Relevant category B factors are indicated where: "death was caused in the course of an unlawful act which involved an intention to cause harm falling just short of GBH"; "death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender." We pause there to note that that is the particular category factor relied on by the Crown. A further feature was: "death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role"; and "concealment, destruction, defilement or dismemberment of the body (where not separately charged)."
41. Category C is medium culpability. That includes: "where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm (or recklessness as to whether harm would be caused) that falls between a high and lower culpability", or "where death was caused in the course of committing or escaping from a less serious offence but in which the offender played more than a minor role."
42. Category D, lower culpability, includes: "death was caused in the course of an unlawful act which was in defence of self or others where not amounting to a defence." There were other relevant factors in category D.
43. Category A has a starting point of 18 years imprisonment. Category B has a starting point of 12 years' imprisonment, with a range of 8-16 years. Category C has a starting point of 6 years, with a range of 3-9 years. Category D has a starting point of 2 years, with a range of 1-4 years' imprisonment.

Leave refused

44. We record the following matters. First, that this was a sentencing exercise carried out by the judge after he had heard a trial over some 7 weeks from January to March this year. Secondly, the judge made careful findings of fact about which he was sure based on the evidence that he had heard. Thirdly, those findings had to be, and were, consistent with the verdicts of the jury.
45. It is well established that this court will respect the findings of fact made by a sentencing judge unless those findings are: not based on the evidence; internally inconsistent; inconsistent with uncontroverted facts; irrational; or suffer from similar such defects. Those tests are not easily met, and it was not submitted either on behalf of the Solicitor General nor Brikel Palaj that the findings of fact made by the judge could be challenged on any reasonable basis.
46. The crucial findings made by the judge in this case included the fact that Group B were carrying out a lucrative criminal business of stealing cannabis crops but that this did not involve violence. The finding that Group B was not involved with violence was soundly based on a fact which the judge had found, namely that Group B had watched a property in Manchester in order to steal a growing cannabis crop but had given up the plan because the house was occupied.
47. The judge also recorded that it was Group A which was on alert for a potential theft of their cannabis and it was Group A who had initiated contact with Group B. It seems from the judge's findings that there were elements of ambush in the planning of Group A's defence of their cannabis crop and, indeed, a desire to find out who was the person who had given details of the cannabis grows to others. The judge found that Nikola Palaj and another member of Group B had been confronted, and that the other member had managed to escape and run away but Nikola Palaj was caught. The judge found Group A were determined to find out how Group B had come to get the information about the cannabis growing and it seems were intent on extracting that information from Nikola Palaj. There was also, on the evidence (namely the finding of a screwdriver in bushes nearby where Nikola Palaj had

been held) the use of a screwdriver; although what was done with it was not made clear in the evidence. It was in these circumstances that Brikel Palaj and Radian Lika went to buy knives in order to secure the release of Nikola Palaj. It does not seem that this was a very well-formulated plan, because when they were first about to leave Sainsbury's, it seems that the knives were still wrapped, before they then saw members of Group A and went back to unwrap those knives. The judge found that Radian Lika was frightened, but felt he had to go and help Nikola Palaj, the brother of Brikel Palaj. Brikel Palaj and Radian Lika arrived, and then there was violence and screaming and the inevitable death that followed. The victim was stabbed in the course of this fight.

48. We turn then to the points made on behalf of the Solicitor General. First, that this offending was committed in the context of organised criminal activity leading to conflict between two criminal gangs. It is right that this was criminal offending committed in the context of organised criminal activity and that there was conflict between gangs A and B, but the judge had that factor well in mind and it was the factual background against which the sentences for Brikel Palaj and Radian Lika went up to a 25-year starting point because they went to purchase the knives to extract Nikola Palaj from his false imprisonment.
49. The judge also had well in mind the second point made on behalf of the Solicitor General, which was that this offence was committed in a residential street and would have caused significant fear for members of the public who witnessed the violence. That was obvious from the judge's reference to those matters. This was not a statutory aggravating factor but was obviously a matter which the judge was entitled to weigh in the balance and it is apparent that the judge had regard to it.
50. The third point, and perhaps the most important point made on behalf of the Attorney General, was that the judge's treatment of self-defence, it was submitted, showed an error of law in that the judge found that there were elements of self-defence. In the course of submissions it was submitted that the law would not allow anyone to carry knives to secure the release of another person being imprisoned by others, and there was a short and interesting discussion about the extent of self-defence and defence of others. All that it is

necessary to say in relation to that point is that self-defence and defence of others was properly left by the judge to the jury at the trial and that the judge was perfectly entitled and right to find that there was excessive force for the defence of self-defence to be effective. That does not mean however that the judge was not entitled to make the findings, particularly in the context of a planned ambush, it seems, by Group A on members of Group B, that there were elements of self-defence. In those circumstances, although we understand why the application has been made, we can find no justiciable basis to interfere with the careful findings of fact and assessment of where those findings took the judge in relation to the first and second offenders.

51. Next, before dealing with Nikola Palaj, we deal with the first offender, Brikel Palaj's application for leave to appeal against sentence. Effectively the same answer that has just been given to the Attorney applies to that application. The judge was best placed to make the proper assessment of where to come down to having regard to the issue of self-defence and the fact that Brikel Palaj and indeed Radian Lika had only purchased the knives (which meant that they ended up with a 25-year starting point) because they were trying to ensure the release of Nikola Palaj. No doubt the judge would have reflected, when calculating the sentence that he imposed, on the fact that in many respects Brikel Palaj and Radian Lika had started the whole process running by being part of the Organised Crime Group trying to steal cannabis. We can see again no justiciable error made by the judge. We refuse leave to appeal against sentence.

52. We turn then to consider the issue of Nikola Palaj. In so far as it was submitted on behalf of the Solicitor General that the same three submissions as the appeals applied to Nikola Palaj, we have already answered them, but it is necessary to just deal with some specific matters. It is right that there were category B features if one looks at the guideline alone: "death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender". That was because on the judge's finding, albeit very much at the end of events when Mr Nikola Palaj joined in the fight which was being carried on by Brikel Palaj and Radian Lika with knives, there was a high

risk of death or GBH. It is also right to look at category D, which was: "death was caused in the course of an unlawful act which was in defence of self or others", and this was in defence of self, "not amounting to a defence". In those circumstances it is clear that the judge was perfectly entitled, and indeed right, to place this offending in category C, which includes: "where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm ... that falls between high and lower culpability". In those circumstances, the judge having chosen the correct category, it was very much for the judge to apply his findings of fact to the various aggravating and mitigating features that he found. It might be thought that the sentence imposed on behalf of Nikola Palaj was generous, but it is impossible to describe it as unduly lenient.

53. For all those reasons, we refuse the Solicitor General leave to refer these sentences and we refuse Brikel Palaj leave to appeal against sentence.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk