



SCANIA AND BLEKINGE
COURT OF APPEAL Section 2
Division 21

JUDGMENT
11.04.2017 Malmö

Case no.
B 3187-16

APPEALED DECISION

Blekinge District Court's decision of 06 December 2016 in case no. B 569-16, see Annex A.

PARTIES (number of accused 1)

Appellant and counterparty

(Prosecutor) Public

Prosecutor[...], Swedish

Prosecution Authority

International Public Prosecution Office in Stockholm

Appellant and counterparty (Defendant)

[...] Citizen of Iraq

No address information available

Representative and court-appointed lawyer: Lawyer [...]

CASE

War crime

THE JUDICIAL DECISION OF THE COURT OF APPEAL

The Court of Appeal amends the verdict of the District Court in such a way that the Court of Appeal, which applies Chapter 34, §1.1.2 §3.2 of the Penal Code in its wording prior to 1 July 2016, sets the term of imprisonment to 9 months. The verdict of the District Court applies otherwise.

The seizure is upheld.

For the defence in the Court of Appeal, [the lawyer] receives remuneration from public funds of SEK 103,168, of which SEK 37,576 relates to work, SEK 31,980 to time lost, NOK 12,979 to expenses, and SEK 20,633 to VAT. The state is responsible for these costs.

The Court of Appeal confirms the confidentiality order.

The Court of Appeal orders that the confidentiality clause in Chapter 21.1 of the Public Access to Information and Secrecy Act (2009:400) will continue to apply to the uncensored images of e.g. dead people, which have been presented during proceedings behind closed doors.



MOTIONS IN THE COURT OF APPEAL

The prosecutor has requested that the Court of Appeal should confirm the prosecution in full, and in any case sentence [the defendant] to a longer prison sentence and decide to expel him for life. The prosecutor has also requested that, due to the risk of flight, the Court of Appeal should detain [the defendant] in connection with his conditional release from the prison sentence he is currently serving.

[The defendant] has requested that the Court of Appeal should overturn the prosecution and the special claim for forfeiture of a seized mobile phone.

The parties have opposed each other's motions for amendments.

PROCEEDINGS IN THE COURT OF APPEAL

The Court of Appeal has taken account of the same investigation as the District Court. In addition, at the prosecutor's request, the Court of Appeal has allowed additional questions to be asked of [the expert witness] regarding the importance within Arab Middle Eastern culture of someone stamping on or shows the soles of their feet to another person.

THE FINDINGS OF THE COURT OF APPEAL

Guilt

The Court of Appeal initially accepts the District Court's assessment that it is clear from the investigation in the case that [the defendant] acted in the manner stated by the prosecutor in her statement of the criminal act charged, and that the offence was part of or otherwise associated with an armed conflict in the Salah al-Din region in Iraq. On the grounds stated in the District Court, the Court of Appeal also agrees that the term "person" in the definition of protected persons in §3 of the Act on criminal responsibility for genocide, crimes against humanity and war crimes (2014:406), should also be understood to dead persons. Consequently, the dead people who appear on the photographs in question in this case were protected persons at the time.

In order for criminal responsibility for war crimes under §4.1.7 of the law above to be applicable, the preparatory work to the law requires that a person humiliates, degrades or otherwise subjects a person to treatment which is generally regarded as a violation of their personal dignity. There is no requirement that the humiliating or degrading action should cause a detectable effect. The actions covered by the criminal responsibility can be of various kinds. It can involve sexual assault, various forms of abuse, threats or deeds whereby someone is forced to carry out or tolerate seriously degrading or insulting actions (see government bill 2013/14:146, p. 268f). The Court of Appeal believes that the assessment of whether humiliating or degrading treatment of a protected person is meant to seriously violate their personal dignity should be based on the context in which the act occurs. Unlike the District Court, therefore, the Court of Appeal considers that it is not generally possible to exclude victory gestures or manifestations of joy from what could constitute a punishable war crime, because it depends on the context in which they are committed and how they manifest themselves. The Court of Appeal will therefore first assess the context in which [the defendant] has acted.

The photographs show, as the District Court explained in more detail, that some of the bodies are connected to each other by a black strap that is fastened around their neck. In addition, three of the bodies seem to be connected to each other by means of a chain and two of them lack clothing on some of their body. The circumstances strongly suggest that the bodies were dragged to the site. The content of the invoked film, which was published on [the defendant's] Facebook account and which appears to have been recorded before the bodies were photographed, also supports such a conclusion. The film shows both how bodies are dragged on the ground and how a severely injured or dead person is transported lying on his back on the bonnet of a car. The Court of Appeal assesses that the dead people were transported to the site and placed there in a manner that was demeaning for the dead persons. In view of the foregoing, the Court of Appeal has difficulty seeing any other reasonable motive for the subsequent photographing of the bodies, other than for an intentionally degrading purpose. The photographs also show that there are several people photographing and posing by the dead people. There is therefore no doubt that [the defendant] acted together and in agreement with other people.

On the grounds mentioned by the District Court, it is also clear that [the defendant] has not acted in distress or had a lack of intent in his conduct. As regards the issue of whether [the defendant's] treatment of the persons in the photographs constitutes war crimes, the Court of Appeal makes the following assessment.

The Court of Appeal initially agrees with the District Court's assessment that by posing next to the separated head of one of the dead persons (red images no. 1, 12, 17, 19 and 22), [the defendant] subjected the dead person to such humiliating or degrading treatment that was intended to seriously violate their personal dignity. The Court of Appeal makes the same assessment regarding the photographs where [the defendant] actively poses by the bodies where someone place a foot against one of the dead person's head (red images no. 5 and 8), where [the defendant] places a foot or weapon against the chest of one of the dead people (red images no. 11, 14 and 21), and [the defendant] looks into the camera and points to one of the bodies (red picture No. 20). Regarding the images that are so-called selfies, i.e. where [the defendant] and others appear in the foreground of the picture, but where one or two dead people are in the focus of the images (red images no. 2, 7, 9-10, 15-16, 18 and 24), the Court of Appeal considers, with reference to the foregoing regarding the purpose of the photography, that [the defendant's] actions also in this regard subjected the dead persons to humiliating or degrading treatment that was intended to seriously violate their personal dignity. The fact that [the defendant] appears in some of the pictures to make a victory gesture with one hand in the form of a V-sign does not change the assessment of his actions. The prosecution is therefore upheld in the stated parts.

The investigation also shows that [the defendant] published the relevant pictures (red images no. 1, 9, 12 and 24) on his Facebook account. By publishing the images, he has allowed their unlimited distribution, especially on Facebook, but also within the internet. It has been possible to recognize the people in the pictures. By publishing the images, he has treated the photographed persons in such humiliating and degrading way that is likely to seriously violating the personal dignity of the persons. The prosecution is also upheld in this part.

In summary, [the defendant] has been guilty of war crimes in the manner stated in the statement of the criminal act charged. The prosecution must therefore be fully approved.

Sanctions

The total penal value of the criminality is higher than the District Court found and, according to the Court of Appeal, corresponds to imprisonment for one year and six months. [The defendant] was convicted of robbery by this Court of Appeal on 4 July 2016 and sentenced to imprisonment for three years and six months, which he is currently serving. Considering the provision in chapter 34, §3.2 of the Penal Code, in its wording prior to 1 July 2016, the term of imprisonment should be set at nine months.

Expulsion, forfeiture and detention

The Court of Appeal accepts the District Court's assessments in the issues of expulsion and forfeiture. In view of the fact that, according to a sentencing decision of the Swedish Prison and Probation Service on 7 July 2016, [the defendant] cannot be conditionally released from prison until 8 March 2018, there are not sufficient grounds for detaining him in connection with his conditional release.

HOW TO APPEAL; refer to Annex B. The deadline for appeals is 09 May 2017.

President of the Court of Appeal[...], Judge of Appeal [...](reporting judge), former judge [...] and the lay assessors [...] and [...] participated in the decision. The judges were unanimous.

Settlement documentation, see Annex C



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BLEKINGE DISTRICT COURT
Blekinge DC
Judge 1.

JUDGMENT
06.12.2016
announced in
KARLSKRONA

Case no.: B 569-16

PARTIES (Number of accused: 1)

Accused

[...] Detention: Inmate in the Swedish Prison
and Probation Service No address information
available.

Citizen of Iraq

Court-appointed

lawyer: [...]

Prosecutor

District prosecutors [...] and [...]

The Swedish Prosecution Authority

International Public Prosecution Office in Stockholm

JUDGMENT

Crime for which the accused is convicted

War crime, §4.1.7 and 4.2 of the Act on criminal responsibility for genocide, crimes
against humanity and war crimes (2014:406).

01.01.2015 -- 22.07.2015

Sanctions etc.

Imprisonment for 6 months

Section invoked

Chapter 34, §1.1 of the

Penal Code, Chapter 34.2

of the Penal Code.

Expulsion

The motion for expulsion is dismissed.

Forfeiture and seizure

The seized cell phone is declared forfeited. The seizure is upheld (Swedish Police Authority, National Operations Department, War Crimes).

Detention etc.

The motion for conditional detention is dismissed.

Confidentiality

The confidentiality pursuant to Chapter 35, §1 and Chapter 43, §5.2 of the Public Access to Information and Secrecy Act (2009:400) for the uncensored images of dead persons, etc. presented in proceedings behind closed doors will be upheld in the case.

Crime Victim Fund

The accused is ordered to pay a fee of SEK 500 pursuant to the Fund for Victims of Crime Act (1994:419).

Compensation

1. [the lawyer] is awarded compensation from public funds of SEK 262,245. Of this amount, SEK 138,584 relates to work, SEK 45,938 to time lost, SEK 25,275 to expenses and SEK 44,444 to VAT.
2. The cost of the defence will be borne by the state.

MOTIONS, ETC.

The prosecutor has requested in accordance with the judgment annex 1, with the adjustment made therein. The prosecutor has also requested that [the defendant] should be detained conditionally and expelled for life.

APPROACH TO THE CASE ETC.

[The defendant] has denied the act and he has contested the forfeiture motion, the expulsion motion and the prosecutor's detention motion.

INVESTIGATION

As written evidence, the prosecutor has invoked photographs, films, expert statements from the Swedish National Forensic Centre, PM and screenshots, expert statements from [expert witness], reports from UNAMI, Swedish Migration Agency legal position statements on the situation in Iraq, parts of the Rome Statute, rule 113 of the ICRC, Finnish judgments, a press release from the court of appeal in Frankfurt am Main and German judgments.

To develop the case, the prosecutor has also stated essentially the following. The District Court has to decide firstly whether the nature of the acts in question are so degrading, humiliating and so seriously violating that they constitute war crimes and, secondly, whether the act in question can be regarded as a war crime under Swedish law, since the persons to whom the actions were directed were dead.

The actions in the case

The charge against [the defendant] includes both the fact that he has been photographed next to the bodies and that he has published two photographs on Facebook.

The photographs came to the police's attention when investigating other crimes. [the defendant] has published pictures of himself on Facebook, as well as a picture on a head lying on a barrel. In addition, additional pictures have been found showing [the defendant] wearing combat uniform as well as pictures of desecrated dead bodies. The information about these images was submitted to the Armed Forces because there was found to be an association with Sweden. A notification was then issued, and a preliminary investigation was initiated. The preliminary investigation found pictures of the Iraqi Army soldiers and IS taken during spring 2015. The pictures show different poses and actions next to desecrated bodies. [the defendant] has admitted that he is present in the pictures and that the events have taken place in Salah al-Din in Iraq in spring 2015. Furthermore, [the defendant] has admitted that he has belonged to the Iraqi regime's army, or a military force allied to the Iraqi regime. He has participated in the fighting as a radio operator. On the day when the photographs were taken, four people were captured to be killed or were killed during battles, and then photographed. In July 2015, two of the pictures were published on Facebook.

Legal rules

The legal rules in this area are based on international law and humanitarian law. These rules are also called the law of war, which is a collective term for the laws applicable during war, rules between states, as well as state practice. The rules are also called customary law and general international law. The purpose of international law is to limit suffering for those who are not part of the conflict, while also taking account of the military requirement for freedom of action. Swedish law contains penal provisions for war crimes in the Act on criminal responsibility for genocide, crimes against humanity and war crimes (2014:406). One violation of the penal provisions is a violation of the laws of war. The regulations are based on fundamental treaties and the most important treaties in this respect are the Geneva Conventions. The acts charged are to be covered by three requisites, which are set out in §4.1.7 of the Act on criminal responsibility for genocide, crimes against humanity and war crimes (2014:406).

The act must be part of, or otherwise be in connection with an armed conflict or occupation, it must concern a protected person who is subjected to humiliating or degrading treatment, and the act must also, by its nature, be a serious violation of personal dignity.

Armed conflict

International law divides armed conflicts into international armed conflicts and internal armed conflicts. In order for an internal armed conflict to exist, it is necessary that the disputes consist of more than just internal disturbances and tensions, such as riots or a short-lived attempted revolution. Through international legal practice, two parameters have been developed that can be considered in order to determine whether there is an internal armed conflict. The first parameter is the intensity of armed violence and the other is the degree of the group's organization. Examples of indicators that can be considered when assessing the intensity of conflict are as follows. The existence of drawn-out violence between armed groups, the number of civilians fleeing the combat zones, the types of weapons used, the extent of combat-related material destruction, the number of soldiers and military units participating, and whether the government is forced to deploy military forces against rebels. Examples of indicators that can be considered when assessing the degree of organization of the rebellious armed group are as follows. The group's ability to carry out continuous armed violence, whether the group can confront its opponent with military means, the group's military strategy and the ability to exercise some form of control over the members of the group.

At the time of the act, IS was an opponent of the Iraqi regime or the army of the Iraqi regime. In connection with IS proclaiming its existence in June 2014, the city of Mosul was captured, and the city of Tikrit was captured immediately afterwards. It is generally known that there is still conflict in Mosul and that IS is an armed group.

In support of the assessment of whether there is an armed conflict in Iraq, guidance may be sought in reports prepared by international actors operating in the area.

For this reason, three reports are relied upon that were drawn up by the United Nations Assistance Mission for Iraq (UNAMI), whose mandate is derived from the UN. UNAMI has, inter alia, a mandate to improve protection of human rights and peaceful solutions, legal reform and to strengthen the rule of law in Iraq. The reports are based on information from, inter alia, people who have witnessed e.g. abuse, information from NGOs, human rights activists, politicians, religious leaders and various UN agencies. The reliability and credibility of the information has been tested before it is used. The first report concerns the period between 5 June 2014 and 5 July 2014. The report shows, among other things, that there was an internal armed conflict in Iraq during the period covered by the report. It also appears that the actors involved in the fighting were, on the one hand, the Iraqi government with allied groups and, on the other hand, IS with allied groups. Thus, there was already an internal armed conflict in Iraq in 2014. The second report concerns the period between 11 December 2014 and 30 April 2015. The report's conclusion shows that the armed conflict in Iraq had a horrendous impact on the civilian population. What has been found in the reports should be considered in the light of the indicators that apply for the intensity of a conflict. The second report also shows that IS resisted strongly in Salah al-Din, despite the attacks of the regime and forces loyal to the regime. Large-scale attacks occurred in Anbar and Salah al-Din and IS captured a city in Anbar in February 2015. During the period that followed, the Iraqi regime employed military means to recapture the areas. 30,000 regime soldiers and soldiers loyal to the regime participated in the regime's offensive to recapture Tikrit, which commenced in March 2015. The armed conflict was still ongoing in Salah al-Din. Other factors that may be considered are that more than 44,000 civilians have been injured, of which more than 14,000 people have died between 1 January 2014 and the end of April 2015. Between January 2014 and 25 April 2015, more than 2.8 million people fled, of which 1.3 million were children. 435,900 people fled from Salah al-Din.

The third report concerning the period between 1 May 2015 and 31 October 2015 shows that it was the civilian population who still suffered most from the ongoing internal armed conflict in Iraq. During this period, 18,000 deaths have been recorded.

The reports have good credibility and, in view of this, it is established that there was an armed conflict during the relevant period. It may have been an international armed conflict, but there was at least an internal armed conflict in the spring of 2015.

As additional support for the existence of an internal armed conflict in Iraq, the Swedish Migration Agency's legal position from 2014 can be considered, which is still applicable. It is clear from this that IS has taken over a third of Iraq's territory and that Salah al-Din is one of the most affected areas. There are no signs of the fighting subsiding. The position, which actually applies to asylum-seekers, shows that the criteria are generally satisfied *for alternative protection needs* according to Chapter 4, §2.1 of the Aliens Act (2005:716) as a result of the current situation.

Protected person

§3 of the Act on criminal responsibility for genocide, crimes against humanity and war crimes (2014:406) specifies which persons are protected under Swedish law. The section of the law states that the term "protected person" refers to a person who is injured, sick, shipwrecked, a prisoner of war or a civilian or who otherwise is entitled to special protection under the Geneva Conventions of 12 August 1949, the first supplementary protocol to these from 1977, or otherwise according to general international law that is applicable in armed conflict or during occupation. General international law and Swedish law protects all persons who are put out of action, regardless of whether or not they are suspected of belonging to a terrorist organization.

Consequently, the term also covers dead persons according to both Swedish law and general international law, especially with regard to the prohibition against violating their personal dignity.

The Geneva Conventions were introduced in 1949 in order to prevent a repeat of the barbarism of World War II. There are four different Geneva Conventions, each with their own purpose. Article 3 is common to all the conventions. This article provides a minimum of protection for certain specially protected persons, regardless of whether it concerns an internal armed conflict or an international armed conflict. According to Article 3, people are protected who are put out of action due to illness, wounding, detention or for any other reason. There is also a specific ban against, among other things, violations of personal dignity, especially humiliating and degrading treatment. Article 3 constitutes customary law, which means that the protection that follows from the article applies regardless of whether a state has acceded to the Geneva Conventions. Under customary law and general international law, the protection under Article 3 is clearer than in the conventions. Swedish law refers in many respects to general international law that is updated when there is an armed conflict, and Swedish law reflects the general international law that has emerged. Therefore, in this part, the Rome Statute and its source of interpretation should be examined, since the Rome Statute and its source of interpretation are a codification of the way in which general international law was formulated in 1998 when the Statute was adopted. The Rome Statute contains, inter alia, criminal criteria for the International Criminal Court in The Hague (ICC) and was drawn up following negotiations between 160 states. In addition to the Rome Statute making the ICC permanent, criminal law regulations have been established which set out which crimes the court can judge. The purpose of the Rome Statute was to codify existing customary law, but since customary law was already binding on all people, no new law was created. Sweden ratified the Rome Statute in 2001 and it has been in force since 1 July 2002. Articles 6 to 8 list the punishment for the crimes which the court has to judge. Article 8 applies to war crimes. Since the penal provisions are only found in three articles, criminal criteria have been developed to clarify the penal provisions. It follows from Article 9 that the criminal criteria constitute support for interpretation and application of the Rome Statute.

Consequently, the criminal criteria are considered when applying Articles 6 to 8.

Article 8(2)(c) of the Rome Statute corresponds to the Swedish penal provision in §4.1.7 of the Act on criminal responsibility for genocide, crimes against humanity and war crimes (2014:406). Thus, there is a prohibition against humiliating and degrading treatment of anyone who is not involved in the fighting. Article 8(2)(c)(ii).1 of the criminal criteria states that war crimes by violation of personal dignity occurs when a perpetrator humiliates, degrades or otherwise violates the personal dignity of one or more persons. The footnote to this criminal criterion states that a dead person may also be covered by the term *persons*. The person in question need not personally be aware of the humiliation, degradation or violation. Thus, it is explicitly stated that this type of offence may also refer to dead persons. The victim himself does not have to be aware of the violation, which is reflected in the Swedish penal provision when it states that the act must be intended to seriously violate personal dignity. This means that the person in question does not have to experience the violation, and the person may therefore have been unconscious or dead. However, in order for the Swedish penal provision to be applied, it is necessary that the violation is serious. But even dead people must be treated with dignity. This interpretation of the term "protected persons" complies with the interpretation in the general international law, legislation and decisions in other countries.

Desecration

So far, state practice has been touched upon, but there are also other actors in the area whose work should be examined in this regard. The International Committee of the Red Cross is an actor that has conducted a comprehensive study of the current rules of customary law. The study was conducted by a legal department, several national and international sources, as well as experts from around the world. Military manuals, practices and governments' positions on resolutions have been considered in the study.

The study was completed in 2005 and comprises 161 rules. The rule currently applicable is Rule 113. The rule stipulates that every actor in a conflict must take all possible precautions to prevent the plundering of dead persons and the mutilation of dead bodies is prohibited. The state practice covers all rules and all continents. Studies of this rule have found that in most military manuals, with associated penal rules, the mistreatment of dead persons is prohibited. It is thus a war crime.

The commentary on the rule does not support the contention that it would be a permitted behaviour, but the 161 rules have been rewritten in the preparatory work and have been a starting point. There are also foreign judgments from Finland and Germany that apply to people who have posed with severed heads. There is also a German detention protocol from the German Supreme Court.

[...] expert statement essentially states the following. Desecration of bodies is forbidden in Islam. The ban applies to both Muslims and non-Muslims. The prohibition against desecration of a corpse is based principally on the perception that this act is inhuman and contradicts what the Qur'an calls the dignity of man. Within the Islamic tradition, there are also statements by Muhammad prohibiting desecration of corpses. Islamic sources contain depictions that show that the prohibition against desecration of a corpse was introduced at an early stage.

Film

The film was uploaded to [the defendant's] Facebook account in July 2015. It is a film that was presumably filmed just before the corpses were photographed. Against the background of the film, they must at present be presumed to have performed the act together and by mutual agreement. [The defendant] must therefore be presumed to have had intent. The film shows how a severely injured or dead man is transported on the bonnet of a car. It is [the defendant] who is reversing the car. People can be seen discussing whether or not the man lying on the bonnet is alive.

Pictures

Censored images - orange marked

[The defendant] has stated that he was in the military and on the pictures, he is seen in combat uniform bearing various weapons. [The defendant] has admitted that he appears on the pictures with, among other things, an anti-tank grenade launcher, an automatic rifle and a machine gun.

Censored images - red marked

In the pictures, [the defendant] points with an object to the severed head, makes the "V-sign" and points with weapons. He actively participates in the pictures with a smile. In one of the pictures published on [the defendant's] Facebook account, he is wearing a military uniform and an ammunition belt. He points with a screwdriver towards a severed head lying on a barrel. The head on the barrel belongs to one of the dead bodies lying on the ground in another picture. In other pictures, three dead bodies which are partly undressed, are seen on the ground. On one of these pictures, [the defendant] makes a "V-sign" and the picture is taken as a selfie.

On another picture, four bodies can be seen on the ground at the same time. Three of the bodies are lying with their head placed so that it is included in the picture, although covered with a blue mark. One of the bodies lies with the head outside the image, so that only the lower part of that body can be seen. In another picture, [the defendant] posed with a foot and a weapon on the dead body. According to NFC's analysis, the head lying on the barrel belonged to this body. In another picture, [the defendant] is standing next to another man and points the weapon towards the dead body lying on the ground. In one picture, between the two bodies lying on the ground, a black strap can be seen between the two bodies lying on the ground, as well as a chain from the body on the right, which is partly beneath the right body. A man in military uniform stands with his foot on a piece of the chain. The chain and the strap may have been used to drag the bodies behind, for example, a car. In one picture, [the defendant] is squatting in front of a barrel with a severed head on it. He is pointing to the head with an object that is probably a screwdriver.

In another picture, [the defendant] seems to be taking a picture of himself and a body can be seen on the ground in the background. There are additional pictures with a severed head and partially undressed dead bodies. [the defendant] points to the body whose head has been severed and placed on a barrel. [The defendant] is looking straight into the camera in this picture. In another picture, which is similar to another picture, [the defendant] is standing by a dead body, making the "V-sign" and pointing a weapon towards the dead body.

Uncensored images - Confidentiality

The persons who appear in the pictures can be identified by relatives, among others. What can be seen on these pictures and not on the censored ones is that [the defendant], when he squats in front of a barrel with a severed head, is pointing towards one eye with a screwdriver.

Image analysis

According to NFC, the results of the image analysis conducted strongly suggest that the deceased person on the red-marked image (Grade + 3) is the same person who appears on the red-marked images 11, 13, 14 and 21. This means that the head in the red-marked image 1 belongs to the body that is included in the red-marked images 11, 13, 14 and 21.

Facebook - publication, logins, etc.

The prosecutor obtained access to the pictures on Facebook through a relative of [the defendant]. There are about one billion users on Facebook. On 6 April 2016, screen clips were displayed to the prosecutor representing red-marked image 1 and red-marked image 9 from [the defendant's] Facebook page. At that time, there were no other red-marked images.

The red-marked image 9 was published on 3 July 2015 on [the defendant's] Facebook page. The picture has been liked by 42 people or other Facebook accounts and received 14 comments. It may be assumed that at least those who have liked the image have viewed it.

On 4 July 2015, the red-flagged image 1 was published on [the defendant's] Facebook page. The picture has been liked by 44 people or accounts and received 42 comments. On 5 July 2015, two albums were created on [the defendant's] Facebook account, containing eleven unique film clips, one of which has been invoked.

[The defendant's] Facebook account was registered on 31 August 2014 in Iraq. An investigation was conducted of [the defendant] logins on Facebook during the period 1 March 2015 to 1 September 2015. He has mostly logged into the account once a day and quite often several times a day. There are sixteen breaks in the logins, ranging from one day to seven weeks. All IP numbers associated with the respective logins go to ISPs in Iraq. From 1 March 2015 to 6 September 2015, logins only occur in Iraq. On 7 September at 01.22, the first known login outside of Iraq occurs, in Turkey. [The defendant] has himself admitted that the logins have taken place in Iraq, which is consistent with the investigation conducted of the logins.

The pictures published on [the defendant's] Facebook page have only been accessible to his friends. The number of friends that [the defendant] has had was only confirmed on 20 May 2016, but since Facebook only provides a snapshot of the number of friends one has, it is not possible to say how many people actually had an opportunity to see what was published in July 2015.

The prosecutor has invoked as oral evidence the testimony of [the expert witness], apart from the examination of [the defendant]. Those examined have essentially stated the following.

[The defendant]: He was a liaison officer in the Iraqi army after he was recruited in 2014. He was first a bodyguard for the brigade commander, but when a new brigade commander arrived, he did not want him.

He was then redeployed and started as a liaison soldier in March/April 2015. Lieutenant-Colonel [M.] was the name of his senior commander. There were two soldiers who protected the commanding officer. When the fighting was concluded, the lieutenant-colonel liked to visit the front line to see the outcome of the fighting. During the fighting, the lieutenant-colonel would not be at the front. He received combat training from the Iraqi army for three months. The training provided practical skills in combat techniques, communication equipment and how to treat the enemy. They were in Garman in Salah al-Din province near the city of Tikrit in spring 2015. He accompanied the commander to the front when he went there. He had pictures in his mobile phone that were taken with a camera. The pictures were of him with other soldiers. He was always armed. He did not pose with corpses because it is sinful. Ambulance staff buried the bodies in a certain way. There were battles, and they wanted to bring more weapons and soldiers to the front. He had slept before driving to the front on the day in question. It was a deserted area and there were no inhabitants there. He did not want to be photographed with a person with a severed head. He was forced to participate in the photography. He took two pictures himself and then the person was moved. It was not him who took the other pictures. That was done by other guys. The general told them to take pictures. His comrades said that he was afraid, and the commander told him and several others to be in the pictures. This event with the pictures occurred after he had been redeployed. He served as a telecommunications operator in connection with the fighting. Initially, he was between 4-9 kilometres behind the fighting. He was with the commanding officer when the fighting ended and then they went to the place where the fighting occurred. When they arrived, one of the enemy was alive. The commander sentenced the survivor to death and he was executed. He did not see the killing of the survivor. The killing took place on their base. The four dead persons belonged to IS. The film shown by the prosecutor was from this moment. The commander said that they should photograph the explosive belts. They were to take the enemy soldiers to the cold-store and wait for someone to undertake to bury the bodies, because the burial cost money. They were sad because they had lost comrades from their base. Picture eight was taken after they had been transported on the cars. They stood around followers of IS who lay on the ground.

They did not stand around the bodies for long. It was the person responsible for media who took most of the pictures. He only took picture number 18. He took a selfie. It was not good to take a picture with a corpse. Figure 20 everyone is dead. He felt compelled to participate in picture no. 1. He did not like taking this picture at all. The man whose head is lying on a barrel was killed by someone from his base. He does not know why he pointed to a person in picture 20. He does not know who the head of the killed person belongs to. He does not think it is the same person he points to and walks on. He does not remember if he published the pictures on Facebook. The pictures are from his Facebook account. Several people have had access to his Facebook account. There was a person at the base who helped him create a Facebook account. On 3-5 July, he uploaded the pictures and the film to his Facebook account. He does not know why he uploaded the pictures. He does not remember much about it. His friends on Facebook included [A.]. He held a screwdriver towards the head of the dead person. [H.] is his friend who cut the head off the man who is in the pictures. He was present when [H.] received the order to cut the man's head off. He held the screwdriver because he was ordered to do so. They swore obedience to the army and if they were not completely loyal, they could be killed. In total, there was one prisoner and four dead. The man whose head was on the barrel was executed and it was [M.] the commander who ordered it. He pulled back 5-6 metres before the head was severed from the body. They would have killed him if he had not pointed at the head. He saw a person being shot in the leg because he questioned an order. He made the V-sign to signify that they were victorious in this battle. He was not aware that the pictures were on his mobile phone. He did not distribute the pictures. [H.] had a lust for vengeance against the person who had his head severed from his body and did not mind killing him. He was aware that the film was on his Facebook page.

[The expert witness]: He is a professor of Islamic theology and philosophy at [...] University. There was previously a tradition of desecration of corpses on the Arab peninsula in order to demonstrate power and instil terror in the enemy. Desecration of corpses occurred in battles in the year 624 between Muslim troops loyal to Mecca's leading clans.

Islamic sources show that desecration of corpses was banned at an early stage by both Sunni and Shia Muslims. The tradition of desecrating corpses has not been legitimized after the year 624. The prohibition has never been changed. Desecration of a corpse can include removing a body-part or eating body parts. It may happen that the population of the Arab peninsula act in such a way that they are guilty of desecrating corpses. The body must be intact at burial according to Muslim tradition.

THE COURT FINDINGS

Guilt etc.

Firstly, through the investigation, especially the written evidence and [the defendant's] own information, it is clear that [the defendant] actually acted in the manner claimed by the prosecutor. Thus, he has both posed in and published pictures as alleged in the charge.

In addition, the prosecutor has reported a convincing investigation, showing that during the spring and summer of 2015, there was an internal armed conflict occurring in the Salah al-Din region between the state of Iraq on the one hand, and Islamic State (IS) on the other.

The District Court must then consider whether the deceased persons in the photographs in question in this case, may be regarded as protected persons referred to in the Act on criminal responsibility for genocide, crimes against humanity and war crimes (2014:406). According to §3 of this Act, the term "protected person" refers to a person who is injured, sick, shipwrecked, a prisoner of war or a civilian or who otherwise is entitled to special protection under the Geneva Conventions of 12 August 1949, the first supplementary protocol to these from 1977, or otherwise according to general international law that is applicable in armed conflict or during occupation. When this legislation was drafted, the preparatory work stated that the legislation was intended to cover what was criminal according to, inter alia, the Rome Statute for the International Criminal Court (government bill 2013/14:146, p. 69).

Furthermore, a footnote to the criminal criteria in Article 8 of the Rome Statute states that dead persons are also covered by the protection against violation of their personal dignity. The Rome Statute is a codification of the international law developed at the time of its entry into force. Regarding what has been alleged, even dead people are considered to enjoy protection under the Swedish law.

According to §4.7 of the same law, a person who subjects a protected person to humiliating or degrading treatment, which is intended to seriously violate their personal dignity, can be convicted of a war crime, if the act is part of or otherwise associated with armed conflict or occupation. It is thus required that the treatment which the protected person is subjected to seriously violates their personal dignity and in these circumstances, manifestations of joy and victory gestures cannot be punished in connection with persons who are dead. According to the District Court, [the defendant's] posing etc. in front of the partially dressed dead people does not reach the level at which they are likely to seriously violate their personal dignity. Thus, in this part, the charge is already rejected for this reason. With regard to the pictures where [the defendant] poses next to one of the severed heads of the dead persons, these images are such that [the defendant] exposes the person in question to degrading treatment that is intended to seriously violate their personal dignity. In this part, the objective sense of the charge is upheld.

The District Court then considers [the defendant's] intention and his objection that he felt compelled to participate in the pictures. During the main proceedings, [the defendant] expressed, inter alia, disgust towards the dead people who appeared in the pictures and what they stood for. Furthermore, there is nothing in the reported picture material to suggest that he was forced to participate in the photography. On the contrary, some of the images suggest the opposite. His statements that he, for example, was unable to look at the dead people during the photography was also disproved when he was subsequently shown images where he is looking at the dead person and holding a screwdriver to their eye.

In these circumstances, his objection of lack of intent and distress is disproved. The charge is thus upheld in the above-mentioned part. The act is to be regarded in the manner alleged by the prosecutor.

The motion for forfeiture will be upheld as legally founded.

Sanctions

[The defendant] appears under one section of the criminal records. He was convicted of robbery by the Scania and Blekinge Court of Appeal on 4 July 2016 and sentenced to imprisonment for three years and six months. He is currently serving the prison sentence. In the same judgment, [the defendant] was expelled and prohibited from returning here before 12 April 2026.

In view of the personal circumstances of [the defendant], his other crime and the criminality in this case, no sanctions other than prison can be considered. According to the District Court, the penal value of the current crime is imprisonment for one year. The sentence of imprisonment shall be imposed on him separately and the District Court finds, considering that the sanctions, see e.g. previous sentences, should together not exceed what would have been imposed based on the total criminality, that the prison sentence now imposed may remain at six months.

Expulsion and detention

In view of the assessment of the current crime and previous decision on expulsion, there is no reason to order expulsion for longer than has already been done. The prosecutor's motion for expulsion is therefore dismissed.

In view of [the defendant's] relatively weak connection with Sweden and the circumstances generally, there is a risk of flight.

However, the prosecutor's motion for so-called conditional detention in view of the time that [the defendant] has left to serve of a previously imposed prison sentence, is not deemed justified at present and is therefore dismissed.

Other issues

[The defendant] is sentenced for a crime with imprisonment in the scale of sentences. He must therefore pay a fee of SEK 500 to a crime victims' fund.

The defence will be granted the requested compensation as it is considered reasonable. The costs shall be borne by the state, in view of [the defendant's] economic and personal circumstances.

HOW TO APPEAL, see Appendix 2 (DV 400)

Appeals shall be submitted to Scania and Blekinge Court of Appeal and filed with the District Court no later than 27 December 2016.

On behalf of the District Court

[...]