

R v Sgt Danny Nightingale

Bulford Military Court Centre

Sentencing remarks of HHJ Jeff Blackett, Judge Advocate General

I intend to make some general observations about this case before addressing you on sentence.

Possession of a firearm is a very serious offence and it is aggravated when ammunition is with the firearm. Parliament has decreed that a person who unlawfully possesses a prohibited firearm such as a Glock pistol should be sentenced to a minimum term of five years imprisonment. That term may only be reduced if there are exceptional circumstances. It is obvious why this policy exists: there have been a number of atrocities such as Hungerford and Dunblane where someone with a gun has murdered innocent members of the public including children. That means that even where someone has no criminal intent, but he possesses a prohibited and unlicensed firearm, particularly where it is not secure, then the law treats him severely. Severe sentences are designed to act as a deterrent – that is what the public and Parliament demand.

It is because the unlawful possession of a firearm endangers society that even where mitigation appears very strong significant sentences are still appropriate. There are many examples of such cases. For instance in 2006 a defendant called Blackall had been shot and rendered a paraplegic by an unknown gunman who was never identified. On a further occasion a man knocked at the defendant's front door and put a gun to his head. He reported this to the police but no one was apprehended. He kept a loaded revolver thereafter for his own protection. Four months later the police came to his house and he told them where his gun was. His exceptional circumstances were taken into account to reduce the sentence of five years to three years imprisonment.

The law applies to everyone even those with an impeccable character and a history of exceptional public service. A weapon is dangerous in the wrong hands whether it originates from someone with no criminal intent who is careless or from someone with baser motives. It has been said, and it is right, that you are not a danger to society. However, what you have done has endangered society and for that reason your offending is serious.

While this case has proceeded – and was *sub judice* – many people including you have made numerous public statements, many of which were misleading. As a result there has been much uninformed and misinformed public debate. Much of what has been said bordered on contempt and has not helped the course of justice. The criticism of the prosecution and the Army is unmerited and totally without foundation. We understand how difficult these proceedings have been for you and your family. However, you have brought much of that anguish upon yourself and your public assertions that you are a scapegoat or the victim of some wider political agenda is absolute nonsense. You are simply someone against whom there was a strong prima facie case of serious wrongdoing and, given the dangers to society caused by illegal

firearms and their misuse, it was in the public interest to prosecute you. The Service Prosecuting Authority would have been neglecting its duty if it had not brought this prosecution.

You have now had a fair trial before a civilian judge and an independent and impartial Board. All of the issues you wished to raise and all of the submissions you wished to make have been fully considered and verdicts properly given. It would have made no difference had you been tried before a civilian jury – the evidence against you was overwhelming and I have no doubt the verdicts would have been the same.

I trust that those who have been so critical of the Service Prosecuting Authority and the Court Martial process – particularly those who made unfounded and uninformed remarks under the cloak of Parliamentary privilege – now realise how inappropriate and wrong their criticisms were.

Now to sentence

This board has found you guilty of the two charges of possessing a Glock 9mm and 338 rounds of ammunition, over 120 of which fitted the Glock. You originally said that you received the pistol as a gift in Iraq and you accumulated the ammunition in your capacity as a range officer. You maintained that account until relatively recently when you said that your admissions were false and that you had confabulated them. In fact, you said, you never possessed the weapon or ammunition – you are too meticulous a soldier to have done that – and the weapon and ammunition must have been put in your room by your former best friend and housemate Soldier N. You asserted that you were never aware of their presence in your room. You and Soldier N trained together, have been through operations together and were best friends. Yet you suggested he was prepared to throw that friendship away by putting you in jeopardy of being dismissed from the Army and sent to prison, and that his motive for not accepting responsibility for the Glock and ammunition found in your room was to lessen his own criminality so that he received a shorter sentence.

This court has rejected that explanation. The court does not accept that you confabulated about the weapon and ammunition. Having heard all of the evidence – not just the neuropsychologist and neuropsychiatrist - the court was sure that you did not confabulate and that you did know the weapon and ammunition were in your room and how they got there. They observed you when you were interviewed by the police and when you gave evidence in court. They took account of the evidence of soldiers who have served with you on operations since your brain injury and your two most recent professional assessments and concluded that there is no evidence of confabulation. Importantly the court accepts the evidence that you would not have been able to undertake the operational tasks that you completed after your return to service if you truly had the mental dysfunction you now say you have.

In coming to that conclusion the Court accepted Dr Joseph's concern about the difference in memory test results between those administered by Dr Young and Professor Gudjonsson, and his conclusion that if you had been confabulating you would still have had the memory albeit it would have been a false memory. Dr Joseph said that your assertions that you cannot remember obtaining the pistol and ammunition in the way you described is inconsistent with a diagnosis of confabulation

and this demonstrates that your account has been contaminated by the legal process. The court accepted Dr Johnson's expert opinion and agreed with his conclusions. In short, the account you gave to this court lacks credibility and the court does not believe you.

It does not matter for these circumstances how you got the Glock – whether it was in fact given to you by grateful Iraqis or whether it came into your possession in some other way. The court concluded that you knew it was in your wardrobe – it was with your clothes and it is inconceivable that you did not know it was there. Equally it is inconceivable that you did not know you had such a large cache of ammunition. It was in a transparent box which also contained items of stationery and which you accepted was your admin box. The Court concluded that you accumulated this ammunition when acting as a range officer and you placed it in your admin box as you originally described to the police.

Your SSSA was not secure. It was a normal semi detached house in suburbia, and it was left empty for much of the time. This could have been a tempting target for burglars – and if there had been a burglary and the weapon and ammunition had been taken, the consequences could have been terrible and terrifying. A number of military weapons do somehow end up in the criminal community and any thing that makes that dangerous transfer easier – such as leaving a weapon and ammunition unsecured – must be deterred.

You deal with weapons routinely both at home and abroad and you are required to be expert with them. While not an excuse the Court accepts that weapons are a normal part of your life and you would not have held them in the sort of awe which civilians would. It is this attitude, however, which must be guarded against because it leads to the sort of laxness you have demonstrated.

The starting point for the sentence for the first charge would be five years imprisonment. There is no doubt that there are exceptional circumstances in this case and I have already indicated in a previous ruling that this court may not pass a sentence which is more severe than the original sentence passed at your first trial. Those original sentences were 18 months detention for the first charge of possessing a firearm and 6 months detention for possession of ammunition, although this court could make the overall term longer without it being more severe because you received the benefit of guilty pleas at that hearing which you are not entitled to here.

The exceptional circumstances in this case are as follows:

1. You were an outstanding Senior NCO who has served with distinction in the elite regiment of the British Army. You have served on a number of operational deployments where your conduct has been exceptional;
2. Not only have you done your duty, but you have also done more to improve the medical care of those who receive traumatic injury by developing the Nightingale dressing;
3. You suffered a brain injury in 2009 which has had some effect upon you – while the court has rejected your assertions of confabulation about the pistol and ammunition we accept that you do have some mental

- impairment which may have affected the way you failed to decommission the pistol or return the ammunition;
4. You had no criminal intention – you found yourself in this position because of poor administrative practices and possibly forgetfulness.

The court at your original trial would have had all of these matters in their minds when they determined that the appropriate sentence for Charge 1 was 18 months detention. The Court Martial Appeal Court determined that 18 months was too long and they substituted a suspended term of 12 months detention. However, in determining that sentence both the original court and their Lordships gave you credit for your plea of guilty, your co-operation with the authorities and your expressed remorse. At that stage you had not made up a spurious defence which falsely impugned the character of a fellow soldier and caused a number of SAS soldiers to risk their own security in giving evidence. Had their Lordships dealt with you after a trial in these circumstances I have no doubt they would not have been so lenient. None of those mitigating factors are present as we sentence today and you can claim no credit for them. In those circumstances the appropriate sentence is 2 years' detention. This is not a sentence of greater severity than your original sentence of 18 months detention for the reasons expressed in R v Skanes [2006] EWCA Crim 2309.

We have undertaken the same exercise in relation to Charge 2 and determined that the appropriate sentence is 9 months detention. Those sentences shall be served concurrently so that the overall sentence is one of 2 years detention. This is the same sentence as Sergeant N: his cache was larger than yours and contained a live hand grenade but he had the benefit of a plea of guilty which he tendered at the earliest opportunity. Your sentence would have been shorter had you also pleaded guilty, to reflect the smaller and more limited cache.

We have examined whether this sentence should be suspended and referred to the JAG sentencing guide paragraph 3.4.9 and the principles of sentencing in the Armed Forces Act 2006 s237. That section imposes a duty on the court to follow the six purposes of sentencing: punishment of offenders, maintenance of discipline, reduction of service offences and other crime (including reduction by deterrence), the reform and rehabilitation of offenders, the protection of the public and the making of reparation. Their Lordships in the Court Martial Appeal Court were satisfied that the sentence they imposed could be suspended without compromising those purposes because of your exceptional character, your conduct which went above and beyond that required of a SNCO (such as in relation to the development of the Nightingale dressing) and the exceptional circumstances of this case. In our opinion the seriousness of this case does merit an immediate custodial sentence but we feel constrained by the decision of their Lordships. In those circumstances we have decided that the sentences passed should both be suspended for a period of 12 months.

The weapon and ammunition has been seized by competent military authorities. We order that the useable ammunition be brought back on charge with the balance being destroyed. We order that the Glock pistol be forfeit and destroyed.

25 July 2013