

15 January 1948

UNITED STATES )  
                  ) )  
                  v. )  
Eduard CURTEN )

Case No. 000-Mauthausen-6

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 2-4 April 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE I: Violation of the Laws and Usages of War.

Particulars: In that Eduard CURTEN, a German National, did, at or near Florisdorf, Austria, in or about July 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish inmate of Florisdorf Concentration Camp, who was then in custody of the then German Reich.

CHARGE II: Violation of the Laws and Usages of War.

Particulars: In that Eduard CURTEN, a German National, did, at or near Florisdorf, Austria, in or about August 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish inmate of Florisdorf Concentration Camp, who was then in custody of the then German Reich.

CHARGE III: Violation of the Laws and Usages of War.

Particulars: In that Eduard CURTEN, a German National, did, at or near Florisdorf, Austria, in or about November 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish inmate of Florisdorf Concentration Camp, who was then in custody of the then German Reich.

(Surname of CURTEN actually spelled CURTEN (R 143; P-Ex 4, p.6).

III. SUMMARY OF EVIDENCE: The Court acquitted the accused of the offense described under Charge I (R 175).

From June to November 1944 the accused served as an SS sergeant in charge of the inmate infirmary at the Florisdorf Concentration Camp (R 50, 118, 140; P-Ex 3, p. 1), where in August 1944 he allegedly participated in the hanging of a Polish inmate (R 9, 16). This incident covered in Charge II will hereinafter be referred to as "Incident No. 2".

In October or November 1944 the accused allegedly participated in pushing a Polish inmate into the electric fence, resulting in the inmate's death (R 25, 26, 29, 40, 51). This incident covered by Charge III will hereinafter be referred to as "Incident No. 3".

The accused denied having participated in the killing of any inmate in the Florisdorf Concentration Camp (R 118).

Little credence is given to the testimony of witnesses Alfred Emmert and Hans Karl von Posern.

IV. EVIDENCE AND RECOMMENDATIONS:

Eduard CURTEN

Nationality:	German
Age:	37
Civilian Status:	Butcher
Party Status:	Nazi Party since 1933
Military Status:	Waifen SS Sergeant
Pleas:	NG Charge I; NG Charge II; NG Charge III
Findings:	NG Charge I; G Charge II; G Charge III
Sentence:	Life imprisonment

Evidence for Prosecution: von Posern, a former inmate, and the accused testified that the accused was an SS sergeant at the Florisdorf Concentration Camp from June to November 1944, in charge of the inmate infirmary (R 50, 118, 133).

Incident No. 2. von Posern identified the accused (R 6), and further testified that in August 1944 the accused and Camp Commander Streitwieser participated in the hanging of a Polish inmate in the attic of the warehouse in Florisdorf Concentration Camp after having forced the inmate to state that he had tried to escape. von Posern saw the accused, in order to force this confession, cause a dog, which was trained to bite only in the genital parts, to mutilate the inmate (R 8, 9, 17, 18). The witness did not see the hanging; however, he apparently saw the camp commander and the accused, who on the way picked up a rope, take the

inmate into the warehouse. He then saw them return in about 10 minutes without the inmate, and the accused instructed the witness to write a death report stating that the inmate was dead and giving the cause of death to be "\*\*\* voluntary death by hanging". The witness further testified that the victim was dropped from the strength report, and the witness heard that the body was taken to the crematory in Vienna (R 9).

Incident No. 3. Klichowski, a former inmate, identified the accused and testified that one evening in October or November 1944 between 2100 and 2300 hours, he saw the accused, Camp Commander Streitwieser, and roll call leader Buchner march into Florisdorf Concentration Camp with a Polish inmate. The witness further testified that he saw these three persons push the Polish inmate into the electric wire; that he saw sparks issue, and the inmate afterwards lying on the ground. The witness knew the voltage of the electric fence to be 380 volts. He did not testify that the inmate was dead, but that he remained lying on the ground and was never seen again by the witness (R 25-29). The witness, however, testified that he was positive that he saw the accused together with the other two persons push this inmate into the electric wire (R 30, 31). With further reference to Incident No. 3, witness Rini testified that he saw the accused, together with two other persons, throw the inmate into the electric wire and that the next morning he saw the dead body of the inmate and that there were burns on the inmate's hands (R 39, 40). This witness further testified that he prepared the death certificate (R 40). Witness Korchowsky, a former inmate, testified that on the morning after this incident he heard in camp that there was a dead inmate in the supply room with burns indicating death by electric current (R 51).

Evidence for Defense:

Incident No. 2. The accused testified that, in August 1944, a tailor capo named Theo Pfister was captured and returned to Florisdorf Concentration Camp by the camp commander, the roll call leader, and Technical Sergeant Grulke, together with the camp commander's dog named Hasso; that the camp commander in the presence of the accused told the capo that h

would be sent to Mauthausen the next morning and, "I suppose you know what is in store for you in Mauthausen?"; and that the roll call leader then locked this capo in the laundry room. During the evening the accused was told that this capo had hanged himself (R 131, 132).

Incident No. 3. The accused testified that in October or November 1944 when the lights were off, indicating an air raid, he came out of his quarters and was walking toward the guardhouse when he heard someone yelling; that he went toward the yelling and while doing so observed sparks from the electric fence; that when he came nearer he saw the roll call leader Buchner, a block leader of the Luftwaffe, and an inmate by the name of Theo Munster; that after he objected to the treatment this inmate was receiving. Buchner and the block leader took the inmate, who was somewhat paralyzed by the electric shock but could still walk, to the laundry room; and that the next morning it was reported to the accused that this inmate had hanged himself (R 133, 134).

The accused further testified that he believed witness Klichowski's testimony to be an act of revenge. The accused relieved him of his job in 1943 for stealing cigarettes while cleaning the accused's room (R 149, 150). The accused also testified that witness Riml's testimony might also be an act of revenge as the accused slapped him because he had severely beaten an Italian inmate for coming to the dispensary for treatment with dirty feet (R 128, 129).

Emmert testified relative to Incident No. 3 that the accused was present during the air raid alarm in October or November 1944 when the Polish inmate was alleged to have been pushed into the electric fence, but as all lights were out except the emergency lights, he could not see whether the accused participated. The air raid alarm occurred after dark (R 79). Two witnesses testified that the roll call leader and the accused were not on friendly terms (R 111, 113). One of these two witnesses further testified that the accused made great effort to improve the diet of the inmates in the inmate dispensary (R 110). A third witness

testified that he was taken into the infirmary by the accused on two occasions and given treatment and protection after having been mistreated by the roll call leader and the camp commander's dog (R 91-94). Emmert testified that he was an inmate in the Florisdorf Concentration Camp and was in daily contact with the accused as his personal orderly from August 1943 until February 1945 (R 61); that the accused had all seriously ill inmates admitted into the infirmary; that he permitted Jews to be admitted into the infirmary as Poles (R 68, 69); and that the accused received an order that all inmates working in the dispensary were to be liquidated every three months, but instead of carrying out this order, the accused made false reports, thus saving the lives of many inmates (R 73-75).

A fifth witness, an inmate doctor at Florisdorf Concentration Camp, testified that the accused exerted a great effort to obtain medical supplies for the concentration camp (R 56, 57, 65, 66, 68; D-Ex 1).

The accused further testified that he never caused the death of any inmate at Florisdorf in any manner whatsoever (R 118). On one occasion he took prosecution witness Rimpl into the dispensary, treated and protected him after he had been almost beaten to death by the roll call leader Buehner (R 128).

Sufficiency of Evidence: The circumstantial evidence based solely on the uncorroborated evidence of the witness von Posern does not warrant the findings of guilty as to Charge II.

In view of the obvious visibility difficulties obtaining during the air raid alarm as demonstrated by the record, the prosecution evidence adduced with regard to Charge III lacks persuasiveness.

The findings of guilty are not warranted by the evidence.

Petitions: A Petition for Review was filed by defense counsel, Major Olaf J. Tolnas, S. C., 4 April 1947. Petitions for Clemency were filed by Martin Fuhr, 29 March 1947; Dr. Marg. Trost, 6 November 1947; Jakob Soens, 25 September 1947; Franz Pavola, 25 September 1947; Otto Kootzle, 6 October 1947; Dr. Marg. Trost, 28 November 1947; Franz Brunnlehner, 26 November 1947.

Recommendation: That the findings and sentence be disapproved.

V. QUESTIONS OF LAW:

Jurisdiction: The jurisdiction of the Court to try the accused was questioned by the defense on the ground that the acts alleged were committed outside the American Zone of Germany (R 5). War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law", Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever <sup>/and wheresoever</sup> ever committed"; consequently, it is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

Evidence: The defense moved to strike from the record the testimony of witnesses relative to alleged acts of cruelty to inmates by the accused at Schwechat, Germany, in the spring of 1944, on the ground that the particulars under the charge in this case only alleged unlawful acts committed at Floriedorf during July to November 1944. The prosecution contended that the evidence was admissible as tending to prove a course of conduct by the accused toward inmates. The motions were overruled (R 47, 48, 52).

In view of the fact that the allegations alleged in Charge II and Charge III are not established, no reason is seen for discussing the legal significance of these rulings by the Court.

Examination of the entire record fails to disclose any error or omission in the conduct of the trial which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentence be disapproved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

WILLIAM A. OATES  
Major CAC  
Post Trial Branch

Having examined the record of trial, I concur, this \_\_\_\_\_  
day of \_\_\_\_\_ 1948.

C. W. PHIFER  
Lieutenant Colonel, USAF  
Acting Deputy Judge Advocate  
for War Crimes