

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMIAND
APO 407

~~XXXXXXXXXXXXXXXXXXXX~~
15 January 1948

UNITED STATES)

v.)

Case No. 000-Mauthausen-13

Karl ALBRECHT)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 24-25 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 Karl ALBRECHT, a German national, did, at or in the vicinity of Mauthausen, Austria, in or about November 1944, wrongfully encourage, aid, abet and participate in the killing of Major PINTER, a Polish inmate of Gusen Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Karl ALBRECHT, a German national, did, at or in the vicinity of Mauthausen, Austria, in or about December 1944, wrongfully encourage, aid, abet and participate in the killing of Izio HORTIEG, a Polish inmate of Gusen Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Karl ALBRECHT, a German national, did, at or in the vicinity of Mauthausen, Austria, in or about January 1945, wrongfully encourage, aid, abet and participate in the killing of Abraham MAJEROVICZ, a Polish inmate of Gusen Concentration Camp, who was then in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: Offenses alleged under Charges I and III are hereinafter referred to as Incidents Nos. 1 and 3, respectively. Inasmuch as the accused was acquitted of Charge II, the evidence in support of that charge is not discussed herein.

Incident No. 1. On an evening in November 1944 the accused, block oldest of Block 12 at Camp Gusen II, an outcamp of Mauthausen Concentration Camp, beat inmate Rasek Major Pinter (also known as Major Pinter) until he died.

CLASSIFICATION CAUTION

Incident No. 3. In or about January 1945 the accused, then block oldest of Block 7, struck Abraham Majerovicz, an inmate, on the back of the neck with the leg of a chair. Majerovicz's head was immersed in a pail of water while he was conscious and held there until he was dead.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Karl ALBERT

Nationality:	German
Age:	36
Civilian Status:	Convict
Party Status:	Unknown
Military Status:	Waffen SS
Plea:	NG Charge I; NG Charge II; NG Charge III
Findings:	G Charge I; NG Charge II; G Charge III
Sentence:	Death by hanging

Evidence for Prosecution: In January 1945 the accused, then block oldest of Block 7 (R 15, 32, 36), had the responsibility of keeping order, distributing food and preserving the cleanliness of the block (R 15, 16, 24). At 1700 hours on an evening in or about January 1945, a list of about 20 weak and ill inmates (R 17, 21, 22, 30) was read in the block. These inmates were put in the Jewish corner of the block (R 17, 30). At approximately 2200 hours that same evening (R 20), inmates on that list were required to undress and to bend over; they were then struck on the back of the neck (R 17, 21). Their faces were then immersed in pails of water or urine in order to kill them. If the victim did not die from this treatment, he was kicked to death or killed by pressure of a foot placed on his neck (R 17). The reason ascribed for the killing of these inmates was weakness and inability to work (R 22). On the morning following the incident an eye witness saw some 25 dead bodies lying in the block undressed (R 31). In killing these inmates the accused was assisted by the capos and charge of quarters (R 19, 27, 36), and the accused was in charge of the proceedings (R 27).

Incident No. 1. A witness, a Pole from Krakow and a former inmate of Gusen Concentration Camp II, testified that at approximately 1900 or 2000 hours on an evening (R 6, 8, 9, 11) in November or December 1944 (R 8, 10) in Block 12 (R 8) at Camp Gusen II, an outcamp of Mauthausen Concentration Camp (R 28, 43), he saw the accused, then block eldest of Block 12 (R 7, 14), beat the witness' cousin Major Pinter with a rubber club and kick him (R 8, 9) for approximately half an hour (R 10) until he died (R 8, 9). The witness undressed the body and removed it to the rear of the barracks. It was later taken to the crematory (R 8, 9). The witness further testified that he heard that Pinter was punished in that manner for failure to perform his assignment of working with "the so called staircase detail" (R 12).

Incident No. 3. Two witnesses, one a cousin of the victim, saw the accused strike a fellow inmate, Abraham Majerovicz (also known by christian name of Schlomo (R 14)), on the back of his neck with the leg of a chair or a stick (R 16-18, 21, 29-31, 32). His head was immersed by two other persons in a pail of water while he was conscious (R 26, 27). It was held there until he apparently died (R 16-20, 27, 32). After Majerovicz's prison number was written on his chest by the charge of quarters (R 18) his body was thrown into the corner of the block with the corpses of other victims. There it remained until removal next morning to the morgue (R 19) and then to the crematory (R 20, 32). This incident apparently occurred in January 1945 (R 15).

Evidence for Defense: The accused, in his testimony, denied killing any inmate while he was block eldest of either Block 12 or Block 7 at Camp Gusen II (R 75, 100). He asserted that he had not known Pinter (R 75) nor Abraham Majerovicz (R 77) and had no knowledge of the killing of inmates by the procedure of inflicting strokes on the neck and immersing the heads in pails of liquid (R 77, 78).

He testified that he administered punishment as required by his duty, striking with a stick or his hand (R 71-74, 90). He was charged with sole responsibility for discipline in his block; the methods of disciplining

were in his discretion (R 62, 89, 90, 96, 97). He punished inmates for failure to obey ^{his} orders (R 90), for relieving themselves improperly in the block (R 71) and for thefts among themselves (R 72-74). He had not wanted to be block eldest (R 71). He maintained that he aided ill inmates (R 82, 83) by procuring food (R 83) and proper medicine for them (R 84) when an epidemic of spotted fever (typhus) swept the camp (R 70, 83, 103, 105, 112). He was constantly under threat of punishment for failure to require inmates to perform their duties (R 79, 80). His membership in the SS was compulsory, having been forced on him by surprise and order (R 80-82, 96). According to his testimony, no orders to kill ill inmates were issued to him by higher authority (R 93, 96).

Witness Schauring testified that inmates relieved themselves in bed or in the corner of the building (R 42), stole from each other (R 42) and approved the punishment administered by the accused for thefts (R 46). Other witnesses testified that the accused helped inmates (R 47, 60, 61); that they had neither seen nor heard anything bad about him (R 55, 61, 103, 111, 112); that the accused was an orderly, decent, kind man (R 64, 87, 103); that no reports were circulated in camp that the accused killed or beat inmates to death (R 88); and that the accused, as block eldest, had nothing to do with the compilation of the list of inmates to be killed (R 64, 66). Witness Schauring corroborated the accused's explanation of the administration of punishment (R 45). Another witness stated that the accused's membership in the SS was an involuntary one (R 56, 57). A former block leader, who had served under the accused when the latter was block eldest, epitomized the accused "as an orderly, decent fellow; he wasn't brutal, he wasn't rude, and he treated all men alike." (R 64). A former inmate stated, in an extrajudicial sworn statement, "I only know him as an honest human being. I never knew him to harm anyone, I could only imagine him helping others " (R 39; D-Ex 1).

Incident No. 1. The accused testified that he did not know Pintor (R 75).

Incident No. 3. The accused testified that he did not know Abraham

Majerovicz (R 77).

Sufficiency of Evidence: The evidence under Charge III fails to satisfactorily establish one of the elements of the offense alleged, i. e., that the victim was of Polish nationality. However, the evidence in support of Charge I establishes, by an eye-witness who was a Pole from Krakow and a cousin of the victim, that the accused beat and kicked to death a former inmate of Gusen Concentration Camp II within the time alleged in the particulars.

The sentence is not excessive.

Petitions: A Petition for Review was filed by defense counsel, Major Olaf J. Tolnas, 25 April 1947. Petitions for Clemency were filed by two members of the Court, Colonel A. R. S. Barden and Lieutenant Colonel Louis S. Tracy, 29 April 1947; Franz Bender, brother-in-law of the accused, 27 May 1947; and the father and mother of the accused, 27 May 1947.

Recommendation: That the findings as to Charge III be disapproved, that the findings as to Charge I be approved, and that the sentence be approved.

V. QUESTIONS OF LAW:

Legal Sufficiency of Charges and Particulars: A question not raised during the course of the trial, but which merits discussion, is whether the charges and particulars thereunder are legally sufficient.

Paragraph b, Section 5-323, Title 5, "Legal and Penal Administration" of "Military Government Regulations" published by Office of ^{Government/} Military for Germany (US), 27 March 1947, requires that each charge disclose one offense only. Each charge in the instant case alleges violation of the laws and usages of war. Regardless of the expression "laws and usages" of war, only one offense is alleged, i.e., a violation of the "law" of war. In the case of *In re Yamashita*, 66 Supreme Court Reporter 340, the charge alleged violation of the "laws of war," yet Mr. Chief Justice Stone, in referring to the charge, used the expression that it alleged "a violation of the law of war" (underscoring supplied). Thus it is clear that the more appropriate expression is "a violation of the law

of war."

As to the question of whether each charge and the particulars thereunder allege more than one offense, inasmuch as more than one illegal act is involved, the following language in the Yamashita case, supra, is pertinent:

"The Charge. Neither Congressional action nor the military orders constituting the commission authorized it to place petitioner on trial unless the charge preferred against him is of a violation of the law of war. The charge, so far as now relevant, is that petitioner, between October 9, 1944 and September 2, 1945, in the Philippine Islands, while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he . . . thereby violated the laws of war'.

"Bills of particulars, filed by the prosecution by order of the commission, allege a series of acts, one hundred and twenty-three in number, committed by members of the forces under petitioner's command during the period mentioned. The first item specifies the execution of 'a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity.' Other items specify acts of violence, cruelty and homicide inflicted upon the civilian population and prisoners of war, acts of wholesale pillage and the wanton destruction of religious monuments."

Another aspect of the question as to legal sufficiency of the respective charges and particulars not raised during the trial is whether each charge and the particulars thereunder are stated with sufficient particularity and definiteness. In the Yamashita case, supra, with respect to the broad allegations involving numerous criminal acts, the Supreme Court stated:

"Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment. Cf. Collins v. McDonald, supra, 420. But we conclude that the allegations of the charge, tested by any reasonable standard, adequately alleges a violation of the

law of war and that the commission had authority to try and decide the issue which it raised. Cf. *Doaly v. United States*, 152 U. S. 539; *Williamson v. United States*, 207 U. S. 425, 447; *Glasser v. United States*, 315 U. S. 60, 66, and cases cited."

It is apparent that the allegations in the instant case specify the criminal acts and identify the time, the place, and the victims thereof with considerably more particularity than did the allegations in the Yamashita case.

Evidence as to Independent Illegal Acts: As appears herein at the outset of the evidence for the prosecution, the record contains evidence as to the commission of certain illegal acts not covered by the allegations. Thus the question is raised as to the legal significance of the admission of evidence as to the commission by the accused of such independent illegal acts.

Section 5-354.4, Title 5, "Legal and Penal Administration" of "Military Government Regulations," published by Office of Military Government for Germany (US), 27 March 1947, provides that "all evidence which will aid in determining the truth will be admitted." Subparagraph a, Section 270, "Manual for Trial of War Crimes and Related Cases," 15 July 1946, as amended, provides that a war crimes tribunal may admit any evidence which in its opinion has probative value. Subparagraph c (2) of said Section 270 provides that a war crimes tribunal may admit any evidence believed to be of probative value or, to apply a similar test, evidence which would be helpful in arriving at a true finding.

The Staff Judge Advocate, Headquarters, United States Forces in Austria, in his review of a war crimes case, *United States v. Karolyi, et al.*, Case No. 5-100, September 1946, tried by a military commission appointed by that headquarters, stated with regard to evidence concerning independent crimes committed by the accused, that it could be disregarded only in the event that there is sufficient admissible evidence to sustain the findings as to the crime charged. He further stated that the sentences involved in that case should not be disapproved merely because of the

admission of evidence relating to separate independent crimes, if there is sufficient evidence, exclusive of that relating to such independent crimes, to sustain the findings as to the crime charged. The Judge Advocate cited in his review, in support of his position, paragraph 87b, page 74, "Manual for Courts-Martial, U.S. Army," 1928, which paragraph is based upon Article of War 37.

A like rule is contained in the regulations specifically applicable to Military Government Courts:

"The proceedings shall not be invalidated, nor any finding or sentence disapproved, for any error or omission, technical or otherwise occurring (sic) in such proceedings, unless in the opinion of the Reviewing Authority, after an examination of the entire record, it shall appear that the error or omission has resulted in injustice to the accused."

(Section 5-338, Title 5, supra.)

In view of the foregoing, the admission of the evidence as to the separate independent crimes does not, in and of itself, constitute grounds for disapproving the actions of the Court.

It is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

Non-availability of Witnesses: The defense, in its Petition for Review, without naming the witnesses it might have been able to use or what it expected to prove by them, asserts that the Government failed to procure some of the desired witnesses. It appears that nearly all of these witnesses resided in other countries or areas under the control of other governments. It is to be noted that lack of availability of witnesses was not raised during the course of the trial, nor did the defense seek a continuance for this reason. It does not appear that there was a failure to make every reasonable effort to procure all witnesses desired by the defense, nor that an injustice resulted to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings as to Charge III be disapproved, that the findings as to Charge I be approved, and that the sentence

be approved.

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

RICHARD C. HAGAN
Major JAGD
Attorney
Post Trial Branch

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

C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes