

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
AFO 407

14 January 1948

UNITED STATES)

v.)

Case No. 000-50-5-25

Lauriano NAVAS, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 14-21 July 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Lauriano N.V.S, Felix DOMINGO, Moises FERNANDEZ and Indalecio GONZALESS, German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen Sub-camps, including but not limited to Ebensee, Gross-Raming, Guns-kirchen, Gusen, Hinterbruehl, Lambach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942, and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America, and other non-German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

(Surname of GONZALESS properly spelled GONZALEZ;
see Petition for Clemency by his wife, 7 July 1947.)

III. SUMMARY OF EVIDENCE: Three of the accused, N.V.S, FERNANDEZ

and GONZALEZ were spies and one, DOMINGO, was a barber in the

Mauthausen concentration camp and/or its outcamps for considerable periods of time between the dates alleged, and were shown to have participated in the Mauthausen Concentration Camp mass atrocity. Prosecution's P-Ex 2 is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp Case (United States v. Altfuldisch, et al., opinion DJLWC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post; R 10).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Lauriano MAYAS

Nationality:	Spanish
Age:	28
Civilian Status:	Unknown
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: The accused testified that he went to Mauthausen as an inmate on 27 January 1941; that he went to subcamp Gusen on 30 June 1941; that he remained at Gusen until 5 May 1945; that he worked in the washroom at Gusen from 30 June 1941 until 8 December 1941; and that later at Gusen he was in charge of a detail of about five to eight Spanish inmates working under him who were used to repair the railroad tracks at Kastenhofen. There were 60 to 70 Spanish inmates who worked together on that detail (R 208-210). One witness testified that about September 1944 in Kastenhofen he saw the accused beat a Russian inmate until he fell; that he was told that this inmate died after a week in the hospital; and that he saw the body of the inmate. This witness further testified that the accused beat inmates every day; that he was commonly known as a killer; and that he had a detail of about 150 inmates, including Italians, Russians,

testified that in about 1942 in Gusen he saw the accused beat inmates with a rubber hose in order to drive them out of the toilet (R 56).

A third witness testified that he saw the accused beat prisoners on many occasions (R 12-14). The witness also testified that in early 1945, while the witness was standing in formation in the roll call square, the accused and other campos beat a named French companion of the ~~accused~~ ^{Witness}, stating his residence, severely for 10 to 15 minutes. The victim was motionless at the end, was not seen again and the witness believed that he was dead (R 12, 13, 18-21). A fourth witness, a former Spanish inmate, testified that he saw the accused beat inmates in the toilet in 1942 with a rubber hose (R 26, 64, 65).

Evidence for Defense: The accused testified that while he was an officer in the Republican Army in Spain, he suffered a wound in the right hand; that after he fled to France he was interned, eventually went to Mauthausen as an inmate; that because of his injury he could not beat anyone; that he never had a Russian inmate working on his detail; and that removing inmates from the washroom in Gusen was not his concern, but that of the chief of the washroom (R 207-210).

One witness testified that he worked near the accused in Gusen from 1943 to May 1945; that he saw the accused every day; that the accused's detail consisted of four or five inmates, all Spaniards; and that he never saw or heard that the accused beat a Russian inmate to death (R 130-132).

Another witness Kamsmeyer, a convicted accused in another Mauthausen subsequent proceeding, 000-50-5-29, United States v. BERTSCH, et al., testified that because the accused had a crippled right hand, he did everything with his left hand (R 121). A third witness, Folger, a convicted accused in another Mauthausen subsequent proceeding, 000-50-5-42, United States v. PIRNER, et

al., testified that although the accused worked under him for a year, he never heard of him beating an inmate to death (R 152).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by defense counsel, Major L. F. Benson, July 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Rolox DOMINGO

Nationality:	Spanish
Age:	26
Civilian Status:	Unknown
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	2 years, commencing 13 May 1945

Evidence for Prosecution: The accused testified that he was an inmate in Mauthausen Concentration Camp from 13 December 1940 to 24 January 1941; that he was an inmate of subcamp Gusen from 24/January 1941 to 23 August 1943; that he was an inmate of subcamp Wiener-Neudorf from 1 September 1943 to 2 April 1945; and that he worked as a barber in subcamp Gusen from November 1942 to August 1943 (R 192-195). A witness testified that in February 1945 at Mauthausen the accused took him by the ear, lifted him and threw him to the ground causing injury to the ear which resulted in deafness (R 68, 69). This witness testified further that he saw the/accused beat inmates with his hands and kick them; that in January or February 1945, a group of 180 inmates composed of Jews, Hungarians, Frenchmen and Yugoslavs were marked with the letter "K" by the accused and another to designate them for the crematory, and that he saw these inmates led away in the direction of the crematory (R 67, 70, 71, 72). In a statement made to an inmate...

the witness said that the letter placed on inmates by the accused was "Z" not "K", and the place they were sent was the gas chamber and not crematory (R 71, 72). A second witness, a friend of the accused, testified that on one occasion in subcamp Gusen in 1943 he saw the accused strike an inmate "a couple of licks" (l. 57, 66).

Evidence for Defense: The accused testified that he left Spain in 1939; that he was interned in France until captured by the Germans in June 1940; that he became an inmate of Mauthausen in December 1940; that he was not in Mauthausen in February 1945 but was in outcamp Wiener-Neudorf (R 191, 192, 198). The accused further testified he was never a capo and that barbers were not capos (R 202, 203, 205, 206). A former criminal inmate testified that he doubted if it were possible for the accused to have been at Mauthausen in January or February 1945 (R 89,90). Another witness testified that the accused was in Wiener-Neudorf in January, February, and March 1945 (R 96).

Sufficiency of Evidence: The evidence does not satisfactorily establish that the accused gave encouragement to the common design or participated therein. The evidence does not show action by him which is incompatible with that of ordinary inmates and certainly does not show that he furthered or had any intention of furthering or cooperating with those who were carrying the common design into execution.

The findings of guilty are not warranted by the evidence.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be disapproved.

3. Melissa FERNANDEZ

Nationality:	Spanish
Age:	35
Civilian Status:	Unknown

Military Status:	None
Plea:	NG
Findings:	c
Sentence:	20 years, commencing 13 May 1945

Evidence for Prosecution: The accused testified that he went to Mauthausen as an inmate in December 1940; that in January 1942 he was transferred to subcamp Steyr where he remained until an unstated time in 1945; that he was then transferred to Gusen where he remained until May 1945 (R 157). One witness testified that the accused was a capo at Steyr where he was known by the nickname of "Caesar"; that the accused beat inmates with a big stick; that in November 1944 he saw the accused severely beat a Yugoslav inmate; that he took this inmate to the hospital; that he saw the body of this inmate the next morning; and that he was told by a doctor that this inmate died from a beating (R 212, 213, 215, 216, 217). A second witness stated in his extrajudicial sworn statement that at Steyr the accused severely mistreated French, Russian, Polish and Jewish inmates; and that the accused beat this witness with a soup ladle (R 79; P-Ex 6). Another witness stated in an extrajudicial sworn statement that the accused severely mistreated inmates including Russians, Frenchmen and Poles (R 79; P-Ex 7). A defense witness testified that he heard that the accused beat an inmate over the head with a soup ladle; and that he heard that the accused beat inmates on about three other occasions (93, 95).

Evidence for Defense: The accused testified that in 1937 he fled from Spain to France where he was interned; that he was taken prisoner by the Germans in 1940 and became an inmate of Mauthausen; that he was made a capo in 1943 at Steyr; but that he did not beat or mistreat inmates (R 155-159).

sen subsequent proceeding, 000-50-5-38, United States v. FRISCH, et al., testified that the accused treated the inmates well (R 103). This assertion is corroborated by extrajudicial sworn statements of former guards (R 166, 167; D-Exs 1,2).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

4. Indalecio GONZALEZ

Nationality:	Spanish
Age:	37
Civilian Status:	Unknown
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused testified that he came to Mauthausen as an inmate on 24 January 1941; that on 17 February 1941 he was taken to Gusen; that in Gusen he had 14-16 capos, 40-45 assistant capos, and as many as 1,600 inmates working under him (R 172, 178, 180). A witness testified that the accused was a chief capo at Gusen; that the accused beat inmates with his fists, a stick and a rubber hose; that in January or February 1945 the accused beat a French inmate to death (R 11-13). Another witness testified that at Gusen he saw the accused beat a Polish inmate to death; that he saw the body of the victim carried to the crematory; that in September 1944 seven inmates were killed when they were pushed into a latrine pit filled with human excrement; that he saw the accused push two of them into the latrine; and that he saw the seven bodies removed from the latrine the next

morning (R 25-27, 33, 34, 37, 38). A third witness testified that the accused beat inmates with his hands, a stick, a club and a rubber hose; that in September or October 1944 at Gusen he saw the accused beat and kick an inmate named Zyrlich to death; that he helped to carry the body of the victim back to camp; and that about the same date the accused beat a Polish inmate to death with a piece of wood (R 41, 42, 43, 44). Another witness testified that in September or October 1944, at Gusen, he saw the accused beat a Polish Jew to death with a shovel and that he helped to carry the body of the victim to the tunnel (R 75, 76).

Evidence for Defense: The accused testified that he left Spain in February 1939 and was interned in France; that he was captured by the Germans in June 1940, eventually becoming an inmate of Mauthausen in January 1941; that he was sent to Gusen in February 1941; that in Gusen he had about 14-16 capos and 40-45 assistant capos under him, but he never saw any of his assistant capos beat an inmate; that he did not beat anyone to death, although he had slapped inmates with his hand for stealing; and that he did not push anyone into a latrine pit (R 169-173, 175, 180, 189).

Schulz, a convicted accused in another Mauthausen subsequent proceeding, 000-50-5-25, United States v. BERG, et al., testified he had never heard of the accused beating anyone to death or pushing anyone into a latrine pit (R 134). Another witness testified that he never heard of the accused beating an inmate to death, but admitted hearing that accused beat inmates (F 147).

Weithofer, a convicted accused in another Mauthausen subsequent proceeding, 000-50-5-50, United States v. BERG, et al., testified he never saw the accused beat inmates (R 117).

Kansmayer, a convicted accused in another Mauthausen subsequent proceeding, 000-50-5-29, United States v. BERTSCH, et al., testified that the accused never mistreated inmates, but sometimes was forced to beat although he did it "in the manner that

people could still bear" (R 122).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by defense counsel, major L. F. Benson, July 1947. Petitions for Clemency were filed by cable from Paris, France, signed Irujo, 15 August 1947; by the Spanish League for the Rights of Man by cable OM 3 NB/Paris 53/51 15 2145 ELT and by letter, 19 August 1947; by the Minister of Defense and of the Interior of the Republic of Spain, Julio Just, by cable NR131 Paris 92/90 15 2145; by accused's wife, Faquita Gonzales, 7 July 1947; and by the accused, 28 December 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: All four accused were Spanish nationals. Spain was a neutral country. Although no question was raised by the defense as to the jurisdiction of the Court to try the accused, the jurisdictional problem merits discussion.

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 "Wharton'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 and wheresoever committed". Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed (see section 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration" of "Military Government Courts", published by Office of

Military Government for Germany (US), 27 March 1947). Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction over War Crimes," by Cowles, California Law Review, Volume XXXIII, June 1945, pp. 177-218.

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

Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). With the exception of accused DOMINGO, all of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted from the evidence adduced, either in the Parent Case or in this subsequent proceeding, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation were such as to warrant the sentences imposed.

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

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences be approved, except that the findings and sentence as to accused DOMINGO be disapproved.

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

IRMA V. NUNES
Capt., AGD
Attorney
Post Trial Branch

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

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