

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

7 January 1948

UNITED STATES)

v.)

Johann SCHILLER)

Case No. 000-SC-5-39

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 12 September 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Johann SCHILLER 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, Gros-Raming, Gunskirchen, Gusen, Hinterbrühl, Lambach, Linz, Liblbass, Molk, 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.

III. SUMMARY OF EVIDENCE: The accused as a member of the SS served at Mauthausen Concentration Camp and some of its subcamps for considerable periods of time between the dates alleged, and was shown to have participated as a guard and roll call leader in the Mauthausen Concentration Camp mass atrocity. Prosecution's Exhibit P-Ex 2 is a certified copy of the charges, particulars, findings and sentences in the Parent Mauthausen Concentration Camp case (United States v. Altfuldich, et al.,

000-50-6, Opinion DILLS, 25 February 1947, hereinafter referred to as the "Parent Case", see Section V, post; R 6).

IV. EVIDENCE AND RECOMMENDATIONS:

Johann SCHILLEA

Nationality:	Austrian
Age:	29
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS
Plot:	KG
Findings:	G
Sentence:	30 years, commencing 1 June 1945

Evidence for Prosecution: The accused served as a guard at Mauthausen Concentration Camp from 17 January 1942 to March 1943 and as a roll call leader at subcamp Schwesagt from 17 January 1944 to August 1944 and at subcamp St. Valentin from August 1944 to April 1945. He was taken into the Waffen SS in September 1939 and transferred in January 1942 to a guard company in Mauthausen Concentration Camp (R 84, 85, 86; P-Exs 3, 3a).

On 16 November 1944, at subcamp St. Valentin, a Polish inmate was found to be missing from the disinfection detail working at the Nibelungen Works (R 8, 9, 41, 70). The inmate was later found in the factory kitchen, where he was looking for something to eat (R 41, 52, 53, 61, 62). The inmate was turned over to the accused, who started walking back to camp with the inmate. On the way back to camp, the accused, who was walking behind the inmate at a distance of approximately two meters, shot the inmate through the back of the neck with one shot from his service pistol (R 9, 23, 24, 35, 42). The inmate fell to the ground and did not move. He was unconscious and there was a small pool of blood under his head (R 22, 75).

The accused immediately returned to the camp and gave orders to bring in the dead inmate, whom he said he had shot while trying to escape, and to have a sketch made of the "dead" person (R 42, 71). The inmate, however,

was not dead; the blood in the wound had coagulated. He regained consciousness and was brought to the camp dispensary where the prison doctor disinfected and bandaged the wound (R 10, 42, 43, 71, 75). The bullet had entered the back of the neck and passed out through the front of the neck (R 42, 72).

After the accused was informed that the inmate was alive, he had the bandage removed and the victim locked up in a wooden shack. A camp clerk and block leader brought the wounded inmate back to the dispensary where he was rebandaged (R 43, 72). The accused learned of this, removed the bandage, and again locked the inmate in the wooden shack, saying "This dog shall perish here" (R 43, 44, 72, 73). The inmate died in the shack approximately two days later (R 10, 11, 30, 44, 73). He died of tetanus (R 59, 60). The body was put in the morgue and then transferred to Mauthausen (R 58).

The accused ordered that the drawing of the incident be changed to show that the inmate had been shot while attempting to escape (R 10, 29, 30). The accused and the Camp Commander signed the death certificate which contained the statement, "Shot while attempting to escape" (R 44). The death report was not a true report because the inmate was not trying to escape when the accused shot him. He walked in front of the accused and both marched at a definite quiet pace. The victim had been beaten; he could barely walk and he could not run. He made no attempt to divert his course from the road at any time. He died of tetanus (R 9, 11, 24, 25, 39, 60, 61).

The facts involved in the incident of 16 November 1944, described above, were testified to by three witnesses.

One of the above witnesses testified that the accused mistreated inmates of every nationality represented at subcamp St. Valentin. He beat with his gloved hand and a stick, with or without any reason. If an inmate failed to take his hat off to the accused, he beat "so thoroughly" that the victim could barely continue walking (R 12, 38).

Another one of the three witnesses testified that the accused hanged a Belgian inmate with his hands and feet tied behind him. The accused

then beat the inmate with an oxwhip and kicked him in the testicles. The beating stopped after 20 minutes, when the inmate signed an involuntary confession that he had sexual intercourse with a woman. The inmate was transferred to Mauthausen (R 44-47).

Liebowicz, a Polish Jew and former inmate at subcamp St. Valentin, testified that in about January 1943 at subcamp St. Valentin the accused beat him into unconsciousness for buying cigarettes for another Polish inmate whose first name was Erwin. It was common knowledge at subcamp St. Valentin that the accused killed Erwin. The witness saw this inmate's corpse, but he did not see the actual killing (R 65-67).

Trainsberger, a former inmate of subcamp Schwechat, testified that he first learned to know the accused at subcamp Schwechat in the fall of 1943, and that on one occasion the accused broke a Russian inmate's finger while trying to take an aluminum ring off of the victim's finger (R 79-82).

The accused, in his extrajudicial sworn statement, stated that in July or August 1942, while acting as a guard in Mauthausen Concentration Camp, he shot and killed a Russian inmate who was trying to escape; and that at subcamp Schwechat, while acting as roll call leader, he boxed inmates' ears and beat them with a cowhide whip in order to discipline and reprimand them for violations of camp regulations. He admitted that in November 1944, at subcamp St. Valentin, he shot a Polish inmate from a short distance when the inmate tried to escape. The inmate was wounded in the upper part of his body. The accused had the inmate taken to the dispensary and later locked up in a latticed partition where the victim died during the night. The accused further admitted that in the fall of 1944, at subcamp St. Valentin, he hanged a Belgian inmate with his hands tied behind him, and beat the inmate on orders of the camp leader; and that in April 1945, at subcamp St. Valentin, he was present when the camp leader and a block oldest hanged an inmate of foreign nationality, who had hidden himself and delayed a detail. The accused dictated a false death report covering the incident on orders of the camp leader (R 84; P-Exs 3, 3a).

The accused testified that the Polish inmate, whom he shot, was locked up in a wooden room and that he died from complications which set in the wound (R 88, 91).

Evidence for Defense: The accused testified that he only inflicted corporal punishment on inmates for what he deemed justifiable reasons; that he never administered a beating for the pleasure of beating; and that he never seriously injured any inmate whom he punished (R 90).

One witness testified that, at subcamp St. Valentin, the accused suppressed most of the reports that came from the factory against inmates (A 60).

Senlier, a former Dutch inmate at subcamps Schwechat and St. Valentin, testified that he had received verbal instructions that an inmate would not return alive if he attempted to escape (R 15).

Erb, a former block leader at subcamp St. Valentin, testified that the accused beat inmates, but that he did not know of any punishment administered by the accused except for a sufficient reason (R 73, 78).

Sufficiency of Evidence: The evidence clearly establishes the fact that the accused participated in the Mauthausen Concentration Camp atrocity as a guard at Mauthausen Concentration Camp, and roll call leader at subcamps Schwechat and St. Valentin for a considerable period of time between the dates alleged. In addition thereto, it is clearly proved that the accused personally subjected inmates to many types of cruel and inhuman treatment. Austria was a co-belligerent of Germany.

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.

V. QUESTIONS OF LAW:

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

Application of 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 LG OGC.5 JAG-LGO, subject: "Trial of Two German Cases", 14 October 1946, and the Parent Case). The accused was shown to have participated in the mass atrocity, and the Court was warranted by the evidence adduced either in the Parent Case or in this subsequent proceedings in concluding that he not only participated to a substantial degree, but that the nature and extent of his participation were such as to warrant the sentence imposed.

The Court was appointed by paragraph 21, Special Orders No. 144, 6 August 1947, as amended by paragraph 3, Special Orders No. 159, 20 August 1947, Headquarters, European Command, as demonstrated by a copy of the orders bound with the record of trial. However, the record of trial recites that these orders were issued by Headquarters, United States Forces, European Theater, the name applied to highest headquarters of the United States Forces in Europe (Germany) prior to March 1947, following which the name applied was European Command (A 1). Furthermore, these orders appointed certain officers including Lieutenant Colonel Henry A. Holz as members of the Court. The record of trial recites that six members of the Court, including Lieutenant Colonel Henry A. Holz, were present. In the reviewer's personal knowledge no other officers with similar names served on war crimes tribunals at Dachau. That both discrepancies are the result of typographical errors is obvious. Moreover, as to the error in name of the officer, the required number of members, five, were present without regard to Lieutenant Colonel Holz.

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 the sentence be approved.

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

A. Abraham
ABRAHAM ASSMAN
1st Lt AC
Post Trial Branch

Having examined the record of trial, I concur, this 16th day of February 1948.

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