

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

27 January 1948

UNITED STATES

v.

Heinrich BECK, et al.

Case No. 000-50-2-117

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 30-31 July 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Heinrich Beck, Stefan Hupfer and Wendelin Mueller acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 about 29 April 1945, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuse and indignities, the exact names and numbers of such civilian nationals being unknown, but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

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

Particulars: In that Heinrich Beck, Stefan Hupfer and Wendelin Mueller acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of 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 cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The convicted accused, BECK, was a member of the SS and in charge of the inmate tailor shop at Dachau Concentration Camp for a considerable period of time between the dates alleged. The accused personally participated in the execution of Russian prisoners of war.

Prosecution's Exhibit P-Ex 2 (R 9) is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Concentration Camp case (United States v. Weiss, et al., Case No. 000-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post).

Not much weight has been given to the testimony of Karl Kraemer.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Heinrich BECK

Nationality:	German
Age:	34
Civilian Status:	Farmer and tailor
Party Status:	NSDAP from 1933, and SA
Military Status:	SS Master Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	NG Charge I; G Charge II
Sentence:	3 years, commencing 16 August 1946

Evidence for Prosecution: The accused was a member of the SS at Dachau Concentration Camp from 1936 to the beginning of 1943. From 1941 to 1943 he was in charge of the inmate tailor shop (R 42, 43, 66).

Blaha, a former inmate of Camp Dachau, testified in the Parent Case that; during the spring of 1942, 6000 to 8000 Russian prisoners of war were executed at Camp Dachau (R 35; P-Ex 4). Kaltenboecker testified in the Parent Case that these Russian prisoners of war were kept separate from the other inmates. They were led to the rifle range and the SS personnel equipped with rifles followed them. Shortly thereafter, he heard firing, first in salvos, then single shots. The Russian prisoners of war did not return to Camp Dachau as the SS personnel did. These shootings occurred at least three times (R 36; P-Ex 5, pp 1-3; R 69).

The accused stated in his extrajudicial sworn statement that he participated and was present at three executions at the rifle range of Russian prisoners of war in the spring of 1942. In the first execution he helped to place the corpses in the coffins. In the second execution he participated as a rifleman firing at a Russian prisoner of war. There were thirty to forty

Russian prisoners of war executed at that time. In the third execution he participated as a guard on top of a rampart (R 31; P-Ex 3, pp 1-5).

Durner testified that he heard that the accused, while on duty at the tailor shop, beat many inmates. He once threw a pair of scissors at an inmate and then beat him with a yardstick (the witness may or may not have seen this) (R 20, 21).

Witness Karl Kraemer testified that the accused beat many inmates who worked in the tailor shop and reported them for punishment which resulted in their receiving 25 lashes. The accused beat the inmates by hitting them on the back of their necks with his fist. He also beat them on the head with a stick. He deprived the inmates of their second breakfast. Kraemer further testified that he saw the accused approximately 40 times in the truck that went to the laundry supply to pick up aprons, towels, soap, hot water and gloves which were then taken to the rifle range. The accused, with other SS personnel, went to the rifle range. In April 1942 the accused received the war merit badge for meritorious service in the zone of the interior. All members of the headquarters staff, who had participated in the executions of Russian prisoners of war, received this decoration (R 24, 25, 28).

Evidence for Defense: Prosecution witness Durner identified accused HUPFER as accused BECK. He testified that he knew accused HUPFER at Dachau but not very well, but did not know him any more and could not identify him (R 19).

The accused testified that he did not beat any inmates either with his fist or with a stick (R 44, 49, 50). As to his extrajudicial statement regarding the Russians, he claimed that he was mistaken as he meant to say they were Russian partisans and not prisoners of war. He was also mistaken as to the time as it was in November and December 1941 and not in the spring of 1942 when he was ordered to take part in the execution of the Russian prisoners of war. He was ordered to these executions by his superior officer (R 44, 45). Prior to the Russians being executed, an order was read to them explaining their offense against German soldiers (R 45). He denied the testimony of Karl Kraemer that he had received the war merit badge (R 46).

Hofer testified that the accused, when he was placed in charge of the tailor shop, secured a second breakfast for the inmates, and the beating of inmates at the tailor shop stopped. The inmates received better clothes and those who were too weak or old to do heavy work were given lighter jobs by the accused (R 72, 75).

Sufficiency of Evidence: It was established in the Parent Case (supra) that thousands/^{of} Russian prisoners of war were confined and executed at Camp Dachau. The accused acted willingly and not under immediate compulsion. 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.

2. Stefan HUPFER

This accused was acquitted (R 90)

3. Wendelin MUELLER

This accused was acquitted (R 90).

V. QUESTIONS OF LAW:

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

Motion to Dismiss: The motion by the defense to dismiss the charges for lack of specific information as to dates, times and places of any of the alleged offenses charged against the accused and for a dismissal of the charges on the ground that charges allege "a common design" which did not show that any one or any two of the three accused or any combination did act in such pursuance of a common design was properly overruled by the Court (R 8, 9). The legal sufficiency of such charges and particulars has been upheld in many American and British cases (United States v. Weiss, et al., Case No. 000-50-2, opinion of the DJAWC, March 1946, commonly known as the Dachau Concentration Camp Case; United States v. Altfuldisch, et al., Case No. 000-50-5, opinion DJAWC, February 1947, commonly known as the Mauthausen Concentration Camp case; United States v. Becker, et al., Case No. 000-50-46, opinion DJAWC, May 1947, commonly known as the Flossenburg Concentration Camp case; and the Belsen case, tried by the British Army of the Rhine, September

Superior Orders: Accused BECK sought to justify his actions in participating in the executions of Russian prisoners of war by offering evidence to show that he was acting in compliance with "superior orders". Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals (France), July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law" ^{by} Ernst Fraenkel; United States v. Burv. et al., opinion DJAWC, September 1945, United States v. Thomas, supra;

and United States v. Beck, et al., opinion DJAWC, December 1946).

Application of the Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Dachau Concentration Camp 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). Accused Beck 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 the nature and extent of his participation were such as to warrant the sentence 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 the sentence be approved.
2. Legal Forms Nos. 13 and 18 to accomplish this result are attached hereto, should it meet with approval.

ELMER MOODY
1st Lt Inf
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