

III. SUMMARY OF EVIDENCE: At the Dachau Concentration Camp accused SS Master Sergeant HESKE was in charge of a clothing work detail consisting of about 120 inmates. Accused SS Private First Class PELLERT was in charge of a small group of about 12 of these inmates. Accused PELLERT was shown to have been an unreasonable work detail leader. He frequently shouted at, and beat, the inmates who worked under him. He reported several inmates who, as a result, were sent out of Camp Dachau on inmate transports or were assigned to less desirable details. Prosecution's P-Ex 1 is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Concentration Camp case (United States v. Weiss, et al., 000-50-2, March 1946, opinion DJ&WC, hereinafter referred to as the "Parent Case", R 6; Section V, post).

Defense exhibit D-Ex 1 is missing from the record of trial. This exhibit was a letter from witness Dr. Paul Husarek to Military Government terminating his employment in the International Information Office in Dachau and was introduced, with permission to withdraw it, for the purpose of showing that the witness resigned and was not removed involuntarily (R 165-168). Defense exhibit D-Ex 2 is also missing. It was a chess set and was introduced to show that it was a gift from some inmates to accused HESKE in token of their esteem for him (R 315). The absence of both of these exhibits does not prejudice any rights of the accused.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Fritz HESKE

This accused was acquitted (R 349).

2. Johann PELLERT

Nationality: German

Civilian Status: Packer
Party Status: None
Military Status: Pfc. Waffen SS, since April 1942
Plea: NG First Charge; NG Second Charge
Findings: G First Charge; NG Second Charge
Sentence: 3 years, commencing 5 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn testimony that he came to Dachau Concentration Camp in September 1939 where he worked as a civilian employee. He was in charge of supplies in the camp clothing factory, and in April 1942 he became a member of the Waffen SS with the same duties he had had as a civilian. He remained at Camp Dachau until 24 April 1945. From 24 April 1945 until 4 May 1945 he was at emergency outcamp Thierse (R 7; P-Ex 3a). Glase, a former inmate, testified that numerous inmates on the clothing work detail, including an American, were punished as a result of reports turned in when the accused was in charge, and that the clothing work detail was a bad detail because the inmates were driven so hard (R 14-17).

Witness Dreier testified as to the stench which came from the Camp Dachau crematorium and stated that it would have been impossible for an SS guard not to have had full knowledge of what occurred at the crematorium (R 36, 37).

Witness Rogasik testified that the accused beat inmates; that he was the worst man on the clothing detail; that the accused was present at the hanging of two Russians; that during searches, inmates under the accused were beaten (R 41, 42, 57). Witness Moser testified that the accused was hot headed (R 126).

Dr. Husarek, a former inmate, testified that all the inmates were afraid of the accused; that the accused

relentlessly reported inmates who were punished as a result; and that if the accused attended a hanging of two Russian inmates, it would have been on a voluntary basis (R 151, 152, 179).

The accused testified that he attended the hanging of two Poles, but contended that he was ordered to do so (R 234, 235). He testified that he was assigned to Camp Dachau in September 1939 where he served as a camp worker in the clothing factory. There were no inmates working on the clothing factory work detail until the fall of 1942 (R 229, 230). Subsequent to that time the accused had charge of 10 to 12 inmates and toward the end of the war he only had five or six inmates under him (R 230). The accused stated that he joined the SS on 27 April 1942 and continued doing the same work at Camp Dachau until 24 April 1945 when he was transferred to outcamp Tüfense. He stayed at that outcamp until 4 May 1945 (R 242-244).

Evidence for Defense: Glase, a former inmate, who testified for the prosecution, testified that he did not see the accused beat or mistreat inmates (R 11). Witness Hess testified that inmates tried to get on the clothing detail because of the better food and opportunities to procure needed items, and that the accused always did more work than the inmates (R 89-92). Witness Pfanzelt testified that he never heard any inmates say anything bad about the accused, but that some inmates said that he was decent and good (R 197, 201). Witness Effinger, who served three years on the clothing detail, testified that he never saw the accused mistreat any inmates (R 207) (corroborated, R 213, 290). Witness Schuster testified that he never saw the accused strike any inmates; that the accused did the same kind of work that the inmates did, and that he was

conscientious and fair (R 224, 225). The accused testified that he never struck an inmate; that he never made an official report on an inmate; and that women could have done the work that the inmates under him performed (R 228-259).

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.

V. QUESTIONS OF LAW:

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

Conduct of Trial: The record discloses that the member of the Court with legal training was absent during a part of the trial. While there is no affirmative showing that the absent member was required to read the record of the proceedings had during his absence, as provided by Section 120, as amended, "Manual for Trial of War Crimes and Related Cases," 15 July 1946, no provisions require such affirmative showing and it must be assumed that the Court adhered to this provision. During the absence the required number of court members were present. No injustice resulted to the accused because of the temporary absence of the legal member.

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 AG 000,5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). The convicted 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 as to him 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.

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

George M. Lentz
Capt., JAGD
Post Trial Branch

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

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