

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

9 March 1948

UNITED STATES)
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 v.))
))
Wilhelm KAUFFELD)

Case No. OCO-Mauthausen-10

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 23-24 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 Wilhelm KAUFFELD, a German National, did, at or near Steyr, Austria, in or about October 1944, commit an assault upon one GANS, a Polish inmate of Steyr Concentration Camp, who was then in custody of the then German Reich.

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

Particulars: In that Wilhelm KAUFFELD, a German National, did, at or near Steyr, Austria, in or about December 1944, wrongfully encourage, aid, abet and participate in the killing of Leon OBERLANDER, a Polish inmate of Steyr Concentration Camp, who was then in custody of the then German Reich.

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

Particulars: In that Wilhelm KAUFFELD, a German National, did, at or near Steyr, Austria, in or about December 1944, commit an assault upon one Dr. GLUCK and one KOBA, Polish inmates of Steyr Concentration Camp, who were then in custody of the then German Reich.

III. SUMMARY OF EVIDENCE: From June 1944 until 5 May 1945, the accused, a medical noncommissioned officer, was chief of the dispensary at Steyr Concentration Camp, a subcamp of Mauthausen Concentration Camp. His only superior medical officer was at Mauthausen. In the fall of 1944, over the protest of the inmate doctor, the accused ordered an ill Polish inmate named Gans to work despite his illness. The inmate attempted suicide. The first attempt was unsuccessful, but after the inmate was forced to return to work again, the dead body of the inmate was found in the washroom of the camp. This incident is hereinafter referred to as

"Incident No. 1". Sometime during the fall or early winter of 1944, the accused ordered that a Jewish inmate named Oberlander, who was ill with pneumonia, be given a cold water bath which resulted in his death. This incident is hereinafter referred to as "Incident No. 2". In late 1944 or early 1945, the accused severely beat a Polish inmate doctor named Gluck and another inmate known as Koba, which beatings are hereinafter referred to as "Incident No. 3".

IV. EVIDENCE AND RECOMMENDATIONS:

Wilhelm KAUFFELD

Nationality:	German
Age:	47
Civilian Status:	Foreman, Electric Kitchen Stove Equipment Business
Party Status:	Unknown
Military Status:	Waffen SS Sergeant
Plea:	NG Charge I; NG Charge II; NG Charge III
Findings:	G Charge I; G Charge II; G Charge III
Sentence:	30 years, commencing 15 May 1945

Evidence for Prosecution: The accused, a medical noncommissioned officer, was the only SS man connected with the dispensary at Steyr Concentration Camp, a subcamp of Mauthausen Concentration Camp, located near Steyr, Austria. He was chief of the camp dispensary from June 1944 until 5 May 1945 (R 9, 10, 51, 60, 78, 89; P-Exs 2, pp. 2, 14; P-Ex 4, p. 2; P-Exs 6, 7, 9).

In the fall of 1944 approximately 108 Jewish inmates arrived at Steyr and were placed in the care of a Polish inmate doctor (R 11, 38, 45, 52, 60, 78, 89; P-Exs 2; P-Ex 4, p. 2; P-Ex 10, p. 2). There was no dispensary at Steyr for the use of sick Jewish inmates (R 11, 12, 89; P-Ex 10, p. 3). These inmates were segregated and treated in the Jewish block (R 12, 55). Although he could not use the dispensary at first, later on the Jewish inmate doctor, a Polish national named Gluck

60, 89; P-Exs 2, p. 11; P-Ex 4, pp. 2, 3). However, in conformity with the accused's instructions, block bed patients, including those in the Jewish block, did not receive the same treatment as patients in the dispensary, receiving no extra rations of milk, cereal, and butter. There was no bed linen for them and only ordinary blankets were permitted. During winter the blocks were heated only at night and on Saturdays and Sundays. There was no hot water in the blocks (R 14, 15, 17, 37, 38, 40, 45, 55, 56, 64). Two blankets issued to each inmate were not sufficient in the opinion of the inmate doctor (R 15).

The issuance of blankets, food and supplementary rations for ill inmates was under control of the accused (R 15). He made the final decision as to who was fit to work and who was not. He often disregarded the prior physical examinations and the recommendations of the inmate doctor (R 16, 62, 63). It was the practice to ship all ill inmates who could no longer work to Mauthausen Concentration Camp, presumably for extermination (R 39, 89; P-Ex 11). The accused determined the sick inmates to go on these transports to Mauthausen (R 48). It was planned to build a new dispensary at Steyr for Jewish inmates, but it was never constructed (R 40, 41, 48).

The accused slapped inmates at the dispensary several times (R 60, 64). He beat Gans, witness Schnee, Lux and others (R 71, 89; P-Exs 5, 6, 7, 8, 10, 15). Nationalities of inmates beaten included Poles, Czechs, Russians and Italians (R 89; P-Exs 6, 7). The accused made a medical inspection of naked inmates in the snow in the winter of 1944 (R 89; P-Ex 7, p. 2). These were Poles and Russians. One former inmate stated in his extrajudicial sworn statement that he saw the accused take Wenberg, a Czech Jew, out of the barracks and the next morning the Jew was seen hanging in the washroom (R 89; P-Ex 9).

Incident No. 1: Four witnesses testified, and two stated in extrajudicial sworn statements, that at Steyr Concentration Camp in the fall of 1944, Gans, a Polish inmate about 38 to 40 years old, suffering from dropsy, attempted to take his own life by stabbing himself in the region

10, p. 5; P-Ex 4, p. 4; P-Exs 11, 16). Before this incident occurred, Gans had been ordered by the accused to return to his work, despite his illness and the protest of the inmate doctor who was then treating him (R 29, 30, 54, 62, 70, 72, 89; P-Ex 10, p. 4).

Sokolowski, a former Polish block eldest, testified that Gans was incapable of working (R 54). After this suicide attempt, Gans recovered and returned to work (R 30, 54, 89; P-Ex 4, p. 1), but after about 10 or 12 days he became ill again. However, he continued to work (R 31). Schnee testified that in February 1945 he saw Gans beaten by the accused (R 70, 71). However, Gluck, Oberlander, and Fedor indicated by their testimony that Gans died in the fall of 1944 (R 31, 32, 84, 89; P-Ex 4, pp. 4, 5). Sokolowski and Schnee testified that early one morning at approximately 0400 hours Gans was found dead in the washroom (R 55, 73). He was lying on a stone table. His throat was cut through to the spine, each wrist was cut, the chest organs were lying outside, and his intestines were hanging out of his belly (R 55, 62, 84, 89; P-Ex 4, pp. 4, 5). His skull muscles were still jerking, but the heart beat and pulse were completely gone. He was dead (R 31, 55, 61, 73, 75, 84). A knife with a five inch blade was lying on the floor next to the body (R 66, 73). In the opinion of the former inmate doctor, Gluck, and of the former block eldest, Sokolowski, who examined the body, Gans could not have cut his own throat in that fashion (R 31, 32, 66, 84).

Schnee, a former Polish inmate of Steyr, testified that he and Gans had been beaten by the accused. The accused hit Gans 15 times in the face and in the eyes, on one occasion during February 1945 (R 71, 75). The accused beat Gans with intent to kill him (R 74).

Incident No. 2: Several prosecution witnesses testified that during the fall or winter of 1944 (R 21, 22, 56, 79), at about 1430 or 1500 hours (R 86), a 20 or 21 year old Polish Jewish inmate of Steyr named Oberlander (R 21, 46, 52, 65, 83, 89; P-Exs 5, 9), who had been ill for five or six days from pneumonia, was given a cold water bath in a

in bed with a temperature of 39 degrees centigrade (102-103 degrees fahrenheit) (R 31, 44). Two men administered the bathing in the presence of an inmate doctor and the accused (R 23, 41, 42, 89; P-Ex 4, p. 4). The accused stood by and watched the bathing (R 42). Twice, at an interval of several hours, the accused ordered the inmate doctor and the block oldest to give the victim the bath (R 22, 53). In his extrajudicial sworn statement Kornhauser, a former inmate, stated that he saw the accused give Oberlander the bath (R 89; P-Ex 9). Inasmuch as Oberlander could not walk by himself, two men helped him from his bed in the block and supported him during the trip from the block to the washroom. The washroom was located in the same building, but it was necessary to leave the building to go from the block to the washroom (R 23, 24, 46, 81). Oberlander was naked except for a coat thrown around him (R 23, 24). The temperature outside was several degrees below zero centigrade (R 41, 56, 81).

Gluck, the inmate doctor, testified that he informed the accused that the washing of Oberlander would probably be fatal to him, and that the inmate could be given a bath without a shower (R 24, 25, 42, 47). There was no warm water in the washroom (R 25). Oberlander, while naked, was washed by water sprayed through a rubber hose on a part of his body which was then lathered with soap and scrubbed with a heavy bristle brush used ordinarily for scrubbing floors. This treatment caused the victim to tremble and moan (R 25, 41, 42, 56, 80, 81, 82). After a part of his body had been lathered and scrubbed, it was then rinsed and dried (R 25, 41, 42). It was estimated that he was in the washroom for approximately 10 minutes and that the entire procedure required about 10 to 15 minutes (R 26, 27).

Oberlander was returned to his barracks and covered with the same bed covering as he had previously. Later, additional bed covering was given him (R 27, 44, 82). The inmate doctor treated him to no avail (R 43). Within a few minutes Oberlander commenced to shudder, shivering

his fever went up, delirium set in, and he became dazed (R 27, 57). A few hours later, during the evening, he became unconscious and could no longer take nourishment (R 28, 57, 82). Blankets heaped on his bed were no help in warming him and all other attempts by the block oldest to warm him failed (R 28, 54, 64). Two days later Oberlander died (R 28, 53, 82). The accused ordered the body of the victim removed to the crematory (R 29). It was the opinion of the inmate doctor that Oberlander would have lived had he not been given a cold water wash (R 36, 37).

Incident No. 3: Five prosecution witnesses, two of them eye-witnesses, testified that, near the end of the year 1944 or the beginning of 1945, early one morning the accused beat the Polish inmate doctor, Gluck, and an inmate named Jakob Ginsberg, known as Koba, with a rubber hose (R 33, 33, 34, 38, 52, 57, 58, 59, 72, 86, 89; P-Ex 4, p. 5). He gave each of the inmates 25 lashes after he had forced them to remove their pants, which left the lower portions of their bodies naked (R 32, 33, 59). As a result of the beating, the buttocks of the inmates were black and blue and blood flowed (R 33, 59, 72, 86, 89; P-Ex 4, p. 5). The reason given by the accused for these beatings was that when the accused blew the whistle for roll call at 0330 or 0400 hours some of the inmates in the block rushed out and passed without saluting him (R 33, 34, 57). The accused said that Gluck as a Jewish doctor was responsible for the discipline of the Jewish inmates (R 34).

Evidence for Defense: The accused testified that when he came to Steyr orders from Mauthausen Concentration Camp were in effect which forbade the issuance of extra rations to ill Jewish inmates. These orders provided that ill inmates who were unfit for work were to be sent to Mauthausen Concentration Camp (R 92, 93). An order that ill Jewish inmates were to be segregated and kept in one block came from Mauthausen after his arrival at Steyr (R 94). The accused further testified that ill inmates at Steyr were selected for transporting to Mauthausen by the inmate doctor (R 93).

accused (R 94). The accused denied that he overrode the judgment and decisions of the inmate doctor (R 94, 95). He testified that the inmate doctor, Gluck, was a man of indecision (R 94, 95). The accused testified further that extra rations were distributed under his supervision, but he asserted that as a soldier he was compelled to deny the extra rations to Jewish inmates (R 96, 97). He denied that he could have procured extra rations for ill inmates (R 97). Any request for extra rations for ill inmates was initiated by the inmate doctors, completed by the accused and transmitted through the camp commander to Mauthausen (R 97). The accused denied that he ordered anyone to work after the inmate doctor had declared him unfit to work (R 99).

Incident No. 1: The accused, in his testimony, denied suggesting to inmate Gans that he should kill himself (R 95, 96). He denied ordering him to work after the inmate doctor had declared him unfit to work (R 99). In his extrajudicial sworn statement he denied remembering any incident which happened at Steyr concerning an inmate named Gans (R 60; P-Ex 2, p. 1).

Incident No. 2: The accused testified that he did not order the inmate, Dr. Gluck, to administer a cold water bath to inmate Oberlander (R 60; P-Ex 2, p. 13; R 95). He asserted that it was Gluck's duty to treat Jewish inmates (R 95). The accused admitted that he did not know whether a Jewish inmate who had died had perished from a cold water bath or not (R 60; P-Ex 2, p. 13). In his extrajudicial sworn statement, the accused stated that he never ordered any inmate to take a cold water bath. He always treated patients humanely (R 60; P-Ex 2, pp. 3, 4, 5).

In his extrajudicial sworn statement, a former inmate stated that he heard that the inmate doctor, Gluck, gave Oberlander a cold water bath (R 89; P-Ex 4, p. 4). A former block leader stated in his extrajudicial sworn statement that he never received orders from the accused to give Jewish inmates cold water showers (R 89; P-Ex 10, p. 3).

Incident No. 3: In his extrajudicial sworn statement, the accused

stating that he did not know a man by the name of Koba (R 60; P-Ex 2, pp. 9, 11). The accused testified that he could not remember beating Gluck (R 96). He testified and stated in his extrajudicial sworn statement that he did not beat inmates, although he admitted slapping an indefinite number and beating one for disciplinary reasons. He admitted that, while it was not in accord with his principles, it is possible that he may have hit others (R 60; P-Ex 2, pp. 6, 7, 8, 14). In his extrajudicial sworn statement, a former block leader stated that he never saw the accused beat or hit inmates, nor did he ever hear of him doing so (R 89; P-Ex 10, p. 3).

Sufficiency of Evidence: As to Charge I, even if it were established that the accused gave the alleged victim a direct as contrasted to a general order to work regardless of his illness, it is not shown that his words were accompanied by violence. The testimony by witness Schnee as to the accused beating Gans in February 1945 is in conflict with evidence offered by many witnesses to the effect that Gans died in the fall of 1944. Consequently, Schnee's testimony is not persuasive. The findings of guilty as to Charge I are not warranted by the evidence. The findings of guilty as to Charge II are not warranted by the evidence, inasmuch as it is not satisfactorily established that the victim died as a result of the bath and, particularly, it is not established that the accused intended to harm the alleged victim. So much of the findings of guilty as to Charge III as involves assaulting a Polish national is warranted by the evidence. There is an absence of evidence as to the nationality of the second victim, Koba.

The sentence is excessive.

Petitions: No Petitions for Review or Petitions for Clemency were filed.

Recommendations: That the findings of guilty as to Charges I and II be disapproved; that only so much of the findings of guilty as to Charge III be approved as involves committing an assault upon a Polish

V. QUESTIONS OF LAW:

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

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

VI. CONCLUSIONS:

1. It is recommended that the findings of guilty as to Charges I and II be disapproved; that only so much of the findings of guilty as to Charge III be approved as involves committing an assault upon a Polish national; that the sentence be approved, but reduced to imprisonment for 10 years.

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