

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

26 February 1948

UNITED STATES)

v.)

Case No. 000-50-5-41

Hermann STURM)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 18-20 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Hermann STURM, 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-Laming, Gunskirchen, Mosen, 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.

III. SUMMARY OF EVIDENCE: The accused, an SS technical sergeant (d 34, 64, 67, 80, 83, 97, 162), joined the Waffen SS in 1939 and served in combat until 1942 (d 158). He lost an eye in this service and was transferred to Mauthausen Concentration Camp on 3 January 1943, where he served as a block leader (d 103, 159, 160) until 23 June 1943. He was then transferred to subcamp Linz I (d 160), where he became roll call leader the same year (d 90, 160), and as such, was second in charge of the camp

for a part of that period (r 173). When Linz I was bombed out (r 25) in June 1944 (r 90, 97, 132, 163), all the survivors were transferred to Linz III (r 90, 144), another subcamp of Mauthausen (r 141, 164). The accused was transferred with them (r 26, 132, 163) and for a short time served as labor allocation leader (r 26, 92, 164). He became roll call leader for this camp (r 26, 67, 80, 164) and deputy camp commander (r 29, 80, 95, 100). The camp commander, Captain Scheeperle, (r 26, 64, 73, 83, 95, 104) was frequently absent (r 80, 95, 122). One defense witness testified that regardless of his title the accused in effect ran the camp (r 154). He served there until the liberation (r 106, 112, 124, 128, 135, 171). Subcamp Linz I had 440 (r 160) to 1,200 inmates (r 98) of all nationalities, (r 160) and Linz III had 5,000 (r 164) to 8,000 inmates (r 38, 58).

The accused was shown to have engaged in the mistreatment of inmates at these camps between the dates alleged in addition to holding the responsible positions stated, and to have participated in the Mauthausen Concentration Camp mass atrocity. Prosecution's P-Ex 2 (r 7) is a certified copy of the charge, particulars, findings and sentences in the parent Mauthausen Concentration Camp case (United States v. Altfuldisch, et al., 000-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case", see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

Jermann STURK

Nationality,	Austrian
Age:	26
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS Technical Sergeant
Place:	NG
Findings:	G
Sentence:	20 years, commencing 13 June 1945

Evidence for Prosecution: Three witnesses testified that the death rate in subcamp Linz III, while the accused was there, was 30 inmates a day (r 38, 63, 93, 116), principally due to the "physical weakness" of

inmates (A 178). One witness testified that conditions were bad at the dispensary during that period; that the food was "intolerable" and sometimes there was no food at all; that for weeks at a time the inmate patients could not wash; that they were beaten every day; and that on one occasion in April 1945, all of the sick and infirm were given cold baths (A 70, 71). A defense witness testified that the sick roll contained over 2,000 names, although there were only 228 beds in the hospital (R 119).

All witnesses for the prosecution, except Greber, and all witnesses for the defense including the accused, testified that at subcamp Linz III the accused beat inmates with a rubber covered cable (A 27, 28, 41, 80, 81, 82, 92, 93, 94, 137, 152, 165, 168, 182, 183, 189). During these beatings, according to three witnesses, the victims were held by block oldest (A 33, 68) Jemi, who sat on a chair, held the inmates' heads between his legs and held the victims' belts while the accused beat them (R 33, 48, 190, 191). The accused testified that this statement was correct (A 197). The cable for this purpose was generally kept in the orderly room, which the accused maintained as an office and where most of these beatings took place (A 52, 137, 182, 183, 190). Jankowski, testified that some inmates died from these beatings (A 43, 44).

At subcamp Linz III, seriously ill inmates were sent out to work, according to all witnesses including the accused, even though they held certificates from the inmate doctors of their inability to work (A 31, 36, 68, 69, 86, 87, 113, 127, 134, 166, 171). Four witnesses testified that these selections were made by the accused (A 30, 45, 81, 82, 134). One witness and the accused, testified that the accused was present when Schoepfle made the selections (R 113, 127, 166, 176). Two witnesses testified that several times in January and February 1945 (R 31) the accused tore the bandages off wounded inmates and sent them to work (R 30, 68, 69), even though they had been released from work by the doctors (R 30, 69), who were authorized to grant such releases (A 105, 106). Another witness, a Polish inmate (A 83), testified that on 15 January 1945, he and about 270 or 280 other inmates out of a total of 300 who held written releases

from work (A 81, 86, 87), were sent to work by the accused after he had torn off their bandages (R 81, 82). This witness testified that he had permanent scars as a result of infections from such treatment. The scars were exhibited to the Court (A 69). Many inmates died as a result of these orders (A 30, 31, 81, 82). Inmates of all nationalities, including Poles, Czechs, Russians, Greeks, Yugoslavs and French, some of whom were prisoners of war, were treated in this manner (A 82).

Two witnesses testified that at least once a week at subcamp Linz III (A 62, 64) all inmates were forced to go naked to the bathhouse for showers, traveling a considerable distance in all kinds of weather (A 36, 37, 57, 75). The accused knew of this situation, and did nothing about it (A 38, 76). One of these witnesses testified that, as a result, a great many inmates contracted colds and pneumonia, and two or three days after each such bathing incident the death rate increased (R 37, 61, 62, 63).

Two witnesses testified that the accused misappropriated, to his own use, cigarettes furnished for the use of the inmates as premium awards (R 35, 36, 54, 55, 71, 72).

Two witnesses testified that on various occasions the accused required inmates to stand for several hours at roll call in the rain or snow with bad shoes and little clothing (A 32, 80).

Jankowski testified that about November 1944 a young Polish (A 49) inmate was beaten in the orderly room (A 46) by Schoeperle, the accused and another. The accused then threw the bloody victim out of the orderly room, and told demi, who was in charge of block 6, "away with him" (A 27, 28, 39). The witness saw the corpse of this inmate two hours later. The victim had been hanged (A 29, 46, 49, 50). The accused admitted having participated in this beating but denied that he ordered the inmate taken away or hanged, although he admitted that the victim might have been hanged (A 165, 179). Jankowski further testified that in February 1945, a Polish inmate, who had been missing more than three days, was entered on the camp records as dead. When this inmate was found, the accused and two others beat him at the roll call square and demi took him away. The witness

saw his corpse later and demi said he had hanged the victim (A 32, 51). The accused testified that he knew of the beating incident, but he did not beat the inmate or order him hanged and that he did not know what became of him (A 167). Jankowski further testified that the accused never obtained sufficient food or clothing for the inmates, but on the contrary used the camp shops to have personal items made for himself instead of for the inmates (A 35, 52, 53). This witness admitted on cross-examination that he himself had beaten an inmate on one occasion for escaping (A 42).

Greber testified that in January 1945 when some blankets were missing, demi searched all details in the presence of the accused for footrags, etc, which were made of ^{stolen} blankets and beat anyone who had such items in his possession (A 68). They then proceeded to a room in the block where the blankets had been stolen and demi, at the direction of the accused and in his presence, beat 20 inmates, who lived in that room, with a rubber stick (A 68, 77, 78). The victims were of all nationalities, including two or three French officers (A 78). This witness did not see the accused personally beat inmates at subcamp Linz III (A 67, 72).

Grossman testified that at Linz III in November or December 1944, when a Polish inmate was missing from roll call and was found asleep, the accused beat and kicked the inmate and ordered him killed, which order the witness heard was carried out later that day (A 80, 81, 83). He testified further that the accused often beat and ordered others to beat inmates at the roll call square (A 82).

Eckhardt, a former clerk in the office of the accused at subcamp Linz III, testified that the accused beat inmates with a cable (A 189).

Jovanovic testified that at subcamp Linz I in September 1943 at the roll call, five inmates, who were two Yugoslavs, two Poles and one Frenchman (A 8), fell to the ground because they were too weak to stand and the accused beat them with a rubber stick (A 12) and kicked them (A 8, 24) until one of the inmates was bleeding (A 14). The victims were carried to the dispensary (A 15). That night the witness went to the dispensary three times to see these inmates (A 9, 10). On the third occasion, they were dead. The witness saw their bodies taken away (A 10, 15). The doctor

said they had died from the beating (A 23). These inmates had been breaking rocks all day with a 22 pound hammer (A 24).

Evidence For Defense: One witness, a former inmate, testified that he neither saw nor heard of the incident of the five inmates beaten to death at subcamp Linz I (A 91). A second witness, Bogdanaki, also an inmate at subcamp Linz I, testified that he never heard of this incident (A 98) and that he attended all roll calls (A 99), inasmuch as no one was excused (A 101). This latter statement was denied by another defense witness (A 117). Bogdanaki further testified that he only saw one inmate mistreated at subcamp Linz I (A 102) and there were only four deaths there, all from natural causes (A 98), except one inmate who was shot to death (A 100).

A third witness, a former carp of the hospital (A 103), testified that the accused came to the hospital often (A 104); that no inmate who had been beaten by the accused came to the hospital for treatment (A 105, 125); and that there was very little mistreatment of inmates in the camp because most of these incidents occurred at the work site (A 125, 126). He identified birthday greeting cards sent to the accused on his birthday in January 1945 by the camp elders, block elders and clerks, office clerks and nurses (A 109, 110, 116). These were also identified by another witness (A 138). Both of these witnesses testified that the clerks serenaded the accused when his wife gave birth to a child (A 110, 138); that the accused organized a camp band consisting of 12 to 20 inmates (A 110, 111, 118); and that they heard that prosecution witness Jankowski was given a black eye by some former inmates at the time of the liberation for having mistreated them (A 112, 138). This was denied in rebuttal (A 195).

The third witness further testified that on 24 April 1945 Schoepfle ordered that there must be 150 to 180 inmate deaths daily in the infirmary (A 108); that the witness, with the consent of the accused, poured out all the gasoline which might have been used for the purpose of giving injections (A 109, 122); and that the accused protected him for having done so (A 109). At the time of the liberation the accused was afraid Schoepfle

would set fire to the camp hospital when the camp was evacuated. Therefore, he took the 2463 sick inmates to the factory for protection (d 106, 123). The accused was the only SS man who remained in the camp after the evacuation (d 107), although a rebuttal witness testified that about 20 SS personnel stayed there (d 195).

A fourth witness, a former block and camp eldest (d 141), testified that the accused never beat inmates at subcamp Linz I (d 133) although he did beat inmates at subcamp Linz III (d 152); that ^{at} Linz I the accused never sent sick inmates to work, but he did at Linz III (d 134); that the accused was a "good person" (d 139); that the accused saved four inmates who were buried in the bombing of Linz I (d 156); and that he bought fresh vegetables for the inmates with the premium cigarettes he took from inmates (d 140). The shoes and personal items made for the accused were made in the SS shops and not in the inmate shops (d 150). The accused could not and did not give any order for the execution of an inmate (d 152). The witness further testified that there was no severe punishment of inmates in Linz I (d 143), but the camp commander at Linz III ordered three inmates hanged (d 155). During the liberation some former inmates killed 10 to 12 captives for mistreatments, but they did not attack the accused (d 135).

The accused testified that his duties at both the Linz subcamps were to count the men, be responsible for the cleanliness of the camp, to take care of the correspondence (d 161), and to be responsible for the discipline of the inmates (d 174). He had nothing to do with the outdetails (d 162) or the dispensary (d 161), but he admitted that he was responsible for everything that took place in subcamp Linz III (d 175, 176). The accused further testified that he never killed an inmate or ordered one killed (d 186); that he never gave any orders concerning baths either at the blocks or at the dispensary (d 170); and that he never beat anyone at Linz I (d 163). At Linz III he or Schoeperle gave inmates up to 25 strokes with a rubber cable for theft or sabotage (d 168) but only at the orderly room, not at roll call (d 184); that no inmate had to go to the hospital as a result (d 168); and that he had an injury on his hand and therefore

could not grasp a whip tightly (R 184). He categorically denied that he beat five inmates to death at Linz I (R 174) and that he participated in the incident regarding the stolen blankets (R 185). The uniforms and shoes which he had made were fabricated at the SS shops, not in the inmate shops (R 167). He was present when Schoepfle ordered sick inmates out of the hospital to work, but did not do it himself and did not know whether anyone died as a result (R 166, 176, 177). The accused used only the profits on the sale of the inmate cigarettes for fresh vegetables (R 169), and explained his having several thousand cigarettes on hand at the time of the liberation by saying they were merely undistributed inmate cigarettes (R 180). He identified the birthday greetings introduced by the other witnesses (R 172); told how he organized the inmate band (R 172); how he reprimanded a doctor for sending sick Polish inmates to work (R 167); and how he stopped prosecution witness Jankowski from beating an inmate (R 173). The last statement was denied in rebuttal (R 195). The accused further testified that at the time of the liberation he stayed with the sick inmates (R 170) and surrendered the camp, and that the inmates shook his hand and did not threaten him (R 171).

Sufficiency of Evidence: Austria was a co-belligerent of Germany.

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

Petitions: A Petition for review was filed by Major L. F. Benson, defense counsel, 22 October 1947. A Petition for Clemency was filed by Walter Sturm, 22 October 1947.

recommendation: That the findings and sentence be approved.

II. 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 AG 000.5 JAG-AGO, subject: "Trial of War Crimes 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 did participate 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.

ROBERT E. BACHMAN
Captain USAF
Post Trial Branch

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

C. W. PHIPPS
Lieutenant Colonel, USAF
Acting Deputy Judge Advocate
for War Crimes