

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

12 January 1948

U N I T E D S T A T E S )

v.

Case No. 000-Buchenwald-25

August GIESE

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 22 September 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that August GIESE, a German national, did, at or in the vicinity of Weimar, Germany, in or about February 1945, wrongfully encourage, aid, abet and participate in the killing of an unknown non-German national, an inmate of Buchenwald Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that August GIESE, a German national, did, at or in the vicinity of Weimar, Germany, in or about February 1945, wrongfully encourage, aid, abet and participate in committing an assault upon an unknown non-German national, an inmate of Buchenwald Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that August GIESE, a German national, did, at or in the vicinity of Weimar, Germany, in or about March 1945, wrongfully encourage, aid, abet and participate in committing an assault upon approximately three non-German nationals, inmates of Buchenwald Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

III. SUMMARY OF EVIDENCE: The accused was an SS sergeant and work detail leader at Camp Laura, a subcamp of Buchenwald Concentration Camp. In February and March 1945, he beat and otherwise mistreated non-German nationals, inmates of this subcamp.

The offenses alleged in Charges I, II and III will be hereinafter referred to as "Incident No. 1", "Incident No. 2", and "Incident No. 3", respectively. The accused's motion for a finding of not guilty as to

Charge I, made at the close of the prosecution's case, was granted. As a result, no reference will be made herein to the evidence relating to Incident No. 1.

Incident No. 2: In February 1945, the accused beat and otherwise mistreated non-German nationals, inmates of subcamp Laura, by striking them with a stick, his hands, and setting a dog on them. During this period he ordered an unconscious elderly Polish inmate dragged up the stone steps leading to the camp on his hands. He also beat and mistreated inmates too weak to climb steps leading from the quarry where they worked.

Incident No. 3: In March 1945, the accused mistreated non-German nationals, inmates of subcamp Laura, by beating them with his hands, a stick, and setting a dog on them. During this period he ordered a French inmate to be shot. He also shot a French inmate who was too weak to climb the quarry steps.

IV. EVIDENCE AND RECOMMENDATIONS:

August GIESE

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|------------------|--|
| Nationality:     | German                                   |
| Age:             | 50                                       |
| Civilian Status: | Painter                                  |
| Party Status:    | Unknown                                  |
| Military Status: | SS Sergeant, work detail leader          |
| Plea:            | NG Charge I; NG Charge II; NG Charge III |
| Findings:        | NG Charge I; G Charge II, G Charge III   |
| Sentence:        | 4 years, commencing 10 May 1945          |

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he served at Camp Laura, a subcamp of Buchenwald Concentration Camp, for about a year and a half, not stating the dates (R 30; P-Ex 8A). One witness testified and another stated in an extrajudicial sworn statement that they knew the accused in Camp Laura from January or the beginning of February 1945 (R 7, 8, 28; P-Ex 7).

testified that in February 1945 the accused ordered an unknown elderly Polish inmate dragged up 126 stone steps leading to the camp, "on his hands". The victim had collapsed while attempting to climb them. As a result of this mistreatment, the victim bled profusely and died (R 8, 9). The witness further testified that throughout this period, the accused mistreated inmates of many nationalities daily. This mistreatment consisted of beatings with a stick, his hands, and setting a dog on them (R 9). Another witness corroborated these daily mistreatments (R 26). The extrajudicial sworn statement of the former inmate Bruszczyński, a third witness, recites that the accused mistreated inmates working in the quarry by beating them with a stick, pushing them down the stairs leading to the quarry, and by setting a large dog on them (R 28; P-Ex 7). All three witnesses testified that the accused also beat and otherwise mistreated them (R 9, 27, 28; P-Ex 7).

Incident No. 3: Witness Gerschonowitz testified that in March 1945, the accused ordered a guard to shoot an unknown French inmate. The guard shot this inmate in the foot. The same witness further testified that throughout this period the accused beat inmates of all nationalities daily (R 9, 10, 19). This account of daily mistreatments was corroborated by the testimony of witness Jakubowicz (R 26). In his extrajudicial sworn statement witness Bruszczyński told how he saw the accused shoot a French inmate who was too weak to climb the steps leading from the quarry (R 28; P-Ex 7).

Evidence for Defense: The accused did not testify (R 31).

Sufficiency of Evidence: From the evidence adduced the Court properly concluded that the accused beat and otherwise mistreated non-German nationals, inmates of Camp Laura, a subcamp of Buchenwald Concentration Camp, in February and March 1945, as alleged in Charges II and III.

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.

Legal Sufficiency of Charges and Particulars: A question not raised during the course of the trial, but which merits discussion, is whether the charges and particulars thereunder are legally sufficient.

Paragraph b, Section 5-323, Title 5, "Legal and Penal Administration" of "Military Government Regulations," published by Office of Military Government for Germany (US), 27 March 1947, requires that each charge disclose one offense only. Each charge in the instant case alleges violation of the laws and usages of war. Regardless of the expression "laws and usages" of war, only one offense is alleged, i.e., a violation of the "law" of war. In the case of *In re Yamashita*, 66 Supreme Court Reporter 340, the charge alleged violation of the "laws of war," yet Mr. Chief Justice Stone, in referring to the charge, used the expression that it alleged "a violation of the law of war" (underscoring supplied). Thus it is clear that the more appropriate expression is "a violation of the law of war."

As to the question of whether each charge and the particulars thereunder allege more than one offense, inasmuch as more than one illegal act is involved, the following language in the *Yamashita* case, supra, is pertinent:

The Charge. Neither Congressional action nor the military orders constituting the commission authorized it to place petitioner on trial unless the charge preferred against him is of a violation of the law of war. The charge, so far as now relevant, is that petitioner, between October 9, 1944 and September 2, 1945, in the Philippine Islands, while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he . . . thereby violated the laws of war".  
"Bills of particulars, filed by the prosecution by order of the commission, allege a series of acts, one

hundred and twenty-three in number, committed by members of the forces under petitioner's command during the period mentioned. The first item specifies the execution of 'a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity.' Other items specify acts of violence, cruelty and homicide inflicted upon the civilian population and prisoners of war, acts of wholesale pillage and the wanton destruction of religious monuments."

Another aspect of the question as to legal sufficiency of the respective charges and particulars not raised during the trial is whether each charge and the particulars thereunder are stated with sufficient particularity and definiteness. In the Yamashita case, supra, with respect to the broad allegations involving numerous criminal acts, the Supreme Court stated:

"Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment. Cf. Collins v. McDonald, supra, 420. But we conclude that the allegations of the charge, tested by any reasonable standard, adequately alleges a violation of the law of war and that the commission had authority to try and decide the issue which it raised. Cf. Dealy v. United States, 152 U. S. 539; Williamson v. United States, 207 U. S. 425, 447; Glasser v. United States, 315 U. S. 60, 66, and cases cited."

It is apparent that the allegations in the instant case specify the criminal acts and identify the time, the place, and the victims thereof with considerably more particularity than did the allegations in the Yamashita case.

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.

Having examined the record of trial, I concur, this \_\_\_\_\_

day of \_\_\_\_\_ 1948.

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