

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

7 January 1948

UNITED STATES)

v.)

Ernst Emil JACKOBS)

Case No. 000-Buchenwald-3

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 21 October - 3 November 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Ernst Emil JACKOBS, a German national, did, at or in the vicinity of Weimar, Germany, in or about January 1943, wrongfully encourage, aid, abet and participate in the killing of approximately three non-German nationals, inmates of the Buchenwald Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

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

Particulars: In that Ernst Emil JACKOBS, a German national, did, at or in the vicinity of Weimar, Germany, in or about June 1943, wrongfully encourage, aid, abet and participate in the killing of 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.

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

Particulars: In that Ernst Emil JACKOBS, a German national, did, at or in the vicinity of Weimar, Germany, in or about June 1943, 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.

(NOTE: Before the arraignment, the particulars under the charges were amended on motion of the prosecution (R 7), substituting "January 1944" for "January 1943", and "committing assaults upon" for "the killing of" in the particulars under Charge I; substituting "committing assaults upon" for "the killing of" in the particulars under Charge II; and substituting "committing assaults upon" for "the killing of" in the particulars under Charge III.)

WAR DATE 3/31/48
4775032

III. SUMMARY OF EVIDENCE: The accused was an SS master sergeant assigned as a detail leader at a construction site at Buchenwald Concentration Camp, where the Gustloff Works factory was later located. The incidents involved in Charges I, II and III and the particulars thereunder, will hereinafter be referred to as Incidents Nos. 1, 2 and 3, respectively.

Incident No. 1: In the winter of 1943-1944, the accused beat Leon Weissmann, a Polish inmate, with his fists and dipped him into water, then made him work all day in his wet clothing.

In January or February 1944, the accused forced two Polish inmates to dive into water in their clothing when the temperature was 10 degrees below zero, centigrade. The inmates were then forced to work in their wet clothing for eight to ten hours.

Incident No. 2: In about July 1943, the accused ordered SS Technical Sergeant Schmidt to chase some Polish inmates through the line of sentries. Schmidt chased one through the line. Shots were fired and someone was carried away. Twelve hours later another inmate was chased through the line by Schmidt and was not seen again.

In June 1943 the accused beat an inmate, apparently Russian, with an oak walking stick until the inmate lay covered with blood and apparently died.

Incident No. 3: In May 1943 the accused compelled a Russian inmate to get into a water hole about one and a half meters deep. Each time the inmate stuck his head out to breathe, the accused beat his head with a stick and told him to get down again. The inmate was required to remain in his wet clothing. Later it was reported that the victim had gone to the dispensary.

Unless otherwise indicated, an item referred to as a "Statement" is in the form of extrajudicial sworn testimony.

IV. EVIDENCE AND RECOMMENDATIONS:

Ernst Emil JACKOBS

Nationality:

German

SEARCHED
SERIALIZED
INDEXED
FILED
MAY 1944
FBI - WASH DC
715032

Age: 52

Civilian Status: Country Inspector for Insurance Agency

Party Status: Member Nazi Party from 1939

Military Status: SS Master Sergeant

Plea: NG Charge I; NG Charge II;
NG Charge III

Findings: G Charge I; G Charge II;
G Charge III

Sentence: 15 years, commencing 2 May 1945

Evidence for Prosecution: The accused offered a plea of guilty to all charges and particulars, except that he stated in Court that he did not know whether the inmates assaulted were non-German nationals (R 8). He admitted that he beat and kicked inmates (R 9). The Court refused to accept the plea of guilty and entered a plea of not guilty for the accused (R 11).

One witness stated in his Statement that the accused, an SS master sergeant and detail leader at Buchenwald Concentration Camp, together with SS Technical Sergeant Schmidt, carried out a reign of terror among inmates in the detail; that there was not a day that members of the detail were not mistreated with a thick club by Schmidt or with a knotted stick entwined with steel wire by the accused (R 28; P-Ex 9a). Another witness stated in his Statement that in the early winter months of 1944, the accused, a master sergeant and detail leader at the Gustloff Works, beat Russian, Belgian and French inmates viciously in the lavatory of hall 1 and that he saw the accused beating inmates in the jaws with his clenched fists (R 29; P-Ex 10a). A witness testified that the work place of the accused's detail was the construction site for railroad station Buchenwald, which was later on the Gustloff Works factory (R 20).

Defense witness Kramarz stated in his unsworn pretrial statement that he was an inmate of Buchenwald from March 1943 until April 1945 and that he knew the accused there as an SS noncommissioned officer and detail leader in the Gustloff Works factory (R 30; D-Ex 1A).

3/13/50
0775032

Incident No. 1: A former Polish inmate, Weissmann, testified that he was at Buchenwald Concentration Camp from October 1939 until January 1940; that in the winter of 1940-1941 the accused beat him with his fists and the following morning, a terribly cold day, the accused dipped him three times into water; and that the accused then issued orders to witness' foreman that the witness was to work all day in his wet clothing (R 24-27). In an unsworn pretrial statement, the witness related substantially the same story. In addition he stated that each of the three times he was dipped in the water, he was forced to stay under water until he could hold his breath no longer; that after he was finally allowed to get out of the water, the accused hit and kicked him for half an hour; and that accused threatened to kill him if he told anyone of the incident (R 10; P-Ex 8).

It was stipulated that, if the witness Heymann were present he would testify that in January or February 1941, he saw accused force two Polish inmates to dive into water in their clothing at a time when the temperature was 10 degrees below zero centigrade. The inmates were then forced to work eight to ten hours in their wet clothing (R 27). In his Statement, this witness stated that he was an inmate in Buchenwald from June 1938 to April 1945 (R 9; P-Ex 6A).

Incident No. 2: A former German inmate, Kornblum, testified that he was sent to Buchenwald Concentration Camp in May 1943 and was a member of accused's detail from May to September 1943, which detail worked at the construction site for the Buchenwald railroad station. It was later the Gustloff Works factory. The witness further testified that one morning about July 1943 there was an argument between SS Technical Sergeant Schmidt, one of the sergeants in charge of the inmates in the accused's detail, and "the Poles"; that from a distance of 10 to 12 meters the witness heard the accused order Schmidt to chase these Polish inmates through the line of sentries; that he saw Schmidt beating the inmates and chasing them in the direction of the barbed wire; that one was chased into the line of sentries; that he heard shots and in a short time he

ARA Date 3/21/60
4775032

a body carried away; that about 12 hours later Schmidt chased another Polish inmate through the line of sentries; and that he never saw the latter inmate again (R 13-15, 17-21).

In his statement another former inmate stated that in June 1943, while the accused was detail leader at the Gustloff Works, he beat an inmate, who appeared to be Russian, with an oak walking stick about 25 millimeters in diameter and 80 or 90 centimeters long until the inmate lay covered with blood and apparently dead; and that he was unable to make certain the inmate was dead because, if he had gotten too near, he would have been punished (R 29; P-Ex 10A).

Incident No. 3: Witness Kornblum testified that a few meters, about 10, from the construction site for the railroad station Buchenwald, where he worked as a member of the accused's detail, there was a big hole approximately one and a half meters deep; that in May 1943 the accused forced a Russian inmate to get under the water in this hole; that, every time the Russian inmate stuck his head out to breathe, the accused beat his head with a stick or kicked him with his foot and told him to get down again; that later the Russian inmate stood in his wet clothing on a sort of ramp where he was very cold; that he returned to camp in the evening; and that he did not see the Russian inmate again, but fellow inmates told him he was in the dispensary (R 16, 21). Substantially the same story is given by this witness in his statement (R 10; P-Ex 7A).

Evidence for Defense: The accused testified that he was not a detail leader (R 32). Later he testified that he became a detail leader in August or September 1943 (R 34). Witness Kramarz stated in an unsworn pretrial statement that he knew the accused at Buchenwald where he saw him occasionally; that he was never beaten or mistreated by the accused; and that he never saw the accused kill an inmate (R 30; P-EX 1A). Another witness stated in his Statement that he did not know of the accused ever having killed an inmate; that the accused was not the type to report an inmate; that when food was left over in the air corps unit, the accused had it fetched for the inmates; that the accu

3/8/40
775032

bought food for the inmates with his own money; and that the accused carried a walking cane to aid him in walking, but he never hit anybody with it (R 31; D-Ex 2).

Incident No. 1: The accused in his unsworn pretrial statement denied that witness Weissmann was in his detail and stated that this witness did not tell the truth (R 34). The accused denied that he ever "bathed" inmates. He admitted supervising the "bathing" of four protective custody inmates in August 1943, but explained that this was done pursuant to the desire of the rest of the protective custody inmates from whom these four had stolen (R 32).

Incident No. 2: The accused denied that he had ever chased anyone into the chain of guards (R 32). He also denied having beaten anyone with his stick, saying that he used it only for support (R 34).

Incident No. 3: The accused denied that he had ever "bathed" inmates or that he ever beat anyone with his stick (R 32, 34).

Sufficiency of Evidence: The findings of guilty under each charge were warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Major A. R. Myatt, Jr., defense counsel, 10 November 1947. No 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.

Judicial Notice: All of the evidence in this case was to the effect that the offenses alleged to have been committed by the accused were committed in or near Buchenwald Concentration Camp, although there was no testimony that Buchenwald Concentration Camp was located at or in the vicinity of Weimar, Germany. This fact could have been judicially recognized by the Court as a subject of common and general knowledge.

Plea of Guilty: Section 501, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended, provides that while the Court may sentence on a plea of guilty without further proof, it must receive

BA Date 3/13/50
0775032

evidence to determine that the plea was not improvident or unqualified. After hearing such evidence the Court will be closed and will determine by majority vote whether such plea of guilty should be entered for the accused. The accused in this case, when interrogated by the Court, stated that he did not know whether the persons assaulted by him were non-German nationals (R 8). The Court, after receiving evidence as to the offenses alleged, refused to accept the accused's plea of guilty and ordered that a plea of not guilty be entered as to each of the charges and particulars (R 9-11).

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

WAR DATE 3/13/50
2505110

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.

Evidence as to Independent Illegal Acts: As appears herein at the outset of the evidence for the prosecution, the record contains evidence

APR Date 3/13/50
0775032

as to the commission of certain illegal acts not covered by the allegations. Thus the question is raised as to the legal significance of the admission of evidence as to the commission by the accused of such independent illegal acts.

Section 5-354.4, Title 5, "Legal and Penal Administration" of "Military Government Regulations," published by Office of Military Government for Germany (US), 27 March 1947, provides that "all evidence which will aid in determining the truth will be admitted." Sub-paragraph a, Section 270, "Manual for Trial of War Crimes and Related Cases," 15 July 1946, as amended, provides that a war crimes tribunal may admit any evidence which in its opinion has probative value. Sub-paragraph c (2) of said Section 270 provides that a war crimes tribunal may admit any evidence believed to be of probative value or, to apply a similar test, evidence which would be helpful in arriving at a true finding.

The Staff Judge Advocate, Headquarters, United States Forces in Austria, in his review of a war crimes case, United States v. Karolyi, et al., Case No. 5-100, September 1946, tried by a military commission appointed by that headquarters, stated with regard to evidence concerning independent crimes committed by the accused, that it would be disregarded only in the event that there is sufficient admissible evidence to sustain the findings as to the crime charged. He further stated that the sentences involved in that case should not be disapproved merely because of the admission of evidence relating to separate independent crimes. If there is sufficient evidence, exclusive of that relating to such independent crimes, to sustain the findings as to the crime charged. The Judge Advocate cited in his review, in support of his position, paragraph 87b, page 74, "Manual for Courts-Martial, U.S. Army," 1928, which paragraph is based upon Article of War 37.

A like rule is contained in the regulations specifically applicable to Military Government Courts:

WAR DATE 3/13/50
775032

"The proceedings shall not be invalidated, nor any finding or sentence disapproved, for any error or omission, technical or otherwise occurring (sic) in such proceedings, unless in the opinion of the Reviewing Authority, after an examination of the entire record, it shall appear that the error or omission has resulted in injustice to the accused."

(Section 5-338, Title 5, supra.)

In view of the foregoing, the admission of the evidence as to the separate independent crimes does not, in and of itself, constitute grounds for disapproving the actions of the Court.

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

IRMA V. NUNES
Captain AGD
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