

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

17 March 1948

UNITED STATES)

v.)

Heinrich ZWICKL)

Case No. 000-Buchenwald-37

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 31 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 Heinrich ZWICKL, a Hungarian national, did, at or in the vicinity of Weimar, Germany, in or about April 1945, 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 II: Violation of the Laws and Usages of War.

Particulars: In that Heinrich ZWICKL, a Hungarian National, did, at or in the vicinity of Weimar, Germany, in or about March 1945, wrongfully encourage, aid, abet and participate in the killing of approximately five 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 Heinrich ZWICKL, a Hungarian 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 approximately 12 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: An evacuation march started from Buchenwald Concentration Camp, near Weimar, Germany, in ~~April~~ ^{MARCH 1945} 1945, supposedly for Flossenburg, but never arrived there. It continued until liberated by the Americans at Liebenau, Upper Bavaria, on 5 May 1945. The accused, known by the nickname "Red Beet", was ^{/a} guard on this evacuation march of

approximately 1600 inmates, ^{Not m.l.} ~~not~~ more than approximately 100 to 150 inmates were still alive when the remaining inmates on the march were liberated. The accused was last seen with the transport a few days before liberation when other SS men vanished. Inmates were kicked, beaten and killed. The accused participated in these mistreatments.

The offense alleged under Charge I is hereinafter referred to as Incident No. 1 and the offense alleged under Charge II is hereinafter referred to as Incident No. 2. Inasmuch as the accused was acquitted of Charge III, the evidence as ^{/that} ~~to~~ the charge will not be discussed. _{m.l.}

Incident No. 1: During this death march, on 15 April 1945, the accused participated in the shooting of 15 inmates of various non-German nationalities, mostly French. In the same month, 10 to 15 days before liberation, the accused killed a Pole by a shot in the back of the neck.

Incident No. 2: In March 1945, the accused shot 20 to 25 inmates on the evacuation march. On about 25 March 1945, an inmate who was weak and who had been carrying the pack of the accused for some distance, asked to be relieved of this burden. The accused beat the inmate, took him out of line, threw him into a ditch, beat him again and then killed him by firing two shots into him. The accused also killed a French inmate by shooting him in the back of the neck.

Two witnesses in extrajudicial sworn statements, introduced as Court Exhibits, stated that the accused killed inmates on an evacuation march from Flensburg or Fliesberg (probably Floessburg) to Mauthausen from April to May 1945.

Concerning evidence for the defense, the accused denied participating in the march or transport alleged by the prosecution but testified that he was at Berge on the Elster, a subcamp of Buchenwald, where he stood guard in a chain of guards. He alleged he was there from 1 January 1945 to 15 April 1945, when he left on an evacuation march which he deserted at the Czechoslovakian border on 30 April 1945. In his fragebogen he

evacuation march, but came no nearer than 30 meters to an inmate. All of the 1800 inmates on this march came out alive, not one shot being fired.

IV. EVIDENCE AND RECOMMENDATIONS:

Heinrich ZWICKL

Nationality:	Hungarian
Age:	45
Civilian Status:	Farmer
Party Status:	None
Military Status:	Waffen SS
Plen:	NG Charge I; NG Charge II; NG Charge III
Findings:	G Charge I; G Charge II; NG Charge III
Sentence:	Death by hanging

Evidence for Prosecution: Rothkopf, a former Buchenwald inmate (R 8, 9), positively identified the accused and testified that the accused was universally known among the inmates on the transport that left Buchenwald on the 4th or 5th of March 1945, by the nickname "Red Beet" (R 9, 14). Stasewski, another Buchenwald inmate (R 17), identified the accused (R 19) as one of 70 to 80 guards (R 22) on a march of 1600 inmates (R 10, 13, 17) which left Buchenwald Concentration Camp early in March 1945 (R 8, 17) for Flossenburg Concentration Camp (R 10, 13, 17). This transport was still marching when the surviving inmates were liberated at Lebenau between Laufen and Freilassing, Upper Bavaria, 5 May 1945 (R 13). He testified that only about 150 of the inmates who started on this march were still alive when the evacuees were liberated (R 15). The accused was last seen with the transport a few days before liberation when all SS men vanished (R 14, 21). Inmates were mistreated by kicking and beating with rifle butts and were killed by shooting (R 8, 18). The accused, who was very conspicuous all along the road (R 22), participated in mistreating and killing the inmates of ^{Ukrainian} Russian, Polish, French and Belgian nationalities (R 9, 10, 11, 16, 18, 19, 20, 23, 58; C-Ex 1A, 2A). Rothkopf testified that during the march. One a distance of two meters

he saw the accused kill a French inmate by shooting him in the back of the neck (R 11, 12).

Incident No. 1: Rothkopf testified that the transport was liberated on 5 May 1945 (R 13). Stasewski, a Polish witness, testified that on 15 April 1945, while still on the march from Buchenwald, he saw the accused participate with another guard in the shooting of 15 inmates who were of various nationalities, mostly French. He further testified that 10 to 15 days before liberation, from a distance of 3 to 4 meters, he saw the accused kill an inmate, who was a fellow townsman named Moskowicz, by a shot in the back of the neck. This victim, who had been beaten before being shot, had stopped marching because ^{/his} frozen leg made walking difficult for him. The witness testified that the inmates on the march dwindled from approximately 1600 at the start to just over 100 at the end (R 17-20, 23).

In apparent conflict with the prosecution evidence, two extrajudicial sworn statements, introduced at the request of the Court, were to the effect that the accused was a guard on a transport of inmates from Floeberg (Flensburg or Fliesburg) to Mauthausen which lasted about four weeks during the period April to May 1945 and that these two witnesses personally saw the accused, among other SS men, shoot and kill inmates on that transport. The accused was identified from pictures exhibited to each of the witnesses. One witness stated that 90 percent of the inmates on the transport were killed by the accused and others. The other witness stated that the accused murdered without any pity. The victims were Polish, Russian and other nationalities (R 58; C-Ex 1A, 2A).

Incident No. 2: Rothkopf, a former Polish inmate of Buchenwald Concentration Camp, testified that he was a member of a march which left Buchenwald on 4 or 5 March 1945, that he saw the accused shoot 20 to 25 inmates on this march (R 8, 10). On this march, on about 25 March 1945, from a distance of 5 to 6 meters, he saw the accused kill his cousin, an inmate named Czarny (R 10, 11). He further testified that the accused required weak inmates, including his cousin, to carry his pack. After carrying the pack of the accused for some time, his cousin asked to be re-

lieved of the task. Whereupon the accused beat him, took him out of line, throw him into a ditch, beat him with the butt of his gun, and then killed him by firing two shots into him (R 11, 12).

Evidence for Defense: The evidence for the defense, being general in nature, is treated as a unit.

The accused testified that he was a Hungarian and was drafted into the German army in December 1944. After training for three weeks at Buchenwald, he was sent to Berga on the Elster on 1 January 1945 and never returned to Buchenwald (R 29, 30). His only duty at Berga was serving as a guard in a chain of guards (R 32). He never saw an inmate mistreated and because he had no contact with the inmates he could not tell whether the inmates received enough to eat (R 39). He did not know exactly how far Berga was from Buchenwald, but "heard it was 90 to 100 kilometers" (R 38). He testified that he remained at Berga until 15 April 1945 when he left with an evacuation march (R 30, 31) which he deserted at the Czechoslovakian border on 30 April 1945 (R 38). In an extrajudicial sworn statement made in February 1947, the accused stated he left Berga on a transport to Dachau on 15 April 1945 (R 59; D-Ex 1A). He testified that he did not know where the march on which he was a guard was going, "but as gossip goes it was said that we were destined for Dachau" (R 41). It marched in the direction of Plauen (R 41).

The accused further testified that the whole camp at Berga left on this march. The 800 inmates were accompanied by all of the officers and 200 soldiers (R 31, 32, 59; D-Ex 1A). His duty on the transport was to guard inmates to prevent escape. His position most of the time was in the middle of the transport, although it varied somewhat toward the rear and front (R 33, 34). He came no nearer than 30 meters to an inmate (R 39) and testified that all came out alive on the 800 inmate transport, not one shot being fired (R 40). He insisted that he would admit it if he had shot or had beaten an inmate (R 41). The accused testified that he was never a guard on a transport from Buchenwald and that he was on no transport, except the one that left Berga on the Elster on 15 April 1945 (R 34). He testified that Weiss and Schwartz, who were also guards, arrived at Buchenwald in

what Buchenwald looked like" (R 35, 38).

The defense produced two witnesses, both Hungarian nationals and former soldiers in the German army (R 43, 51). One testified that he first saw the accused at Berga about the middle of January 1945 (R 44, 48) and that the accused was in a chain of guards there (R 44, 47). He testified that during some periods he saw the accused daily (R 45). On cross-examination he testified that he "saw him very rarely" (R 48). He stated that in March or early April 1945, the accused left camp on a transport; that he, the witness, was with it too (R 44, 45). He did not know whether he was headed for Flossenburg (R 48, 49). He spent most of his time with the vehicles. The accused was a guard on the transport (R 43, 44). He testified further that inmates were not beaten at Berga nor on the transport (R 48).

The other defense witness testified that he was a guard at Buchenwald (R 54, 55); that he knew the accused since childhood; and that he did not see the accused at Buchenwald from January to April 1945 (R 52). The witness did not frequent many places in Buchenwald (R 56). He did not know any of the guards who lived outside of his own barracks. He stated that he heard of a transport leaving Buchenwald, but never saw any (R 54). He heard that guards were called in from subcamps to accompany transports (R 55).

The accused's German counsel submitted statements in support of Petitions for Clemency. In one of these statements, Vecsey asserts that he was with the accused at Buchenwald Concentration Camp from 7 December 1944 to 1 January 1945, the two being quartered together. At the end of this period, both were transferred to subcamp Berga on the Ulster, remaining there until 15 April 1945 when they were sent on an inmate transport. This service of the accused at Berga and on the transport is corroborated by the statement of Dachtler who also served at Berga. The accused's wife asserts in a sworn statement that she never received a letter by the accused from Buchenwald, but did receive letters by him from Berga following 1 January 1945.

Sufficiency of Evidence: Prosecution witnesses Stasewski and

Rothkopf relate ostensibly persuasive stories as to the existence of the transport from Buchenwald, the identity of the accused and his presence thereon, and the killings by the accused during the course thereof. However, it is not very plausible that the evacuation of Buchenwald was commenced early in March 1945; that a transport leaving at such an early date would have been sent by foot march rather than by rail which was the concentration camp practice at the time; and that a foot march would have been planned at that time which contemplated such a long distance and period of marching time.

Furthermore, the plausibility of the accused's alibi is supported by the testimony of two witnesses, one of whom served at Berga during the period in question, the accused's testimony as well as his extrajudicial sworn statement made months before the trial, the post trial sworn statement by the accused's wife, and the post trial sworn statements of two persons who assert that they served with the accused at Berga during the time in question.

The guilt of the accused is not satisfactorily established as to any of the charges.

Petitions: A Petition for Review was filed by Mr. Josef P. Friske, defense counsel, 1 December 1947. Petitions for Clemency were filed by the accused's German counsel, Dr. Stefan Litwitski, 4 December 1947, 10 January and 4 February 1948, and one undated.

Recommendations: That the findings and sentence be disapproved.

V. QUESTIONS OF LAW:

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

Court Calling for Evidence: Defense counsel, in his Petition for Review, pillories the Court, stating that "the Court...assumed the role of the prosecution....", when it asked for documents or exhibits pertaining to the case, accumulative evidence for its benefit (R 56, 57). Ultimately, defense counsel waived objections to the introduction of the evidence called for by the Court and agreed to such introduction as Court evidence, namely the extrajudicial sworn testimonies marked as Court Exhibits

C-1, C-1A and C-2, C-2A (R 57). Also, the said exhibits which would, if believed, have placed the accused at another and different place than that testified to by prosecution witnesses at the time stated in their testimony, were in fact favorable to the accused, and indicate the fairness of the Court in considering all available evidence that might bear upon the guilt or innocence of the accused.

It is sufficient answer to any objections by the defense at any stage of the trial before findings ^{that the Court may/} call or recall any witness and may examine the witness (Section 5-327.3, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947).

Opportunity to Defend: The defense counsel, although not asking for a continuance or asserting that he was not ready for trial, asserted that he was not informed of his appointment as defense counsel until the date of service of charges upon the accused, 22 October 1947 (R 3). The letter of his appointment was dated 7 October 1947 (R 2; P-Ex 4). The accused responded affirmatively when asked by the President of the Court whether he was ready for trial (R 6). The trial commenced on 31 October 1947 and at the conclusion of the day's proceedings, was recessed to 3 November 1947, on which date it concluded. The Court assured itself that the defense had adequate time to prepare for trial and procure necessary witnesses (R 3, 4, 25, 26, 27, 28). Defense counsel did not request an extension of time at the close of the case nor did defense offer further evidence. It does not appear that an injustice resulted to the accused in this connection.

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

R. D. REYNOLDS
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