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8 January 1948

UNITED STATES)

v.)

Victor HANTSCHARENKO)

Case No. 000-Buchenwald-8

REVIEW AND RECOMMENDATIONS

I. SERIAL DATA: The accused was tried at Dachau, Germany, during the period 14-16 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Victor HANTSCHARENKO, a Russian 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 twelve (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: Shortly after Easter 1945, a transport of inmates left Buchenwald Concentration Camp and marched to Weimar, Germany. At Weimar the inmates were placed in freight cars. After the train had proceeded a comparatively short distance from Weimar it was attacked by an American fighter plane and the locomotive was so disabled that the train was unable to proceed further. The inmates were then compelled to march to Weida.

After leaving the scene of the plane attack beyond Weimar, the accused who accompanied the transport as an SS guard at different times shot and killed a total of 13 or more non-German inmates, some incapable physically to continue to march and others who had attempted to get water or to get roots and grass to eat from beside the road.

IV. WARRANT AND RECOMMENDATIONS:

Victor HANTSCHARENKO

Nationality: Russian
Age: 25
Civilian Status: Laborer

NOTION CANCELLED

Military Status:	SS Guard
Plea:	NG
Findings	3
Sentence:	Life imprisonment

Evidence for Prosecution: Brodziak, a former political prisoner at Buchenwald Concentration Camp (R 13), identified the accused in Court (R 15). He testified that he was in a transport of about 4000 to 4500 inmates which left Buchenwald, bound for Flossenburg about 10 April 1945. The column marched to Weimar about 12 kilometers from Buchenwald where it was entrained. After going a comparatively short distance, the train was attacked by an American fighter plane and the locomotive was disabled. The inmates were then compelled to march to Weida (R 15-18). About three kilometers from Eisenberg, in the vicinity of a railroad bridge, the witness saw the accused, who accompanied the transport as an SS guard, shoot a Czechoslovakian inmate in the neck causing his brains to "spread all over the ground" (R 19, 20). In the vicinity of Gara the witness saw the accused shoot and kill a Belgian inmate who was lying exhausted in the road; the inmate was hit on the left side of the head and the left side of his face near the temple was smashed (R 22, 23). When outside of Gara, a rest was ordered by the SS men, and some inmates who were starving went over to a pile of beets. The witness saw the accused open fire on the inmates at the beet pile and shoot six of them, all non-Germans. The six fell to the ground and did not get up again during the half hour that the column remained there (R 23, 24).

During the entire transport march the accused was clad in the uniform of a German SS man with black shoulder straps, black patches on his SS uniform collar, a round cap having a black band with a skull in the front, which was the normal German SS hat. He did not wear the black Ukrainian uniform (R 39).

Litkowski, a former Polish political prisoner at Buchenwald, testified that he was a member of the transport of inmates that was evacuated from Buchenwald on 10 April 1945 (R 41), and he identified the accused

ness was positive in his identification of the accused under cross examination (R 46-48). He further testified that he saw the accused shoot and kill three inmates, two being Polish friends of the witness and the third unknown to him, about 12 kilometers from Weimar after the locomotive had been disabled by the American planes (R 44). At the time the accused wore the uniform of an SS man (R 47).

Biaganski, another Polish inmate who was with the evacuation transport from Buchenwald on 10 April 1945 (R 49, 50), identified the accused in Court as one of the SS guards who accompanied the transport (R 52, 53, 54, 57, 58, 60). He further testified that between Gera and Weida (R 54) he saw the accused shoot and kill three inmates, whose nationality he could not tell, while they were running from a pile of beets. The inmates were shot in the head (R 58). The accused wore a field grey uniform with black straps, a field cap with a death head on it and the SS insignia on his lapel (R 54).

Doronat testified that he was a Polish inmate of Buchenwald and was evacuated from that camp 10 April 1945 (R 61) with a transport by way of Weimar (R 62). He identified the accused in Court as one of the SS guards who accompanied the transport (R 64, 65, 70, 71). The witness further testified that between Jena and Eisenberg or between Eisenberg and Crossen near a railroad station, he saw the accused shoot a Dutch inmate in the head, and the witness believed that the inmate was killed by the shot (R 65, 66). This witness further testified that between Eisenberg and Gera, he saw the accused shoot and kill three or four inmates, non-Germans, who were endeavoring to get into ditches to drink water or to eat grass (R 67). The witness further testified that about two kilometers from Gera he saw the accused shoot and kill at least two Russian inmates who were returning from a beet pile (R 67, 68).

Evidence for Defense: Defense witness Bergner, a German national, testified that he was an SS Sergeant on guard duty at Buchenwald (R 92). While he testified that the Ukrainian SS guards wore a distinctive black uniform (R 92, 93) and that he knew the accused at Buchenwald as a

know what kind of uniform the accused wore after December 1944, and that approximately 20 to 25 Ukrainian guards who belonged to the same German SS guard company as did the witness were sent out with transports about 10 April 1945 (R 95, 96).

The accused admitted on cross examination that he bears an SS tattoo (R 111); that he was in the same guard company as witness Bergner (R 115); and that a part of the time on the transport he did wear a German headgear (R 117).

Three witnesses testified that Ukrainian SS guards wore black uniforms which differed from those worn by German SS guards (R 81, 82, 84, 85, 92, 93).

The accused testified that he joined the Russian army in 1941 and served six months, four of which were at the front; that he was captured and in prison camps until April 1943 when he was placed in a work battalion in Estonia where he remained until May 1944; that he was then sent with a group of 30 men to Buchenwald where he was given a black uniform as a Ukrainian SS guard; and that he had basic training after which he was assigned to duty in the concentration camp at Buchenwald as a guard. He described the uniform as consisting of breeches, high boots, black blouse, grey bands on the sleeves and headgear, a black pilot cap with buttons, and he testified that he did not have another uniform (R 100-102). He joined the transport which left Buchenwald 8 April 1945 for Flossenburg as a guard. At Weimar the transport was placed on railroad cars and divided into two sections. The accused was with the second section which left in the evening. The first section was bombed by American planes. The second section was not damaged. He did not proceed with the transport from Weimar. He received an order from a German railroad transport officer to command a prisoner train with which he got as far as the station, seven kilometers from Flossenburg. He went from there to Flossenburg and remained there for one day. Later he joined comrades, marched about 60 kilometers and was later captured by the Americans (R 102-105). He made

witnesses against him (R 107).

Sufficiency of Evidence: The accused was definitely and positively identified as the perpetrator of the offenses described by the prosecution witnesses and the Court was justified in concluding that no mistake of identity occurred. The proof was ample to justify the Court in finding that the accused had killed approximately 12 inmates at the time and place alleged.

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:

Continuance: At the inception of the trial, application was made for a continuance due to the inability of the defense to obtain the presence of a witness, one Arthur Papermann, who was in the Russian Zone (R 6-10). The Court did not abuse its discretion in denying the application. The application was renewed at the time the prosecution rested, and at that time counsel for the accused and for the prosecution entered into a stipulation as to the testimony of the absent witness and both counsels agreed that such stipulation would avoid the necessity for a continuance (R 78).

Jurisdiction: The jurisdiction of the Court to try the accused, a Russian national, was questioned by the defense (R 11, 12).

War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law", Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed." Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution, in the Mauthausen Concentration Camp case (United States

1945. Apparently, all concerned with the reviews and approvals in these cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country, who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. (See Section 5-300.2 and 5-300.3, Change I to Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 27 March 1947). Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

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

Sufficiency of Particulars: At the time the prosecution rested the defense moved to strike all testimony in regard to killings or mistreatment of inmates by the accused when dressed in SS uniform, or acting as an SS guard in collaboration with the German Army, for the reason that such matters were not alleged and that therefore the accused was not apprised of the nature of the charges against him. There is no merit to the contention of defense counsel. There can be no doubt that the particulars conform to the requirements as to definiteness prescribed by the procedure for Military Government Courts. The particulars allege but one offense and sufficiently identify the place, the time and the subject matter.

Rights of Accused: Although no objection was made by the defense, the President of the Court announced that the closing arguments of counsel "will be neither transcribed nor translated" (A 132). One of the rights

of the accused as read by the Court (R 6) and prescribed by Section 501, pp. 404, 405, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, is as follows:

"7. To have the proceedings translated when you are otherwise unable to understand the language in which they are conducted."

It is doubtful that arguments of counsel are part of the "proceedings" referred to in the above quoted right of accused. In any event, as all proceedings relating to the proof and all other phases of the trial, except the arguments of counsel, were translated no injustice resulted to the accused.

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.

E. LLOYD MEYER
Captain CMP
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