

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

5 December 1947

UNITED STATES )

v. )

Case No. 000-Buchenwald-9

Heinrich BUUCK )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 13-14 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

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

Particulars: In that Heinrich BUUCK, a German 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 10 non-German nationals, inmates of Sonnenberg 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: On or about 1 April 1945 at subcamp Sonnenberg, Thuringia, a subcamp of Buchenwald Concentration Camp, the accused, while on duty as a guard, shot and killed a Hungarian inmate. At various times during an inmate evacuation march, starting 1 April 1945 from subcamp Sonnenberg and ending 7 May 1945 at Praseles, Czechoslovakia, the accused, on duty as a guard, shot nine inmates, causing the death of one or more of them.

IV. EVIDENCE AND RECOMMENDATIONS:

Heinrich BUUCK

Nationality:	German
Age:	34
Civilian Status:	Farmer
Party Status:	None
Military Status:	Unknown
Plea:	no
Findings:	G
Sentence:	Death by hanging

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Evidence for Prosecution: The accused testified that he was a guard at subcamp Sonnenberg from September 1944 until April 1945; that he went on an inmate evacuation march from Sonnenberg in April 1945; that on the march he shot and killed an inmate who was about 20 years old; and that he shot this inmate because an SS sergeant ordered him to do so (R 67-70).

The accused stated in his extrajudicial sworn statement that the inmate evacuation march from Sonnenberg to the Sudetenland started one day after Easter, 1945, and continued until the end of the war; that inmates were shot when they became too weak to march; and that he shot one inmate because he received an order from an SS sergeant to do so (R 58; P-Ex 7A).

A United States Army psychiatrist stated in an unsworn pretrial statement that he examined the accused prior to this trial; that he determined that the accused has always been nervous and has shown emotional instability to such a degree that, when excited, he is unable to speak, has tremors of extremities and headaches; that he has an intelligence quotient of 67 with poor concept-formation, judgment and reasoning ability; that the accused showed obvious signs of anxiety reaction and confusion with marked tremors of extremities, especially arms; that there is a moderate amount of emotional instability shown in his history and also revealed during the interview; that no evidences of psychosis were shown; that there were no hallucinations, delusions or paranoid references; that the accused is of moronic intelligence; that he is able to differentiate between right and wrong in major incidents; that he can adhere to the right, understand the nature of trial proceedings and aid in his defense; that he is not insane in a medical sense; that there is present a moderate anxiety state which is incapacitating in a slight degree but which can be disregarded for the purpose of trial proceedings (R 10; P-Ex 6).

One witness, an inmate who worked in a kitchen at Sonnenberg, Thuringia, a subcamp of Buchenwald Concentration Camp, testified that about 1 April 1945 he saw an inmate enter the potato cellar of this kitchen; that he saw the accused, while on duty as guard outside the kitchen, shoot with his rifle through the window into this cellar; that this witness later went



named Flach; and that the body had a bullet hole in its head (R 50-52, 54). This evidence is corroborated by the testimony of a second witness that about four days before the inmate evacuation march started he saw inmates enter the potato cellar in Sonnenberg; that he saw the accused fire a shot into the cellar; that he believed the victim to be a Hungarian; that when he went into the cellar later he saw the dead body of this inmate; that the death of this inmate was caused by shooting (witness did not disclose the basis of his conclusions); and that when he saw the accused shoot through the cellar window, this witness was about 100 meters distant (R 39-41, 43).

This witness testified further that between about 1 April 1945 and 7 May 1945 he was on an inmate evacuation march from Sonnenberg to Praseles, Czechoslovakia; that on one occasion he was marching in the rear of the column; that on this occasion he and another inmate were assisting a weak, 25 year old Polish inmate to walk; that the accused ordered them to leave this inmate beside the road; that after they obeyed the accused's order he shot the weak inmate with a carbine; and that the inmate was dead after being shot by the accused (this witness did not disclose the basis of his conclusion that the inmate was dead) (R 39-41, 44).

A third witness, Thau, testified that during the inmate evacuation march, composed of approximately 500 inmates, beginning at Sonnenberg on 1 April 1945 and ending at Praseles, Czechoslovakia on 1 May 1945, he saw the accused shoot and kill an inmate about 20 years of age; that this inmate was shot because he was too weak to continue the march (R 18, 13, 16, 18, 19); that this witness was about 25 meters distant when the shooting occurred; and that (apparently the witness was told this) in the next village orders were left with the mayor to bury the victim (R 13, 14, 16, 18, 19).

A fourth witness, Weiden, testified that on 14 April 1945 between Sivan and Praseles he was marching at the end of the column; that a fellow inmate about 45 years old was unable to walk; that the accused ordered this witness and another inmate to take the weak inmate into the woods; t

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after they complied he heard a shot; but that he did not see the shooting (R 20-23).

A fifth witness testified that about 14 April 1945 on the evacuation march he saw a 25 year old Polish inmate, named Klinger, collapse from weakness; that he saw the accused shoot this inmate; and that this inmate died (this witness did not disclose the basis for his conclusion that the inmate died) (R 26, 28, 30, 31).

This witness testified further that about 28 April 1945 on the same evacuation march he saw another Polish inmate collapse; that he saw the accused kick this inmate into a ditch and shoot him; and that this inmate died (the witness did not disclose the basis for his conclusion that the inmate died) (R 26, 27, 30, 31).

A sixth witness testified that in the first two weeks of April 1945 on the inmate evacuation march from subcamp Sonnenberg to Prasseles the accused shot a Polish inmate, approximately 34 years old, comrade of the witness; that the accused shot this inmate because he made a remark about the accused; and that he did not know whether or not the victim died (R 33, 34, 37).

A seventh witness testified that on about 8 April 1945 on the inmate evacuation march from Sonnenberg to Prasseles he saw the accused and another SS man shoot and kill two Polish inmates, because they picked up a few potatoes on the road (this witness did not say whether or not they died) (R 47-49).

After the defense rested, it was stipulated between the accused, his counsel and the prosecution that if witnesses Thau and Weiden were present in Court they would testify that the inmates which they saw the accused shoot were non-German (R 71, 72).

Evidence for Defense: The accused testified that he never killed an inmate by shooting through a cellar window while he was on guard duty at subcamp Sonnenberg (R 67); that he was a guard at Sonnenberg, a subcamp of Buchenwald Concentration Camp from 9 September 1944 to April 1945; that he shot one inmate on the evacuation march from subcamp Sonnenberg in April 1945 on orders of an SS sergeant; that he was afraid of the S

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sergeant; and that he was told by the SS sergeant that he, the accused, could be killed if he did not shoot the inmate (R 67, 68, 73). He testified further that he did not know it was wrong to shoot this inmate (R 69, 70). The shooting occurred on the side of the road. The victim died as a result of the shooting (R 70). The accused also testified that he did not know the nationality of the victim (R 70). The accused did not disclose the date or geographical location of the admitted killing, other than that it occurred on the inmate evacuation march from subcamp Sonnenberg in April 1945 (R 67). Neither did he disclose the official position of the SS sergeant who gave him the order to shoot the inmate (R 67, 68, 73). He denied that he shot or killed any other inmates on the evacuation march (R 68).

Sufficiency of Evidence: The Court was warranted from the evidence in its findings that the accused was sane at the time of the offense and at the time of trial; that he was capable of distinguishing right from wrong and of adhering to the right; and that he was able to understand the proceedings and to aid in his defense (R 75).

It is clearly established by the evidence that the accused killed one inmate at subcamp Sonnenberg and another inmate on the evacuation march from Sonnenberg. The Court may well have concluded from the evidence adduced that the accused caused the deaths of approximately seven other inmates during the evacuation march. The accused admitted killing an inmate on the evacuation march but pleaded that he acted on orders from an SS sergeant. The record is not helpful in determining if the killing of an inmate as admitted by the accused is a duplication of one of the purported killings testified to by witnesses. The accused did not assert, nor does the record indicate, that he was required to kill the inmate in the presence of a superior. The Court might well have concluded that the accused did not act unwillingly or under the influence of immediate compulsion and that with respect to superior orders he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.



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.

Superior Orders: The accused sought to justify the one admitted killing by offering evidence to show that he was acting in compliance with "superior orders." Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708, United States v. Thomas, opinion DJAWC, December 1945; United States v. Klein, et al. (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals (France), July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U. S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement

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of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U. S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWO, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWO, December 1946.)

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.

HAROLD E. KURN  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur, this 25<sup>th</sup> day  
of February 1946.

*S/ C. E. STRAIGHT*  
7/ C. E. STRAIGHT  
Lieutenant Colonel, JAGD  
Deputy Judge Advocate  
for War Crimes

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