

27 February 1948

UNITED STATES)

v.)

Ignaz SEITZ, et al.)

Case No. 000-Buchenwald-11

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, 6 November 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

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

Particulars: In that Ignatz SEITZ and Johannes VOLK, German nationals, did, at or in the vicinity of Dessau, Germany, in or about April 1945, wrongfully encourage, aid, abet and participate in the killing of 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.

(Christian name of SEITZ actually spelled Ignaz (R 4).)

III. SUMMARY OF EVIDENCE: Leau, a subcamp of Buchenwald Concentration Camp, was evacuated in April 1945. Both accused were assigned as guards on the evacuation march. Leau is located near Bernburg, Germany. The commanding officer of the march ^{was} SS Technical Sergeant Johannes Schmidt. The second in command was SS Staff Sergeant Reinz. Before departure, Schmidt paraded all the guards and told them to shoot all inmates who tried to escape, who ^{were} unable to walk, or who could not keep up with the evacuation march. On the last day of the march, 14 April 1945, Reinz ordered both of the accused and others to shoot two groups of inmates who could not continue on the march because of sickness. One of the groups consisted of four inmates. The other group was composed of seven inmates. Both groups were shot by the accused and other SS guards.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Ignaz SEITZ

Nationality:

German

Civilian Status:	Farmer
Party Status:	None
Military Status:	SS Guard
Place:	NG
Findings:	G
Sentence:	10 years , commencing 14 April 1945

Evidence for Prosecution: Kirschbaum, an American war crimes investigator, testified that he interrogated the accused on 17 April 1947 at Dachau, Germany, (R 8) after warning him that he did not have to incriminate himself and that anything he might say could be used against him (R 11, 12).

In one of his extrajudicial sworn statements, the accused stated that he became a member of the SS on 10 February 1943 and performed duty at Buchenwald Concentration Camp from then to the end of May or beginning of June 1943. He was then transferred to subcamp Leipzig-Thekla. He was reassigned to Buchenwald in April or May 1944 and on 22 August 1944 to subcamp Leau remaining at the latter place until 13 April 1945 (R 9; P-Ex 6A). He stated that 800 to 900 inmates of Leau were evacuated on 13 April 1945 under command of SS Technical Sergeant Schmidt. When the evacuees arrived in the vicinity of Dessau, Germany Schmidt, ordered that certain inmates, who were lying in a wagon because they were too weak to walk, be shot by a detail in charge of ^{SS} Staff Sergeant Reinz (R 9; P-Ex 6A, p 3).

The accused further stated that two groups of inmates were selected, one comprised of four and the other, seven inmates. The group of four inmates selected by Reinz was lead into the woods two or three kilometers from Dessau and shot by the accused and two or three other SS men, at about 0830 or 0900 hours. When the column left Dessau it marched in the direction of Halle. The seven inmates in the second group were shot on or near the road leading from Dessau at about noon by the accused and a few other SS men. The accused further stated in his extrajudicial sworn statement that he shot and killed one inmate in each of the two groups.

Both inmates whom he shot and killed were weak and neither tried to escape, the reason for the killings being that the inmates could not march farther. The nationalities of the inmates who left camp were Polish, Russian, French, Czechoslovakian and German (R 9; P-Ex 6A).

In another extrajudicial sworn statement the accused stated that he believed the group of seven inmates which were shot consisted of five Poles and two Frenchmen, or four Poles and three Frenchmen. He stated that he shot two from this group but did not know whether they were Poles or Frenchmen (R 38; P-Ex 8).

Accused VOLK stated in an extrajudicial sworn statement and testified in Court that accused SEITZ was alongside of him in the firing detail during the shooting of the second group; that accused SEITZ fired more than one shot; and that he believed there were one or more Germans among the group of seven because one or two of them made a few remarks in German. The victims did not try to escape. The shooting of the group of seven took place in a woods. He further testified that the inmate whom he shot was a Ukrainian (R 10, 25, 30, 35; P-Ex 7A).

Evidence for Defense: The accused stated in one of his extrajudicial sworn statements that SS Technical Sergeant Schmidt, in command of the evacuation march, ordered SS Staff Sergeant Reinz to effect the shooting of the inmates; and that Reinz selected those who were to be shot and selected the shooting detail. An SS corporal, whose name the witness no longer remembered, was detailed to bury the victims. The accused/further therein stated that, about one half hour before the evacuation of subcamp Leau, Schmidt had said that those "who will not come along will be shot" (R 9; P-Ex 6A).

Accused VOLK stated in his extrajudicial sworn statement that Schmidt ordered Reinz to shoot the inmates in the woods near Deseau; that the inmates pleaded "please do no shoot", whereupon the detail refused to carry out the shooting; and that Reinz then pulled out his pistol, pointed it at the members of the shooting detail, and stated that he would shoot any guard who refused to fire at the inmates (R 10; P-Ex 7A).

Sufficiency of Evidence: It is clear that the accused participated in the killing and that he shot and killed at least two of the inmates. The Court gave ample consideration to any element of acting under the immediate compulsion of superior orders which may have been present. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Mr. Donald J. Ross, Chief Defense Counsel, and Lothar Steiner, German associate, 9 December 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Johannes VOLK

Nationality:	German
Age:	25
Civilian Status:	Farmer
Party Status:	None
Military Status:	SS Guard
Plea:	NG
Findings:	G
Sentence:	10 years, commencing 14 April 1945

Evidence for Prosecution : Airschbaum, an American war crimes investigator, testified that he interrogated the accused on 17 April 1947 at Dachau, Germany, (R 9) after warning him that anything he might say could be used against him (R 11, 12).

In his extrajudicial sworn statement, the accused stated that he became a member of the SS 1 November 1941; that he performed duty at Oranienburg from 1 May 1944 to 28 October 1944; and that he was then assigned to Buchenwald, where he remained until 4 November 1944 when he was assigned to Leau, a subcamp of Buchenwald, near Bernburg (R 10; P-Ex 7A, pp. 1,3). He stated that Leau was evacuated on 12 April 1945. When the evacuees reached the vicinity of Deseau, seven inmates were shot because they were unable to continue the march. The shooting detail, of which he was a member, took the group of inmates to the woods. He shot one inmate

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Ukrainian. He further stated therein that he did not know whether the Ukrainian was dead, but he saw him collapse after he fired one shot at him (R 10; P-Ex 7A).

In one of his extrajudicial sworn statements, accused SEITZ stated that, when the evacuation march arrived in the vicinity of Dessau, SS Technical Sergeant Schmidt ordered SS Staff Sergeant Reinz to shoot those inmates who could not continue to march; that Reinz then selected the inmates to be shot, seven in number, and also selected the firing detail; that he saw the accused fire at only one inmate; and that he saw the inmate collapse. A mercy shot was not necessary. He thought the inmate died immediately. Accused SEITZ further stated therein that the accused did not participate in shooting the first group. (R 9; P-Ex 6A).

Evidence for Defense: In his extrajudicial sworn ^{ment} ~~state~~ the accused stated that on the morning of 14 April 1945, the day when the evacuation march arrived in the vicinity of Dessau, SS Technical Sergeant Schmidt, the detail leader, ordered SS Staff Sergeant Reinz to shoot those inmates who could not continue to march. He stated further that after Reinz selected the inmates and the shooting detail had escorted them to the woods, the inmates pleaded, "Please do not shoot". The detail, including the accused, refused to shoot. Reinz then pulled out his pistol, pointed it at the members of the detail, and stated that, if any of the guards did not shoot the inmates, they would have to be shot along with the inmates (R 10; P-Ex 7A).

Sufficiency of Evidence: It is clear that the accused participated in the killing and that he shot and killed one inmate. His assertions as to his acting unwillingly and under superior orders carry little, if any, persuasiveness. The shooting detail could have overpowered Reinz and escaped to nearby American forces.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Mr. Donald J. Ross, Chief Defense Counsel; and Lothar Steiner, German associate counsel, on 9 December 1947. No Petitions for Clemency were filed.

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Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: It was clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Superior Orders: It is contended by the accused that they shot the inmates under compulsion and pursuant to orders received from a superior, who stood by to see that his orders were carried out. 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; *Island-orey 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, but an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior 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 of 8 August 1945 Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10- War Department, US, Army, "Rules of Land Warfare", paragraph 345.1. Change No. 1, 15 November 1944; Oppenheim

"International Law", supra, and the Llandoverly 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 DJAWC, September 1945; United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC , December 1946.)

Evidence: The defense objected to the admission of Prosecution's P-Ex 8, an extrajudicial sworn statement by accused SEITZ, after the defense had rested (R 37). The objection was properly overruled (R 38). The accused who gave the statement could not have been surprised. The exhibit is primarily corroborative of evidence previously adduced in the case. The Court restricted the use of the exhibit, it to be used against accused VOLK only (R 38). The reason for such restriction as to use is not apparent. But for the fact that the statement was largely corroborative of evidence adduced, a continuance might have been in order. However, none was requested. The sworn statements of accused and witnesses are always admissible regardless of the presence or absence of those who made them (Subparagraph c(2), Section 270, "Manual for Trial of War Crimes and Related Cases"; 15 July 1946, as amended).

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

WILLIAM R. COHEN
Major Inf
Post Trial Branch

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Having examined the record of trial, I concur, this _____

day of _____ 1948.

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