

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

10 February 1948

UNITED STATES)
) v.)
))
Sebastian SCHMID)

Case No. 000-Dachau-2

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 15-18 September 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Sebastian Schmid, a German national, did, at or in the vicinity of Dachau, Germany, in or about October 1939, wrongfully encourage, aid, abet and participate in the killing of approximately 10 Polish nationals, inmates of the Dachau Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

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

Particulars: In that Sebastian Schmid, a German national, did, at or in the vicinity of Dachau, Germany, in or about March 1940 wrongfully encourage, aid, abet and participate in the killing of approximately 30 Polish nationals, inmates of the Dachau 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: The accused, a sergeant in the SS, was assigned to Dachau Concentration Camp in November 1938. About April 1939 he was assigned to the construction administration as a driver and mechanic. The offenses alleged under Charges I and II will hereinafter be referred to as Incidents Nos. 1 and 2, respectively.

Incident Number 1. In September 1939 a group of Polish nationals from Bromberg were brought to Dachau as inmates. These inmates were severely mistreated. There is evidence that the accused, among others, beat the inmates and kicked them. Several of the victims died the following day.

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Incident Number 2: About ^{March 27, R.} May 1940 a small group of intellectuals of Polish nationality arrived at Dachau as inmates. There is evidence that the accused participated with several other SS men in executing these inmates by shooting them to death.

Not much weight has been given to the testimony of Karl Kramer. However, it does corroborate the testimony of other witnesses in many material respects.

IV. EVIDENCE AND RECOMMENDATIONS:

Sebastian SCHMID

Nationality:	German
Age:	33
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Wehrmacht Private Waffen SS Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused, a sergeant in the SS (R 9, 36, 37, 53, 69, 76, 113, 158; P-Ex 6a), was stationed at Dachau Concentration Camp during the years 1939 and 1940 (R 7, 9, 25, 31, 36, 45, 55, 69, 76, 91, 113, 153, 158; P-Ex 6a). His main duties during that time were as driver and mechanic for the construction administration (R 9, 45, 48, 56, 57, 69, 77, 91, 114).

Kaltenbacher testified that he was an inmate at Dachau from 1937 to 1939 and knew the accused (R 155); that the accused came into the security compound during that time; that on one occasion after a Spanish inmate escaped in January 1939, all the inmates were required to stand in the roll call square during the entire night of 23-24 January 1939 (R 156); that he saw the accused there that night and saw him beat and kick the former mayor of Wuerttemberg; and that a few days later, the mayor died (R 157).

In his extrajudicial sworn statement, Scholz stated that during the period 1940 to 1942 at Dachau the accused forced inmates to run with wheelbarrows full of building material for 300 to 400 meters; that he beat them if they were not able to do it; that on one occasion the accused beat a Polish inmate in the ribs with his pistol butt; and that he sometimes mistreated the inmates by hanging them from a pole (R 158; P-Ex 6A).

Holzappel testified that at Dachau in March or April 1942 she saw the accused beat an inmate with his fists until the victim fell down. The inmate was then put on a cart and taken away (R 152).

Incident Number 1. Weber testified that he was an inmate in Dachau from January 1935 to April 1945 (R 23); that he worked in the carpenter shop; that in September 1939 they made 60 to 70 coffins and delivered them to the bunker; that the coffins were unloaded in front of the bunker (R 24); and that he helped carry some of the coffins into the bunker courtyard. The accused was standing there near the bodies of four inmates. The bodies were in civilian clothing. The victims had been beaten and the bodies were covered with blood. The witness assumed they were dead because their eyes were open and looked glassy and he also assumed they were Polish because two days prior to that time Polish inmates wearing civilian clothes had been brought into the camp. Inmates generally wore striped clothes (R 25).

Habel testified that he was confined in Dachau during the years 1936 to 1943; that while he was there he was a clerk in the political department and was allowed to go into the protective custody camp where the inmates were confined; that in September 1939 the first transport of so-called snipers from Bromberg arrived at Dachau; and that these inmates received especially brutal treatment which left an impression on him (R 29). These inmates were forced to stand for days in the roll call square with their arms raised while they were kicked and beaten by the SS men who were guarding them. The mistreatment was so severe that some of the inmates had to be taken to the dispensary and about 10 of

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the victims died as a result of the mistreatment (R 29, 30). The witness heard about their death from the dispensary. The inmates were Polish civilians and inasmuch as they were in the first transport to arrive during the war, the SS men evidently wanted to show their courage by mistreating them (R 30, 31). The accused was known as a beater at Dachau and his "specialty" was to kick inmates in the abdomen so they fell to the ground unconscious. Habel further testified that he saw the accused go among the Polish inmates of this transport "like raving mad"; and that on several occasions during the day in question the accused kicked some of these inmates in the abdomen, causing the victims to fall to the ground unconscious (R 31).

Durner testified that he was confined in Dachau from June 1937 to April 1945; that in the middle of September 1939 between 60 and 70 Polish nationals were brought to Dachau (R 36, 37); and that these inmates were civilian intellectuals who had been arrested presumably because they were snipers. At that time the witness was a block clerk. The inmates were required to hold their hands over their heads, but when the arms of some of them got tired they dropped them. The accused and other SS men then kicked them (R 37, 43). Durner also saw the accused beat the victims with his fists. These inmates had to stand near the guard house for a few hours and were then taken to the roll call square where they stood for several hours. That night they were taken to the laundry and the next morning each of these victims had to take his own coffin to a place behind the bunker. The camp commander then apparently refused to have them executed. A few of these inmates remained in Dachau and some were sent to Camp Buchenwald. Durner saw five to seven corpses behind the bunker at that time, but he did not know what caused the deaths (R 38).

Schaeffer testified that the truck which was driven by the accused at Dachau was first driven by the accused between the 15th and 20th of September 1939 and that the incident with the Poles was five or six days before that (R 45, 46).

Karl Kramer testified that he was confined in Dachau during the years 1933 to 1943; that in September 1939 a group of Polish nationals were brought from Bromberg; that he was told by the SS that they were snipers and had been captured near Bromberg; that they were called snipers by the SS and severely mistreated; and that he was later told by some Polish inmates that these victims were not snipers (R 7, 8, 20). For about two days the inmates were forced to walk up and down in front of the roll call square with their arms raised (R 8, 9). The accused and others beat these inmates with their rifle butts until many of the victims collapsed. This treatment was unusual at Camp Dachau at that time (R 10). About 10 inmates died from these beatings (R 10, 11). Kramer further testified that he was block clerk when this happened and knew they died; that he was in the immediate vicinity and able to observe everything; and that the accused kicked some of these inmates until they collapsed (R 11, 12).

Incident Number 2. In the spring of 1940, Weber was confined in the bunker (R 25, 26). Late one afternoon sometime between 10 and 15 May 1940 he heard shooting. There were single shots and bursts of shots. He assumed they came from the bunker (R 26).

Habel testified that in the spring of 1940 a Polish transport arrived (R 31, 32). The inmates on this transport were shot. Habel saw these 30 to 40 inmates taken to the bunker and then members of the SS, including the accused, marched into the bunker wearing helmets and carrying rifles. The witness then heard shooting. He did not see these inmates again (R 32).

Durner testified that in the spring of 1940 a transport of about 30 Polish nationals arrived at Dachau; that these inmates were severely beaten and several bodies were on the roll call square; and that he heard shooting in the bunker at that time, but he does not know who did the shooting, who was shot, or the reason for the shooting (R 38, 39).

Kapsberger testified he heard that some Poles were executed at Dachau in the spring of 1940 (R 52, 54).

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Karl Kramer testified that in the spring of 1940 about 38 Polish intellectuals arrived at Dachau as inmates; that he was clerk of block 23 at that time; and that he received word that 18 inmates from that block were to be brought immediately to the dispensary room where the valuables were kept and the clerk of block 21 was to bring 20 inmates (R 13). [These 38 inmates were apparently the Polish intellectuals above mentioned.] At the dispensary he heard that the 38 Poles were to be shot. About 2000 hours that night a Polish inmate named Janowski, another inmate and this witness went to the attic of the laundry. Kramer saw the 38 Polish inmates chased out of the bunker, completely undressed, and shot to death (R 14). The accused was one of the men on the execution detail and he saw the accused fire at the inmates (R 14, 21, 22). Kramer saw most of the bodies but not all of them. The crematory capo told him all of the bodies were brought to the crematory that night (R 14, 15). Kramer further testified that the accused wore a helmet the night of the shooting (R 18).

Evidence for Defense: The accused testified that he did not kick or beat an inmate until he had to be carried away on a wheelbarrow (R 139); that he never made inmates double time with a wheelbarrow full of material for 300 or 400 meters; that he never beat a Polish inmate in his ribs with a rifle butt; that he never arranged to have inmates suspended from a pole because they had not worked satisfactorily; that he never beat a Luxembourg inmate and kicked him in the stomach; - that in January 1939 he was not present at a roll call which lasted an entire night; and that he was not present at that time and beat inmates (R 140). The accused was transferred to Berlin in June 1941 and never returned to Dachau (R 115).

Incident Number 1. Schaefer testified that he was an inmate in Dachau from April 1937 to November 1942 (R 44); that he worked in the construction office where the accused worked as a driver from July 1939 to March 1941 (R 44, 45); that he saw the mistreatment of the Poles in September 1939 for a moment but did not see the accused there (R 46)

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and that the accused could not go into the inmate compound (R 47).

Bestle testified that he was the construction leader building garages at Dachau; that the accused was with him (R 55) during office hours (R 59); that the accused could not go into the inmate compound (R 61); and that he heard the accused was at Dachau until the fall of 1941 (R 50).

Piorkowski testified that he was ^{camp}/commander of Dachau in September 1939; that the accused was transferred to the construction management as a driver in the summer of 1939 (R 90, 91); and that he remained there as a driver until the middle of 1941. Piorkowski further testified that the accused could not get inside the inmate camp without a special pass from the protective custody camp leader (R 92); that in September 1939 a transport of Polish partisan snipers arrived; that they were to be executed but he interfered; that they were brought in by the Gestapo and police and turned over to the political department, which was a branch of the Gestapo office in Munich (R 93); that the accused was not a member of the block personnel at that time (R 94); that the accused had no pass to go in and out of the protective custody camp (R 100, 101); that the roll call square was inside of the protective custody camp (R 102); and that none of these Polish inmates died (R 104). This witness is under sentence of death for his participation in the Dachau Concentration Camp mass atrocity (United States v. Piorkowski, et al., Case No. 000-60-2-23) (R 96).

The accused testified that he never had an opportunity to get into the inmate compound (R 117); that he never knew that a Polish transport arrived in September 1939; that he never hit any inmates (R 118); and that the first time he was in the inmate compound was in March or April 1941 (R 118). The accused further testified that he never received any order to mistreat the Polish snipers (R 134); and that he never beat an inmate involving his falling to the ground and ^{his}/kicking him until he was unconscious.

Lisa Schmid, wife of the accused (R 76), testified that the accused took her to Ossenshausen, Germany, on 15 September 1939, and did not

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return to Dachau until the following Monday (R 78, 79). Lisa Schmid and Hans Schmid, brother of the accused, testified that the accused went to Oessenshausen on 20 September 1939 with a truck which he had been repairing. That was the first time he had driven it (R 69, 70, 80, 88). Hans Schmid testified that the accused was with him on Saturday and Sunday following 20 September 1939 (R 46, 70, 71, 81; D-Ex 1).

Incident Number 2. The accused testified that he was never in the bunker during 1940 (R 118, 119); that he never served on an execution shooting detail; that he never wore a steel helmet in camp (R 140); and that he never fired a rifle while on duty at Dachau after 1939 (R 144).

Sufficiency of Evidence: The evidence as to Charge II is insufficient to support a findings of guilty. There is no satisfactory proof that the accused participated in the killing as charged nor is it shown that he assaulted the victims involved. The evidence under Charge I is insufficient to support a findings of guilty of participating in the killing of 10 Polish nationals. However, it is proved that the accused wrongfully assaulted Polish nationals by kicking and beating, which assault is necessarily included in the offense alleged in Charge I. It is shown that the beatings were severe. The evidence under Charge I is sufficient to support a findings of guilty of wrongfully assaulting Polish nationals. The sentence imposed is disproportionate to this proved offense.

Petitions: A Petition for Review was filed by Dr. Camillo Peyrer Angermann, special defense counsel, 24 September 1947. No Petitions for Clemency were filed.

Recommendation: That the findings as to Charge II be disapproved; that only so much of the findings as to Charge I be approved as involves a findings of guilty of wrongfully assaulting Polish nationals; and that the sentence be approved, but reduced to imprisonment for 10 years, commencing 25 August 1945.

V. QUESTIONS OF LAW.

Jurisdiction: A question not raised during the trial, but which discussion, is whether the Court had jurisdiction of the offenses in

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as they were committed prior to the entry of the United States into World War II against Germany.

A validly constituted court of an independent state derives its power from the state. A state is independent of all other states in the exercise of its judicial power, except where restricted by the law of nations (S.S. Lotus, France v. Turkey, 2 Hudson World Court Reports 23). Concerning punishment for a crime of the type involved in the instant case, it has been stated that the sovereign power of a state extends "to the punishment of piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton's "International Law", Sixth Edition, Volume I, page 269). Recognition of this sovereign power is contained in the provision of the Constitution of the United States which confers upon Congress power "to define and punish offenses against the law of nations" (Winthrop, "Military Laws and Precedents", Second Edition, Reprint 1920, page 831).

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is interested in the preservation and the enforcement thereof. This is true, irrespective of when or where the crime was committed, the belligerency status or non-belligerency status of the punishing power, or the nationality of the victims. ("Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law Reports of Trials of War Criminals", by United Nations War Crimes Commission, 1947, hereinafter referred to as "Law Reports" Volume I, pages 41, 42, 43, 103; United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion DJAWC, March 1946; United States v. Becker, et al., Flossenburg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC

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September 1947; and United States v. Otto, opinion DJAWC, July 1947.)

A British court sitting in Singapore tried Tomono Shimio of the Japanese army and sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law Reports, Volume II, page 128.) It is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

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

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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 87.

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

"The proceedings shall not be invalidated, nor any findings 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 as to Charge II be disapproved; that only so much of the findings as to Charge I be approved as involves a findings of guilty of wrongfully assaulting Polish nationals; and that the sentence be approved, but reduced to imprisonment for 10 years, commencing 25 August 1945.

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

FLOYD M. LUNDBERG
Major JAGD
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

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