

2 December 1947

UNITED STATES)
 v.)
Kurt Konrad STIRNWEIS)

Case No. 000-50-2-77

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 17 March 1947, before an Intermediate Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Kurt Konrad STIRNWEIS acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

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

Particulars: In that Kurt Konrad STIRNWEIS acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The accused was, by his own admission, a member of the SS at Camp Dachau for a considerable period of time between the dates alleged, in the capacity of a work detail leader, and he was shown to have participated in the Dachau Concentration Camp mass atrocity. Prosecution's Exhibit P-Ex 1 is a certified copy of the charges,

particulars, findings and sentences in the parent Dachau Concentration Camp Case (United States v. Weiss, et al., 000-50-2, opinion DJ:MG, March 1946, hereinafter referred to as the "Parent Case", see Section V, post; R 12).

IV. EVIDENCE AND RECOMMENDATIONS:

Kurt Konrad STIRNBEIS

Nationality:	German
Age:	54
Civilian Status:	Factory Representative
Party Status:	Unknown
Military Status:	Second Lieutenant, Waffen SS
Flora:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	2 years, commencing 22 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn testimony that he was in training at Dachau Concentration Camp from 1 to 15 June 1944, after which he was transferred to another concentration camp. From 12 August 1944 until 10 September 1944 he was a work detail leader at Camp Dachau. On 12 September 1944 he was assigned as a work detail leader at the Agfa Camera Works in Munich, Germany, working under Camp Dachau until 27 April 1945. He also stated that he participated as a detail leader and transport leader in the inmate evacuation march from Munich to Wolfratshausen, 27-28 April 1945. This evacuation march consisted of about 500 inmates, three guards and 10 female supervisors (R 12; P-Ex 2). Five hundred fifty women inmates were employed on the Agfa detail (R 61).

Sergeant John Petro, United States Army, testified that the accused was in charge of the inmates, including females, on an ammunition detail in Munich in the fall of 1944 (R 9). The accused selected certain men from the railroad work detail and used them to load and unload ammunition. He mistreated women inmates who were also on this ammunition detail. He usually carried a riding crop (R 10). The accused struck an American

prisoner of war with his riding crop, causing him to bleed (R 11, 39). On one occasion he pushed a woman inmate from a small platform, and she fell on her head on the railroad tracks. She was carried away and never seen on the work detail again. The accused also kicked inmates (R 16, 39). The women inmates on the ammunition detail were of all nationalities including Poles, Russians, Yugoslavs, Frenchmen, Germans, Czechs, and Dutchmen (R 13, 42, 46, 62).

One witness testified that he thought the accused was an integral part of the Camp Dachau system of cruel treatment of inmates (R 39). The accused reported inmates to Camp Dachau for punishment (R 73).

Evidence for Defense: The accused testified that he was transferred from an artillery Division at Freising, Germany, to the Waffen SS in May 1944 and assigned to a guard unit at Dachau, Germany. He tried to be reassigned to the Wehrmacht, but his appeal was turned down (R 59, 60; D-Ex 2). He was placed in charge of a work detail at the Agfa Gancora Works in Munich in September 1944. In the morning he counted the inmates and then went into the factory and inspected the various divisions of the works. Later, he would go back to camp. At noon he supervised distribution of the food in the factory and at 1700 hours he brought the detail back to camp. He never had anything to do with loading ammunition or supervising the loading of ammunition at the railroad yard. He never saw the prosecution witness Petro until he was confronted with him at Camp Dachau (R 60, 61, 75). He never loaded any rails (R 62). He was always on duty in the factory. He never struck any of the inmates nor did he carry a whip or riding crop (R 42, 63). On one occasion he gave a woman inmate, who had been condemned to death, money and clothing and he helped her to escape. He helped dozens of inmates to escape (R 63, 64, 77). When the end of the war was approaching, the accused received an order to evacuate the camp and to approach within 40 kilometers of Innsbruck. He gave his word of honor to the camp oldest, Mrs. De Winter-Swart, that he would stay with the inmate evacuation march until he could turn them over to the English or Americans (R 64).

On the second day he halted the inmate evacuation march at Wolfratshausen. At noon on Saturday he received an order from the storm battalion at Dachau to resume the march immediately. At 1800 hours, the same sergeant who had given him the order returned with a written order that the march resume at 1800 hours. He told the sergeant that he could immediately report that the inmate evacuation march would be taken up again. He waited until the next day when the Americans came and then took leave of Mrs. De Winter-Swart and the 500 women inmates. The next day when he went to report to the local American commander at Wolfratshausen, five former inmates came to him and said "For God's sake, don't report now because they found terrible conditions in Dachau" (R 65).

On 8 May 1945 the accused reported to the American commander at Wolfratshausen, and because of the affidavits made in his favor by the 500 former inmates, he was set free. He paid for inmates' food on the evacuation march with his own money (R 65, 72) and also purchased medicine for them (R 70). The only American prisoners he saw at Munich were negroes (R 71). On Christmas 1944 the accused gave a Christmas party for the inmates. The doctor who examined the inmates after the turnover of the inmate evacuation march to the Americans made the following report: "It is obvious, in contrast to the male prisoners, that no undernourishment can be noticed among the female prisoners" (R 65, 66).

A letter from Mrs. Minnie De Winter-Swart, a former Dutch inmate and camp oldest, of Enschede, Holland, expressing her surprise at the imprisonment of the accused inasmuch as "the Americans promised us his freedom" was introduced into evidence (R 51; D-Ex 1).

Four letters from former women inmates, who served on the accused's work detail, were introduced into evidence stating that the accused had been kind and considerate in his treatment of the inmates at the Agfa Camera Works (R 66, D-Ex 3; R 68, D-Ex 4; R 68, D-Ex 5; R 69, D-Ex 6).

Sufficiency of Evidence: The evidence establishes that the accused was in training at Camp Dachau for a few days and was later a detail

that the accused willingly or actively participated in the common design while he was stationed in Dachau. The testimony regarding the accused's activities on the railroad detail is not compatible with the weight of the evidence which establishes that the accused was never assigned to such detail. The weight of the evidence as to the accused's activities while he was a work detail leader at the Agfa Gemora Works and on the evacuation march indicates that, although he occupied an assigned position, he did not actively or passively participate in the common design to subject inmates to cruelties and mistreatment, but that he affirmatively acted in opposition to the general objectives of the common design.

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: 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.

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). However, a search of the record in the Parent Case and the record in this subsequent proceeding reveals no evidence as to atrocities committed at the out-detail Agfa Gemora Works in Munich. Furthermore there is nothing in the

month.

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.

MURRAY J. ANDROVETTE
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