

DEPUTY JUDGE ADVOCATE'S OFFICE
7706 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

18 September 1947

UNITED STATES)

v.)

Case No. 000-50-2-65

Karl KUCZMIERCZYK)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 16 May 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Karl Kuczmierecyk acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, 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 German Reich in exercise of belligerent control.

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

Particulars: In that Karl Kuczmiereczyk acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully encourage, aid, abet and 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, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The prosecution's evidence established the existence of a mass atrocity operation at the Dachau Concentration Camp

and certain of its outcamps, criminal in its nature and execution, and the connection of the accused therewith as a guard. There is also evidence of acts of gross cruelty by this accused against various inmates, resulting in death. Prosecution's Exhibit 3 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (United States v. WEISS, et al., OOO-50-2, March 1946, DWAC, hereinafter referred to as the "Parent Case", see Section V, post; R 7).

IV. EVIDENCE AND RECOMMENDATIONS:

KARL KUCZMIERCZYK

Nationality:	Austrian
Age:	23
Civilian Status:	Commercial employee
Party Status:	Hitler Youth 1938-1939
Military Status:	SS Corporal
Flea:	NG First Charge; NG Second Charge
Findings:	G First Charge; NG Second Charge
Sentence:	Death by hanging

Evidence for Prosecution: The accused entered the Wehrmacht in October 1942. In September 1944 he was transferred to the Waffen SS. He served as a guard at the following Dachau Concentration Camp outcamps: Kaufering, from September 1944 to December 1944; Landshut, from December 1944 to February 1945; and Augsburg-Iferssee, from February 1945 to April 1945. He was also a guard on the movement of 500 inmates by rail from Kaufering to Landshut in December 1944, and of 150 inmates from Landshut to Dachau in February of 1945 (R 6; I-Ex 2).

Landshut, an outcamp in the Dachau Concentration Camp chain, was activated in December 1944 with the transfer there of 500 of the strongest inmates from outcamp Kaufering (R 22). It was abandoned about 6 February 1945 (R 8, 22, 32). Most of the inmates at this outcamp were engaged in underground construction (R 8). Until the

bombardment of the station at Landshut the inmates were employed erecting barracks at the outcamp. After the bombardment they worked at the railway station (R 22) and there was also a small detail at the airport (R 37).

Toward the end of December 1944, while serving as a guard at the construction site which was located a distance variously stated as being 500 meters (R 9) and 200 meters (R 26) from the camp, the accused beat a Polish inmate named Rubin (R 9, 24, 32). Rubin had left his work to get some carrots (R 32) and was found with his pockets bulging with potatoes and carrots (R 9). The accused beat him severely with a metal filled hose or cable about 40 centimeters long and with a carbine (R 9, 32, 33). The injured man was later taken to the dispensary at the camp and it was said he died the following morning (R 10, 24). Schaja Gleitman states he went into the dispensary the morning after the beating and saw Rubin there dead (R 33). Both brothers, Schaja and Jakob Gleitman, state they observed the beating of Rubin. Witness Jakob Kleiner heard of it the night it occurred (R 24).

In January 1945 after the railroad station at Landsrut had been bombed (R 11, 33), the accused beat another Pole (R 19, 33) named Wachter for entering a kitchen where he was not allowed (R 11, 34). This man was beaten in the same manner as Rubin and with the same instruments (R 11). He, too, was taken to the dispensary and each of the three witnesses states he heard that Wachter died as a result of his beating (R 12, 18, 19, 27, 34). Jakob Gleitman says he saw the accused beat Wachter (R 11). Schaja Gleitman saw the beating of Wachter but does not appear to identify the accused as the guard who administered it (R 33, 34, 40). The other witness, Kleiner, was not present (R 27). No medical treatment was given to either Rubin or Wachter (R 20). The accused had the reputation of being a beater (R 30) and a terror to the inmates (R 38). Other inmates at the camp were mistreated by the accused (R 20) and by others (R 30, 35, 68, 70, 71). At the time the camp was disbanded it contained approximately

400 inmates. About 100 had died during its short existence, mostly as a result of beatings (R 30, 62). The accused was described as a Viennese (R 24) and as wearing a uniform with SS insignia (R 12, 23). One witness described the uniform of the accused as being "precisely the same color as the army uniform but he had SS insignia on his lapels" (R 13). Each of the three witnesses also stated that since leaving Landshut they had not again seen the accused until the day before this case went to trial (R 15, 28, 39).

Evidence for Defense: The accused took the stand and testified under oath in his own defense (R 53). He also offered the testimony of two witnesses, Robert Kientzel (R 41), who had served with him in the SS, and Wilhelm Ketzler (R 62), a former concentration camp inmate.

The accused's testimony as to his military service coincided with the prosecution's evidence (see paragraph 1, Evidence for Prosecution, supra). This additional matter was shown: In May of 1942 the accused was called into the Reichs Arbeits Dienst and he served with this organization in Russia. In October of the same year he was transferred to the Wehrmacht. When injuries and illness disqualified him for duty he was placed in the SS and sent to Camp Dachau, where he spent eight days for examination (R 53, 54). Thereafter, he was assigned to the Dachau Concentration Camp outcamps already referred to (R 54).

The accused was stationed at outcamp Landshut from 18 December 1944 to the beginning of February 1945 (R 53, 54). He served as a guard, but until Christmas of 1944 his duties kept him in the camp where he was engaged in its construction (R 54). After Christmas he served eight days as a tower guard. He was also with the railroad detail, the O.T. detail at the camp, and the airport detail (R 43, 54). The guards, including the accused, carried only rifles (R 43, 55). They had no other weapon such as clubs, sticks and the like (R 44, 55). It was forbidden to carry such instruments or to beat inmates (R 45, 55). The accused never carried any instrument for beating inmates (R 44, 55,

65). He had never beat or mistreated any inmates (R 44, 56, 65). On the contrary his treatment of them was good (R 44, 55, 56, 64). He did not beat any person and did not know of any instances where inmates were beaten by guards (R 60). The former inmate Metzler stated that the accused was always ready to help the inmates and made no distinction as to who they were. The inmates were not accustomed to such treatment from SS men and they were glad when the accused was assigned to them because they knew he was a good guard (R 64). Neither the accused nor the guard Kientzel knew or had ever heard of the two inmates named Rubin and Nachter and they knew nothing about the alleged beatings and death of these two men (R 44, 45, 56). Kientzel stated that had the incidents in question occurred he would have heard of them (R 44, 45).

Other Viennese men were guards at outcamp Landshut. One was, about 17 years of age, another older (R 56). There was some question as to when accused changed from the Wehrmacht to the SS uniform. He stated it was at the end of December 1944 when he was promoted (R 55) but subsequently corrected this statement and placed the time at the end of January (R 60). This would coincide with his promotion which took place in February 1945 (I-EX 2). The witness Kientzel states that the accused wore the Wehrmacht uniform until the end of January (R 45, 48). During this time the other guards were wearing the SS uniform (R 48, 55). There was also evidence that the deaths at Landshut resulted from a disease that had broken out there (R 45, 46).

Sufficiency of Evidence: The length of accused's service at outcamps Kaufering, Landshut, and Augsburg-Ifensee, for the periods set out, is sufficient to show his participation in the scheme of mass atrocity established in the Parent Case. Austria was a co-belligerent of Germany.

The evidence as to the accused's mistreatment of inmates relates only to the time he spent at outcamp Landshut. There is conflict in

the evidence not only on the question of the beatings and resultant deaths of Rubin and Wachter, but on such points as to what uniform the accused wore, from what causes approximately 100 inmates at Landshtut died, and many others. As to certain of these matters, the accused's German counsel requested an adjournment, before the Court made its findings, for the purpose of obtaining additional evidence (R 75). While the denial of this request by the Court was not an abuse of discretion, and therefore not error, it may properly be taken into account on the question of commuting the accused's sentence. There is in this record sufficient evidence to sustain the Court's findings. Yet there are factors that should not be ignored when examining the sentence. At the time of his alleged transgressions the accused was 20 years of age and had been transferred to the SS because he was physically handicapped as a result of injuries and illness. Documents attached to the Petitions for Clemency indicate a good background and character prior to his entry into military service. Letters reputedly sent by him after he was transferred to the SS show he was not in sympathy with that organization. In the light of these considerations it is believed the sentence should be commuted to life imprisonment.

Petitions: By letter dated 1 September 1947, German counsel for the accused states an effort is being made to obtain additional evidence and requests that final action in this case be delayed pending his filing of a Petition for Review. Petitions for Clemency were filed by Anna Kuczniarczyk, mother of the accused, 6 July 1947, and Johannes Krawarik, 8 August 1947. A series of statements including copies of letters written by the accused during the period of his service with the SS, from various people acquainted with the accused prior to his entering military service, were forwarded under date of 26 August 1947.

Recommendation: That the findings and sentence be approved, but that the sentence be commuted to imprisonment for life.

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 the Farent Case: The Court was required to take cognizance of the decision rendered in the Farent 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 Farent Case). The accused was shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Farent Case or in this subsequent proceedings, in concluding as to him that he not only participated to a substantial degree but that the nature and extent of his participation were such as to warrant the sentence commuted as recommended.

Petitions on Behalf of Accused: A number of petitions seeking clemency on behalf of this accused have been submitted by various interested parties. All of these documents have been carefully examined. They contain material which gives an insight into the accused's background, his character and his attitude, particularly towards the SS. While no Petition for Review has as yet been received, accused's German counsel, both orally and in writing, has requested that final action in this case be delayed until such time as he could obtain certain additional evidence which he desired to attach to his Petition for Review. Final action on this case has been withheld up to the present. This case was tried 16 May 1947. Petitions for Review are required to be filed within 10 days after announcement of the findings and sentence, except that for good cause shown any court may extend such period (Section 5-311.3, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Office of Military Government for Germany (U.S.), 27 March 1947). No extension

was granted by the Court nor has "good cause" been shown to the Court or to administrative officials. It is not believed that a further delay in the final disposition is justified.

Examination of the entire record fails to disclose any other error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentence be approved, but that the sentence be commuted to imprisonment for life.

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

/s/ Anthony J. Albert
/t/ ANTHONY J. ALBERT
Attorney
Post Trial Branch

Having examined the record of trial, I concur,
this 2nd day of December 1947.

/s/ C. E. Straight
/t/ C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes