

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

15 January 1948

UNITED STATES)

v.)

Franz BENDL)

Case No. 000-50-2-95

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 16-17 October 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Franz Bendl 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 LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, 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 Franz Bendl 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 LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, 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: In July 1944 the accused was drafted into the German army as a Private, and in October 1944 he was assigned as a guard at Dachau Concentration Camp. He was a guard on one of the inmate evacuation transports which left Camp Dachau during the latter part of April 1945. It was shown that he committed several acts of mistreatment including participation in the killing of at least two inmates on the evacuation transport. Prosecution's Exhibit P-Ex 6 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (United States v. Weise, et al., 000-50-2, opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post p. 7).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Franz BENDL

Nationality:	German
Age:	59
Civilian Status:	Farmer
Party Status:	None
Military Status:	Waffen SS Private
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	20 years, commencing 21 May 1945

Evidence for Prosecution: The accused, a farm laborer, was drafted into the German army in July 1944 when he was 59 years of age. He was assigned (and presumably redesignated as SS) to Dachau Concentration Camp in October 1944, where he performed light guard duty. He was the junior in rank of four guards in charge of about 100 inmates in one railroad car of one of the evacuation transports which went from Dachau to Garmisch in April 1945, the entire trip from time of loading until arrival at Garmisch taking four or five days (R 106-

Finkelstein, a former Polish inmate, testified that, in the latter part of April 1945, he was among those being assembled for an inmate evacuation transport, which was being assembled for movement into the Tyrol, and that the accused used a rifle butt to beat him severely about the legs (R 9, 10; corroborated R 48). The nature of Finkelstein's injuries were described as serious leg wounds by rebuttal witness Steiner who testified that he and another inmate, of necessity, used urine to cleanse the wounds before bandaging (R 128, 129). Finkelstein further testified that the accused took some of the very limited rations of the inmates on the transport. The accused pushed one inmate out of the car while the train was travelling at a speed of 40 or 50 kilometers an hour (R 10-13; corroborated R 32, 33, 46). Finkelstein also testified that he heard that the accused beat a Hungarian inmate on the transport so severely that he died (R 9, 10, 18-21; corroborated R 42).

Cyngisek, a former Polish inmate, testified that on 22 April 1945 at Camp Dachau the accused beat him about the head and neck with a rifle (R 31-34, 50). On the inmate evacuation transport, from Dachau to Garmisch in April 1945, 12 or 13 prisoners died from beatings and hunger in the car in which accused was a guard (R 35, 46, 47). Elotschacher, a former SS guard who was on the same transport to Garmisch with accused, testified that he heard some inmates died on the transport (R 89). Basler, an SS guard on the inmate evacuation transport, testified that some deaths occurred on the transport (R 104, 105). Steiner testified that the accused beat his cousin, a Polish inmate, so severely that he died within 10 minutes after being removed from the inmate evacuation transport (R 130). In his testimony the accused admitted his presence as an SS guard at Camp Dachau and on

the inmate transport (R 109-111). Two extrajudicial sworn statements of the accused were admitted in evidence in which he admitted beating to death a considerable number of inmates at Camp Dachau and that he pushed one inmate off the inmate evacuation transport and that 30 or 35 inmates died from starvation on the transport (R 51, 52; P-Exs 7, 8). The accused testified he received no promises or threats with reference to his signing the 1946 statement, but that preceding the 1945 statement in his own handwriting he was beaten by a German with no American personnel present (R 118, 121).

Evidence for Defense: Schneider, who was an SS First Lieutenant commanding the 5th Guard Company at Camp Dachau to which the accused was assigned, testified that the accused never took part in any mistreatment of inmates (R 66-69). Geigl, who was an SS Master Sergeant in the 5th Guard Company, testified he did not know of accused mistreating any inmates (R 74-79). Bletschacher, a former SS guard at Camp Dachau, testified that he never knew of the accused beating any inmates or taking inmates to the crematorium and that he knew of no cruelties committed by the accused on the inmate evacuation transport from ^{Dachau to} Garmisch in April 1945 (R 81, 85). In his testimony, the accused denied mistreating inmates at Camp Dachau or on the inmate evacuation transport (R 110-113). Bletschacher testified that the accused described to him a severe beating he received at Innsbruck before he signed the first statement (R 51, 86, 92; P-Ex 7). The accused also described the beating to witness Essler (R 101-103, 107). Geigl also testified that the accused told him he had been brutally beaten after his arrest (R 76-78). The accused testified that he signed his first confession after being severely beaten and the second confession because he believed he would receive a similar beating if he did not sign (R 114-116).

Sufficiency of Evidence: The evidence given by the witnesses who confronted the accused and who were subjected

to cross-examination, when taken alone, is sufficient to sustain and warrant the findings of guilty. 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.

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 know of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file LG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). The accused was shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent 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 imposed.

Extrajudicial Statements of the Accused: The Court admitted into evidence two extrajudicial sworn statements of the accused (R 51, 52; P-Exe 7, 8) and also evidence tending to establish that the accused was subjected to or feared mistreatment at the time these statements were made.

War crimes tribunals may admit any evidence which the tribunal may deem to have probative value (Section 5-329, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947; Section 270 c (5), "Manual for Trial of War Crimes and Related Cases", 15 July 1946). Subparagraph c (4), Section 270, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended 1 February 1947, provided that war crimes tribunals will not require foundation evidence to establish that sworn statements offered in evidence were voluntarily procured, but on the other hand will presume subject to being rebutted by competent evidence that the sworn statements were voluntarily made.

In war crimes trials the voluntariness of sworn statements and confessions is of necessity a problem for the Court. It does not appear that it failed to properly consider all the evidence bearing upon whether the extrajudicial sworn statements or confessions of the accused were voluntary and whether they were made under circumstances which might have induced the accused to state untruths. Moreover, it does not appear that the Court assigned inappropriate probative value thereto.

The Court did not err in admitting the extrajudicial sworn statements or confessions of the accused in evidence or in considering them for such probative value as they might have. In any event the findings and sentence are amply supported by other evidence.

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.

GEORGE M. LENTZ
Captain 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