

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

3 February 1948

UNITED STATES)

v.)

Case No. 000-50-2-98

Anton BITTRUF)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 29 August to 3 September 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Anton BITTRUF, 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 four Czechoslovakian 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.

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

Particulars: In that Anton BITTRUF, a German national, did, at or in the vicinity of Dachau, Germany, in or about December 1941, wrongfully encourage, aid, abet and participate in the killing of approximately 40 Polish, French and Russian 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.

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

Particulars: In that Anton BITTRUF, a German national, did, at or in the vicinity of Dachau, Germany, in or about July 1944, wrongfully encourage, aid, abet and participate in the killing of approximately 300 French 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 was a Waffen SS master sergeant having been transferred from the Allgemeine SS which he joined in 1933 (R 105). He served in Dachau Concentration Camp from May 1934 until March 1945, except for brief periods when he was hospitalized. The evidence as to Charges I, II and III and the particulars will hereinafter be referred to as Incidents Nos. 1, 2 and 3, respectively.

Incident No. 1. There was evidence indicating that the accused fired 20 or 22 shots into a group of Czech inmates being unloaded from a trans-

Incident No. 2. There was evidence indicating that in 1941 and 1942 the accused, as a member of an SS firing squad, participated in the execution of Poles, Czechs, and Frenchmen on several occasions.

Incident No. 3. There was evidence indicating that in August 1944 a transport of 1500 to 1800 French inmates arrived at Dachau Concentration Camp, 300 of whom were beaten to death on the roll call square. One witness testified that he saw the accused participate in beating these French inmates.

Little weight has been given to the testimony of the prosecution witnesses Karl Kraemer and Karl Geiger.

IV. EVIDENCE AND RECOMMENDATIONS:

Anton BITTRUF

Nationality:	German
Age:	35
Civilian Status:	Basket Maker
Party Status:	Allgemeine SS
Military Status:	Master Sergeant, Waffen SS
Plea:	NG Charge I; NG Charge II; NG Charge III
Findings:	G Charge I; G Charge II; G Charge III
Sentence:	Death by hanging

Evidence for Prosecution: The accused joined the Allgemeine SS on the first of November 1933 and arrived at Dachau Concentration Camp in May 1934. During the months of August and September 1939 he was in charge of the armory (R 99, 100). From August 1941 until October 1942 he was in charge of the detail in block 29, engaged in painting, woodwork and basket weaving except for a short period of time when he was hospitalized at the Schwabinger hospital in Munich, Germany. The accused was employed in the mail censorship department from October 1942 until March 1945, when he was sent to the front (R 101, 102).

Incident No. 1. Habel, a former inmate of Dachau Concentration Camp, testified that a railway transport of several hundred Czech nationals

arrived at Dachau Concentration Camp in September 1939 and that he heard that there were dead prisoners among them (R 43, 44). Geiger, a former inmate, testified that in September 1939 a transport consisting of Czechs and Poles arrived at Dachau Concentration Camp and that the accused was posted as a guard by the headquarters staff during the unloading. When the first car was unloaded some of the people were pushing and the camp commandant gave orders to shoot. The accused fired between 20 and 22 shots into the inmates from a very short distance (R 29). The witness further testified that he saw four dead bodies on this occasion; that some had chest wounds and others head wounds; and that he was standing between 15 and 18 meters away from where the accused was firing his machine pistol (R 30).

Kraemer, a former inmate, testified that in September 1939, while a large transport of Poles was being unloaded, the SS guards shot and beat them; that the accused shot at the prisoners with a machine pistol; and that he saw about four dead (R 10, 11, 15).

Incident No. 2. Kraemer also testified that he saw the accused in 1941 and 1942, as a member of an SS firing squad, participate in the execution of Poles, Czechs and Frenchmen on several occasions (R 11, 13, 19).

Incident No. 3. Kraemer further testified that between 15 and 18 August 1944 a transport consisting of approximately 1500 to 1800 French inmates arrived at Dachau Concentration Camp, and that while they were being marched to the roll call square the ^{SS} guards, including the accused, beat the inmates severely, using the butts and barrels of their rifles, resulting in a loss of at least 300 inmates (R 13, 14, 24). About 1500 to 1800 of these inmates were assembled on the roll call square and about 300 of them were beaten to death by the accused and other SS men using either the butts or barrels of their rifles (R 14, 15, 24). Kraemer was about 20 feet distant from roll call square on this occasion (R 15).

Evidence for Defense:

Incident No. 1. The accused testified that he never shot into a crowd of Czech prisoners in August or September 1939 (R 101).

Witness Geiger testified that although he was sure of his identifica-

tion of the accused as the shooter he made special inquiries to be quite sure. He could not believe that the accused would commit such a deed (R 34).

Incident No. 2. The accused denied that he participated in the execution of Polish, Czech and French inmates in 1941 (R 104).

Incident No. 3. Schwaemmle, a former SS man, testified that the accused was employed in the mail room from 1 March 1933 until February 1945; that the accused never would have permitted himself to participate in the killing of 300 French nationals in July 1944; and that if the accused had been absent before noon of August 15 to 18, 1944, long enough to participate in the beating or killing of 300 French nationals, the witness would have learned of it (R 56). He never heard of the accused or any other SS man killing inmates in Dachau Concentration Camp (R 59). The testimony of witness Schwaemmle was corroborated by Schwarz, a former SS man (R 69). Fuesdel, a former inmate, testified that the accused was not known as a beater and that he never heard of his having beaten or killed any inmates (R 76, 78).

Gensling, a former inmate, testified that he never saw the accused beat or mistreat a prisoner nor did he ever hear any inmates say anything against him.

Nett, a former inmate, testified that the accused was not feared in the camp nor did he ever see him beat or mistreat any inmates (R 84).

Zimmermann, a former inmate and capo, testified that he never saw or heard of the accused beating prisoners (R 90).

In an unsworn pretrial statement a Franciscan brother, Mahler, stated that the accused always acted humanely toward the inmates and nothing unfavorable ever became known in Dachau Concentration Camp about him (R 92; D-Ex 1).

The accused testified that he did not know of any inmates in Dachau Concentration Camp being killed and never took part in any of the beating punishments that were administered (R 105, 106); and that due to his employment in the mail room it was impossible for him to see what went on in Dachau Concentration Camp or to have participated in any of the offenses

committed there (R 106). He further testified that he never took part in any executions as a member of the headquarters staff (R 107); and that he never received an order to beat a prisoner and never did so (R 107).

Sufficiency of Evidence: Apart from the questionable credibility of two of the prosecution's witnesses the evidence adduced lacks persuasiveness and is insufficient to support the findings of the Court. The findings of guilty are not warranted by the evidence.

Petitions: A Petition for Review was filed by defense counsel, Major Olaf J. Tolms, 4 September 1947. Petitions for Clemency were filed by Reverend Dr. Wins, 27 September 1947; Mayor of Johannistal, Germany, 4 October 1947; Andreas Bittruf and Anna Bittruf, parents of accused, 10 December 1947; and Maria Bittruf, 10 December 1947.

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.

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.

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