

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

26 August 1947

UNITED STATES )

v. )

Willi RIEKE, et al. )

Case No. 12-1685

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 4-13 February 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Willi RIEKE and Karl SCHENK, German nationals, did, at or near FAUERBACH, Germany, on or about 28 July 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be 2nd Lt. Peter MANDROS, Jr., who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On 28 July 1944, an American officer flier, identified as Peter Mandros, Jr., ASN O-718517, was apprehended near Bauerheim, Germany, and was delivered to the village mayor's office. Very soon thereafter the accused RIEKE and SCHENK arrived in an automobile. RIEKE went inside, and immediately came out with the flier. The automobile was driven to a small bridge over the Usa River on the outskirts of Fauerbach, Germany, where it stopped and RIEKE with the flier got out. Immediately RIEKE shot the flier, and after the flier fell beside the car, RIEKE fired more shots into the flier's head or neck. RIEKE drove away in the car toward Fauerbach. The flier still showed signs of life. RIEKE returned within ten to twenty minutes and fired another shot into the head of the flier. The body was taken to



the cemetery at Friedberg, Germany, where it was buried the next day. Accused RIEKE testified that the flier was shot while attempting to escape. He further attempted to raise the issue that the flier may have been finally killed by Ortsgruppenleiter Demme.

IV. EVIDENCE AND RECOMMENDATIONS:

1. WILLI RIEKE

Nationality:	German
Age:	56
Civilian Status:	Sports Instructor
Party Status:	Member NSDAP; SA Colonel
Military Status:	Commander Kreis Volkssturm
Plea:	NO
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: Prosecution witness Keller, a farmer, testified that late in July 1944, an American bomber crashed near Bauernheim, Germany, that he apprehended a flier, who was uninjured and offered no resistance, and took the flier to the village mayor's office. The flier was left with the mayor's wife (R 14-15). As witness stood outside the mayor's house, two men in SA uniforms drove up in a car. The one driving was armed with a pistol and the other with a carbine. The driver stopped the car, got out, went inside and brought the flier out. The flier was placed in the front seat of the car with the driver, and the other SA man with the carbine got into the rear seat. The car then drove away (R 15-16). The flier was not armed (R 23).

The co-accused SCHENK by his extrajudicial sworn statement after telling of picking up the flier at Bauernheim, said:

"Close before Fauerbach we stopped—after RIEKE had driven close to the right edge of the road—RIEKE and the flier alighted. The flier remained standing beside the car—I then heard RIEKE load his pistol—At that moment I saw the flier stand before me with raised hands. At the same moment I heard—two or three shots



go off and I saw the flier, who was wounded in the left breast, fell to the ground. RIEKE then placed himself beside the flier lying on the earth and fired two or three shots in his head behind the left ear (P-Ex 1A pp. 1-2).

"When driving back to Friedberg he told me: 'SCHENK, when you are asked now in the office, tell them that the flier was shot while escaping or while trying to escape.'" (P-Ex 1A p. 3).

SCHENK'S version of the shooting is corroborated by eyewitness Stoppel (R 29-33, 38), Diemer (R 63-65), Doenges (R 94, 102-103), Linck (R 112-114), Kratz (R 129-135), Rohs (R 153-155), and Heinrich Geppert (R 175). Witnesses Stoppel, Diemer, Linck, Kratz, and Rohs testified that the wounded flier still showed signs of life when accused RIEKE drove away in the car after the shooting (R 32, 64, 114, 137, 155).

Accused RIEKE left in the car toward Feuerbach and Friedberg, and came back from that direction after ten to twenty minutes, according to four of the witnesses (R 34-35, 67, 95, 156). Witnesses Diemer and Doenges saw the accused RIEKE, after he had returned to the scene, stand over the body of the wounded flier and, after his pistol had misfired twice, adjust the pistol and fire a shot into the flier's head (R 70, 96).

Witness Doenges testified that there was no basis for saying that the flier attempted to escape (R 104). This was corroborated by Diemer and SCHENK (R 92 and P-Ex 1A p. 2). The body of the flier was dead, but still had "nervous motions" when delivered to the cemetery at Friedberg around noon on 28 July 1944 (R 379). On the body were two identification tags; "—with the number NO-718517 AB GO and 'Peter Mandros'" (R 221). The official police report identifies the body: "American flier, Peter Mandros, Jr., ASN O-718517 T 43-44 AB GO" (P-Ex 4A). The autopsy report, made after exhumation, states that death was caused by bullet wounds in the head (D-Ex 1).

Eight of the witnesses and the co-accused SCHENK testified that there were no low flying planes in the vicinity on the day of the killing (R 26, 32-33, 58, 71, 95, 96, 114, 138, 145, 153, 224-226; P-Ex 1A p. 2).



On rebuttal witnesses, Stoppel, Kone, Linck, and Aratz, who were present, testified that accused RIEKE did not bandage the flier (R 397, 404-405, 417, 418). Two police officers who examined the body at the morgue testified that there were no bandages (R 410-411, 412). Widczisk also testified that there was no cover over the upper part of the body while it was lying at the morgue (R 414). Witness Heinrich Gappert saw accused RIEKE and the Ortsgruppenleiter Damme speaking with Wehrmacht officers Captain Engelhardt and Lieutenant Hillmann at the scene after the shooting, and that no army truck was then present; that the only vehicle present was the car of the accused RIEKE (R 415).

Evidence for Defense: Willi Rieke, son of the accused, testified that his father was, above everything, a sportsman and believed in fair play. He further testified that accused was friendly toward Americans, never expressed any bitterness toward enemy fliers or the air war, that accused believed the fliers only obeyed orders, and that his opinion was never changed by the Party propoganda (R 245-250). Four defense witnesses testified to the good character of accused, that he was always "fair", that he was strict and soldierly, but never unjust and never brutal (R 254, 260, 263, 268).

Accused took the stand in his own behalf but was not sworn. He testified that he picked up the flier to deliver him over to the Wehrmacht at Friedberg (R 276-280). On several other occasions he had picked up fliers and delivered them to military authorities and to hospitals (R 281-283). As accused and the flier passed a burning plane, the flier pushed the car door open (R 283-284). Approaching Fauerbach, accused saw that fighter planes were pulling down from the bomber formations in the vicinity of Bauernheim, Friedberg and Fauerbach. Accused pulled the car to the right side of the road seeking cover under some trees. Before the car stopped completely, the flier got out by himself. Accused said, "Stop, stay here". Accused testified that he got out on left side of car, but,

"He continued moving. He didn't stand still, and he turned around, exposing the left side of his body. I grabbed my pistol and fired one, possibly two, but I believe only one shot, in him. Then the flier threw up his arms and fell down."



The wound was "Below the collar bone and to the left of the back muscle" (R 284-285). Accused bandaged the wound and turned the flier on his right side (R 286).

An air raid protection man at the scene said that there was another injured flier at the plane. Accused told SCHENK to "Stay here for a moment. I'll be back right away". He turned the car around and drove back to the plane (R 287). He found no one there, so he turned around and went back to give further aid to the flier he had wounded. When he got back, an army truck was parked in front of the flier with a soldier in uniform standing behind the truck. Ortsgruppenleiter Damme stood next to the soldier.

Accused further testified:

"I said to the soldier, 'Open up the tail gate of this truck immediately, and take this man to the hospital'. And I said to Damme, 'You know the way to the hospital. Please go along with this man so I will know where to find him.'"

The flier was placed in the truck. The soldier got behind the wheel, and Damme in back with the flier. The truck went through Feuerbach to Friedberg (R 287-288). After the truck had left, accused fired one shot into the grass to clear his pistol. This accused and SCHENK then drove to Friedberg, and this accused reported by telephone to higher headquarters (R 289).

Later Damme told this accused that the flier was dead and had been taken to the cemetery. Accused then directed Damme to accompany him to the cemetery (R 290). They saw the body at the morgue, but the head and upper part of the body were covered (R 293). While driving away from the cemetery, Damme said to accused, "Now at least I have avenged my son" (R 294).

Accused denied that he shot the flier in the neck or in the head, or while he was lying on the ground (R 296, 327-328).

Accused testified that he would never have executed an order to kill a flier according to the "Goebbels idea". Near the end he refused to obey an order to commit his Volksturm unit to action (R 301). He never shot any other flier and never mistreated anybody, but always helped where



possible (R 302). He gave as a reason for stopping the car that planes came down to a height of 500 meters (R 318). He did not see Captain Engelhardt or Lieutenant Hillmann at the scene of the shooting (R 334). He denied that, prior to 28 July 1944, he had ever heard of Goebbels' propaganda or of any orders concerning the treatment of captured allied fliers (R 342).

Sufficiency of Evidence: The defense that the flier was shot because he tried to escape is clearly refuted by the overwhelming weight of the testimony. The defense's claim that accused stopped the car because of low flying planes is shown to be untrue by the unanimous testimony of all witnesses who appeared at the trial. Accused was positively identified by eyewitnesses as having fired the shots that killed the flier prisoner of war, and every element of the crime of murder was clearly proven.

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

Petitions: Under date of 14 February 1947, Defense Counsel filed in behalf of the accused RIEKE a Petition for Review, same being in the nature of a formal petition and is attached to the record.

Under date of 12 August 1947, the accused RIEKE has filed a letter in which he urges additional argument that the Ortsgruppenleiter Damme, mentioned in the record, finally killed the American flier of whose murder the said accused was convicted. He attaches to the said letter a sworn statement by one Werner Cherubin of Wisselsheim, Germany, to whom the said Damme made certain statements which he believes might infer the guilt of Damme. Said documents are attached to the record.

Neither of the above mentioned documents present anything for additional consideration in this Review.

Also attached to the record is certain correspondence, consisting of an Internal Route Slip dated 25 July 1947, from Chief, Post Trial Branch, and a letter dated 11 August 1947, from Defense Counsel, in



which it is intimated that the defense in this case had requested a delay in the review of the case for the purpose of allowing the defense to submit additional evidence. However, no statement is made as to when such additional evidence will be submitted, except that it is expected within a very few days. Also no indication is given as to what the nature of such expected additional evidence may be.

More than six months have elapsed since 14 February 1947, when the trial was finished, and it is felt that sufficient and ample time has been allowed for the filing of any petitions or motions by the defense and as well for procuring and filing of any possible additional evidence. It is felt that further delay is not warranted and that the Review and Recommendations should be closed, and that such action does not violate or prejudice any right of the said accused.

No Petitions for Clemency have been filed.

Recommendation: That the findings and sentence be approved.

2. KARL SCHENK

This accused was acquitted (R 488).

V. QUESTIONS OF LAW:

Jurisdiction: No question of jurisdiction was raised at the trial. It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Admissibility of Extrajudicial Statement of an Accused as Evidence Against a Co-Accused: Counsel for the accused RIEKE objected to the admission in evidence of the extrajudicial sworn statement of the co-accused SCHENK (R 7-11),

It appears to be well settled that such extrajudicial statements are admissible in evidence in War Crimes Trials as against a co-accused. (U.S. v. Fritz Pohls, et al., Case No. 12-1745, approved 11 June 1946).

Admission of a Part Only of a Written Instrument: Defense Counsel objected to the admission in evidence of the extrajudicial sworn statement of the accused SCHENK, less certain marked parts thereof which



were not introduced by the Prosecution (R 7-11).

It is fundamental that a party to a legal proceeding may introduce into evidence such parts of a written instrument as he may deem relevant to his case. However, the other party may then, if he so desires, introduce other parts, or all of the remainder of the instrument. In this case the Defense made no offer to introduce into evidence the parts of such statement omitted by the Prosecution. Because of such failure, the Defense is in no position to complain of the omission of parts of such statement from the 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.

/s/V. H. McCLINTOCK  
V. H. McCLINTOCK  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur,

this 7th day of October 1947

/s/C.E. STRAIGHT  
C.E. STRAIGHT  
Lieutenant Colonel, J/CD  
Deputy Judge Advocate  
for War Crimes