

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER

December 1946.

UNITED STATES)

v)

Eugen KATZENMEIER,
a German National.)

Case No. 12-1848

REVIEW AND RECOMMENDATIONS OF THE
DEPUTY THEATER JUDGE ADVOCATE
FOR WAR CRIMES

1. TRIAL: The accused was tried before a General Military Government Court which convened at Dachau, Germany, 7 October 1946 and continued its sessions through 8 October 1946. The court was appointed by paragraph 3, Special Orders No. 238, Headquarters, United States Forces, European Theater, AIO 757, dated 26 August 1946 and amended by paragraph 25 of Special Order 242, dated 30 August 1946, same headquarters.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the Laws of War:

Particulars: In that Eugen KATZENMEIER, Heinrich ERB and Ernst Heinrich LIND, German nationals, did, at or near Giessen, Germany, on or about 11 September 1944 wilfully, deliberately and wrongfully, aid, abet, encourage and participate in the killing of an unknown member of the United States Army, then a surrendered and unarmed prisoner of war in the custody of the then German Reich.

To this Charge and Particulars the accused KATZENMEIER pleaded not guilty and was found guilty.

3. SENTENCE: The court by at least a two-thirds vote of the members present at the time the vote was taken concurring, sentenced the accused KATZENMEIER to be imprisoned for life at Dachau or at such other place as may be determined by competent military authority. The other accused named in the charge sheet, Heinrich ERB and Ernst Heinrich LIND have not as yet been apprehended, and were not tried at this time.

4. DATA AS TO ACCUSED: Eugen KATZENWEIER is a German national, forty (40) years old, and a resident of Giessen, Klein-Linden (R 6). He is married and the father of three children. In civil life he was a mechanical engineer (R 64). He was also a member of the NSDAF and held the position of Kreisorgmann on the German Labor Front. He was drafted into the German armed forces in October 1939 and served until January 1944 when he was discharged because of wounds received on the Russian Front (R 64), and was apparently given this civilian position because of his disability (R 68). He was the recipient of the Iron Cross, first class, the Iron Cross, second class, and the Combat Infantry Badge (R 111).

5. RECOMMENDATION: That the sentence of accused Eugen KATZENWEIER be approved by the Theater Judge Advocate under the provisions of paragraph 8d, Letter, Headquarters, United States Forces, European Theater, file 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", dated 14 October 1946.

6. EVIDENCE:

a. For the Prosecution: On or about 11 September 1944 a grounded allied pilot was being taken from the Burgemeister's office in Klein-Linden to the hospital in Giessen by one Emil Valter MUHL, a witness in this case (R 9). After proceeding 50 or 60 meters (R 12) a car drove up which contained three men. One was dressed in the uniform of an officer of the Hitler Youth and the others were in civilian clothes, one of whom was this accused (R 9, 10). This accused addressed the witness saying, "Go away, this man belongs to us" (R 9), and struck the prisoner, who was identified as an American (R 9, 10). The prisoner was then hustled into the car which drove off (R 11). A pre-trial statement of the accused was offered and was admitted into evidence over the protests of the defense (Tros. Ex. 5, Tros. Ex. 5A; R 24). In this statement accused said that he was ordered by the Kreisleiter BRUECK to pick up an American pilot who was in custody in the office of

the Burgomeister in Klein-Linden, and to bring him to the Kreisleitung. The co-accused ERB and LIND accompanied him. He then described how they obtained the prisoner from a German sergeant (feldwebel). They then proceeded to the Kreisleitung, where the Kreisleiter ordered them to kill the prisoner. The three proceeded to a nearby wood where ERB, LIND and the prisoner got out of the car. KATZENMEIER turned the car around, got out also and followed the other three. The prisoner made an attempt to escape but KATZENMEIER took hold of him. ERB then struck the prisoner and felled him with several blows. LIND fired two or three shots at the prisoner at close range and the trio left the scene (R 5, 29).

The fact that the prisoner was taken from the Wehrmacht guard was corroborated by an independent witness (R 32 et seq).

Prosecution's Exhibit 10 (R 39) was the sworn statement of one Stephan LANGE. In September 1944 he was employed in the cemetery of Giessen. He stated that an American soldier was buried there on 11 or 12 September 1944. Prosecution's Exhibit 11 (R 39) was an original registry of burial which shows that an American flyer was buried on 19 September in the place described by LANGE; Prosecution's Exhibit 11A (R 39) is a permit for burial of an American soldier, dated 19 September 1944, and Pros. Ex. 11B is an order of burial for an unknown American flier dated 23 September 1944. These three exhibits were apparently original documents taken from the official city records.

Prosecution's Exhibit No. 12 was the report of an Army pathologist who examined the body found in the cemetery plot described in Prosecution's Exhibit 10. It was quite lengthy and a full review will not be attempted here. Three wounds were shown, two in the head and one in the chest. The chest wound and one head wound were not thought to have been fatal. The second head wound was considered possibly to have caused instant death.

Prosecution's Exhibits 9 and 9 A were sections of a human skull, showing holes therein, and which were identified by Prosecution's

Exhibit 12, which stated: "A portion of both parietal bones including the above described defect is removed and retained as 'Exhibit A'". These exhibits were placed in sealed manila envelopes and signed by the pathologist.

b. For the Defense: The first two defense witnesses did not testify to anything material or which had any direct bearing on the guilt of the particular accused. The second witness ERB, stated that there had been some ill-feeling between KATZENMEIER and the kreisleiter (R 53). KATZENMEIER further was lame and always walked with the aid of a walking stick (R 53). Furthermore, the kreisleiter had ordered that captured allied fliers were not to be protected from attacks of the local populace (R 55). KATZENMEIER disagreed with these orders (R 55) .

The next witness, one Theo FRITZ, testified to a conversation he had had with the kreisleiter BRUECK, in which the latter stated that KATZENMEIER was not in sympathy with some of his orders. He (KATZENMEIER) had further showed his displeasure in public and as a result BRUECK had decided to file charges against him (R 59).

The accused then took the stand in his own defense. One day during September 1944 the kreisleiter ordered him to come to his office with the official car of the Labor Front office (R 65). He reported there and found ERB and LIND. BRUECK, the kreisleiter, then ordered him to proceed to Klein-Linden and to pick up a captured American flier. The prisoner was then to be transported to the kreisleitung, where ERB and LIND would know what to do. The trio proceeded in the car as ordered and took custody of the prisoner substantially as described by the Prosecution's witnesses, with the exception that the accused testified that he drove the car and turned it around while ERB and LIND took custody of the flier (R 66). The car then went to the kreisleitung. KATZENMEIER reported to the kreisleiter, who told ERB and LIND, "Act according to my orders". ERB then directed the accused to drive in the

direction of the caserne on Licherstrasse (R 68). After passing the caserne KATZENMEIER was told to drive to the parade ground and to pull up and stop on the left side of the road, which he did. A path there led into the woods. ERB and LIND got out and took the flier with them. KATZENMEIER turned the car around and got out himself (R 69). As the accused approached the others the prisoner started to run away. The accused grabbed the flier and stopped him momentarily. The exertion caused KATZENMEIER to fall down on account of his injured leg. His efforts were sufficient to cause the escaping flier to pause long enough so that ERB was able to strike him and knock him to the ground (R 70). Before KATZENMEIER could regain his feet he heard two shots, and saw that LIND fired the second shot. The flier lay on the ground, shot through the head, apparently dead (R 47). KATZENMEIER walked over to the group and gave vent to his displeasure at the way the whole affair had been handled. The group then returned to the Kreisleitung where the accused made a like remark to the Kreisleiter (R 71). The accused then testified that at some prior date the Kreisleiter had "demanded" that all shot down fliers should be shot but that he (KATZENMEIER) was not in sympathy with this order (R 72). On cross-examination he was questioned relative to a pre-trial statement wherein he said that all three members of the group, himself, ERB and LIND got out of the car and took the flier into their custody, contrary to the manner he had described in his direct examination. He attempted to explain that this discrepancy was due to his poor physical and mental condition as of the time the statement was taken (R 75). He was further questioned as to certain discrepancies between the facts as given by him in his pre-trial statement and his direct examination (R 76, 77, 78, 79). During his examination by the court he stated that the reason he left the car at the parade ground was that he was afraid that something was about to happen, and he wanted to prevent it (R 95).

The next defense witness was KARL HAHN, a former temporary province chief for the German Labor Front (R 100). He testified that he was

formerly a superior of the accused (R 101). He also testified to the ill-feeling between the accused and the Kreisleiter, due to KATZENMEIER's basic sympathetic feeling as to how workers should be treated, which was in conflict with BRUECK's ideas on the same subject (R 101). KATZENMEIER finally lost his position because of these differences of opinion (R 102). He further stated that KATZENMEIER was generally held in very high regard by the public (R 103).

7. JURISDICTION:

The record of trial and the nature of the Charge and Particulars indicate that the court had jurisdiction. The question of jurisdiction is discussed at length in the case of United States v. NOACK et al (No. 12-472) and a complete review will not be attempted herein. Reference is therefore made to that case. It was concluded there that to give jurisdiction of a War Crimes Case the following steps must be taken in conformity with current directives:

- a. A proper charge must be filed.
- b. A court having jurisdiction of the offense must be appointed by proper authority.
- c. The actual case must be referred for trial.

Certain steps have been taken herein:

- a. A charge dated 11 February 1946 is included in the record as more fully set out in paragraph 2, supra.
- b. A general military government court has been appointed by the proper authority (See Pros. Ex. 4; R 15).
- c. A letter has been placed of record (dated 7 October 1946 from Deputy Theater Judge Advocate for War Crimes) referring the present case for trial (Pros. Ex. 4; R 15).

The court thus has jurisdiction of the person and subject matter to be tried. (See U.S. v. NOACK et al, No. 12-472; letter of 11 July 1946, AG OOO.5 WCB-ACC, subject: "Trial of War Crimes Cases", paragraphs 5 and 6, the directive in effect at the time of this trial).

The reviewer has noted that the court met as an "Intermediate Military Government Court" (R 1). However any jurisdictional errors which may have originally been in the record may be assumed to have been corrected by the subsequent introduction of prosecution's Exhibit 4 into the record. Paragraph 3 of Special Order No. 238 (26 August 1946), taken together with the charge sheet and the above-mentioned letter of 7 October 1946 are deemed sufficient for this purpose.

8. DISCUSSION:

A close perusal of the record fails to show any material error which may be considered prejudicial to the case of the defendant. There are some interlocutory rulings by the court which will be mentioned briefly.

a. During the course of the trial the prosecution offered in evidence a sworn written pre-trial statement of the accused. The statement was admitted over the strenuous objection of the defense (R 28). It is believed that this was the proper ruling. The question of the introduction of pre-trial statements at the trial of War Crimes cases has been fully discussed in the case of United States vs. NOACK et al (No. 12-472; see also MCR, Title 5 paragraphs 5-354.1, 5-354.2, 5-354.3). For a complete discussion of this point reference is made to the above citations.

b. Objection was made to the introduction of prosecution's Exhibits 9 and 9A. These were two pieces of human skull with holes therein, and which were allegedly taken from the victim in whose homicide the accused herein is charged with having participated. The evidence was rightly admitted (R 45). Courts must be particularly careful in admitting evidence of this kind, since it is highly prejudicial to the accused and if not properly identified, may prove nothing. Material error may thus creep into the record. In the present case the exhibit may be considered to have been sufficiently identified by the pathologist's report (Proc. Ex. 12; R 42). It must be realized

however, that very little of probative value is put forward by the introduction of this exhibit.

c. At the end of the prosecution's case the defense moved for a finding of not guilty (R 45). The motion was rightly overruled. A thorough perusal of the record discloses that a prima facie case had been made out by the prosecution. It is an elementary principle of law that this is all that is required.

Other interlocutory rulings were made by the court but mention of them is not believed necessary in this review. A cursory perusal will show that the conclusions were properly reached.

9. SUFFICIENCY:

This case, as hereinbefore shown, involves three accused of whom only one is now on trial. It deals with an apparent cold blooded murder. The prosecution's case shows that KATZ MEIER set out with his co-accused took the victim from a duly constituted ward and brought him to the Kreisleitung. Here the Kreisleiter relieved the trio of some of the victim's equipment and ordered them to take him outside of town and shoot him (Pros. Ex. 13; R 68). This was done. KATZENMEIER drove the car and from the above confession they acted together and conjointly. Such being the case each shared in the consequences and may be said to be equally guilty. Even though this accused did not actually pull the trigger which snuffed out the victim's life, his actions made this result possible. The record thus shows that the court would have been amply justified in awarding a capital sentence subsequent to such a finding of guilty. It can therefore be concluded that the evidence is sufficient to sustain the finding and sentence.

10. CLEMENCY:

No petitions for clemency have been received on behalf of this accused. A review of the record does not indicate that, under the circumstances, any clemency would be justified, and consequently none is recommended.

II. CONCLUSION:

Upon completion of the review of the evidence herein presented relative to the accused, it is recommended that the findings and sentence of life imprisonment of the accused KATZENBACHER, be approved.

Forms of Action designed to carry out the foregoing recommendations into effect, should they meet with approval, are submitted herewith.

/s/ David I. Hurvey
/t/ DAVID I. HURVEY,
Attorney,
Post Trial Section.

Having examined the record of trial I concur:

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

HEADQUARTERS
US FORCES, EUROPEAN THEATER

AG 383.6 JAG-AGO

AIO 757
16 January 1947

SUBJECT: United States v. Eugen KATZENMEIER et al, (Case No: 12-1848).
TO : Commanding General, Third US Army Area, AIO-403, US Army.

Reference is made to letter, this Headquarters, AG 013-37
CAI-AGO, dated 11 July 1946, subject: "Designation of Prison for War
Criminals," and to the inclosed copies of the Order on Review in the
above entitled case as to accused Eugen KATZENMEIER.

Upon compliance with the Order on Review the certificate
below will be completed and returned to the Deputy Theater Judge
Advocate for War Crimes, 7702 War Crimes Group, AIO 178, US Army.

By Command of GENERAL McNARNEY: ...

/s/ George F. Herbert
/t/ GEORGE F. HERBERT
Colonel AGC
Adjutant General

CERTIFICATE OF COMPLIANCE

The above sentence imposed on Eugen KATZENMEIER, a German national,
was put into execution at The War Criminal Prison, Landsberg, Germany,
on 26 Oct 1946, at 1200.
(Date) (Hour)

/s/ Collin J. Boyd
/t/ COLLIN J. BOYD
Maj., INF
Prison Officer

(Signature and Rank)

WAR CRIMES PRISON
Landsberg

(Organization)

/s/ Joseph H. Williams
/t/ JOSEPH H. WILLIAMS
1st Lt. INF
Assistant Prison Officer

(Countersignature and Rank of
Witnessing Officer)

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