

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

3 October 1947

U N I T E D S T A T E S )

v. )

Julius LASSAK )

Case No. 12-1871-1

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 9-10 June 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Julius LASSAK, a German national, did, at or near GIESSEN-WIESECK, Germany, on or about 3 October 1944, wrongfully encourage, aid, abet and participate in the killing of three members of the United States Army, believed to be Franklin ADAMS, Wallace BENGSON and Edmund DORNBURGH, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On 3 October 1944, three members of an American bomber crew parachuted to earth in the vicinity of Giessen-Wieseck, Germany. They were captured and taken to the police station at Wieseck. The accused, who was the police director for that area, arrived at the police station and ordered the chief of police to turn the flyers over to the Party. After the accused had left, Wilcke, Sonntag, Gerich and Schartt arrived at the police station and demanded that the three captured flyers be turned over to them as they were under orders from the accused. The four men, acting on orders from the accused and Kreisleiter Brueck, forcibly took the flyers from the police station and shot them.

The record of the testimony of Ludwig Schartt and Prosecution's P-Ex 2 conflict on the spelling of the names of three of the four men who shot the three flyers. The name of one of them is spelled

"Wilken" in the record (R 10) and "Wilcke" in P-Ex 2, Page 4; the name of another is spelled "Schartt" in the record (R 5) and "Schardt" in P-Ex 2, page 4; and the name of another is spelled "Gerich" in the record (R 10) and "Goerig" in P-Ex 2, page 9. It is clear that the individuals are the same in spite of the variance in the spelling of their names.

IV. EVIDENCE AND RECOMMENDATIONS:

JULIUS LASSAK

Nationality:	German
Age:	60
Civilian Status:	Inspector of Railroads; Police Director, Giessen, Germany
Party Status:	NSDAP since 1925
Military Status:	Allgemeine SS Colonel
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: On 3 October 1944, an American bomber was destroyed and crash-landed in the vicinity of Giessen-Wieseck, Germany. Three members of the crew parachuted to earth in the vicinity of Giessen-Wieseck. The flyers were captured and delivered to the police station at Wieseck (R 17; P-Ex 2, p. 1), where they were placed under guard and a report was made to the anti-air commando (R 17, P-Ex 2, p. 1). The anti-air commando issued orders that the flyers were to be turned over to the security police for delivery to the Air Corps. Before this could be accomplished, the accused, Kreisleiter Brueck, Wilcke and another man arrived at the station (R 17; P-Ex 2, pp. 2, 3). The accused identified himself as police director of Giessen to the police chief and ordered the flyers turned over to the Party (R 36). This order was repeated by the accused to the chief of police two times but was refused each time, as the accused was unknown to the chief of police of Wieseck (R 17; P-Ex 2, pp. 2, 3). After appar-

men left the police station. Shortly thereafter, the chief of police left and Wilcke, Sonntag, Gerich and Schartt returned to the police station and demanded the three flyers from the police guard, stating at that time that they were acting on orders of the accused. The request was refused and they left the police station. They soon returned and requested the flyers, stating again that they were under orders from the accused. When their request was refused, they forcibly took the flyers from the police station (R 10, 17; P-Ex 2, pp. 4-9). Wilcke led the flyers out of the police station to a field some distance from the police station and, on Wilcke's signal, the three flyers were shot by Wilcke, Sonntag, Gerich and Schartt (R 10). The accused stated in his extrajudicial sworn testimony that he knew of the order to turn captured flyers over to either the Party or the Gestapo and knew that, if the order was complied with, they would be shot (R 62; P-Ex 3, pp. 3-5).

Evidence for Defense: The accused took the stand, was sworn and testified in his own defense to the effect that he was the police director of Giessen, Friedburg and Bad Nauheim from 11 January 1944 to 28 March 1945 (R 34, 62; P-Ex 3, p. 2). The accused admitted that he had received orders from the highest SS authorities that captured flyers who were discovered to be spies or agents were to be shot; that he had received orders from the Reich Defense Commissioner that captured flyers would be turned over to the Party; and that he had received orders from the Reich's Security Office that captured flyers were to be turned over to the Gestapo. He asserted that he did not pass on these orders (R 35) but, to the contrary, ordered his police chiefs to turn captured flyers over to the Luftwaffe or the Wehrmacht and to protect them from the civilian population (R 28, 34, 35). Orders to turn captured flyers over to the Luftwaffe or Wehrmacht were never changed by the accused after he took office in January 1944 (R 23). On 3 October 1944, the

ordered the accused to turn the three flyers over to the Party for interrogation (R 35, 36). When Kreisleiter Brueck asked the accused for the flyers, the accused hesitated and Brueck replied: "You know the order, don't you?" The accused replied: "Yes" (R 62; P-Ex 3, p. 5). The accused asserted that he told Brueck to deliver the flyers to the Luftwaffe after the interrogation and that this was agreed to by Brueck (R 59, 60). The accused then went into the police station and, after identifying himself, ordered the policeman on duty to turn the three flyers over to the Party. The policeman on duty replied: "Yes". Thereupon, the accused left and proceeded to the place where the plane had crashed. When the accused returned to the police station, approximately three quarters of an hour later, the three captured flyers were no longer in the police station (R 57, 58). The following day, Kreisleiter Brueck telephoned the accused and informed him that the three flyers had been shot while attempting to escape (R 57). The accused knew of the order issued by Himmler, who was his superior, but testified that he would not have obeyed the order if he had known that any captured flyer was to be killed (R 41). The accused also knew of the order to shoot captured flyers which was issued by General Strop (R 53), who was also the accused's superior (R 54). Kreisleiter Brueck was deputy defense commissioner for the district of Giessen and, therefore, could give orders to the accused (R 56).

The accused made an untested assertion that he was subjected to mistreatment and abuse by CIC personnel at Nattenberg, Giessen and Wiesbaden (R 60). He further asserted that Mr. Zinn, the War Crimes Investigator who took his statement (P-Ex 3) in Wiesbaden in August 1946, did not permit him to correct his statement on certain important points (R 60, 64, 65, 66). Among others, the Wiesbaden statement of the accused (P-Ex 3) was introduced against him in U.S. v. Jurgen Strop, et al., 12-2000, etc., where it was identified and admitted as P-Ex 57. In the Strop case the accused

made similar accusations against CIC and War Crimes investigative personnel and the evidence concerning the same was much more fully developed than in the case at hand. In the Stroop case the court heard the testimony of Mr. Coates who is apparently the "Mr. Cortes" referred to by the accused in this case (R 60).

On page 53 of the Review and Recommendations of the Deputy Judge Advocate for War Crimes in United States v. Jurgen Stroop, et al., September 1947, it was stated concerning the question of the mistreatment of accused LASSAK:

"Evidence for Defense: . . . . . He further testified that his statements in his extrajudicial sworn testimony regarding his knowledge that the flyer would be shot were made under duress and were not true (R 267, 891-893; P-Ex 57, p. 5). The accused contended that he was abused by unnamed CIC investigators during an interrogation in Camp No. 5, Natternberg, Germany, in August 1945, and again by a CIC investigator in Giessen, Germany, in early July 1946 (R 879-881, 884, 885). No attempt to test the truth of these assertions with the testimony of other witnesses was made. The accused also contended he was pressed against a wall and told not to lie during an interrogation in Wiesbaden, Germany, in August 1945, by a war crimes investigator, Mr. Zinn (R 924, 925). This was conceded on the stand by Mr. Coates, War Department civilian war crimes employee who was present acting as an interpreter (R 967). However, it appears that Mr. Zinn, the investigator in the Wiesbaden interrogation, expressed no general threats and merely admonished the accused not to lie (R 967-980). When Mr. Zinn pressed the accused against the wall Mr. Coates said to Mr. Zinn, "Joe, come back. Don't do a thing like this. We don't touch prisoners" (R 970).

"Sufficiency of Evidence: . . . . . While the testimony taken in Giessen was introduced, it was duplicated in most pertinent respects by the Wiesbaden extrajudicial sworn testimony.

frowned upon, the Court might well have concluded that it was not such as to put the accused in fear of physical violence, particularly in view of the immediate admonition of Mr. Zinn by Mr. Coates in the presence of the accused, and that it was not shown that the accused was in such a state of fear as might induce him to state untruths."

Sufficiency of Evidence: The evidence clearly establishes the fact that the accused issued the order to turn the flyers over to the Party and that Wilcke, Schartt, Gerich and Sonntag took the flyers from the police station on his orders. The accused knew that the orders to kill captured flyers were in effect at that time. Although the action of the investigator at Wiesbaden is to be frowned upon, the Court might well have concluded that it was not such as to put the accused in fear of physical violence, particularly in view of the immediate admonition of Mr. Zinn by Mr. Coates in the presence of the accused; that it was not shown that the accused was in such a state of fear as might have induced him to state untruths; and that the accused ordered the flyers turned over to the party knowing and intending that they were to be killed.

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

The accused was convicted and sentenced in United States v. Jurgen STROOP, et al., Case No. 12-2000, which prior conviction was considered by the Court in arriving at the sentence (R 74).

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: The Court was legally constituted and had jurisdiction over the persons of the accused and of the subject matter.

Motion to Dismiss: The Court's ruling on the defense's motion to dismiss at the close of the prosecution's case was proper. It is not error for a war crimes tribunal to overrule a motion for findings of not guilty made at the close of the case for the prosecution if it believes that there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, United States Forces, European Theater, 30 November 1945 and Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). A similar practice is followed in Courts-Martial (Paragraph 71, d., "Manual for Courts-Martial, United States Army", 20 April 1943).

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.



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Having examined the record of trial, I concur, this 27th day of

October 1947.



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Deputy Judge Advocate  
for War Crimes