

HEADQUARTERS THIRD ARMY  
OFFICE OF THE STAFF JUDGE ADVOCATE  
WAR CRIMES BRANCH  
AFO 403 US ARMY

Ludwigsburg Detachment

27 May 1946

THE UNITED STATES

vs

HANS FOHL  
German National.

Case No. 12-1880

1. TRIAL:

Accused, a German male civilian, was tried on 14 May 1946 at Ludwigsburg, Germany, before an Intermediate Military Government Court, appointed by Paragraph 4 Special Orders #100, Headquarters Third United States Army, AFO 403, dated 20 April 1946.

2. CHARGES, PLEAS, FINDINGS AND SENTENCE:

Charge and Particulars	Pleas	Findings
Charge: Violation of the Laws of War	NG	G
Particulars:	NG	G

In that Hans Fohl, a German national, did, at or near Schierstein, Germany, on or about the 10th day of March, 1944, wrongfully commit an assault upon an unknown member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich, by hitting him in the face with his fist and by kicking him.

Sentence:

The Court in closed session, at least two thirds of the members present at the time the vote was taken concurring therein sentenced the accused to be imprisoned for the term of 1 year commencing 14 January 1946 at such place as may be designated by competent military authority and to pay a fine of 1,000 Reichsmarks on or before the 13th January 1947, and in default of payment to serve a further term of imprisonment of one (1) day for each ten (10) Reichsmarks of the total fine at such place as may be designated by competent military authority.

3. JURISDICTIONAL MATTERS:

- a) It is settled law that civilian nationals of one belligerent nation may be tried and punished before the duly constituted



tribunals of another belligerent nation for violations of international laws governing land warfare. When a civilian wrongfully commits an assault upon a person who has fallen into his hands as a prisoner of war it is an offense falling within the scope of this rule (Far. 348 FM 27-10).

- b) The Intermediate Military Government Court, which heard this case was duly and legally appointed by the Commanding General, Third U.S. Army by Paragraph 4, Special Orders #100, Headquarters Third United States Army, AFO 493, dated 20 April 1946. The Charge and Particulars were properly preferred and referred for trial. Accused stated in open court that a copy of the charge sheet had been served upon him prior to trial. (R 3) Accused was properly represented by counsel and announced ready for trial (R 2 & 3). The jurisdictional number of three members of the Court was vested with full power and authority to try the accused for the offense alleged and the sentence was legally within the power of the court to impose (Art. III MGO 2).

#### 4. EVIDENCE:

- a) For the Prosecution: During March 1944 five (5) unknown American fliers, who were prisoners of war under German military guard, (R 5, 9, 10, 16, 17, 19) were waiting in the town of Schierstein, Germany, to be placed on a bus and taken to Wiesbaden, Germany. As the bus pulled up it was full of people and the conductor refused to permit the guards to put the fliers on the bus. There was a crowd of people around the bus and one of the fliers was pushed towards the door of the bus. This flier sailed and this was noticed by the accused Hans Fohl who was in the crowd. Accused was heard to say "What, you are laughing about it, you dog." Without any other provocation accused struck the flier once or twice in the face with his hand and kicked him (R 5, 6, 9, 10, 13, 14, 15, 16, 17, 19 & 21). A Dr. Labonte who was standing near by told accused "to cut it out." (R 8 & 10). Dr. Labonte then spoke to a German sergeant, one of the guards, suggesting that he walks with the prisoners to Wiesbaden (R 9 & 19). There was no evidence that the flier suffered any injury as the result of the assault.
- b) For Accused: Accused admits that he was present on 14 September 1944 in a crowd of people which included four fliers and a guard in the town of Schierstein, Germany. He states that the crowd was present at a place where a bus had stopped. Accused heard the conductoress refused to allow anyone including the fliers to get on the bus. Accused noticed that one of the fliers was blocking the passage way to the bus, so he raised his hand to the fliers (R 20 & 21). He states that the witnesses who testified for the prosecution that he hit the fliers did so because of personal reasons (R 21). Accused stated that his act of pushing the flier was to assist the female conductor to keep the people off the bus (R 26).

#### 5. DISCUSSION:

- a) The evidence adduced before the court by the prosecution establishes all of the elements of the offense charged. It is established by the evidence that the accused, a German National, did at Schierstein, Germany, during the month of March 1944, commit an assault on an American flier who was an



unarmed prisoner of war in the custody of the then German Reich by hitting him in the face with his hand and kicking him (R 5, 9, 10, 13, 14, 15, 16, 17, 19). The identity of the victim as an American flier was established in the evidence (R 5, 7, 10, 11, 16, & 19).

- b) The Court overruled the motion made by the defense counsel objecting to the jurisdiction of the court for the reason that there was no law member on the court. In support of his motion counsel for accused cites several provisions of the Technical Manual for Legal and Prison officers as follows: Paragraph 305 para 33 "In General and Intermediate Military Court and when practicable in Summary Military Court, at least one of the members shall be a lawyer serving with Military Government." and Section 201 para 19, "General Military Government Courts consisting of not less than three officers one of whom shall be a lawyer serving with the Military Government." The word General in the last quotation is obviously a misstatement and counsel meant to use the word Intermediate (R 2).

This citations of defense counsel appear in the text material as found in the Legal and Technical Manual and must be considered in the light of the M.G. Ordinances and Directives as pointed out in paragraph one of Section 305; these rules shall be read with and subject to the proclamations and Ordinances of the Military Government." Article IV of Military Government Ordinance 2 which provides for the establishment of Military Government Courts makes no reference to a law member being appointed on Military Government Court.

The jurisdictions of Military Government Courts over War Crimes Offenses which occurred prior to 9 May 1945 is not derived from the Military Government Ordinances and Rules but rather is conferred by reason of separate instructions of the Theater Commander with regard to War Crimes Trials (Sub. Par. b, Par. 5 Guide to Procedure in Military Government Courts page 43). On 16 July 1945 the Theater Commander established the policy that in all War Crimes cases, where the offense occurred prior to 9 May 1945, would be conducted before the Military Government Courts. (Par. 1 Letter USFOT 16 July 1945).

In the past War Crimes cases have been tried before military commissions set up for the trial of such cases (In re Yamashita, U.S. Supreme Court case 61 Wis. 672). But the Theater Commander of the European Theater in order to prevent unnecessary duplication in Tribunals in this Theater has in effect established the Military Government Courts as Military Commissions for the trial of these War Crimes cases. The Theater commander in his letter establishing the policy which will be followed in the trial of War Crimes cases before Military Government Courts has directed that the Army Commander in appointing Military Government Courts for the trial of War Crimes cases should detail one officer with legal training as a member of such courts. Due to redeployment, officers with legal training are very scarce. Those officers with legal training, who are remaining in the Theater are assigned to positions which require their full time and make it impossible to detail them to serve as law members on Military Government Courts. In view of the circumstances the provisions of the Letter of the Theater Commander which establishes the policy in regard to the trial of



War Crimes case which directs the detailing of law members on Military Government Courts must be regarded as directory and not mandatory. At present the records in all of the War Crimes cases are being examined by the Staff Judge Advocate of the appropriate Reviewing Authority before the findings and sentence are approved by the reviewing authority and if any errors or irregularities are found they may be corrected by the reviewing authority in his order on review. Therefore it cannot be said that the absence of a law member during the trial prejudices the rights of the accused in War Crimes cases. In view of Rule 26 as found in the Technical Manual for Legal and Prison Officers the proceedings herein should not be set aside by the reviewing authority unless he is convinced that the rights are prejudiced by such a technical error, occurring in the proceeding of the court. Such is not the case in this particular record as herein before pointed out.

- c) The sentence imposed by the court herein was within the authority of the court to impose (Art. III MCO 2). The offense of which the court found the accused guilty is equivalent to that of an assault and Battery as it is known in Anglo American Courts. Considering the Table of Maximum punishments as set out in the Manual of Courts-Martial as a guide a sentence of imprisonment for a period of six (6) months would be adequate to punish the accused for the offense of which the accused has been found guilty. Therefore the sentence as imposed by the court herein is excessive and should be reduced accordingly.
- d) A careful examination and consideration of the record herein discloses no errors or irregularities which prejudice the rights of the accused herein.

#### 6. DATA AS TO ACCUSED:

Accused is 33 years old; a German Civilian; he is married with no children but he does support his mother, and his last residence was Wiesbaden, Schierstein (R 3 & 27). His occupation is that of gardener (R 20). He joined the party in 1937, but held no official position in the party (R 25). He has lost his home during the war. (R 27) He has been in custody since 16 January 1946 (R 24). He has no previous convictions (R 24).

#### 7. PETITION FOR REVIEW:

A petition for review was filed on behalf of the accused herein pointing out that the sentence imposed by the court was excessive in view of the evidence present before the court.

As has been pointed out in paragraph c of the Discussion the sentence is excessive and should be reduced to six (6) months imprisonment.

#### 8. CLEMENCY:

Several letters of clemency have been filed on behalf of the accused. Three of these letters point out that accused held no official position in the party. One of the letters is that of accused's Minister which points out that accused is a good church member and repeatedly contradicted any attempts of the party to cause him to leave the church. Also that he is an industrious and respectable citizen. A certificate showing the accused is a master Gardener is also attached.



9. RECOMMENDATION:

It is recommended that the findings of the court be approved and upheld but that the sentence be reduced to imprisonment for a period of six (6) months beginning 16 January 1946. An order for review carrying out this recommendation is attached for the signature of the reviewing authority.

/s/ Russell S. Mc Kay  
/t/ RUSSELL S. Mc KAY  
U.S. Civ., Attorney  
Reviewer

I concur.

/s/ Charles F. Cheever  
/t/ CHARLES F. CHEEVER  
Colonel JAGC  
Staff Judge Advocate



I N T E R I M  
HEADQUARTERS  
THIRD UNITED STATES ARMY  
AFO 403

INTERMEDIATE MILITARY GOVERNMENT )

COURT ORDER NUMBER

17 )

8 June 1946

Before an intermediate military government court, which convened at Ludwigsburg, Germany, on 14 May 1946, pursuant to paragraph 4, Special Orders No. 100, this headquarters, 20 April 1946, as amended by paragraph 23, Special Orders No. 100, this headquarters, 20 April 1946, and paragraph 2, Special Orders No. 119, this headquarters, 13 May 1946, was arraigned and tried:

Hans Fohl, German National

CHARGE: Violation of the Laws of War

Specification: In that Hans FOHL, a German national, did, at or near SCHIERSTEIN, Germany, on or about the 10th of March, 1944, wrongfully commit an assault upon an unknown member of the United States Army, who was then an unarmed, surrendered prisoner of war, in the custody of the then German Reich, by hitting him in the face with his fist and by kicking him.

FLEAS

To the Specification of the CHARGE:  
To the CHARGE:

Not Guilty  
Not Guilty

FINDINGS

Of the Specification of the CHARGE:  
Of the CHARGE:

Guilty  
Guilty

SENTENCE

To be imprisoned for a term of one (1) year commencing 14 January 1946, at such place as may be designated by competent military authority, and to pay a fine of 1,000 Reich marks on or before the 13th of January 1947, and in default of payment to serve a further term of imprisonment of one (1) day for each ten (10) Reich marks of the total fine at such place as may be designated by competent military authority.

The sentence was adjudged 14 May 1946.

The findings of the court are approved and upheld but the sentence is reduced to confinement for a term of six (6) months, commencing 14 January 1946. That portion of confinement which is in excess of six (6) months and the fine of 1,000 Reichsmark is hereby remitted. As thus modified the sentence will be duly executed. Bruchsal Central Prison, Bruchsal, Germany, is designated as the place of confinement.

BY COMMAND OF LIEUTENANT GENERAL KEYES:

WM. R. SCHMIDT  
Major General, General Staff Corps  
Chief of Staff

/s/ W. G. Caldwell  
/t/ W. G. CALDWELL  
Colonel, Adjutant General's Department  
Acting Adjutant General

DO NOT FILE