

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

25 February 1947

UNITED STATES

vs

Case No. 12-2034

Anton DOERR, Aloys NEIS,  
 August STURM, and Karl MAI,  
 German Nationals

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

1. TRIAL: The accused were tried at Dachau, Germany, on 24 October 1946, before an Intermediate Military Court appointed by Special Orders No. 250, paragraph 2, Headquarters, United States Forces, European Theater, APO 757, dated 7 September 1946.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the laws of war.

Particulars: In that Anton DOERR, Aloys NEIS, August STURM and Karl MAI, German nationals, did, at WEHLEEN, Germany, on or about August 1944, wrongfully encourage, aid, abet and participate in an assault upon an unknown member of the United States Forces of the United States who was then an unarmed, surge-locked prisoner of war in the custody of the then German Wehrmacht by hitting him with their fists, with a stick, and with a rifle butt, and by kicking him.

<u>Pleas to</u> <u>the Charge and Particulars</u>		<u>FINDINGS</u>
DOERR, Anton	NG	G
NEIS, Aloys	NG	G
STURM, August	NG	NG
MAI, Karl	NG	G

3. SENTENCE: The court, by at least a two-thirds vote of the members present at the time the vote was taken concurring, imposed the following sentences:



DOERR, Anton	17 Months	Commencing 13 June 1945
NEIS, Aloys	16 Months	Commencing 2 July 1945
STURM, August	Acquittal	
MAI, Karl	14 Months	Commencing 10 October 1945

The record of trial has been forwarded to the Commanding General, United States Forces, European Theater, for approval (paragraph 8d, Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO subject, "Trial of War Crimes Cases" dated 14 October 1946).

4. DATA AS TO ACCUSED:

a. Accused DOERR is a German national, 39½ years of age (R 3). He was a master electrician and a former member of the German Labor Front (R 52). He is married and has five children dependent on him for support (R 63).

b. Accused NEIS is a German national, 34 years of age, (R 4), married with one child and was employed as a master mechanic (R 44 and P. Ex. 1, R 9).

c. Accused STURM is a German national, 50 years of age (R 3), married, has eight children and was employed as a coal mine foreman (R 37).

d. Accused MAI is a German national, 52 years of age, was employed as a mine worker (P. Ex. 2, R 9), is married and has five children (R 64).

5. RECOMMENDATION: That the findings and the sentence of the Military Government Court as to each accused be approved by the Theater Judge Advocate under the provisions of paragraph 8d of the letter referred to in paragraph 3, supra.

6. EVIDENCE:

a. For the Prosecution: The case for the Prosecution is based on the testimony of five witnesses, including, as against the accused MAI, that of the accused DOERR, together with three



exhibits consisting of sworn testimony of the accused, NEIS, STURM and DOERR received in evidence (R 45, 53).

The accused NEIS and DOERR admitted striking the flyer. In addition, the unimpeached testimony of the witnesses Anna WEBER and Heinrich KAHRENBAUER, who testified that they saw DOERR strike the flyer (R 11, 18), would be conclusive, if necessary.

The testimony of the witness Anna WEBER was to the effect that she saw the accused MAI strike the flyer (R 11). This testimony was also supported by the accused DOERR (R 56).

Three sworn statements by the accused DOERR (P.Ex. 3, R 22) NEIS (P.Ex. 1, R 9) and STURM (P.Ex. 2, R 9) were introduced by the prosecution and received in evidence by the Court.

DOERR, in his statement, admitted being at the scene because of having a desire for retaliation at having lost his wife in an air-raid and testified he saw MAI strike the flyer. He also states that he saw the Sturm Abteilung man, STURM, "ram the flyer in the back with the butt of his rifle." (P.Ex. 3, R 22).

NEIS, in his statement, admits being at the scene of the incident and striking the flyer (P.Ex. 1, R 9).

STURM, in his statement, admits taking his rifle from his house and running to the place where the parachuting flyer landed (P.Ex. 2, R 9).

b. For the Defense: On behalf of and in mitigation of his act, the accused DOERR testified that he had no intention of molesting the flyer when he went to the scene but that when he arrived there he suddenly thought of his deceased wife who had been killed in an air raid and was overcome with excitement and he hit the flyer on the shoulder (R 53, 54).

On behalf of and in mitigation of his act, the accused NEIS claimed that he only slapped the flyer with the back of his hand in the face and this only because his boy, who was with him,



complained that he had been kicked. He later learned that this was an accident and that the flyer had stepped on the child (R 45).

The accused MAI, although admitting having been present, testified that he never struck the flyer at any time and denied participating in any of the beating (R 49). In explanation of the testimony of the witness for the prosecution, Anna WEBER, he stated that he worked for a local firm as gateman detailed to factory security. His duties included searching all of the workers twice every week. Anna WEBER's husband was among the people searched (R 50).

On behalf of the accused STURM, the testimony of the witness Peter SCHUH was to the effect that STURM was dressed in work clothes and not only did not strike the flyer but that he protected the flyer by pushing the crowd away and helping the flyer when he sank to his knees. Furthermore there was a uniformed Sturm Abteilung man who beat the flyer with his rifle, but that he, the accused, did not (R 26, 27).

The testimony of Ludwig KARLMEYER on behalf of the accused STURM was to the effect that STURM wore no uniform but that he was in his work clothes and that he did not beat the flyer (R 33).

The accused STURM, testifying on his own behalf stating that he had put on his work clothes and when he saw the parachute about to land he got his rifle by reason of a standing order to all Sturm Abteilung men to take into custody any jumping parachutist and deliver him to the nearest army installation. When he arrived at the scene, however, the pilot had landed and was being escorted by two soldiers to a flak position. He made a passage through the crowd with the aid of his rifle and helped the flyer by telling the crowd "further mistreatment must be stopped" (R 38, 39). He further testified that he did not strike the flyer or mistreat him in any way (R 40).



Two sworn statements were introduced by the defense and received in evidence by the Court consisting of that portion (D.Ex. 1, R 36) of the statement of August STURM specifically excluded from the prosecution's exhibit (P.EX. 2, R 22) and the statement of the witness Jacob PHEISEN (D.Ex. 2, R 44).

The portion of the statement of the accused Anton DOERR introduced by the defense (D.Ex. 1, R 36) was to the effect that the accused STURM had to make way with his rifle butt through the crowd to get to the prisoner. Subsequently while the anti-aircraft soldiers led the flyer away he followed them and kept the crowd away with his rifle butt. During this entire time he did not strike the flyer. The statement of the witness Jacob THEISEN made no mention whatsoever of any of the four accused but instead named two entirely different people.

7. JURISDICTION:

The particulars allege a violation of the laws and usages of war which were committed before 9 May 1945 by enemy nationals against a member of the United States Armed Forces at a time when a state of war existed between Germany and the United States of America. Accordingly, the court which was specially appointed to hear the case had jurisdiction of the persons and subject matter in accordance with previous decisions of this office in similar cases (See UNITED STATES v. CLEMENS WIEGAND, November 1945; UNITED STATES v. RICHARD DRAUZ, April 1946).

8. SUFFICIENCY:

The evidence and exhibits before the Court clearly establish the guilt of the two accused DOERR and NEIS. The accused MAI denied having struck or molested the flyer in any way (R 49), and hence there is a direct conflict in the testimony of the witness on the one hand and the accused MAI on the other. However, the accused MAI admits being on the scene (R 49) and it is apparent



from the record that there was ample evidence in the testimony before the Court upon which to base the finding of guilty.

The only testimony that was introduced against the accused STURM was contained in a sworn statement dated 3 October 1945 made by the accused DOERR. In this statement DOERR stated STURM rammed the flyer in the back with the butt of his rifle but the testimony of the accused DOERR who made the statement (P.Ex. 3, p. 22) introduced in evidence is barren of any reference whatsoever as to any hostile act of STURM against the flyer. However, according to the statement, he did see a Sturm Abteilung man with rifle walk behind the flyer and strike him. He did not recognize STURM but was later told it was this accused. This testimony was stricken. There was direct testimony on the part of the witnesses Peter SCHUH and Ludwig KARRENBAUER that not only did the accused STURM not beat the flyer but that he attempted to help and protect him. STURM's testimony, which was to the same effect, remained unimpeached upon examination by the Court. Consequently, there was no evidence in the testimony produced before the Court to connect the accused STURM with the beating so that it would seem that a finding of guilty with respect to this accused could not have been supported and the Court was fully justified in acquitting him and, in fact, was in duty bound to do so.

The case for the Prosecution is based on the confessions of the two accused DOERR and NEIS with additional statements and testimony sufficient to establish that an American or Allied flyer was beaten and that the three accused who were found guilty participated in the beating. The denial on the part of the accused MAI was natural and in view of the direct testimony of the two witnesses, the Court could determine both the value of the positive eye-witness testimony and of the accused MAI's denials.

#### 9. SENTENCES:

An Intermediate Military Court may impose a prison sen-