

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE  
7708 WAR CRIMES GROUP  
UNITED STATES FORCES, EUROPEAN THEATER  
APO 178

21 February 1947

UNITED STATES )

vs )

Josef PELIZAEUS, a German  
national )

Case No. 12-2052

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

ACCUSED

Tried at Dachau, Germany  
Date: 30 September 1946  
Intermediate Military  
Government Court  
Sentence: Confinement 10 years  
commencing 7 June 1945

Age 49  
Member of the Home  
Guard and SA  
Civilian Occupation:  
Salesman

CHARGE: Violation of Laws of War

Pleas  
NG

Findings  
G

Particulars: In that Josef PELIZAEUS, a German national, did, at Wellesweiler, Germany, on or about 30 November 1944, wrongfully commit an assault upon Staff Sergeant F. J. MacADAM, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich by kicking him.

2. RECOMMENDATIONS: That the findings and sentence be disapproved.

3. EVIDENCE:

For the Prosecution: On or about 30 November 1944 an American soldier parachuted from a disabled bomber and landed on the roof of a house in Wellesweiler, Germany (R 6, 7). The soldier, unconscious and injured, was dropped from the roof and crashed to the ground, a distance of two meters 50 cm, when the parachute ropes were cut after the accused PELIZAEUS who was standing on the ground had yelled, "Let him come down." (R 8, 11, 12, 13, 21, 39, 46). Accused PELIZAEUS removed several personal items and identification tags from the injured man (R 9, 23, 44, 45) and then kicked him on the right shoulder (R 26, 30). People in a crowd that had gathered wanted to help the flier (R 36, 43, 44) but the accused, armed with



a pistol, refused to let them near the scene (R 22, 23, 31, 32, 47). No first aid was given (R 31). Soldiers arrived and took the flier away (R 18, 28, 51).

For the Defense. A witness who arrived while the parachute ropes were being removed from the flyer after he had fallen to the ground and who stayed until the flyer was taken away did not see the flyer mistreated in any way (R 51, 52).

Accused turned over the articles removed from the flyer when requested to do so by proper authority (R 58, 59).

Accused PELIZAEUS elected to testify in his own behalf in substance as follows: Accused defended the airman from a threatening crowd with a pistol that fired only blanks (R 62, 68, 69). After accused called, "Let him down," someone distracted his attention and the flyer fell to the ground (R 62). Accused removed the articles from the American soldier's pockets to prevent them getting in the wrong hands (R 63). PELIZAEUS did not kick the flyer (R 65).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the person of the accused and of the offense.

5. COMMENTS: The only evidence before the Court that accused kicked the flyer was the testimony of one witness whose description of the action of the accused just prior to the kicking and the story of the actual kicking are such as to raise a doubt as to the truth of his statements (R 26, 27). Two other witnesses for the Prosecution, one of whom did not leave the scene while the flyer was on the ground, and one witness for the Defense testified that they did not see the accused kick the flyer (R 38, 45). According to the testimony of several witnesses there was a large crowd gathered and it does not appear reasonable that only one person in the crowd was available to testify that the accused kicked the flyer.

While there was evidence from which the Court may have found that the accused was guilty of mistreating the flyer in other respects it



victim. Thus in making its finding the Court was limited to consideration of evidence tending to prove this one act.

It is believed that the evidence presented to the Court is not sufficient to prove beyond a reasonable doubt that accused is guilty of the particulars of the charge.

6. CLEMENCY: There are no Petitions for Clemency. A Petition for Review dated 9 October 1946 was filed by Captain Frank E. Morse, defense counsel.

7. CONCLUSIONS: It is recommended that the findings and sentence be disapproved.

/s/ Nora G. Springfield  
NORA G. SPRINGFIELD  
1st Lt., WAC  
Post Trial Section

Having examined the record of trial, I concur.

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