

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

8 September 1947

UNITED STATES )

v. )

Franz UMSTATTER )

Case No. 12-2381

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 26-27 August 1946, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

FIRST CHARGE: Violation of the Laws of War

Particulars: That Franz UMSTATTER, did on or about 26 August 1944 wilfully deliberately, and wrongfully encourage, aid, abet, and participate in the killing of John N. SEKUL, William A. DUMONT, Thomas D. WILLIAMS, and Elmore L. AUSTIN of the United States Army and two other members of the United States Army whose names are unknown, each of whom was then unarmed and a prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On the morning of 26 August 1944, in Russelshaim, Germany, the accused UMSTATTER beat captured American flyers severely with a club for approximately fifteen minutes. Other members of the crowd, which was assailing these flyers, participated in beating them. Six of the flyers died and were buried in a common grave. UMSTATTER removed a pair of low-cut brown shoes from one of the flyers. He was seen later in possession of the shoes at which time he admitted participating in the beatings. The accused denied beating the flyers and also denied being in Russelshaim at the time of the incident. The incident involved in this case is the same incident as the one involved in United States v. Hartgen, et al., October 1945 (DJAWC). A copy of the record in that case was introduced in evidence (RS: 1-Ex 1). However, that exhibit was missing when the record of trial was received for review. Attempts to find the same have been futile. In lieu thereof an authenticated copy of the exhibit, i.e., a copy

of the record in the Hartgen case, complete with exhibits thereto, has been prepared and appended to the record.

IV. EVIDENCE AND RECOMMENDATIONS:

FRANZ UMSTLITZER

Nationality:	German
Age:	36
Civilian Status:	Wine gardner
Party Status:	Unknown
Military Status:	Corporal
Flea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: A duplicate original of the record of trial in United States v. Josef Hartgen et al., supra, was introduced into evidence and made a part of the record in this case for the asserted purpose of establishing the corpus delicti with reference to American flyers, John N. Sekul, William A. Dumont, Thomas D. Williams, Elmore L. Austin, and two other unknown Americans. These victims were members of the crew of a B-24 bomber on a mission near Hannover, Germany, on 24 August 1944, when they were compelled to parachute to the ground. With the exception of an injured member of the crew, eight of the flyers were brought to Russelsheim, Germany, by various means of travel, early on the morning of 26 August 1944. An air raid had occurred during the preceding night. They were attacked by a crowd of people in the streets of the town (R 8; F-Ex 1).

The accused beat the flyers severely while they were lying on the ground. He used a club that was approximately one and a half meters long and six inches in diameter (R 17, 18, 19, 25). He beat every flyer who showed signs of life or moved (R 17), assailing their heads and shoulders (R 18) while swinging his weapon up over his right shoulder and down with both hands (R 26), as the flyers attempted to crawl over each other and to seek shelter against a wall nearby (R 18). Accused's

The principal prosecution witness saw the accused remove a pair of shoes from one of the victims (R 18) and carry them away (R 19). This witness testified that the crowd was at fever pitch during the beating (R 32), that he couldn't recall the accused making any remarks during the beating (R 33), and that Hartgen cried to the accused, "Beat these pilots to pieces" or something similar (R 34).

The bodies of the flyers were taken to the cemetery where more beatings were administered. During an air raid alarm, two of the flyers who were alive escaped. Later in the day shots were fired in the cemetery. Within a short time the bodies of six flyers were buried in a common grave (R 8; P-Ex 1).

A woman who knew the accused testified that on the day of the beating he said to her, "We just beat them up. I beat them with a board" (R 39). The accused remarked that he had loaded a flyer on the cart and he had taken the flyer's shoes which he, the accused, needed, adding, "I don't have any others at home any more" (R 39). The accused told others, "All right, we helped beating them up some top, and they already threw them up on the cart and I took his shoes off quickly" (R 46). He had low-cut brown shoes in his hands at the time he was talking (R 47) and admitted taking them from a flyer (R 47).

A prosecution rebuttal witness in an extrajudicial sworn statement asserted that the accused spoke to a crowd on the morning when the American flyers were killed: "Well, I got that dog. I beat him with a board, whereby I lost the heel from my shoes and for that, I took his." He wore a pair of brown half-shoes which he said came from the flyer (R 108; P-Ex 4). Another rebuttal witness stated in substance in an extrajudicial sworn statement, admitted into evidence (R 110), that she heard accused was on the street in Russelshelm where and when the beating occurred; that accused had beaten the flyers; and that he had taken a pair of shoes from one of them (R 110; P-Ex 5). This witness lived in the same house as the accused.

Evidence for Defense: The accused elected to make an unsworn

ment (R 99; D-Ex A). He asserted that he arrived at his home in Russelsheim on the night of 25 August 1944 in an absent without leave status from the German army (R 60-62, 84). An air raid occurred. He helped with the clearing work (R 63, 84). About eight or nine o'clock in the morning, 26 August 1944, he went to the police station at Russelsheim to report his absent without leave status in accordance with army procedure (R 63, 79, 82). He was sent to Mainz (R 63), arriving approximately ten o'clock (R 64). Enroute there, he had seen a plane shot down over Bischofsheim (R 99; D-Ex A). He returned to Russelsheim around twelve o'clock (R 65, 74, 75, 76). He was informed en route by the people of Bischofsheim that flyers had been beaten to death in Russelsheim (R 66, 89). At two o'clock in the afternoon, he rode on his bicycle with two small children to Dienheim in order to procure housing for his family (R 67). He remained overnight with his parents and returned next morning with a truck for his household goods (R 68).

It was stipulated that, if the wife of the accused were in Court, she would testify that on 26 August 1944, the accused left home between eight and nine o'clock and did not return until between noon and one o'clock and that, during this time, he did not return home with a pair of shoes (R 98).

The accused denies having had anything to do with an American (R 80); that he swung a post (R 87); that he knew when the flyers were beaten to death (R 89); that he beat the flyers (R 111); and that he was present at time of the beating of the flyers (R 99; D-Ex A). An eye witness to the incident, who didn't know the accused at that time, (R 95) could not identify the accused for the American authorities as being present during the incident (R 93).

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

Petitions: A Petition for Review was filed by Benjamin Reich, defense counsel, undated. An annex to the Petition for Review was

points will not be allowed to interfere with such a result" (Section 5-350, Title 5, Military Government Regulations, supra). It has been stated by the Supreme Court of the United States in the case of *In re Yamashita* that, "Obviously charges of violations of the law of war triable before a military tribunal need not be stated with the precision of a common law indictment." (*In re Yamashita*, 66 Supreme Court Reporter 340; see also *United States v. Becker, et al.*, May 1947, commonly known as the Flossenburg Concentration Camp case.)

The obvious purpose of prescribing that the place of commission of an offense will be alleged is to sufficiently describe the offense to permit the accused to effectively prepare his defense. It clearly appears from the record that the accused was fully aware of the place the alleged offense was committed; that the absence of the allegation as to place did not impair his defense; and that the charge was vigorously defended by the accused and his counsel. Therefore, it is clear that no injustice resulted to the accused.

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.

/s/ Richard C. Hagan  
/t/ RICHARD C. HAGAN  
Major JAGD  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur,  
this \_\_\_\_\_ day of \_\_\_\_\_ 1947.

/t/ C. E. STRAIGHT  
Lieutenant Colonel, JAGD  
Deputy Judge Advocate  
for War Crimes

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