

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

29 March 1948

UNITED STATES)
 v.) Case No. 11-562
Engelbert SUNTZ)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 5 June 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Engelbert SUNTZ, a German national, did, at or near OMERVILLE, France, on or about 14 June 1944, wrongfully encourage, aid, abet and participate in the killing of three unknown members of the United States Army, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On or about 14 June 1944, four American prisoners of war under a two man guard escort were fired on by one of the guards, an unidentified member of the Wehrmacht, in the vicinity of Omerville, France. Three of the Americans were shot from behind and killed and one escaped. The accused, a corporal and ranking non-commissioned officer present, was in charge of the guard detail and superior to the unidentified soldier, who was a private first class. Despite his foreknowledge that the other soldier intended to shoot the prisoners the accused took no positive action to prevent the killing and endeavored to prevent the escape of the prisoner who fled after his comrades had been shot.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Engelbert SUNTZ

Nationality:	German
Age:	38
Civilian Status:	Shoemaker
Party Status:	None

Military Status:	Corporal, Wehrmacht
Plea:	NG
Findings:	G
Sentence:	5 years, commencing 7 February 1947

Evidence for Prosecution: Shortly after the invasion of Normandy the accused, a corporal in the Wehrmacht, was stationed at Omerville, France (R 7, P-Ex 2). The accused testified that on or about 14 June 1944, he was summoned by his commanding officer, Lieutenant Kunis, and informed by him that four prisoners were coming and that they were to be shot; that he protested, but was told it was either he or they (R 18, 19); that another soldier, an unidentified private first class (R 45) was detailed to help him; and that Kunis then turned the four prisoners over to him (R 20). The accused further testified that he and his helper then marched the prisoners to the village of Omerville, and from there to Ogdeville (R 21), where the accused telephoned his commanding officer and again was told to carry out the order and to return immediately (R 23, 24); that he then informed the other German that the order to shoot the prisoners had been affirmed, but that they would take the prisoners to Valognes, where there was a camp for American prisoners of war (R 24). The accused also stated that he and his comrade then marched the prisoners off in single file, with the two guards in the rear; that they had walked from 100 to 150 meters along the road to Valognes, when the accused heard a shot beside him and after grabbing the rifle away from his helper, saw that three of the prisoners were lying on the ground, while the fourth was running away; that he gave pursuit, shouted "Stop", assumed a kneeling position, adjusted his own carbine, which had jammed, and fired in the air (R 25-27); that while he was thus engaged, he heard several shots behind him, and upon asking his comrade what he was doing was told that two of the Americans had still been alive (R 27, 28). The accused testified that two of the Americans had been shot through the head, while the third was bleeding from the left breast (R 28); that

reprimanded him (R 28, 37); that he told his commanding officer he wanted to arrange for burial (R 28). The accused admitted that the prisoners were American (R 40). In a statement, the accused said he had fired after the escaping prisoner once, but did not know whether he had hit him (R 7, P-Ex 2). In another statement, the accused affirmed that three prisoners fell after one shot (R 8, P-Ex 3); that although he did not shoot so as to hit the fourth prisoner, he nevertheless ran after him to see whether he was wounded (R 8, P-Ex 3).

In a confidential Army intelligence report, 7 October 1945, based upon hearsay, it is stated that Adolph Riege, a protestant chaplain, had voiced his suspicion that the accused had shot two American soldiers after having been given discretion as to their disposal by Kunis. Chaplain Riege, while serving as telephone operator, had overheard a conversation to that effect between the accused and Kunis (R 9, P-Ex 4).

Evidence for Defense: The accused testified that upon first being advised by Kunis that the prisoners were to be shot he protested against the order (R 19); that he attempted to turn the Americans over to battalion headquarters at Ogdeville, but ^{was} refused (R 21-23); that when he spoke to his commanding officer over the telephone and received a confirmation of the shooting order, he screamed at Kunis and said "You cowards" (R 23,24); that his comrade then fired the first shot and that three of the prisoners fell to the ground (R 26); that he then shouted "stop" several times in order to give the fleeing American a chance to escape, and that he fired into the air rather than at the prisoner (R 27). The accused also testified that he permitted the prisoners to have some food, and that he refused the suggestion of his comrade that the prisoners be taken out and shot (R 32); that he did not believe the other German really had this intention (R 33); that he had really intended to take the prisoners over to the American lines, but could not effectively communicate the idea to them (R 38); and that the only reason he assumed a kneeling position before he fired was to put one weapon on the ground, and not to reload (R 36).

Sufficiency of Evidence: The evidence clearly establishes that a crime was committed and that the prisoners were unarmed and were not attempting to escape. They were shot from behind and killed. It is not established that the accused personally participated in the shooting, but it has been proved that he was the non-commissioned officer in charge of the detail; that he received the shooting order from Kunis; that the order was actually carried out; that the accused could, by virtue of his seniority over his helper, have prevented the execution of the order; and that in fact he did nothing to prevent it. The accused is bound by his admission that he fired after one of the prisoners; and the Court might well have concluded that his intention was to kill the fourth man and not to allow his escape. The testimony of the accused is not of the plausible variety. It is most unlikely that three men were knocked down by one shot, or, if two of them were merely shamming, that they simply lay there waiting to be finished off. The explanation given by the accused for his failure to carry out his alleged intention to take the prisoners over to the American lines is incredible.. He could have done so despite their inability to understand German, since he had the upper hand. The accused's assertion that he fired into the air without aiming at the flyer is inconsistent with his story that he ran after the prisoner to see whether he was wounded.

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

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 defense challenged the jurisdiction of the Court on the ground that the offense was committed in France. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated

in "Whiston's International Law," Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed." Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. See Sections 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration" of "Military Government Regulations", published by Office of Military Government for Germany (US), 27 March 1947. Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

It may be the defense intended to attack the jurisdiction of the Court on the ground that the accused could not be tried in the United States Zone of Occupation unless certain administrative steps were taken as provided by Section 4, Article III, Control Council Law No. 10, which provides:

" 4. Persons known to be wanted for trial in another Zone or outside Germany will not be tried prior to decision under Article IV unless the fact of their apprehension has been reported in accordance with Section I (b) of this Article, three months have elapsed thereafter, and no request for delivery of the type contemplated by Article IV has been received by the Zone Commander concerned.

The defense failed to establish a lack of adherence to the provisions in question. In any event, the provisions are merely administrative and not jurisdictional. Failure to strictly comply therewith would not have affected the jurisdiction of the Court. Section 2 of the same article of that law provides:

" 2. The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedures thereof shall be determined or designated by each Zone Commander for his respective Zone. Nothing herein is intended to, or shall impair or limit the jurisdiction or power of any court or tribunal now or hereafter estab-

of the International Military Tribunal established by the London Agreement of 8 August 1945."

It is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

Motions: At the close of the prosecution's case defense moved for a dismissal on the ground that no prima facie case had been established (R 11). In support of its contention, the defense emphasized the distinction between confessions and admissions; and after stating categorically that the statements of the accused were admissions rather than confessions, proceeded to argue that confessions need to be corroborated before they can be considered as sufficient to establish guilt. While this may be the applicable rule in American Municipal criminal law, as concerns confessions, the law as to the use of admissions against interest to establish guilt is well established. In Section 559, Volume 20, American Jurisprudence, the principle is set forth as follows: "Statements freely and voluntarily made by a person accused of crime, including admissions contained in a statement purporting to be exculpatory in general, are admissible against him upon his trial for the crime to which they relate. Such a statement is admitted as proof of an independent fact, rather than as a confession of guilt." Moreover the applicable procedure for the trial of war crimes cases specifically provides for the admissibility of such statements (Section 270, c, page 107, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended). The Court properly overruled the motion (R 16).

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 8th
day of April 1948.

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