

25 September 1947

U N I T E D S T A T E S )

v. )

Hans HEITKAMP )

Case No. 12-413-1

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 7-8 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that the accused, Hans HEITKAMP, a German national, did, at or near QUIRNBACH, Germany, on or about 20 March 1945, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On about 20 March 1945, an American pilot made a forced landing near the village of Quirnbach, Germany, and was taken into custody by a Gestapo agent named Figl. The flier was escorted to the office of the headquarters of the Gestapo. The Gestapo chief, with threats, ordered the Gestapo agent, Master Sergeant Dressler, to take the flier into the woods and shoot him. The accused, a technical sergeant, on orders of the Gestapo chief, accompanied Dressler to the woods. The flier was shot and killed by Dressler, who admitted the shooting, asserting that he did it due to the presence of and pursuant to a command of the accused. He testified that the accused was an SS officer candidate and therefore, his superior. The incident which formed the basis of this case was also involved in United States v. Dressler, Case No. 12-413. Dressler, who appeared as a witness in this case, was sentenced to death in the

previous case for his participation in the incident. In this case, tried later in time, Dressler made a greater effort to establish that he acted pursuant to orders of this accused.

IV. EVIDENCE AND RECOMMENDATIONS:

Hans HEITKAMP

Nationality:	German
Age:	35
Civilian Status:	Bank clerk
Party Status:	Unknown
Military Status:	SS Technical Sergeant, Gestapo
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: On about 20 March 1945, an American pilot made a forced landing in the vicinity of Quirnbach, Germany. The pilot was taken prisoner by Figl, a member of the Gestapo, who turned the captured flier over to other Gestapo officials. These Gestapo agents took the flier to the Gestapo headquarters in the village of Quirnbach (R 10). Witness Dressler, who was convicted and sentenced to death for his participation in the killing of the flier in United States v. Dressler, Case No. 12-413 (R 7; P-Ex 2, p. 63), testified that he arrived at the Gestapo headquarters at about 1800 hours on 20 March 1945, and that the captured flier was at that time in the office of the commanding officer. The personal property belonging to the flier had been removed and placed on a table.

The Gestapo chief then gave Dressler an order to shoot the flier. Dressler asked to have the order rescinded, but the Gestapo chief, with threats, ordered Dressler to take the flier into the woods and kill him, and at that time handed Dressler a machine pistol. Whereupon, he left with the flier (R 22, 23). The Gestapo chief ordered the accused to accom-

pany Dressler. The accused offered the excuse that he did not have a steel helmet. However, the Gestapo chief repeated the order (R 50, 51). The accused left the office with Dressler and the flier or immediately thereafter (R 51, 60). Dressler testified that shortly after leaving the Gestapo headquarters with the flier, they met an air force officer who started to talk to the flier. In a few minutes, the accused appeared and took the flier away from the air force officer. The accused, Dressler and the flier proceeded on toward the woods (R 24). This was at about 1830 hours (R 11, 22).

Dressler further testified that, while proceeding toward the woods, the accused checked a spot on the map which he was carrying as to where the flier was to be killed. Dressler begged the accused to speak to the Gestapo chief so that he would not have to kill the flier, but the accused said the order had to be carried out. When they arrived in the woods, Dressler again told the accused he did not wish to shoot the flier, but the accused again stated that the order would be carried out. Then the accused, armed with a pistol, stood behind Dressler and gave the order to shoot, which he, Dressler, then and there did with the machine pistol (R 23 - 25). Before firing, Dressler attempted to turn the machine pistol over to the accused (R 31). After Dressler had shot the flier he and the accused carried the body into the woods (R 25).

In United States v. Dressler, Case No. 12-413, Dressler testified: "I suspect that HEITKAMP came along as a watchdog to make sure that I would shoot the pilot and not deliver him to the air force to set him free" (R 28, R 7; P-Ex 2, p. 6). Witness Dressler asserted that, while he was of higher technical rank and older than the accused, the accused as an officer candidate and as a department chief was, in fact, the superior to other noncommissioned officers (R 32). He testified that the reason that he shot the flier was because the accused was standing one meter behind him with a pistol and gave him the command to fire (R 24, 31 - 33).

Witness Then testified that at approximately 1950 hours, the accused

and Dressler returned to the village and had the flier's jacket with the flier's name, "J. Rives", sewn on the front. They tore off the name. Dressler was in possession of the flier's lighter and a package of Camel cigarettes, which he passed around. The accused had the watch belonging to the flier (R 15, 16).

Dressler testified that he returned to the Gestapo headquarters and reported the killing to the Gestapo chief (R 25). On the order of the Gestapo chief, he made a false written report that the flier had been shot while attempting to escape (R 36). Witness Then testified that the following morning he and another man, with picks and shovels, were taken into the woods by Dressler. Upon arrival in the woods, Dressler told them to dig a hole one meter and 60 centimeters deep and 50 centimeters wide. While they were so engaged, Dressler moved some brush which disclosed the body of the flier. Dressler then stated to the two men: "You don't need to be shocked. That man has been bombing deliberately villages and cities, perhaps even your own relatives." The body of the flier was placed in the hole, and while that was being done, witness Then noticed six or seven bullet holes in the flier's body (R 11, 12). The boots of the flier were removed and turned over to Dressler, before the body was covered with dirt (R 12, 13). Witness Then requested permission from Dressler to build a cross over the grave. Dressler replied: "If we dared to talk about anything we had seen in the woods, the same thing would happen to us" (R 13).

Witness Then further testified that, approximately two or three weeks after the flier was buried, he returned to the scene with American soldiers and helped exhumed the body of the flier. The body that was exhumed was the same body that he had helped bury and was the body of the flier whom he had seen with the accused and Dressler in the village (R 14).

Evidence for Defense: The accused testified that on 20 March 1945, an American flier crashed in the vicinity of Wümbach, Germany. The flier was captured by Higl, who delivered the flier to the Gestapo chief.

The latter upbraided Figl for not having killed the flier on the spot. The flier's personal property was removed by the Gestapo chief. While this was in progress, Dressler arrived at the office to report from his patrol and had his steel helmet and machine pistol with him, and in view of the fact he was so equipped, the Gestapo chief ordered him to shoot the flier on the outskirts of the village (R 50). Dressler objected to the order, but the Gestapo chief again repeated the order in a strong, brusque manner and then ordered the accused to accompany Dressler.

The accused further testified that his request to be relieved from the order was refused. There were no other instructions given to the accused nor were any reasons given as to why the accused should accompany Dressler. It was the customary practice and policy to always place two guards over a prisoner in order to avoid escape (R 51). Upon arrival in the woods, Dressler again tried to get out of killing the flier by offering the machine pistol to the accused, but he refused to accept. This was done by Dressler with a gesture only, no words were spoken (R 51, 53). Dressler was superior to the accused and he would have obeyed his verbal orders except as to shooting the flier (R 53). The accused in no way threatened Dressler (R 54, 55). Dressler could have forced the accused to do as he wished by turning the machine pistol on him (R 54). The accused denied that he was an officer candidate (R 55). He also denied that he had a nap in his possession and that he designated the spot where the shooting was to take place (R 60). The accused further testified that it was Dressler who broke up the conversation between the officer and the flier as he was the one who was in charge (R 61). Dressler was the senior and in charge and was the responsible person (R 63, 64).

The prosecution and defense stipulated, which stipulation was accepted by the Court, that, if two named witnesses were present in Court, they would testify to the effect that the accused tried many times to be relieved from duty with the Gestapo; that each request was refused; that the accused was not in sympathy with the Gestapo and wanted to return to

CIVIL work; and that the accused was sentenced with punishment, as he filed another application for release (R 45).

Witness Thon testified that the accused treated the prisoners of the Gestapo very well and decently (R 19).

Sufficiency of Evidence: It is established by competent evidence, not only in this proceedings but in United States v. Drossler, Case No. 12-413, P-Ex 2, that the flier was killed by Drossler on orders of his superior officer and under the direct supervision of the accused.

While it does not appear that the accused was Drossler's superior in rank, the record in this proceedings and the record in Case No. 12-413, supra, do indicate that the accused was very close to the chief of the Gestapo and that he, in effect served as an aide to him. Furthermore, while the real purpose of the accused's accompanying Drossler to the scene of the shooting is not too apparent, the Court might well have concluded that he went to supervise or to assure effective execution of the Gestapo chief's order, and that the presence of the accused as a watchman created a degree of immediate compulsion, which caused Drossler to carry out the order of the Gestapo chief. While the testimony of Drossler and the accused contradict each other on some points, on the whole they corroborate each other, though each attempts to place the guilt on the other. With regard to the evidence offered in support of superior orders, the accused was not ordered to shoot or to direct the shooting of the flier in the presence of his superior and did not act under immediate compulsion. The accused failed to meet the burden of proof concerning superior orders required by pertinent authorities, discussed in Section V, post.

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

Petitions: A Petition for Review was filed, 9 August 1947, by Major A. R. Myatt, Chief Defense Counsel. Petition for Clemency was filed by Major A. R. Myatt, defense counsel, undated, with attached

allied papers.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: The jurisdiction of the Court was questioned by the defense on the ground that the offense was committed in the French Zone of Occupation (R 5, 6).

It is well settled by accepted international law that 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 "Sheaton'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 questions 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.

The defense also challenged the jurisdiction of the Court (R 5,6) on the ground of failure to comply with 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 lack of adherence to the provisions in question. In any event the provisions in question 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 established in any Zone by the Commander thereof, or 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.

Superior Orders: The accused as shown in Section IV, paragraph 2, supra, sought to justify his actions by offering evidence to show that he was acting in compliance with "superior orders". Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovory Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWG, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWG, February 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior in fact, directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of



human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandoverly Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rules of the Law", by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in United States v. Bury et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946).

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

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 sentence be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

ELMER MOODY  
First Lieutenant, Infantry  
Post Trial Branch

Having examined the record of trial, I concur, this \_\_\_\_\_ day of \_\_\_\_\_ 1948.

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