

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

16 January 1948

UNITED STATES)
))
 v.) Case No. 12-531
))
Ernst BOHRS, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 31 January to 7 February 1947 before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Ernst BOHRS, Peter BRÜMMER and Hermann DAMMANN, German nationals, did, at or near NEU-WULMSTORF, Germany, on or about 20 June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Sergeant William H. Kane, ASN 32824677, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

(Surname DAMMANN actually spelled DAMMANN, P-Ex 1).

III. SUMMARY OF EVIDENCE: Following a bombing attack on Harbur, a suburb of Hamburg, Germany, on 28 June 1944, an American flyer, believed to be Sergeant William H. Kane, parachuted to earth in a disabled plane, landing near Neu-Wulmstorf, Germany. He was immediately taken prisoner by a German civilian and was being evacuated by him when accused BOHRS, BRÜMMER and DAMMANN, who carried a rifle, approached and began to beat the flyer despite the objections of his original captor. BRÜMMER used a steel helmet in the beating. While the flyer was lying in a ditch beside the road DAMMANN beat him over the head with a rifle butt

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ditch. The flyer appeared to be dead but when he showed signs of life after being pulled out of the ditch, he was given a mercy shot by an unidentified German soldier who was standing nearby.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Ernst BOHRIS

Nationality:	German
Age:	38
Civilian Status:	Farmer
Party Status:	Member Nazi Party
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	7 years, commencing 11 May 1945

Evidence for Prosecution: Witness Quast, the German civilian who captured the American flyer, testified that he recognized the accused as one of the three persons whom he met on the road while the flyer was being evacuated toward a kaserne; that these three persons or possibly only two of them, one of whom used a steel helmet, began to beat the flyer (R 13, 14); that witness tried to push the three assailants away from the flyer (R 14); that the flyer was pushed into a roadside ditch which contained about one foot of water (R 23); that when the witness objected to the beating of the flyer, the accused told the witness he should keep quiet (R 38); that the witness did not know whether the flyer died from the beating or from a shot later administered by a soldier (R 15, 41). Witness Eggers, a civilian who was helping evacuate the flyer, identified the accused as one of the three assailants and testified that, after the flyer was in the ditch, he saw the accused beat the flyer on his head one time with a steel helmet (R 48, 49, 83, 299). The accused admitted in his extrajudicial sworn statement and in his testimony in Court that he grabbed and shook the flyer (R 234, 237, 248, 252, 259; R 106; P-Lx 2, pp. 2, 3, 5).

Evidence for Defense: Prosecution witness Quast was not positive that the accused was present when the flyer was shot (R 35). Witness Czychy, who arrived shortly after the beating, testified that she did not see the accused at the scene (R 93). Witness Schoenau testified as to the good reputation and behavior of the accused (R 103). Witness Guenther testified as to the general good character of the accused and as to the general knowledge of the community that soldiers of the Wehrmacht had killed the flyer (R 284, 285). Witness von der Fecht testified that a German sergeant by the name of Feix admitted beating and shooting the flyer (R 289). Witness Hoyer testified to the good character of the accused and stated that he saw the flyer standing with a large group of soldiers before the accused arrived (R 153, 155). Accused BRUMMER testified that this accused stated that he (BOHRIS) had only touched the flyer and that he was still in his yard when BRUMMER was going out to the scene of the incident (R 174, 176). Accused DAMMANN testified that he did not see this accused at the scene until after the beating of the flyer (R 211). In his extrajudicial sworn statement, the accused stated that he did not arrive at the scene of the beating until after a crowd had gathered (R 106; P-Ex 2, p. 2). The accused testified that he did not arrive on the scene until after 20 to 25 persons were around the flyer and that he only grabbed and shook the flyer a little bit (R 234). He denied having a helmet at the scene and denied hitting the flyer with a helmet (R 236-238).

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

Petitions: A Petition for Clemency was filed by the accused 11 October 1947.

Recommendation: That the findings and sentence be approved

2. Peter BRUMMER

Nationality:	German
Age:	47
Civilian Status:	Factory Foreman
Party Status:	Member Nazi Party
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	20 years, commencing 11 May 1945

Evidence for Prosecution: Witness Quast, the German civilian who captured the American flyer, testified that the accused was one of the three persons he met on the road while the flyer was being evacuated toward a kaserne; that these three persons or possibly only two of them began to beat the flyer (R 13, 14, 26, 43); that the witness tried to push the three assailants away from the flyer (R 14); that the flyer was beaten with a steel helmet and pushed into the roadside ditch which contained about one foot of water (R 14, 23); that witness did not know whether the flyer died from the beating or from a shot later administered by a soldier (R 15, 41).

The accused stated in his extrajudicial sworn statement that when he arrived at the scene approximately 20 persons had gathered around the flyer; that he threw down his bicycle and walked over to the flyer; that someone bumped against his leg; and that in his excitement he hit the flyer in the face using his hand on which he had a steel helmet attached by its strap at the wrist. He wanted to hit the flyer again, but a soldier prevented this. He further stated that after he hit the flyer, the victim's knees buckled under him and he collapsed; that other persons pushed the flyer around and someone called, "Is that pig still alive?" (R 109; P-Ex 3a, pp. 2, 4).

The accused testified that he beat the flyer with his hand in which he had a steel helmet; that he hit him on the cheek one time; that he tried to strike him again, but a soldier grabbed his hand (R 158, 160, 161, 166, 176, 181). Defense witness von der Fecht testified that a German soldier had stated that the flyer had been beaten so severely that he was half dead when the soldiers arrived (R 289).

Evidence for Defense: Prosecution witness Quast could not positively identify the accused as one of those who beat the flyer (R 43). Witness Eggert, who was present throughout the incident, did not see the accused mistreat the flyer (R 51), however, he did not know the accused at that time (R 48). Witness Gzychy, who arrived after the beating, stated she did not see the accused at the scene (R 93). Witness Schoenau testified to the good reputation of the accused for behavior and conduct (R 103). Witness Hoyer testified to the good character of the accused and to the fact that he saw the flyer standing with a group of soldiers before the accused arrived on the scene (R 153, 155). Accused DAMMANN testified that he did not see the accused at the scene until after the beating (R 211). Witness Guenther testified to the general good character of the accused and to the talk in the community that soldiers of the Wehrmacht had killed the flyer (R 284, 285). Witness von der Fecht testified that a German sergeant by the name of Feix admitted beating and shooting the flyer (R 289). The accused testified that he only hit the flyer with his hand in which he was carrying a steel helmet and that he did this because he had received a blow on the leg (R 158, 159, 180); that the flyer must have been knocked into the ditch after he had left the scene (R 167); that he was too excited to know what he was doing when he hit the flyer; and that he did not know he had a helmet in his hand (R 174, 182).

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

Petitions: A Petition for Clemency was filed by the accused 12 October 1947.

Recommendation: That the findings and sentence be approved.

3. Hermann DAMMANN

Nationality:	German
Age:	52
Civilian Status:	Teacher
Party Status:	Member Nazi Party since 1933; Cell Leader
Military Status:	Home Guard (Volks-urm) Leader
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: Witness Quast, the German civilian who captured the American flyer, testified that the accused was one of the three persons he met on the road while the flyer was being evacuated toward the kaserne; that two or all three of these men immediately beat the flyer without saying a word (R 13); that witness tried to push the three assailants away from the flyer (R 14); that after the flyer had been beaten with a steel helmet and had been pushed into the roadside ditch which contained about one foot of water a man whom the witness later identified as the accused beat the flyer over the head with his rifle butt (R 14, 23, 30, 37); that the witness did not know whether the flyer died from the beating or from a shot later administered by a soldier, nor did he know whether the accused was present when the shot was fired (R 41, 42). Witness Eggers, who was helping evacuate the flyer, identified the accused as one of the three assailants and testified that the accused confronted him with a rifle and forced him to step

aside (R 48); that the accused later used his carbine to push the flyer's head under the water and mud in the ditch, keeping the flyer's head under water for a short while (R 49, 50); that the accused asked the soldiers not to shoot the flyer, saying, "He's got to croak slowly" (R 51, 300); that the witness considered the shot a mercy shot (R 81).

Witness Czychy testified that his daughter told him that the accused stated he could say with a clear conscience that he had beaten the flyer (R 93). Witnesses Iute and Luttmer, "teen age" pupils of the accused, testified that the accused told his class of students that he had beaten the flyer and that he would get some acknowledgment from the Party (R 95-97). Witness Schoenau testified that the accused told the group of women whom she supervised not to get excited about this flyer incident as his conscience was "quiet" and that the enemy would do the same to German flyers (R 100). Witness von der Fecht testified that a German soldier stated that the flyer had already been beaten and was half dead when the soldiers arrived (R 289).

The accused stated in his unsigned pretrial statement that the flyer was lying in a ditch when he arrived at the scene; that 30 to 50 persons were already there; that the flyer was wounded in the head and bleeding; that he went up to the flyer and hit him on the head with the butt of his rifle while the victim was lying in the water; that after he hit the flyer, the victim raised his head; that after he struck the flyer he left the scene (R 105; P-Ex 1, pp. 2,3).

The accused testified that when he arrived at the scene, the flyer was lying on his stomach in a ditch which contained 30 centimeters of mud and about 15 to 20 centimeters of water; that the flyer held his head up; that he went to the edge of the ditch and hit the flyer on the back of his head one time with his rifle butt; and that the victim let his head fall down

slightly, but after a short time he raised it again. The accused further testified that after he struck the flyer, he immediately left the scene (R 195, 196, 220-222, 224).

Evidence for Defense: Witness Quast testified that he did not see the flyer's head held under the water (R 29) and that when pulled from the ditch the flyer was still alive and was killed by a soldier who administered a mercy shot (R 29, 31). Witness Eggers testified that he did not see the accused beat the flyer prior to the time the flyer was lying in the ditch (R 59). Witness Guenther testified that the accused was some distance from the scene of the incident; that a soldier beat the flyer with a rifle butt; that a soldier, and not the accused stated, "They should let the dog die slowly"; that the flyer's name was Schwabe; that the word "Canada" was on his papers; and that it was general knowledge in the community that soldiers of the Wehrmacht had killed the flyer (R 268, 284, 285). Witness von der Fecht testified that a German sergeant named Felix admitted beating and shooting the flyer (R 289).

The accused testified that a crowd of about 30 persons consisting of civilians and soldiers was already around the flyer when he arrived on the scene (R 194); that the flyer was already lying on his stomach in mud and water in the ditch (R 195); and that because of the color of his clothing, he thought the flyer should be considered as a spy (R 209, 211).

Sufficiency of Evidence:

By his own admission in his extrajudicial sworn statement and in his testimony, the accused beat the American flyer on the head with his rifle butt while he was lying in mud and water in the ditch. This, and other actions on his part, were performed in the presence of a number of bystanders, including

the soldier who fired the fatal shot. It is clear that, by this conduct on his part, the accused encouraged, aided, abetted and participated in the killing.

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

Petitions: No Petition for Review was filed. Petitions for Clemency were filed by Dr. Josef Krause, 13 May 1947; and by accused 12 December 1947, 23 November 1947, and 21 March 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the persons 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 the sentences be approved.

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

George M. Lentz
GEORGE M. LENTZ
Capt., JAGD
Post Trial Branch

Having examined the record of trial, I concur, this 30th
day of January 1948.

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