

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

UNITED STATES)

20 August 1947

v.)

Karl EGGERT)

Case No. 12-5511

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 2-3 June 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Karl EGGERT, a German national, did, at or near NENTERSHAUSEN, Germany, US Zone, on or about 27 September 1944 wrongfully encourage, aid, abet and participate in the killing of four 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: Following a bombing attack on the interior Germany, 27 September 1944, four American fliers parachuted to earth from their disabled plane, landing in Kreis Rotenberg. Two landed near the town of Nentershausen and the other two landed near the neighboring village of Suess. The former two were brought into the conference room of the Eastern Laborers' Camp, Nentershausen; one by accused EGGERT and Hellwig, Gestapo agents, and one Winkler; the other flier by accused EGGERT and a local policeman. These fliers were beaten by the accused, the agent and Winkler and the others, and taken outside by the accused EGGERT and others and shot to death. The two fliers who landed near Suess were called for by the accused EGGERT, Ehlen and Viehl, where they were beaten before being removed to the said camp in Nentershausen. The two were shot to death near the same building, one of them admittedly shot from the rear by EGGERT. It appears that at no time did any of the four unarmed, surrendered prisoners of war attempt to escape or offer any resistance, except in the case of one flier to defend himself against an unprovoked assault.

The proof of the main facts in this case is the same as in the companion case No. 12-551, which was tried at Dachau, Germany, 21 Oct

Franz Miller, Martin Baesse and Paul Winkler, additional participants in this atrocity, were tried. In that trial three of the accused were sentenced to death, two were sentenced to six years imprisonment, and the other accused was sentenced to four years imprisonment. The record in that case 12-551, indicates that the Gestapo agent, Christian Hellwig, the remaining perpetrator, committed suicide before arrest on or about 1 July 1945.

IV. EVIDENCE AND RECOMMENDATIONS:

KARL EGGERT

Nationality: German
Age: 50
Civilian Status: Truck driver
Party Status: None
Military Status: Either a member of or employed by Gestapo from 1942.
Flee: NG
Findings: G
Sentence: Death by hanging

Evidence for Prosecution: The accused was an assistant to Hellwig, criminal commissar in the Gestapo office in Cassel (Kassel) (F-Ex 2a, p 1; F-Ex 4a, p 1). He wore a Gestapo badge, carried a pistol (F-Ex 3, p 1), and was sometimes dressed in the uniform of a staff sergeant in the Allgemeine SS (F-Ex 2a, p 2). On 27 September 1944 Hellwig, accused EGGERT and another German escorted an American flier to the conference room of a labor camp in Nentershausen. Both Hellwig and the accused were drunk at the time (F-Ex 2a, pp 1, 2; F-Ex 3, p 1). The accused left the room and returned a little while later with a policeman and another American flier (F-Ex 2a, p 3; F-Ex 3, p 1; F-Ex 4a, p 2). The accused and Hellwig beat the fliers severely and then, together with another German, took the fliers from the room and returned shortly without them. The group that had been in the conference room went to a restaurant for supper and there Hellwig ordered the accused and two others to proceed to Suess to pick up the other two fliers (F-Ex 2a, pp 3, 4; F-Ex 3 pp 1, 2; F-Ex 4a, pp 2,

ted them to the conference room at the labor camp in Nentershausen, arriving there around midnight (F-Ex 3, p 2; F-Ex 4a, pp 3, 4; F-Ex 5a). The accused, either alone or with one of the other men, took one of the fliers out of the room and returned in a few minutes without the flier (F-Ex 3, p 3; F-Ex 4a, pp 4, 5). He then took the other flier from the room and was followed by the two men who had accompanied him to Suess. About 70 meters from the barracks the accused, who was walking two or three meters behind the flier, fired one or two shots into the fliers back, killing him. The flier crumpled to the ground near the dead body of the other flier they had picked up in Suess. The accused then fired another shot toward the ground (F-Ex 3, p 3; F-Ex 4a pp 5, 6; F-Ex 5a; F-Ex 6a). The following morning the bodies of four American flier were picked up at the camp to be taken to the cemetery. Two of the bodies were identified as those of the fliers taken into custody at Suess the previous night (F-Ex 4a, p 6).

Evidence for Defense: The accused elected to testify under oath in Court to the effect that he was only a chauffeur for the Gestapo; that he was assigned to this job against his will; that he was never a member of the Gestapo (R 16, 17); that he never wore a uniform in Nentershausen; that he did not hold an official rank in the Army or SS (R 19); that he was not drunk on the day of the incident (R 19, 20); that he did not beat any of the fliers (R 21); and that he did not ordinarily drive for Hellwig (R 22). Although he was present in the conference room when the first two pilots were taken away, he did not have anything to do with their death (R 23-25). When he went to Suess, he carried a pistol that Hellwig had given him (R 26). On arrival at the labor camp from Suess, the other two men took the fliers into a room and the accused turned the car around and locked it. Hellwig arrived and told him that the two fliers "were supposed to be shot to death", and that Ehlen and Viehl, who were in the building with the fliers "had already gotten the order and they knew what was to be done". Hellwig then left and the accused went into the building (R 27). Hellwig did not return and apparently the accused did not see him again that night. The fliers were not shot for quite some time a

Hellwig left. It does not clearly appear that the accused was in charge of Ehlen and Viehl, but by the accused's testimony, he countermanded one of their orders to the victims (R 27, 28). The other two men took one of the pilots out and returned alone. The three then took the fourth pilot out. The accused asked where the third pilot was lying and, when they approached the spot, he carried out his order to shoot the pilot to death (R 28, 29). He knew that if he failed to carry out the order he would be punished (R 29, 30).

Sufficiency of Evidence: With regard to the evidence offered in support of superior orders, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

The evidence fails to satisfactorily establish that the accused actually received an order. The Court might well have concluded that Hellwig merely recited to him the fact that orders had been given by someone to Ehlen and Viehl and that the accused's participation was not reluctant to any degree. Moreover, no superior was present.

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

Petitions: No Petitions for Review were filed. Petitions for Clemency were filed by H. Joachim Standau, 10 June 1947; Fr. Eggert, 10 June 1947; Fr. Marie Eggert, 10 June 1947; Mayor Rissel, 11 June 1947 as local police authority, 10 June 1947; Karl Eggert, 15 July 1947; Karl Eggert, 5 July 1947; Marie Eggert, mother of the accused, Wilhelm Althaus, 26 June 1947; and the following testimonials concerning accused EGGER's character were filed: Heinrich Brothauer, 26 June 1947; Rissel, local police authority, 31 May 1947; the Burgomeister, 24 June 1947; (signature illegible) 31 May 1947; Dr. Krigar, 26 June 1947; Dr. Krigar, 2 July 1947; Gustav Noskowski, 26 June 1947; Friedrich Rosenthal, 26 June 1947; Wilhelm Schulten, 2 July 1947; Engelhardt Tröbing, 26 June 1947; Heinrich Zuschlag, 26 June 1947; (signature illegible) 27 June 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: A member with legal training was designated in the orders appointing the Court but did not sit as a member of the Court; however, the record indicates that a legally trained officer sat on the court and acted as legal member. It is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

Superior Orders: Accused EGGERT, as shown in Section IV, paragraph 1, 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, Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Dominikus Thomas, December 1945; and United States v. Alfons Klein, et al., (Hadamar Murder Factory Case), February 1946. This rule is followed in Anglo-American jurisprudence (Pitcheil v. Harmony, 13 How. 115, and "Manual for Courts Martial, United States 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 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 standard 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, United States Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944;

cited therein; "Manual for Courts-Martial", supra; "Report of the President of the United States", 7 June 1945, by Mr. Justice Jackson, United States 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 Rule of the Law", by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in United States v. Albert Bury and Wilhelm Hofner, September 1945, United States v. Dominikus Thomas, December 1945, and United States v. Gerd Beck and Otto Weinreich, December 1946).

Examination of the entire record fails to disclose any error or omission which resulted in an 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.

/s/ D. S. Furl
/t/ D. S. FURL
Major, Cml. C.
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this 7th day of
October 1947.

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