

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 178

UNITED STATES)
))
 v.)
))
Christian MENRATH, et al.)

27 June 1947

Case No. 12-765

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 24-27 March 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Christian MENRATH and Otto KNOPP, German nationals, did, on or about 29 March 1945, at or near BERGISCHE-GLADBACH, Germany, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be George F. BROWN, Jr., 2nd Lt., ASN 0-831104, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On about 28 March 1945, near Bergisch-Gladbach, Germany, an American flyer, believed to be Second Lieutenant George F. Brown, Jr., was taken prisoner by Ortsgruppenleiter Stefan Shoedder, who turned the flyer over to Kreisleiter Aldinger in Odenthal, Germany. The flyer was locked in a collar for the night. At the dining table in the evening Kreisleiter Aldinger, SS First Lieutenant Meissen, and the accused, Christian MENRATH and Otto KNOPP, discussed the flyer, and it was stated that he would be killed. The next morning, 29 March 1945, the flyer was taken in an automobile by Meissen, MENRATH, and KNOPP to a sideroad near Bergisch-Gladbach and near a large bomb crater where the flyer was taken from the car and pushed into the crater by Meissen and KNOPP as MENRATH fired four or five shots from an automatic rifle. The flyer fell, screaming and begging for mercy whereupon Meissen fired a shot with a pistol into the flyer's head. Then Meissen and KNOPP buried the body by covering it with sand in the bottom of the bomb crater while MENRATH kept civilians away at the road, after which

Kreisleiter Aldinger is dead (P-Ex 6). The perpetrator, Meisson, is also dead (P-Ex 4).

The flyer victim was sufficiently identified as Second Lieutenant George F. Brown, Jr., ASN 0-831104 (R 56, P-Exs 11, 12),

IV. EVIDENCE AND RECOMMENDATIONS:

1. CHRISTIAN MENRATH

Nationality:	German
Age:	56
Civilian Status:	Master metal worker
Party Status:	Acting Ortsgruppenleiter and Kreis Propaganda-Leiter
Military Status:	Volksturm Company Commander
Plot:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused, a Company Commander of the Volksturm Unit of which Kreisleiter Aldinger was commanding officer, (P-Ex 1A) on the evening of 28 March 1945, ate at a table with several officers, including Kreisleiter Aldinger, SS First Lieutenant Meisson, and accused KNOFF. Meisson told about a flyer who was locked in the cellar and said that the flyer would be shot that night. The next morning about 0700 hours Meisson gave the accused a rifle, saying, "Loaded and locked. Now we are taking the prisoner away". The accused presumed that the prisoner was going to be shot (P-Ex 1A, p. 1). The accused and accused KNOFF with Meisson driving, and each armed, left with the prisoner in a small automobile (P-Ex 1A, pp. 1, 2). The accused gives the following account of the death ride in his extrajudicial sworn testimony:

"We drove in the direction of Odenthal-Noschen, directly behind Odenthal on a hillside, Meisson intended to carry out the shooting, saying: 'Here he will be finished off'. I raised a protest with the remark: 'Not here'. We drove on in the direction of Bechen, Meisson and KNOFF asked me: 'Where then?' I said: 'Behind Bergloch Gladbach'". (P-Ex 1A, p. 2).

After passing through Bergisch-Gladbach, the car was stopped on a side-road near a large bomb crater. Meissen and accused KNOFF got out. KNOFF blocked the road, Meissen walked around behind the crater and then told the accused to get out with the prisoner. The accused motioned the prisoner toward the crater (P-Ex 1A, p. 2). Of the actual killing this accused stated as follows in his extrajudicial sworn testimony:

"Meissen gave the order: 'Go on, go on and shoot'. Thereupon I unlocked my weapon and fired about three shots. The prisoner fell to the ground, but still called 'Pardon'. Then Meissen drew his pistol and definitely shot the prisoner". (P-Ex 1A, p. 2).

The accused in his extrajudicial sworn testimony then tells of the superficial burial of the body in the bottom of the bomb crater, and that then the accused and KNOFF, together with Meissen, returned to Odenthal (P-Ex 1A, p. 2). The accused fled at the approach of the American Army and after hearing that he was wanted for killing the flyer. He obtained employment under an assumed name on a farm near Adorf, Germany, where he remained in hiding until apprehended 25 September 1946 (P-Ex 1A, p. 3).

The actual killing was observed, unknown to the accused, by witness Friedrich Jung. He saw the accused fire four or five shots from a carbine, and the flyer fall. He later heard a single shot fired (R 24). This witness further testified:

"I didn't hear any talking. I didn't hear anybody yelling except the flyer afterwards. The flyer afterwards was moaning. After a few shots were fired already. A few shots, four or five shots. What the man was yelling and crying in the bomb crater I didn't hear. I only heard that he was yelling." (R 31).

Witness Neuhauser heard the first burst of shots, then some terrible shouting, then a single shot, after which all was quiet. He approached the scene and was ordered away by this accused (R 77-81). When the accused approached the witness near the bomb crater five or six minutes after the shooting, accused had his hands in his pockets and was whistling a tune (R 139).

Evidence for Defense: The accused took the stand testifying in his own behalf, and interposed the defense of superior orders. He introduced evidence that Aldinger was Kreisleiter and Meissen was the executive and

accused would have been shot, if he had refused to obey an order of Aldinger or Meissen (R 91, 92). Both Aldinger and Meissen had the reputation of being brutal and ruthless (R 95). The accused admits in his testimony that he fired two or three shots, "without taking aim", but claims it was after Meissen had given him the order three times and had drawn a pistol. He claims that he thought he did not hit the flyer and that the flyer fell to his knees begging for mercy, and Meissen shot him in the head after the accused had protested (R 147, 148). When Meissen shot the flyer, the accused suffered a nervous collapse and "sank down" (R 150).

✓ Sufficiency of Evidence: In regard to the defense of superior orders, the Court, having heard the witnesses testify on the stand, including the accused, evidently did not believe the testimony to the effect that the accused acted under the immediate compulsion of orders and threats, as against the facts and circumstances shown in evidence and the testimony of disinterested witnesses, which was sufficient to establish beyond a reasonable doubt that the accused MENRATH was a willing participant in a premeditated and malicious killing. The Court was entirely justified in accepting the latter mentioned theory of the incident. Armed with an automatic rifle, the accused, especially since it is contended that accused KNOPP was opposed to the killing, was in a position to have taken complete control of the situation had he so desired and was certainly not in a position to have been forced to shoot the flyer against his will by Meissen or any other one man. He definitely failed to meet the burden of proof required as to superior orders by pertinent authorities discussed in Section V, post.

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

Petitions: Defense counsel filed a Petition for Review, 3 April 1947, and an amended Petition for Review, 4 April 1947, citing under "Grounds" certain assignments of error under three subheadings in the order discussed below.

(a) Concerning the assignment of error under paragraph "1a", there was no error committed by the Court in overruling the defense objection to the translation of the German phrase "Nach Bergisch-Gladbach". The translation of the Exhibit (P-Exs 1, 1A) shows to have been officially made, and the Court did not abuse its discretion in accepting as correct such an official translation. Further the translation was verified as correct by the official court interpreter at the trial (R 13, 14). Also the Court announced that it would take judicial notice of the various interpretations of the German preposition "nach" (R 15).

(b) The defense assignment of error under paragraph "1-b" is entirely without merit. The answer of the witness that is complained of could not in any conceivable way have been harmful to the accused. No issue was raised as to the identity of the victim. Even if the identity was not clearly established by other evidence, the proof that the victim was a member of the American Armed Forces was sufficient.

(c) The assignment of error under paragraph "1-c" is also without merit. The Court announced that the testimony of witness Karl Menrath would not be considered by the Court in connection with the case against his father, accused Christian MENRATH (R 63). The Court was correct in its holding that witness Karl Menrath could be required to testify as to accused KNOPP and that the testimony would be disregarded as to accused MENRATH (R 63, 66). It must be presumed that in regard to the findings and sentence as to the accused Christian MENRATH the testimony of the witness Karl Menrath was not considered.

(d) Concerning the assignment of error under paragraph "1-d", no error was committed in the admission of Prosecution Exhibit 12 (P-Ex 12). Such extrajudicial sworn testimony is clearly admissible under the rules for whatever probative value it may have (Sections 270 and 280, "Manual for Trial of War Crimes and Related Cases", 15 July 1946).

(e) Relative to the assignment of error under paragraph "1-e", the accused was not improperly limited in cross-examination. The matter

being inquired into was not cross-examination in fact, but an attempt to bring in new matter in behalf of the accused that had not been touched upon in direct examination. In any event, the witness was subsequently permitted to fully testify as to what he had observed (R 132).

(f) Concerning the assignment of error in paragraph "1-f", the Court should have permitted witness Christian Molitor to testify as to the reputation of witness Karl Menrath for truthfulness (R 181). Such evidence for the purpose of impeachment of a witness is always admissible under Anglo-American criminal practice. However, it is sufficient answer to point out that the Court did not consider the testimony of witness Karl Menrath as to accused Christian MENRATH (R 63). Moreover, attached to the Petition for Review on behalf of accused MENRATH is an affidavit by witness Christian Molitor, in which the witness states under oath:

"I know the son of MENRATH, Karl Menrath, for he lives in my neighborhood and I have seen and observed him very often. In my opinion he is an unreliable lout."

It may appropriately be assumed that such would have been the testimony given in answer to the question asked by defense counsel during the trial. Thus, it is seen that, even if Anglo-American rules of evidence had been followed though not necessarily applicable, the Court would not have considered the testimony because a witness cannot be impeached merely upon the opinion of another witness. Impeachment in such a case must be made upon a knowledge of general reputation of witness to be impeached as to truth and veracity in the community wherein the witness resides and that such reputation is bad.

Concerning the assignments of error set forth in subparagraphs 1-b to 1-f, inclusive, of the Petition for Review, it appears that they are all bottomed on Anglo-American rules of evidence. Such rules are not applicable to war crimes trials. (Section 5-329 and 5-354.4, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1945).

No Petition for Clemency appears.

Nationality: German
Age: 46
Civilian Status: Clerk
Party Status: Secretary to Kreisleiter
Military Status: Volksturm, Clerk
Plea: NG
Findings: G
Sentence: Death by hanging

Evidence for Prosecution: Much of the evidence discussed above in connection with accused MENRATH also applies to this accused and is here referred to and, for the sake of brevity, not repeated. The accused was a secretary in Kreisleiter Aldinger's office. He was the Kreisleiter's righthand man (P-Ex 1A). He was present at the dinner table when SS First Lieutenant Meissen discussed the prisoner flyer and stated that the flyer would be shot that night. "This statement----must have been heard by all people present" (P-Ex 1A, p. 1). Accused MENRATH also stated that when the car on the death ride passed some bomb damaged buildings, the accused said to the prisoner in an angry tone, "This was done by you and your comrades". At the first stop when MENRATH said, "Not here", Meissen and the accused asked, "Where then?" (P-Ex 1A). Other statements of accused MENRATH concerning the participation of this accused are as follows:

"Meissen and KNOFF got out of the car and inspected the surroundings. KNOFF, who had exactly the same 7.65 mm pistol as did Meissen, stood guard on the road. Meissen and KNOFF, who had carried the prisoner into the bomb crater, and had tried to cover the body by means of their hands, accomplished now the burial with the shovel" (P-Ex 1A).

Accused returned to Odenthal in the same car in which he came to the scene of the crime, together with Meissen and accused MENRATH (R 33, P-Ex 1A). Accused MENRATH's statement that this accused assisted in the burial is corroborated (R 51). Accused MENRATH stated:

"KNOFF as I presumed, came along in order to supervise the shooting of the prisoner by orders of the District Leader" (P-Ex 1A, p. 2).

Meissen, immediately before being fatally injured, stated to a war crimes investigator:

"That on the morning of 29 March 1945 he (Meissen), Otto KNOFF and Christian MENRATH received orders from Kreisleiter William Aldinger of Kreis Bergisch-Gladbach to kill an American flyer whom Kreisleiter Aldinger then turned over to them,

"That the three of them, Meissen, KNOFF, and MENRATH then proceeded in a vehicle driven by MENRATH to a bomb crater along the Alten Wupperfurter Strasse in Bergisch-Gladbach where all three of the men and the American flyer got out of the vehicle.

"That he (Meissen) then pushed the flyer into the bomb crater, and that MENRATH then shot the flyer several times thus killing him." (P-Ex 5).

Witness Jung testified that he first saw the accused standing on the road; that the accused then followed the flyer around the bomb crater; that the accused and Meissen pushed the flyer into the crater; that "two of them were pushing the flyer into the bomb crater"; that then accused MENRATH fired the shots (R 34); and that "KNOFF and Meissen, as far as I could see, in my opinion, pushed the flyer into the bomb crater" (R 41). Witness Jung definitely identified the accused as being present during the killing (R 45).

Witness Otto saw the accused in the bomb crater after the flyer was dead, stating "In my opinion KNOFF helped to shovel sand" (R 51). Accused MENRATH on the evening before the killing told his son, Karl Menrath, that the flyer was to be killed and that the accused had volunteered to fulfill the mission (R 73). KNOFF's participation is further corroborated by witness Neuhauser (R 77-81).

Evidence for Defense: The accused testified in Court that he had been in the poor graces of the Kreisleiter and that he was only an office clerk (R 105-110); that he went in the automobile only to deliver a letter in Weiden; that he thought the flyer was to be delivered to the police at Bergisch-Gladbach (R 110, 111); that he was not armed (R 112); that he thought some defect in the car caused it to stop; that he got out and went into the woods to relieve himself (R 113); that he was in the woods when he heard three or four shots, then in a moment a single

that he did not go back in the car with MENRATH and Meissen, but walked home (R 116); that he did not help bury the flyer; and that he refused Meissen's direct order to do so (R 127). The accused introduced six statements of witnesses as to his character and general reputation as being good (D-Exs 2-7).

Sufficiency of Evidence: The evidence on the part of the Prosecution that the accused went along on the death ride for the specific purpose to see that the order of the Kreisleiter to kill the flyer was carried out, and the testimony of the eyewitness, Jung, that the accused was present during the actual killing, that he led the prisoner from the car around the bomb crater, and that he with Meissen pushed the flyer into the crater at the time accused MENRATH fired the shots and then helped to bury the body, and that after the murder he returned to Odenthal in the same car together with MENRATH and Meissen, is all corroborated by all the surrounding facts and circumstances as well as by witnesses Otto, Karl Menrath, and Neuhauser and is amply sufficient to establish that the accused was a very active participant.

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

Petitions: A Petition for Review was filed by defense counsel, Captain Frank E. Morse, 23 April 1947. This Petition makes three assignments of error, which are discussed respectively as follows:

a. There was no error in the admission of the testimony of the witness Karl Menrath as against this accused (R 55-76). Hearsay evidence is clearly admissible for whatever probative value it may have (Section 270, "Manual for Trial of War Crimes and Related Cases", 15 July 1946).

b. The contention that the finding of guilty "is against the weight of the evidence" has no merit.

c. The punishment is not excessive. It is clearly warranted and commensurate with the crime.

No Petition for Clemency has been filed.

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.

Witness Related to Accused: A witness who is the son of an accused may claim his privilege to refuse to testify against his parent (Paragraph f, Section 270, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). However, such exemption could not be claimed for the benefit of another accused in the same trial who is not related to such witness, and the Court may properly require the witness to testify as to all matters within his knowledge that may be used as evidence concerning the participation of such other accused. The rulings of the Court in this connection concerning the testimony of witness Karl Menrath were correct (R 55-76).

Superior Orders: Accused MENRATH as shown in Section IV, paragraph 1, 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; Llandoverly 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 (Mitchell v. Harmony, 13 How. 115, and "Manual, 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 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,

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: RM 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 factnote, 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 U.S. v. Albert Bury and Wilhelm Hofner, September 1945, U.S. v. Dominicus Thomas, December 1945, and U.S. v. Gerd Beck and Otto Weinreich, December 1946).

Conflicting Evidence: It is fundamental that the Court, where there is a conflict in the testimony, should accept as true that testimony deemed by the Court to be most worth of belief.

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.

/s/ V. E. McClintock
/t/ V. E. McCLINTOCK
Attorney
Post Trial Branch

Having examined the record of trial, I concur
this 9th day of October, 1947.

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