

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 4Q7

7 January 1948

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

v.)

Georg STURM)

Case No. 12-793-2

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 28-29 July 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Georg STURM, a German national, did, on or about 29 August 1944, at or near GROSS GERAU, Germany, wrongfully encourage, aid, abet and participate in the killing of 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 29 August 1944 two flyers, tentatively identified as American, were captured by civilians at the village of Trebur, Germany. They were immediately taken to Gross Gerau, Germany, by an escort including the accused STURM. There the flyers were attacked and beaten by civilians but were taken by police into the courtyard of the city hall. STURM, who was a Luftwaffe soldier in uniform, ordered witness Schmaltz to exchange trousers with him so that he would not be recognized as a soldier. At that time the two flyers lay on the ground alive, unconscious from a previous beating. Schmaltz returned in about fifteen minutes and saw STURM alone with the flyers, beating them with an iron bar until they were finally dead.

The incident involved in this case is substantially the same as that in the cases of United States v. Flannus, et al., in which two accused were sentenced to death, and United States v. Deubert,

et al., in which one accused was sentenced to imprisonment for 15 years, one to one year, one to two years, and one to one and one-half years.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Georg STURM

Nationality:	German
Age:	33
Civilian Status:	Unknown
Party Status:	NSDAP, SA, terminated 1934
Military Status:	Master Sergeant, Air Force
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 10 June 1947

Evidence for Prosecution: Witness Bonn identified the accused in court and testified that two flyers were captured in Trebur, Germany, about 29 August 1944 (R 6); that they were immediately delivered to the police station in Gross Gerau, Germany (R 7); that the flyers were attacked by civilians but were taken by police into a gate of the city hall (R 8); that the witness returned to the city hall courtyard in about one hour; that the accused had accompanied the witness with the flyers to Gross Gerau and returned with him to Trebur; that on the return trip the accused remarked, "My brother has got his revenge now" (R 9). The witness testified that he saw the accused go into the city hall courtyard with the flyers (R 18). The accused was dressed in his air force uniform (R 16).

Witness Schmenger identified the accused in Court (R 26), and said that the accused was in the group who escorted the flyers from Trebur to Gross Gerau (R 27).

Witness Hochlein identified the accused in Court (R 28), and testified that he accompanied the escort of the flyers from Trebur to Gross Gerau; that the accused was present; and that they were

told that the flyers were American (R 29).

Former police chief Fachinger, in his extrajudicial sworn statement, stated that he took the flyers from a mob that was beating them and took them inside the city hall courtyard where he left them with a man named Flanaus and another man whom he did not know. When he returned both flyers were dead (R 31; P-Ex. 24).

Mrs. Schmidt, in her extrajudicial sworn statement, stated that after the flyers had been taken into the courtyard and Fachinger started to close the gate she heard a man, whom she described as a chauffeur, say "Take it easy. I am coming along. Now I have a different pair of trousers. Now I can do the beating better. I am not allowed to do it in uniform" (R 34; P-Ex. 44, p. 2).

Witness Schmaltz identified the accused in Court and testified that he and the accused were with the group who took the two captured flyers from Trebur to Gross Gerau on or about 29 August 1944 (R 37); that from a distance of 10 meters he personally saw the accused beat the two flyers to death with an iron rod in the courtyard of the city hall at Gross Gerau; that he saw the accused strike ten or fifteen blows; that the flyers were alive before the accused beat them; that they were unarmed and offered no resistance and made no attempt to escape (R 38); and that all the blows were struck across the back of the necks of the flyers. The witness positively identified the accused as the person he saw kill the flyers. He further testified that the accused, before the beating, ordered him to exchange trousers so that he, the accused, would not be recognized as a soldier (R 39, 40, 58). The witness further testified that after the exchange of trousers he left, but later returned to the courtyard and saw the accused kill the flyers (R 54). He testified further that when the flyers were finally killed only the accused was present with the flyers. The witness was standing in a doorway (R 42). After the beating by the accused the flyers did not move any more and did not show any signs of life. (R 55).

Flauaus, who was convicted and sentenced to death in United States v. Flauaus, et al., Case No. 12-793, in his extrajudicial sworn statement, stated that he and another man, whom he did not know but who he understood was a soldier, beat the two flyers to death. He stated that the other man borrowed a pair of trousers to hide his identity as a soldier (R 66; P-Ex. 6A).

An entry in the record of the burial book of the Gross Gerau cemetery contained the entry "2 American flyers of Trobur were removed from the city hall and were buried here on 30 August 1944" (R 67; P-Ex. 7).

Evidence for Defense: On cross-examination Bonn testified that he had requested that the accused go along on the trip to deliver the flyers to Gross Gerau (R 12). He did not see the accused mistreat the flyers but he saw him push the flyers through the city hall courtyard gate and away from the persons beating them (R 13, 14). The witness admitted that what he understood the accused to say about his brother being revenged could have been a misinterpretation on his part (R 15, 16).

The accused testified that his services with the German Air Force required handling aviation gasoline from 1936 to 1945 and that because of this he was affected with attacks of amnesia and an unnatural desire for sleeping; that his mind was affected and that he could not remember what happened on certain days; that in 1945 he was injured in an air raid and was unconscious four or five days from a brain concussion (R 70, 71); and that, due to the brain injury, he could not remember anything for a long time and now cannot remember anything that occurred since 1942 or 1943. He testified that he did not ever remember having been at Gross Gerau or Trobur and remembered nothing of having participated in the beating of flyers on or about 29 August 1944 and that he did not remember having ever before seen any of the witnesses who appeared at the trial (R 72).

Witness Schultz testified that he was the accused's first sergeant from December 1938 to May 1942; that the accused contracted lead poisoning from gasoline fumes (R 77, 78); and that, because of his mental condition brought about by the lead poisoning, the accused was given many disciplinary punishments for minor violations, such as failure to salute, before it was recognized that such violations were caused by the accused's mental condition (R 79-81).

Witness Burdach identified the accused and qualified himself as an expert on mental diseases (R 83, 84). He testified that it is possible that a patient suffering from lead poisoning "**** will have an unconscious sort of mind, which one can also call a sort of being drunk****" and that such a patient is easily excited to violence and will, under such excitement, commit acts for which he is not responsible and which he cannot remember. The witness testified that he had examined the accused on 21 July 1947 and found no symptoms of lead poisoning, but said that it was normal that the effects of lead poisoning would have disappeared by that time (R 85, 86). The witness testified further that the accused at the time of the trial was mentally normal but did suffer from a nervous condition due to a skull injury received in March 1945 (R 92) and that such nervous condition caused him to become easily excited (R 93).

Sufficiency of Evidence: The testimony on the part of the prosecution witnesses is ample to establish that the accused was present at the beating of the two flyers and that he administered the final blows that killed the flyers. It is apparent that the Court took into consideration the evidence concerning the accused's mental condition, in assessing the sentence.

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: It is clear that the Court had jurisdiction of the person 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 sentence be approved.

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



V. H. McCLINTOCK
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this 23rd day
of January 1948.



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