

22 January 1948

UNITED STATES)
))
 V.) Case No. 000-Dachau-1
Anton STINGLWAGNER, et al)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 12-14 August 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS.

CHARGE I: Violation of the Laws and Usages of War.

Particulars: In that Max Lengfelder and Anton Stinglwagner, German nationals, did, at or in the vicinity of Dachau, Germany, in or about October 1939, wrongfully encourage, aid, abet and participate in the killing of approximately 70 Polish nationals, inmates of the Dachau Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

CHARGE II: Violation of the Laws and Usages of War.

Particulars: In that Anton Stinglwagner, a German National, did, at or in the vicinity of Dachau, Germany, in or about October 1939, wrongfully encourage, aid, abet and participate in the killing of an unknown Czechoslovakian national, an inmate of the Dachau Concentration Camp, who was then in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: Immediately following the occupation of Poland by Germany in September 1939, two groups of civilians were brought into Dachau Concentration Camp. One group consisted of about 70 Poles who, upon their arrival into the camp, were beaten by both accused and other SS personnel, so severely that at least 10 of them died. This group is hereinafter referred to as the "Polish group". Of the second group, mostly Czech civilians, a rabbi, while exhorting the inmates to be courageous,

is hereinafter referred to as the "Czech group".

Not much weight has been given to the testimony of witness Karl Kramer.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Max LENGFELDER

Nationality:	German
Age:	35
Civilian Status:	Unknown
Party Status:	Nazi since 1934
Military Status:	SS since January 1932.- Sergeant, Waffen SS
Plea:	NG
Findings:	G Charge I, except the number 70, substituting therefor the number 10; of the excepted number: NG; of the substituted number: G
Sentence:	Life Imprisonment

Evidence for Prosecution: At the time of the commission of the acts of which the accused was charged, he was an SS sergeant. He was employed in the Political Department of Dachau (R 20, 21, 25, 67, 74, 79, 96).

Five witnesses testified that at various places within the camp, including the roll call square, arrest bunker and bathhouse, the inmates of the Polish group were severely beaten by members of the SS Headquarters Staff and the blockleaders (R 11, 15, 18, 20, 22, 23, 25, 36, 119, 120, 122, 124, 125, 127, 129, 130, 132). One of them, witness Geiger, testified that in the roll call square "there was one pool of blood after the other on the ground" and that none of the inmates were uninjured (R 19). This witness further testified that the accused beat some of the inmates on the roll call square and that as a result of beatings by the accused and accused STINGELMAGNER some of the inmates died (R 18, 19). Another of these witnesses who worked

under the accused, recalled that on the roll call square he saw the accused strike these inmates with his hands and others, who were guards, beat them with rifle butts and pistols. As a result of these beatings some of the inmates were sent to the dispensary and he heard that, later, some died (R 25, 26, 29). As a result of these mistreatments, which continued for a period of a few days, at least 10 of the inmates died (R 11, 19, 26, 29, 35, 120, 121, 130). Later, the survivors of the Polish group were sent to Buchenwald Concentration Camp (R 31, 71, 96, 96).

Witness Karl Kramer testified that on the day of the arrival of the Polish group the accused participated in the beating of these inmates by hitting them with a rifle and, on the second day, by beating them with his fists. He further testified that when these inmates were being marched from the gate to the roll call square they were beaten to such an extent that several broke down and many were taken to the dispensary, some dying on the spot (R 43, 44, 45, 53, 57).

Evidence for Defense: There was a rumor in Dachau that the inmates of the Polish group had been active as snipers or partisans (R 10, 13, 15, 20, 25, 72, 131, 132). They were given red arm bands to so identify them (R 13, 14). Upon arrival, they were in a weak physical condition, their clothes were ragged and they had been previously beaten (R 25). During the time the Polish group remained in Dachau, the inmates did not receive any mattresses, blankets or food (R 131).

The accused testified that he did not recall the arrival of the Polish group (R 81, 82). He denied possessing a rifle although he admitted that he was armed with a pistol while on duty at the camp (R 81, 82). He further denied any mistreatment of inmates at any time (R 86, 87).

Four witnesses testified that they remembered the arrival

of the Polish group (R 68, 89, 96, 105). One of these witnesses testified that he thought the accused was present on this occasion with other guards, some of whom were armed with rifles (R 69). Another of these witnesses testified that he did not see the accused at the place of arrival of the Polish group, but he had his back turned at the time (R 95). This witness also testified that the accused had a good reputation (R 98, 99, 101), although the witness did admit that he had heard that the inmates were badly beaten in the rear of the bathhouse (R 101). A third of these four witnesses testified that he did not see anyone beat the inmates while they were being led to the arrest bunker (R 105). One of the four witnesses and an additional witness testified that the accused helped some of the inmates and was known as a decent, humane and thoughtful person toward them (R 62, 98, 99).

A prosecution rebuttal witness testified that he did not see the accused beat any of the inmates (R 120). Witness Karl Kramer testified that on arrival at Dachau the inmates on the Polish transport looked as though they had been previously beaten and were wearing ragged and torn civilian clothing. Many were swaying back and forth (R 43, 45).

Sufficiency of Evidence: The evidence falls short of proving beyond a reasonable doubt that inmates died as a direct result of beatings by the accused. The evidence does, however, show that the accused participated ^{in the killings,} at least to the extent of beating some inmates with his fists. The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: A Petition for Review was filed by defense counsel, Major Olaf J. Tolnas, 15 August 1947. Petitions for Clemency were filed by Anna Lengfelder, wife of the accused, 14 September 1947; Josef Dauer, 7 September 1947; Anton Hertrich 8 September 1947; Maria Kaufinger and nine other townspeople,

9 September 1947; Ludwig Moosburger, 9 September 1947; Stefan Schwarzbauer, 10 September 1947; Mina Roth, 10 September 1947; Wilhelm Reisser, 10 September 1947; B. Maria Wirth, 10 September 1947; Peter Lichtinger, 11 September 1947; Georg Ziegler, 11 September 1947; Franz Wimmer, 11 September 1947; Hans Schmidt, 11 September 1947; Zenta Eberl, 11 September 1947; Michael Schmid, 11 September 1947; and the accused, undated.

Recommendation: That the findings and sentence be approved but that the sentence be reduced to imprisonment for 20 years, commencing 14 August 1947.

2. Anton STINGLWAGNER

Nationality:	German
Age:	33
Civilian Status:	House painter
Party Status:	Nazi 1932-1943
Military Status:	Sergeant, Waffen SS; Blockleader
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I, except the number 70, substituting therefor the number 10; of the excepted number: NG; of the substituted number: G Charge II
Sentence:	Death by hanging

Evidence for Prosecution: The accused was assigned to the headquarters at Dachau Concentration Camp (R 20, 21, 96, 109). One witness, Geiger, testified that the accused was among the SS personnel who participated in beating inmates of the Polish group in September 1939; that on this occasion he struck them with a rifle; and that some of the inmates were beaten so severely that they fell to the ground. At least 10 of these inmates died as a result of the mass beating (R 11, 18, 19, 20).

Witnesses Geiger and Habel testified that the accused was present when the Czech group, numbering 50-60 inmates, arrived at Dachau Concentration Camp in September 1939. The Czech group

and the accused stood nearby (R 12, 26, 33). During this formation, one of the inmates, a rabbi, stepped out before the other inmates and told them to be courageous and not to sign anything as this would constitute signing their own death warrants (R 12, 26). Geiger testified that the accused then fired several shots with his pistol at the rabbi, killing him (R 12). This was followed by a general shooting at the inmates by other SS personnel resulting in the death of six other inmates of the Czech group (R 12). Habel testified that, after he heard the rabbi speak to the inmates, he heard shots and angry shouting; that he saw a weapon in the hand of the accused; and that he concluded that the accused must have been the one who fired (R 26, 33, 34). Witness Durner who had not seen the incident testified that it was generally known among the inmates of Dachau that the accused shot the Czech rabbi (R 130, 133).

Two additional witnesses stated in their extrajudicial sworn statements that on other occasions the accused beat inmates at Dachau (R 140; P-Ex 3a, 4a).

Witness Karl Kramer corroborated the testimony of one witness who testified that the accused shot and killed the rabbi with a pistol. This killing was followed by additional shooting which resulted in the death of at least six inmates (R 47, 48-51, 54, 55).

Evidence for Defense: The accused testified that he did not recall the arrival of the Polish group, but he admitted that it might have arrived (R 110). He denied beating or killing any of the inmates of the Polish group or shooting the rabbi of the Czech group (R 111). He further testified that he never beat any inmate at any time (R 115).

Witness Schaefer testified that he did not see the accused beat any of the inmates (R 120). Kiermair testified that he

did not see any beatings or any dead inmates of the Polish group (R 69, 70). Four witnesses did not recall the arrival of the Czech transport (R 74, 84, 90, 91, 123).

Witness Hildner testified that although he lived with Geiger and had a close relationship with him, Geiger never mentioned the incident involving the shooting of a rabbi of the Czech group (R 74, 76).

Sufficiency of Evidence: The evidence concerning the participation of accused LENGFELDER in the mistreatment of inmates of the Polish group is applicable, to a considerable extent, to this accused. In addition, the evidence as to the killing of the Czech rabbi is sufficiently corroborated to prove the accused's guilt beyond a reasonable doubt.

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

Petitions: A Petition for Review was filed by defense counsel, Major Olaf J. Tolnas, 15 August 1947. Petitions for Clemency were filed by Parson of Catholic Parochial office "Our Dear Lady" and the Bishop of Augsburg, 12 December 1947; by Hermann V. Tannstein, 17 November 1947; and 10 January 1948; Rudolf Sailer, 5 October 1947; and by the accused, undated.

Recommendation: That the findings and sentence be approved
V. SPECIAL PLEAS: Accused LENGFELDER pleaded in bar on the ground that he was being placed in double jeopardy inasmuch as, on or about 26 May 1947, he was tried, convicted and sentenced to a term of six years imprisonment by a Military Government Court in Case No. 000-50-2-87 (R 6). A written stipulation signed by counsel for the prosecution and defense and by accused LENGFELDER was received into evidence as D Ex-1, (R 8). This exhibit stipulates to the conviction and sentence of accused as above related upon charges and specifications as contained in a copy of the charge sheet attached to the

proceeding.

The legal aspects raised by this motion are discussed in Section VI, post.

VI. QUESTIONS OF LAW:

1. Jurisdiction: A question, not raised at any stage of the trial but implicit in the facts, warrants discussion. Inasmuch as both particulars contained allegations that the offenses were committed on a date which was prior to the date the United States entered the war, had the Court jurisdiction of the offense?

A validly constituted court of an independent state derives its powers from the state; and the state is independent of every other in the exercise of its judicial power. This power of a sovereign state extends "to the punishment of piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton's International Law, Sixth Edition, Volume I, p. 269). Recognition of this sovereign power is contained in the provision of the Constitution of the United States which confers upon Congress the power "to define and punish offenses against the law of nations." (Winthrop, "Military Laws and Precedents," Second Edition, Reprint 1920, at page 831).

It is clear that the laws and customs of war comprise a part of the law of nations. An offense against the former is a violation of the latter. The judicial power of an independent state, embracing the latter, includes trial and punishment of offenders against the laws and usages of war; and jurisdiction to try war criminals is an incident of the sovereign power of an independent state (Memorandum for the Joint Intelligence Committee, The Joint Chiefs of Staff, file SPJGW, 1943/17671, 13 December 1943, by The Judge Advocate General, at

page 37. Such power is full and complete except where restricted by the body of principles comprising the law of nations (S. S. Lotus, France v. Turkey, 2 Hudson World Court Reports 23). The power of an independent state in connection with the trial of war criminals is not limited to the trial and punishment of war criminals for offenses committed subsequent to its entry into a war. Nor does a logical analysis of the character of judicial power of a sovereign state compel such restriction.

It is axiomatic that a sovereign state adhering to the laws and usages of war is a fortiori interested in their preservation and hence their enforcement. The power to try and to punish violators thereof is a necessary incident of this interest. Any war crime, whenever committed, constitutes an invasion of the interest of the sovereign.

Whether such power will be exercised in a particular case is a matter resting within the discretion of the sovereign. In this instance, the United States has elected to try the accused.

To avoid vain and empty processes by the sovereign and to assure the enforcement of its sentences, physical custody of the person of a war criminal is a primary requisite. The United States has custody of the accused.

While the existence of a state of war is a necessary condition precedent to the existence of a "war crime," it is not a sine qua non of jurisdiction of an independent state to try and to punish an offense against the laws and customs of war. That power stems from the sovereign character of an independent state. Therefore, it rests on a basis apart from actual participation in warfare as a belligerent. That it is not a belligerent is logically unimportant to the jurisdiction of a sovereign state. By the same token, a neutral nation, securing physical custody of a war criminal, would have

jurisdiction to try and to punish him for the commission of a war crime. Time of entry of the sovereign state into warfare is immaterial to judicial power of the state over the offense. Furthermore, providing the offense charged is a war crime, the time of commission of the offense is neither causative nor determinative of the existence of the jurisdiction of a sovereign state's validly constituted courts over either the offense or the offender. The fact that the accused may have committed the offense prior to the entry of the United States into war with Germany does not bar the United States from jurisdiction to try and to punish the accused for the offense charged. Time of commission is inconsequential to the judicial power of the United States over the offense.

Participation in warfare accentuates the primary interest of the independent state in the enforcement of the laws and customs of war and does, in most instances, strongly induce the state to exercise its jurisdiction. The present case is an example.

It is stated by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218, "Universality of Jurisdiction of War Crimes" that, "every independent state has jurisdiction to punish war criminals in its custody regardless of the nationality of the victim, the time it entered the war, or place where the offense was committed".

It is clear that the Court was not deprived of jurisdiction because the charge and particulars alleged an offense committed prior to entry in the war by the United States.

The Court had jurisdiction of the persons of the accused and of the subject matter.

2. Double Jeopardy: A plea of double jeopardy was made by the defense on the grounds that the violations of the laws and usages of war set forth in this case could have been

thusly: ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . ." The test of identity of offenses is whether the same evidence is required to sustain them (Morgan v. Devine, 237 U. S. 632). It is to be doubted that an accused war criminal may meritoriously claim, as a matter of right, benefits of the Constitution of the United States or the common law. However, it is not necessary to consider that question herein.

an examination of the charge in this case and the charges in the previous trial of the accused reveals that they do not meet the required test of identity of offenses. The similarity exists solely in that in each case the accused was charged with a violation of the laws and usages of war, commonly known as a war crime. The offenses alleged in the particulars under the two charges differ in two respects, viz., as to time of commission and as to nature of the respective offenses. The particulars under the charge in the prior case relate to a crime committed between 1 January 1942 and about 29 April 1945, whereas, those involving the accused in this case relate to a crime committed in October 1939. Similarly, there is no identity as to the nature of the alleged offenses. The particulars under the charges in the prior case allege participation in a common design during periods between the dates alleged to commit certain alleged illegal acts, whereas, those involving the accused in this case allege participation in an illegal killing incident. It is obvious that there is substantial diversity as to facts, circumstances, and legal character of the offenses alleged. The plea of double jeopardy was properly overruled (R 9).

3. Status of Victims as Unlawful Belligerents: There is some evidence in the record, based solely upon rumor, that the inmates of the Polish group were snipers and partisans at

and received that the aforementioned prosecution witness, when a guest of the testifying witness, had taken advantage of his hospitality. An objection by the prosecution to this evidence was sustained. This objection was not coupled with a motion to strike this evidence from the record (R 74, 75). Defense counsel, in his Petition for Review, assigns the two rulings of the Court, above set forth, as error and prejudicial to the accused, asserting that further testimony from his defense witness and another witness to be called to the stand would have impeached the prosecution witness' testimony by proving that he had participated in the killing of an inmate. The record is silent as to any offer of proof in this respect. It does not appear that the Court abused its discretion in excluding the testimony. In any event, no injustice resulted to the accused.

VII. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved, but that the sentence of accused LENGFELDER to life imprisonment be reduced to imprisonment for 20 years, commencing 14 August 1947.

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

Oliver C. Hardy
OLIVER C. HARDY
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this
28th day of *January* 1948.

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