

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

24 February 1948

UNITED STATES)

v.)

Franz FAVELA)

Case No. 000-50-5-43

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 24-26 September 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Franz FAVELA, German national or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen Sub-Camps, including but not limited to Ebensee, Gross-Raming, Gusenkirchen, Gusen, Hinterbruehl, Lambach, Lienz, Loiblpass, Melk, Schwachat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942 and May 5, 1945, wrongfully encourage, aid, abet and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America, and other non-German nationals who were then and there in the custody of the then German Reich, and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

III. SUMMARY OF EVIDENCE: The accused was an inmate at Mauthausen Concentration Camp and/or its subcamps for a considerable period of time between the dates alleged and was shown to have participated in the Mauthausen Concentration Camp mass atrocity.

IV. EVIDENCE AND RECOMMENDATIONS

Franz FAVELA

Nationality: Austrian

Age: 28

Civilian Status:	Butcher
Party Status:	Unknown
Military Status:	Unknown
Flea:	NO
Findings:	G
Sentence:	25 years, commencing 7 May 1945

Evidence for Prosecution: The accused testified that in September 1939 he was arrested in Vienna by the German police on charges of refusal to work and sabotage; that he was then confined in Sachsenhausen Concentration Camp (R 109); that in March 1940 he was moved to Dachau Concentration Camp; and that he remained in Camp Dachau until the middle of May 1943 when he was selected to go to an inmate probation company in Minsk, Russia, with a group of 28 inmates (R 109, 110). The accused escaped from this probation company, was recaptured and returned to Camp Sachsenhausen where he was sentenced to death for desertion (R 110, 111). The accused was then sent to Mauthausen subcamp Schwechat where he was confined until May 1944 (R 112). Subcamp Schwechat was sometimes called Haidfeld (R 79, 101). The accused was then sent to subcamp Floridsdorf and remained there until mid-September 1944 (R 113). He was then sent to subcamp Hinterbruehl, where he was camp eldest until relieved in February 1945 (R 113, 114). He left Hinterbruehl on 30 March 1945 on an evacuation march to Camp Mauthausen and remained at Camp Mauthausen until after it was liberated (R 116). The accused was a block eldest at subcamp Schwechat (R 11).

A witness, who was a German inmate at the Floridsdorf and Schwechat subcamps of Mauthausen, testified that he was beaten by the accused with a rubber hose at Haidfeld (R 11). He saw the accused beat inmates every day with a rubber hose. Some of the victims of these beatings had to be taken to the dispensary (R 10). He saw the accused participate in the hanging of one German and one Yugoslavian inmate in the first part of 1945 at Floridsdorf. This witness was 20 meters from the scene of the hangings (R 10). He saw the accused come out of the building where the inmate was hanged. The witness looked through a hole and saw the body of one

of the inmates hanging there (R 14). The Yugoslav inmate was left hanging on a pole all night, but did not die. The next morning he was taken down and for a long time was incapable of working (R 21). The German inmate died as a result of the hanging (R 20). The witness heard the accused say that he had "finished" a German, a Pole, a Russian and a Yugoslav in subcamp Haidfeld (R 18).

A second witness testified that accused beat inmates at subcamp Solwechat in the autumn of 1943 with a rubber hose and his fist (R 22, 23). In May 1944 the witness saw the accused beat an inmate with a wooden club, causing the immediate death of the victim. The witness was five or six meters away from the scene of the beating. The incident occurred immediately after a bombing attack (R 25). The witness saw the accused hit the inmate 10 to 15 times on his head and back causing him to fall down repeatedly. Shortly thereafter the victim died and his body was thrown in a place where other corpses were lying (R 26). The inmate was bleeding from the beating and two persons picked him up and put him on a pile of inmates who had died from the bombing attack (R 27).

A third witness, a former Yugoslavian inmate, testified that at subcamp Hinterbrühl he saw the accused beat a Belgian inmate with a rubber hose until the inmate was bloody and beaten to such an extent that he could not sit down (R 30). Subcamp Hinterbrühl was sometimes called Moedling (R 79, 101). The accused then made the inmate stand all afternoon in front of the block until 1800 or 1900 hours (R 30). The accused then came out and took the inmate outside of the block and pushed him into the electric wire fence and left him there until morning, when he was dead (R 31). The witness saw two people take the corpse into the dispensary on a stretcher. The incident happened in March 1945 (R 31).

The third witness also saw the accused kill an inmate on the evacuation march from subcamp Hinterbrühl (R 31). The inmate had taken an extra liter of soup during a pause of the march; therefore, the accused took him aside and beat him with a club until he could not get up (R 32). Later the accused shot the inmate in the head (R 32). The witness heard

from friends who were in the burial detail that the wounded inmate had been buried (R 32).

A fourth witness, former German inmate Kiewitt, who worked as a medic at subcamp Floridsdorf, saw the accused severely beat a Russian inmate. After the beating, the inmate was bound to a pole until ordered released by the accused. The witness then gave the inmate medical treatment. The victim had a swollen face and blood formed under the skin (R 51). The witness was four meters away from the scene of the beating when it occurred (H 52).

A fifth witness stated in an extrajudicial sworn statement that one evening about 2100 hours toward the end of 1943, the accused, who was block oldest at subcamp Schwechat, came into block 1 with camp oldest "Jumbo". They had a Polish inmate with them and they threw him into the bunk next to the witness. They came back at 2400 hours and took the inmate into the washroom. The next morning at 0500 hours the witness saw the body of the Polish inmate hanging in the washroom. The witness stated further that he saw the accused mistreat and beat inmates of all nationalities and that he was beaten by the accused on numerous occasions (R 54; I-Ex 6).

A sixth witness, Emmert, stated in an extrajudicial sworn statement that in April 1944 at subcamp Schwechat he saw the accused and block leader Erb hang block oldest August in the washroom, and that the witness saw the corpse. This witness stated that in May 1944 he saw the accused and Erb take a recaptured Russian inmate into the washroom. Erb carried a rope. One half hour later Erb and the accused came out of the washroom. In the morning the witness saw the dead body of the same Russian hanging there. He further stated that he saw the accused on numerous occasions mistreat inmates (H 130; F-Ex 7A).

Evidence for Defense: Former inmate Erb, who is confined in War Criminal Prison No. 1, Landsberg, Germany, hereinafter referred to as "Landsberg" testified that he knew nothing concerning the hanging of an inmate in the washroom at Schwechat in or around 1943 or 1944; and that he was convicted for allegedly hanging a Russian inmate at the entrance of the

washroom (R 55).

Another witness, now serving a sentence in "Landsberg", testified that he was a block leader in subcamp Floridsdorf (R 56); that he has no knowledge that the accused killed an inmate at Floridsdorf; that he never heard that the accused hanged or participated in the hanging of two or three inmates; that he would have known had such a thing happened; and that he never heard that the accused beat an inmate to death with a rubber hose (R 57).

A witness, a former SS man (R 64), now serving a sentence in "Landsberg", testified that he was a medic at subcamp Hinterbruehl (R 62); that the accused did not hang anyone at Hinterbruehl as long as the witness was there (R 62), and that if such a hanging had occurred, the witness would have known about it inasmuch as a medical report would have been made. He had no knowledge of a Polish inmate having been beaten to death by the accused (R 62). He further testified that he removed witness Kiewitt from his job as a medic on suspicion that he was a homosexual; that the accused was usually decent toward inmates and on occasions went with the witness to obtain new things for the barracks; and that on one occasion the accused was beaten by the roll call leader and made to stand against a wall for an hour (R 63, 64).

Another witness, a former SS man now serving a sentence in "Landsberg" (R 65), testified that he had no knowledge of the accused having beaten an inmate and causing him to stand by the barracks until 1900 hours and then chasing him into the electric wire (R 66); that he never heard that the accused killed an inmate on the evacuation march from subcamp Hinterbruehl; and that he saw the roll call leader Dushler give the accused 25 strokes with a stick (R 67).

Another witness, a former SS man now serving a sentence in "Landsberg", testified that it was impossible for the accused to have hanged a Yugoslav inmate who lived and later was put to work. The witness had guard post No. 1, and some inmate surely would have told him of such an incident (R 69). The accused never caused the death of an inmate at sub-

camp Hinterbrühl by forcing him into the electric wire. Only one inmate had contact with the electric wire and that was by accident and resulted in a burn from which the victim later recovered. If someone had come in contact with the electric wire, the fuses would have blown out, the power would have been turned off, and someone in authority would have gone to the scene immediately (R 70). The block leaders had an order to make a check in such cases. If a body had been allowed to stay on the wire all night, the guard leaders would have been punished. This witness was on the evacuation march from subcamp Hinterbrühl to Camp Mauthausen (R 71). The accused was armed with a carbine (R 71) and no inmate was shot or killed while food was being distributed (R 72). He saw the accused receive 25 blows with a stick from roll call leader Buehler for failing to carry out an order to give two Polish inmates 25 strokes (R 72).

Another witness, a former SS man now serving a sentence in "Landsberg" (R 75), testified that the accused came to him on several occasions to obtain straw for the inmates; that the accused had been forbidden to do so by roll call leader Buehler; that the accused procured some food, stoves and mattresses from the Heinkel works for the inmates; that Buehler resented this action and threatened to punish the accused; and that the next day the witness heard that the accused had received 25 strokes (R 76, 77).

A witness, a former German inmate (R 82) now serving a sentence in "Landsberg", testified that it could not have happened that the accused hanged a German inmate and the Yugoslav inmate who was said not to have died as a result of the hanging (R 79, 80). It was impossible for the accused to have beat an inmate and then forced him into the electric wire. A body never was left hanging on the electric wire all night (R 80). The accused was known to have helped inmates by getting beds for them. He saved the life of the witness by falsely informing Buehler that the witness had died as a result of punishment (R 81, 82). It was impossible for the accused to have killed an inmate during the evacuation march from

subcamp Hinterbrühl as testified to by a prosecution witness. The witness never heard of such an incident (R 82, 83).

Another witness, a former member of the SS now serving a sentence in "Landsberg", testified that the alleged hanging by the accused of two inmates at subcamp Floridsdorf could not have happened; that the accused could not have done such a thing (R 85, 86); that he never heard that accused hanged a Polish inmate in the washroom at subcamp Schwechat (R 86); that it was impossible that accused beat a Polish inmate to death in Schwechat; that such an incident would have been reported; that it was impossible that the accused, after beating an inmate, chased him into the electric wire (R 87); that the body would have vanished through burning; and that a body was never left on the fence all night (R 88). The witness was on the evacuation march and testified that the accused did not kill an inmate on the march (R 89). The witness saw the accused receive 25 blows from Buchler with a spade handle for giving food to inmates (R 91).

Emmert, a former German inmate, testified that nearly all of the persons who were present at the lineup at Dachau agreed to make a statement that would result in the conviction of the accused (R 95). The witness admitted that on 14 May 1947, after the lineup, he also made a false statement to the investigator, Lieutenant Conn (R 96, 99). The witness made his false statement out of hatred of the accused (R 100). He testified that the accused did not hang the two inmates at subcamp Floridsdorf; that the accused did not beat a Polish inmate to death in subcamp Schwechat (R 93); that the accused was armed with a carbine on the evacuation march; that the witness never heard that he shot an inmate on this occasion; that he would have heard about it had such a thing occurred as the witness was an assistant company leader; and that the accused never beat an inmate and then chased him into the electric wire at subcamp Hinterbrühl (R 94). The witness further testified that the washroom hanging of a Polish inmate and a Russian inmate at subcamp Schwechat, for which the accused and "Jumbo" were said to be responsible, did not in fact involve the accused (R 94, 95). This was the incident for which inmate Reb was convicted (R 96).

A Polish guard at Dachau, who was a former inmate of subcamps Floridsdorf and Schwechat, testified that he never saw or heard that the accused participated in the hangings of a German inmate and a Yugoslav inmate at Floridsdorf (R 101, 102); that he knew nothing about the beating to death of a Polish inmate at Schwechat; that he knew of an incident where a recaptured Russian inmate was hanged at Schwechat after an attempted escape, but he never heard that the accused participated in the incident; and that he never heard that the accused chased an inmate into the wire at subcamp Hinterbrühl, but he did hear that roll call leader Bushler had committed such an act (R 102). The witness was on the evacuation march to Camp Mauthausen, but he knew nothing about the alleged shooting of an inmate by the accused (R 103). The accused was known as a severe beater, but he once told the witness that he beat in the presence of officials so as to prevent a more severe punishment or death of the inmate (R 105).

The accused testified that he became camp eldest at subcamp Floridsdorf 27 June 1944 (R 123), and that he was camp eldest at subcamp Hinterbrühl until February 1945 when he was relieved for refusing to execute an order (R 114). He denied having beaten to death a Polish inmate after a bombing attack in May 1944. He denied that he participated with "Jumbo" in the washroom hanging of a Polish inmate (R 112). He denied that he was in Floridsdorf during the year 1945. He denied that he participated in the alleged hangings of the German and Yugoslav inmates (R 113). He denied that he beat and chased a Belgian inmate into the electric wire (R 114). The wires were charged with electricity only during the night (R 114, 115). The accused lost his job as camp eldest for refusal to exercise the inmates all night, and he received 25 strokes with a shovel handle from the roll call leader as a result of this refusal (R 114). The accused also denied having participated in the killing of an inmate on the evacuation march to Camp Mauthausen (R 116). He was beaten himself on 17 or 18 occasions by roll call leader Bushler. He admitted that he beat inmates in order to save them from more severe punishment.

but denied having beaten them so badly that they required hospitalization (R 118).

Sufficiency of Evidence: 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.

Application of Parent Case: It does not affirmatively appear from the record of trial that a certified copy of the charge, particulars, findings and sentences pronounced in the parent Mauthausen Concentration Camp case (United States v. Altfuldish, et al., Case No. 000-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case") was furnished to the Court (Paragraph 12; letter, Headquarters, United States Forces, European Theater, file AG 000,5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, set forth at length in Section 120, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, as amended). The better practice would have been to offer such copies in evidence. However, a failure to do so did not preclude the Court from taking judicial notice of the "decision rendered in the parent case, including the finding of the Court * * * that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, did subject persons to killings, beatings, tortures, etc." The accused was shown to have participated in the Mauthausen Concentration Camp mass atrocity and the Court was warranted by the evidence adduced either in the Parent Case or in this subsequent proceedings in concluding as to him that he not only participated to a substantial degree but that the nature and extent of his participation were such as to warrant the sentence imposed.

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.

M. M. CROOK
Attorney
Post Trial Branch

Having examined the record of trial, I concur, this _____ day of
_____ 1948.

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