

HEADQUARTERS THIRD ARMY  
OFFICE OF THE STAFF JUDGE ADVOCATE  
WAR CRIMES BRANCH  
AIO 403 US ARMY

Ludwigsburg Detachment

20 May 1946

THE UNITED STATES

vs

RUDOLF HAFFERBURG  
Case No: 12-1592

REVIEW AND RECOMMENDATIONS OF STAFF JUDGE ADVOCATE

1. TRIAL:

Accused, a German male civilian was tried on 20 April 1946 at Ludwigsburg, Germany, before an Intermediate Military Government Court appointed by Paragraph 2, Special Order #100, Headquarters Third U.S. Army, AFO 403, dated 20 April 1946.

2. CHARGES, PLEAS, FINDING AND SENTENCE:

Charge and Particular	Plea	Finding
Charge: Violation of the Laws of War	NG	G
Particular:	NG	G

In that accused, Rudolf Haferburg, German national, did at or near Billrode, Germany, on or about 7 October 1944, wrongfully commit an assault upon an unknown member of the U.S. Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich, by hitting him and by kicking him.

Sentence:

The Court in closed session, at least two-thirds of the members present at the time the vote was taken concurring therein sentenced the accused to be imprisoned for the term of one year, commencing 18 May 1945, at such place as may be designated by competent military authority.

3. JURISDICTIONAL MATTERS:

a) It is settled law that civilian nationals of one belligerent nation may be tried and punished before the duly constituted tribunals of another belligerent nation for violations of international laws governing land warfare. When a civilian wrongfully commits an assault upon a person who has fallen into his hands as a prisoner of war it is an offence falling within this rule. (Par. 348 FM 27-10).

b) The Intermediate Military Government Court which heard this case was duly and legally appointed by the commanding General of the Third US Army by Paragraph 2, Special Orders 100, Headquarters Third US Army AFO 403, dated 20 April 1946. The charge and particular herein were properly preferred for trial. Accused stated in open Court that a copy of the charge sheet had been served upon him prior to trial (R 3). Accused was properly represented by counsel and announced ready for trial (R 2). The jurisdictional number of three members of the Court panel was present throughout the trial. This Court was vested with full power and authority to try the accused for the offense alleged. The sentence was legally within the power of the court to impose (Art. 111 MGO 2).

#### 4. EVIDENCE:

a) For the Prosecution: On 7 October 1944 two American fliers parachuted to earth in the vicinity of the village of Billroda, Germany. (F. Ex. 1). Both of the fliers were wounded, one very seriously (F. Ex. 3). The accused Haferburg grabbed a rifle and ran to the seriously injured flier and kicked him with his foot (F. Ex. 2 & 3). Displaced persons of Billroda administered first aid to the seriously wounded flier until the flier was turned over to German Military authorities (F. Ex. 2 & 3).

b) For the Accused: On 7 October 1944 an air-raid took place over the village of Billroda, Germany. The accused who was the leader of the Home Guard on hearing the cry "Parachutists, parachutists," picked up his rifle and ran in the direction that he observed fliers parachuting to the ground. He saw two fliers in the air, one of whom landed behind a hill and the other landed in a potato field. Accused proceeded to the flier who had fallen in the potato field. As he reached this flier a Frenchman also arrived from the opposite direction. The accused heard the Frenchman say "Don't shoot comrade. The flier is an American." The accused searched the flier for weapons. Accused tried to remove the parachute harness from the flier but was unable to do so. Bandages were found on the flier which were used by the Frenchman to bandage the flier who was bleeding from the forehead. Accused then sent someone to harness his horse but before they could return the flier was placed on a litter and carried into the village. Accused denies kicking or in any way molesting the flier (R 11-15).

#### 5. DISCUSSION:

a) The evidence adduced by the prosecution establishes that on 7 October 1944 near the village of Billroda, Germany, the accused, a German civilian committed an assault upon an unknown American flier who was an unarmed, surrendered prisoner of war, who was being taken into custody as a prisoner of war of the then German Reich, by kicking him (F. Ex. 1, 2 & 3). The identity of the victim as being an American flier was established (F. Ex. 1, 2, 3 and R 12).

b) There is a slight variance between the evidence and the charge and particular as contained in the Charge Sheet. The particular states that the victim was an unarmed surrendered prisoner of war in the custody of the then German Reich. The evidence shows that the victim had parachuted to the ground in enemy territory and was seriously wounded and that the assault was administered by the accused who was in the process of taking the flier into custody as a prisoner of war. The allegations in the charge and particular in War Crime Cases need not be stated with the same precision as is necessary in the case of common law indictments. So long as the variance does not exceed that standard which can be reasonably applied under the circumstances it cannot be said that the variance is one which prejudices the rights of the accused (In re: Yamashita, US Supreme Court, Case #61, Misc. and 672).

c) Prosecution's entire case is presented in three sworn statements which were included in the file of this case when the case was forwarded to this section from the office of the Theater Judge Advocate, War Crimes Branch for trial. There are three statements two of which were made by Polish displaced persons who were not available as witnesses at the time of trial because they had returned to Poland and the third is by a German civilian who resides in the Russian Zone of Occupation and was not available as a witness at the time of trial. Inasmuch as these statements were taken by an officer of the US Army who was duly authorized to take oaths and acknowledgments they would be admissible on the provisions of the letter of the Deputy Theater Judge Advocate, dated 6 October 1945. Under the provisions of Rule 12 of the Rules of procedure applicable in Military Government Courts, the Court herein has the authority to admit such statements into evidence as long as the Court felt that such statements had value as proof. In view of the fact that all of the facts as set out in such statements are so strongly corroborated by the testimony of the accused as a witness it cannot be said that the Court abused its discretion by admitting such statements into evidence in this case.

d) This case resolves itself into a question of fact. The Court could have accepted either the evidence as it was presented by the prosecution or the accused. The court in making its findings herein accepted the statements as presented by the prosecution. Inasmuch as there was evidence presented by the prosecution from which the Court as reasonable man could draw the conclusions that were necessary, in order to establish the guilt of the accused for the offense charged, it can't be said that the court abused its discretion in making its findings herein.

e) The sentence imposed by the Court was within the authority of the Court to impose. The assault committed by the accused herein was clearly a war crime (Par. 73, FM 27-10) which could have been punished by imprisonment for a term of ten years (Art. 111 MGO 2). The assault which the accused was found guilty is the equivalent of an assault with intent to do great bodily harm (Par. 149n MCM 1928) and if we consider the Table of Maximum punishments as set out in the Manual for Courts-Martial as a guide the sentence of one year imprisonment is adequate to punish the accused for the offense of which he has been found guilty.

f) A careful examination of the record of trial herein disclosed no errors or irregularities in the proceedings of the Court which prejudiced the rights of the accused herein.

6. DATA AS TO ACCUSED:

Accused is 57 years old; he is a German civilian; he is married and has four children and his last residence was in the village of Billroda, Germany (R 2 & 11). Accused's occupation is that of farmer (R 11). No party affiliations are shown in the record or allied papers. Accused was a member of the Landmacht (Home Guard) (R 12). He has been in confinement continuously since 18 May 1945 (R 21).

7. PETITION FOR REVIEW:

No petition for review was filed on behalf of accused.

8. CLEMENCY:

No petition for clemency was filed on behalf of accused.

9. RECOMMENDATION:

It is recommended that the findings and sentence of the Court be approved and upheld and the sentence duly executed. The proper order for carrying out this recommendation has been appended for the signature of the reviewing authority.

/s/ M. C. Setzkorn  
/t/ M. C. SETZKORN  
U. S. Civilian  
Chief, Trial Section

I concur.

/s/ Charles E. Cheever  
/t/ CHARLES E. CHEEVER  
Colonel, JAGC  
Staff Judge Advocate