

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

4 February 1948

UNITED STATES)

v.)

Adolf SCHLUPPECK, et al.)

Case No. 000-50-2-105

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: Accused STUTZ-ZENNER was tried at Dachau, Germany, during the period 21-22 August 1947 before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Adolf Schluppeck (and) Theodor Stutz-Zenner acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

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

Particulars: In that Adolf Schluppeck (and) Theodor Stutz-Zenner acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of 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 cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: Accused STUTZ-ZENNER was a member of the SS with various duties at Camp Dachau and many of its subcamps and outdetails between the dates alleged. In addition thereto, he personally beat and mistreated many inmates. He admitted beating one Russian inmate with a piece of rubber cable and administering official beatings of 25 strokes to other inmates. Prosecution's Exhibit P-Ex 2 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (United States v. Weiss, et al., Case No. 000-50-2, opinion DJAWG, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post; R 7).

Not much weight was given to the testimony of witness Karl Kraemer.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Adolf SCHLUPPECK

This accused was served but not tried (R 1).

2. Theodor STUTZ-ZENNER

Nationality	German
Age:	34
Civilian Status:	Unknown
Party Status:	Member of Nazi Party from 1936
Military Status:	SS Technical Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge 1; NG Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he was a member of the SS at Camp Dachau from 25 May 1941 to 19 August 1941 at which time he was transferred to subcamp Feldafing where he stayed until February 1942. His duty was that of detail leader. From February 1942 to August 1942 he was again on duty at Camp Dachau. From August to December 1942 he was the detail leader at outdetails Ehrengut

(Munich) and Heppenheim. On 20 December 1942 he returned to Camp Dachau. In February or March 1943 he was transferred to subcamp Allach as a detail leader and stayed there until 10 May 1944 at which time he was transferred to subcamp Bleichach as camp leader where he stayed until the end of April 1945 (R 8; P-Ex 4 pp. 1, 2; R 109-113).

Karl, who was an inmate at subcamp Allach from 1 April 1943 to 26 March 1945, testified that he knew the accused while he was a detail leader at subcamp Allach (R 57). In April or May 1944 two Russian inmates were hanged on the gallows that had been built on the roll call square. All SS personnel and inmates were present for the hanging, including the accused (R 58, 59). He saw the accused beat inmates by giving them 25 lashes with an oxtail whip. Once, when capos or block elders were beating other inmates by giving them 25 lashes, and the accused was present, he took the club away from one of the beaters and finished the beating himself (R 59, 60).

Kleiber, who was an inmate at subcamp Allach from 1943 to the capitulation, testified that he knew the accused when he was at subcamp Allach (R 65). During the period 1943 to June 1944 he saw the accused administer punishment to the inmates with an oxtail whip. He was the most vicious beater of all (R 65,66). There were two Russian inmates who escaped from subcamp Allach and were recaptured shortly thereafter. They were later hanged at subcamp Allach. All SS personnel and inmates were present at the hanging (R 66). He further testified that he had heard that the accused kicked a French inmate who was standing by the entrance gate to subcamp Allach. This French inmate was removed to the dispensary (R 67).

Hermann, who was an inmate at subcamp Allach from November 1943 to September 1944, at which time he was transferred to subcamp Bleichach, testified that he knew the accused at both subcamps (R 73). He saw the accused beat inmates with his hand at

subcamp Allach and with a hose or a cable at subcamp Bleichach (R 73). He was told by various French inmates that the accused had removed from their Red Cross packages, cigarettes, chocolate and woolen things (R 74).

Ostal, who was a former inmate at subcamp Allach from May 1943 to the capitulation, testified that he knew the accused when he was at subcamp Allach (R 77). He saw the accused participate in the hanging of two Russian inmates in April or May 1944. They were hanged because they had escaped from a work detail (R 77). The accused was known to be the most brutal beater in the camp and he participated in the public whippings. He even took the instrument that was being used by another to beat the inmates with and finished the beating himself (R 78). The only participation of the accused at the hanging of the two Russian prisoners was that he was present with the other SS personnel (R 78).

Urban, who was an inmate at subcamp Bleichach from June 1944 to the capitulation, testified that he knew the accused there (R 81). He saw the accused administer 25 lashes to an inmate with a rubber truncheon. Once during an air raid alarm the accused beat inmates over the head with a steel. This was done in order to make the inmates move faster into the cellar. The 25 lashes that the accused administered to the inmate was punishment for infraction of the rules of the camp (R 81-83).

Schneider, who was an inmate at subcamp Bleichach from June 1944 to the capitulation, testified that he knew the accused there (R 85). He saw the accused beat inmates almost daily. Once the accused administered 25 strokes with a cable to an inmate. This beating was very vicious (R 86). The accused beat some of the inmates until they bled (R 86). The 25 strokes the accused administered to the inmate were given as punishment after a report had been made about the inmate (R 88, 89).

Wening, who was an inmate at Camp Dachau from April 1933 to

June 1944 and at subcamp Allach from June 1943 to 4 April 1944, testified that he knew the accused in both camps (R 90-92). The accused was known as a very bad beater at Camp Dachau and he took part in the public floggings by beating inmates very viciously (R 91). Once in subcamp Allach a Polish inmate was caught with a bottle of beer at the "BMW" factory. The beer was taken away from him and the inmate was warned. When the detail returned to the camp, another bottle of beer was found on the Polish inmate. He was immediately given 25 strokes with a stick by two SS block leaders. The accused interceded and grabbed an oxwhip from one of the block leaders and said "Oh, he does not notice that, you've got to beat differently". Whereupon the accused beat the Polish inmate most viciously. The next day the inmate was missing from the detail apparently because of the beating (R 92, 93).

Schumacher stated in his extrajudicial sworn statement that the accused was the camp leader at subcamp Bleichach. He seriously mistreated many inmates, especially the Polish and Russian ones. The accused also beat and kicked inmates at the "BMW" factory. During the early part of 1945 ten Polish and Russian inmates were seriously beaten at the camp (R 96; P-Ex 8).

Karl Kraemer, who was a former inmate at Camp Dachau and at subcamp Allach, testified that he was at subcamp Allach from April 1943 to May 1944 and knew the accused (R 10). In the early part of 1944 three Russian inmates escaped from subcamp Allach. Two of the escaped inmates were recaptured by the accused and he reported the inmates for looting during the night. The accused told other people in camp that after he had recaptured the Russians he had beaten them (R 17). The Russian inmates were then sent to Camp Dachau. Later in March or April 1944 they were returned to subcamp Allach where they were hanged on the gallows that had been built on the roll call square. Prior to the hanging, the Russians were mistreated and beaten (R 18, 19). All SS

personnel and inmates were present for the hanging, including the accused (R 10, 11). Many inmates were beaten daily by the accused with an oxwhip, with his fists, and he also kicked them. The accused administered 25 lashes to approximately 15 to 20 inmates daily when he was roll call leader (R 13, 23). When the accused was detail leader of the details Dickerhof and Halle 3, he beat the inmates with wooden clubs, with a cable and other instruments (R 13). Kraemer further testified that once when he was standing by the gate, he saw the accused when he was returning with his detail, kick a French inmate in the kidneys. This inmate was removed to the dispensary at Camp Dachau and it was later learned that he died (R 13, 14, 40, 41).

The accused in one of his extrajudicial sworn statements stated that he beat a Russian inmate with a rubber hose at subcamp Bleichach. This beating was given as punishment upon orders of his superior, the Camp Commander at Camp Dachau (R 9; P-Ex 5, pp. 2, 3).

Evidence for Defense: The accused testified that the reason he was on duty at a concentration camp was that his father who was a sick man, lost two sons in the war and therefore made a request that the accused not be sent to the front. This request was granted by Berlin (R 110). During the time he was at Camp Dachau and subcamp Feldafing in 1942, he never beat an inmate or killed one. When he was in charge of outdetail Ehrengut in 1942, he did not beat or kill any inmates. They were well fed and clothed. He was responsible for the feeding of the inmates and secured extra food for them (R 111). When he was in charge of detail Heppenhein, he did not beat or kill any inmates and when the rations ran out he secured additional food so the inmates could eat (R 112, 113). At subcamp Allach when the Russian inmates escaped, he was placed in charge of a detail to search for the escaped inmates and it was his detail that recaptured them. After they were captured they were not mistreated but were brought

straight back to the camp and turned over to the Camp Commander (R 114-116). During the time that he was at subcamp Allach there were no hangings, therefore it was impossible for him to be present at the hanging of the two Russian inmates (R 119).

The accused denied the testimony of witnesses as to his kicking to death a French inmate. He never kicked a French inmate or struck or beat one in any way nor did he ever hear of one dying at subcamp Allach (R 119, 120). The accused further testified that he beat inmates by giving them 25 lashes; that this was done on orders of his superior officer; that these beatings were official punishment meted out to the inmates for violations of the rules and the orders authorizing the punishment came from Headquarters Berlin (R 120, 121). In April or May 1944 he was transferred to subcamp Bleichach as the camp leader and stayed there until 24 April 1945 (R 123). The inmates were adequately fed, clothed and housed (R 126). On 26 April 1945, due to the French Army approaching the vicinity of the camp, he received orders to evacuate the camp and proceed to Gatzel in Tyrol. Approximately 8 or 9 inmates were left behind because of their physical condition (R 126, 127).

The accused further testified that he knew the witness Kraemer at subcamp Allach and that the witness was in high favor with the SS leaders and had a close circle of inmate friends who stole for themselves and the SS. The position the witness held in the work allocation office was such that he was able to designate which inmates would work where. Once when Kraemer was in trouble he helped him by not making a report about some documents the witness had. He again saw Kraemer when they were both confined in the bunker at Camp Dachau by the American authorities. They had a bet together that Kraemer would be discharged within a very short period of time. Kraemer lost the bet and wretched on it and he had called Kraemer on it. For that reason he felt that Kraemer had testified against him (R 130-136).

Frey, who was a former inmate at Camp Dachau from 1933 to the

capitulation, testified that he knew the accused there in 1941 and 1942 and that he never knew or saw the accused beat or mistreat an inmate. He knew that the accused secured letters for another inmate (R 103, 104).

Rustl, who was a former inmate at Camp Dachau and subcamp Bleichach from May 1941 to the capitulation, testified that he knew the accused in both camps (R 105). At subcamp Bleichach between June 1944 and April 1945 he was the kitchen capo and had to secure the food for the inmates. The accused did not object to his securing additional food. He did not see the accused beat any inmates but heard that some had received the official 25 lashes (R 106, 107).

Mrs. Ehrengut testified that during the years 1942 and 1943 inmates from Camp Dachau were employed in her husband's shop (R 98). The accused was the detail leader of 10 inmates who worked there from March 1942 to October 1942 (R 99). The accused never beat or mistreated the inmates (R 99).

Maximilian Ehrengut stated in his extrajudicial sworn statement that during March to October 1942 there were 10 inmates employed in his shop and the accused was the detail leader. He treated the inmates very well and allowed them to cook extra meals for themselves on Sunday. He never mistreated the inmates, not even when one of them escaped (R 101; D-Ex 2).

Kleiber testified that at the hanging of the two Russian inmates he did not see the accused there but assumed he was present because all of the SS personnel were supposed to be present (R 69). His position at subcamp Allach was such that he saw all official correspondence that transpired between Camp Dachau and subcamp Allach and at no time did he ever see any correspondence pertaining to the death of the French inmate whom the accused kicked (R 68, 69).

Sufficiency of Evidence: The accused was a member of the SS at Dachau Concentration Camp and various subcamps and outdetails

belonging thereto with duties of roll call leader, detail leader and camp leader for a considerable period of time between the dates alleged. In addition thereto, he personally beat and mistreated a great number of inmates of various non-German nationalities.

With regard to the evidence offered in support of superior orders, the Court might well have concluded that the accused was not required to beat the inmates in the presence of his superiors; that his desire to cooperate with and to please his superiors was stronger than other considerations; and that he failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

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

Petitions: A Petition for Review was filed by Lieutenant Colonel Irving R. Crawford, defense counsel, 27 August 1947. A Petition of Denouncement was filed by B. Siret, a French national, 13 October 1947. No 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.

Motion to Dismiss: The defense, prior to the arraignment of the accused, moved for a dismissal of the charges and particulars on the ground that there was only one accused on trial and he, therefore, could not be guilty of participation in the execution of a common design (R 6). The Court properly overruled the motion (R 7). The legal sufficiency of such charges and particulars has been upheld in many American and British cases (United States v. Weiss, et al., Case No. 000-50-2, opinion of the DJAGC, March 1946, commonly known as the Dachau Concentration Camp Case; United States

1947, commonly known as the Mauthausen Concentration Camp case; United States v. Becker, et al., Case No. 000-50-46, opinion DJAWC, May 1947, commonly known as the Flossenburg Concentration Camp case; and the Belsen Case, tried by the British Army of the Rhine, September 1945).

Admission of Extrajudicial Statements: The defense objected to the admission into evidence of two extrajudicial sworn statements, one by Kraemer, on the ground that it was not the best evidence as the witness had just previously testified before the Court and therefore was not proper and should not be admitted into evidence (R 52, 53). The other statement, which was by Schumacher, was objected to on the grounds that it contained opinions and conclusions and was not based upon any fact and was incompetent to prove any issues (R 96). The Court properly overruled the objections (R 52, 53, 96). A Military Government Court shall, in general, admit oral, written and physical evidence having a bearing on the issues before it and may exclude any evidence which in its opinion is of no value as proof (Section 5-329, Title 5 "Legal and Penal Administration", of "Military Government Regulations", published by Office of Military Government for Germany (U.S.)", 27 March 1947, and Section 270 c (1), "Manual for Trial of War Crimes and Related Cases," 15 July 1946, as amended 17 February 1947).

The sworn statements of witnesses are always admissible regardless of the presence or absence of those who made the statements, unless the Court is of the opinion that the statements have no probative value or, to apply a similar test, that the statements would not be helpful in arriving at a true finding (Section 270, c (2), "Manual for Trial of War Crimes and Related Cases", supra).

Superior Orders: The accused 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

sentatives, Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandoverry Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; and United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946; and French Republic v. Wagner, et al., Court of Appeals, (France), July 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, 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 in fact, 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, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent 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; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandoverry 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 footnote, page 53, "Military Occupation and the Rules of the Law",

by Ernst Fraenkel; United States v. Bury, et al., opinion DJAWC, September 1945, United States v. Thomas, supra; and United States v. Bock, et al., opinion DJAWC, December 1946.)

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein acting in pursuance of a common design subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, File AG 000.5 JAG-AGO, Subject: "Trial of War Crimes Cases", 14 October 1946 and the Parent Case). The accused was shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced either in the Parent Case or in this subsequent proceedings in concluding 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.

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.

ELMER MOGDY
1st Lt., Inf
Post Trial Branch

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

C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate