

30 December 1947

UNITED STATES )

v. )

Max AUERSWALD )

Case No. 000-Flossenburg-10

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 21 October 1947 before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Max AUERSWALD, a German national, did, at or in the vicinity of Flossenbuerg, Germany, in or about April 1945, wrongfully encourage, aid, abet and participate in the killing of approximately four non-German nationals, inmates of Flossenbuerg Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

(Correct name of accused AUERSWALD is actually Max Arthur AUERSWALD; T 19, F-2x c.)

III. SUMMARY OF EVIDENCE: The accused was a member of the SS at Flossenburg Concentration Camp from 7 February 1940 to 20 April 1945, beginning as a guard and rising to the rank of technical sergeant on 1 June 1944. On 20 April 1945 inmates were evacuated from Flossenburg in the direction of Dachau Concentration Camp due to the approaching American forces. On this inmate evacuation march, the accused killed three or four inmates who were Allied nationals.

IV. EVIDENCE AND RECOMMENDATIONS:

Max Arthur AUERSWALD

Nationality: German

Age: 60

Civilian Status: Restaurant-keeper

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Party Status: None  
Military Status: SS Technical sergeant  
Race: NG  
Findings: G  
Sentence: Death by hanging

Evidence for Prosecution: The accused testified that he was at Flossenburg a total of about five years; that from 1943 until the final evacuation started on about 16 April 1945 he worked in the electrical shop as an assistant to Schubert; and that he left Flossenburg on a wagon convoy on about 20 April 1945 (R 46, 47). A witness testified that the inmates all walked (R 17).

The accused stated in his questionnaire that he was a guard at Flossenburg from February 1940 to October 1943; that he became an SS technical sergeant on 1 June 1944; and that he supervised the light and water supply installations from October 1943 to 20 April 1945 (R 19; P-Ex 6).

One witness, Staskiewicz, who was a Polish inmate on the evacuation march, testified that he left Flossenburg on 20 April 1945; that he saw the accused on the first three days of the march; that on 21 April 1945 he saw the accused shoot a rifle once into the inmate column; that he saw two inmates, one Dutch and the other probably French, fall after the shot was fired by the accused; and that he did not know what happened to the two shot inmates (R 8-11). This witness further testified that the inmates were weak from hunger and that the ration on the march consisted of one 200 gram piece of bread, a 50 gram piece of blood sausage and grass and potatoes secured from the roadside (R 13).

A second witness, Berendt, an employee of the Polish consulate and an inmate on the evacuation march, testified that he left Flossenburg on the inmate evacuation march on

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saw the accused shoot and kill three Allied inmates, one of whom was a friend of this witness of two years standing; that two of the victims were shot in the head, but he was not sure where the other was shot; that he was at the most 30 meters from the accused when he shot his friend; and that he passed within two meters of the dead body of his friend (R 15, 16).

Evidence for Defense: A witness testified that the accused left Flossenburg on a baggage transport departing Flossenburg approximately 1300 hours, 20 April 1945; that this transport consisted only of about 10 to 12 horse drawn baggage wagons and SS guards. There was a driver and two men to each wagon (R 23). He saw no inmates except three accompanied by two SS men (R 25). This witness testified that the destination was supposed to be Dachau (R 27) but he did not know whether the accused was with the wagon crews (R 27); and that he only saw the accused while he was riding with the witness a portion of one day (R 27); and that the witness took the accused on his wagon because he could not walk any longer (R 23). The witness did not see the accused on 20 or 21 April but only on 22 or 23 April 1945 (R 27). This transport was overrun by American troops on 23 April 1945.

A second witness, an SS man, testified that he was on a baggage transport which left on 20 April 1945, carrying food for troops and baggage (R 29); that there were 15 to 20 wagons and 60 "soldiers" (R 29); that there were a few inmates with the convoy kitchen, but later he testified that he saw no inmates; that "there must have been" some inmates ahead of the wagon convoy (R 32); that the accused was part of this convoy (R 32); but that he only saw the accused on 23 April 1945 at the time the transport broke up upon advance of Americans (R 29, 30, 33).

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A third witness testified that he accompanied a baggage transport on 20 April 1945 (R 35); that he saw the accused from time to time during the transport (R 35); and that he saw no inmates until 23 April (R 36). On cross-examination this witness testified that he saw the accused on 20 and 21 April on this baggage transport and that he stayed with this transport all the time (R 40).

The accused testified that he left Flossenburg on a horse drawn transport on 16 April 1945 returning to Flossenburg on 17 April 1945 (R 46, 47); that he left on the horse drawn baggage transport on 20 April; that he saw the foregoing defense witnesses on the transport; however, he did not see one of them until the transport disintegrated; and that the transport was disrupted by American fire on 23 April 1945 (R 48). The accused further testified that he did not see any live inmates until 23 April 1945, but he admitted that when the transport disintegrated, inmates were 200 to 1000 meters behind; and that on the transport he was armed only with an .08 pistol (R 49). The accused however later admitted that carbines and other weapons were carried on the horse drawn baggage transport (R 52).

Sufficiency of Evidence: The accused and defense witnesses were evasive as to whether the wagons accompanied a column of inmates. They admitted inmates were near at the end. From all the evidence, including admissions by the accused and defense witnesses, the number of wagons and the type of loads thereon, the accused's defense fails of persuasiveness. 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 ap

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V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction over 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.

THOMAS C. MARLON  
Major, CIV  
Post Trial Branch

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

C. E. ST. LIGHT  
Lieutenant Colonel, J.G.D.  
Deputy Judge Advocate  
for War Crimes

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