

U.S. vs. Earl Weisshuhn

Tried at Ludwigsburg, Germany, 11 December 1945

Before an Intermediate Military Court

1. Summary of Charges, Pleas, Findings and Sentence.

Earl Weisshuhn, the accused German male civilian, was charged with wrongfully assaulting an unknown American prisoner of war of the then German Reich, on or about 2 November 1944, near Witchensdorf, Germany. The accused, in person and with advice of counsel, plead guilty to the charge and particulars. The accused was found guilty and sentenced to imprisonment for three (3) years to commence on 23 April 1945.

2. Jurisdictional Matters.

a. It is settled law that civilian nationals of one belligerent nation may be tried and punished by the duly constituted tribunals of another belligerent nation for violations of international laws governing land warfare. When a civilian wrongfully assaults or beats an enemy person who has fallen into his hands as a prisoner of war, it is an offense falling within the scope of this rule.

b. This Intermediate Military Court was duly and legally appointed and the charges and particulars against this accused were properly referred to this court for trial by the Commanding General, Seventh United States Army/Western Military District, Germany. The required jurisdictional number of three (3) members of the court panel were present throughout the trial. The charge and particulars were served on the accused prior to trial. The accused was properly represented by counsel and the defense announced ready for trial. The court was vested with full power to try this accused for the offense alleged. The sentence was legally within the power of the court to impose.

3. Evidence Summary.

a. Prosecution - About 1200, 2 November 1944, an unknown American airman parachuted safely from a disabled aircraft. (R 3, 10, Pros. Exs. 1, 2, 4) The airman was taken prisoner, put under Wehrmacht guard, and was being marched through Witchensdorf. (R 3, 4, 9, 10, Pros. Exs. 1, 2, 4) The accused was carrying a club four (4) feet long and one and a half (1½) inches thick. He met the captive under guard and, taking the club in both hands, struck the captive one blow on the upper left arm or shoulder knocking him to the ground. (R 4, 10, 12, 13, Pros. Exs. 1, 2, 4) The captive was led away. There is no evidence in the file that the captive did any act after surrender to justify or provoke this attack on himself.

b. Defense - On the date in question, the accused was on bomb disposal duty. There had been an air raid over this area and the accused was on his way to investigate a crater. He carried the club to probe the crater. (R 3, 9, 11, Pros. Ex. 4) The accused struck the captive because he was excited and angered by the raid and bomb disposal duty. (R 3, 8, 9, 10, Pros. Ex. 4, Def. Ex. 1)

the captive was not knocked down by the blow and the degree of injury, if any, did not appear, because the captive continued to hold a canvas bag he had been holding in both hands.
(R 4, 10)

4. Discussion and Opinion.

a. The defense objected to the dossier "introduced by the TJA" on the grounds it contained "improper material and does not contain an accurate summary of the evidence."

(R 4) The dossier is not introduced in evidence by the prosecution and is not evidence before the court. It is a summary of expected evidence in the case in the nature of an opening statement by defense or prosecution and has no larger force or effect in the trial. The court committed no error to any substantial right of the Accused in overruling the objection.

b. There is no reliable proof of the degree of injury sustained by the captive in this case and the court took cognizance of that fact (R 5) following a proper objection by the defense.

c. The plea of guilty standing alone would sustain the findings in this case. Over and above the plea, the evidence is amply sufficient to sustain the findings. The trial was well and fairly conducted. Neither in the procedure nor in the admission of evidence do any errors appear so prejudicial to the accused as to offend against the rules of fairness and justice applicable in Intermediate Courts.

d. The sentence is legal and appropriate for the offense of unjustified, unprovoked assault upon a prisoner of war in violation of the international rules of land warfare. The court imposed a sentence of confinement for three (3) years at such place as higher authority may direct, to commence on 23 April 1945. The commencement date of the sentence takes into consideration the accused's imprisonment prior to trial.

5. Recommendations.

It is recommended the findings and sentence in this case be approved. The proper order for carrying out this recommendation has been appended for signature of the reviewing authority.

/s/ La Rue Smith, Jr.
LA RUE SMITH, JR.
Captain, Air Corps,
Reviewing Officer

I CONCUR

/s/ C. Robert Bard
C. ROBERT BARD
Colonel, JAGD
Staff Judge Advocate