

Tried at Ludwigsburg, Germany, 16 December 1945

Before an Intermediate Military Government Court

Case No. 12-1898

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

Konrad Kremer and Wilhelm Krahn, accused German male civilians, were charged with wrongfully assaulting an unknown Allied airman who was a prisoner of war of the then German Reich, in September, 1944, near Hattenheim, Germany. The accused, each in person and with advice of counsel, plead not guilty to the alleged offense. Konrad Kremer was found guilty and sentenced to imprisonment for five (5) years. Wilhelm Krahn was found not guilty.

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 the international laws of land warfare. When a civilian wrongfully assaults a person who has fallen into his hands as a prisoner of war, it is an offense falling within the scope of the rule stated.

b. This Intermediate Military Court was duly and legally appointed and the charge and particulars against these 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 each accused prior to trial. The defense announced ready. The court was vested with full power to try these accused for the offense alleged. The sentence in the case of Kremer was legally within the power of the court to impose.

3. Evidence Summary.

a. Prosecution - In September, 1944, an unknown American airman parachuted safely near Hattenheim, Germany, and was taken prisoner by the Wehrmacht. The captive was searched and placed on the fender of the military car they were using. (R 4, Pros. Exs. 1, 4, 5, 7, 8) A crowd gathered including both the accused. At this point the accused, Kremer, cursed the captive and attacked him, striking him on the head with a "karat." The blow caused a slight wound which bled a little. (R 8, 9, 10, 11, 17 Pros. Exs. 1, 4, 5, 7, 8) The accused, Krahn, thereafter pushed through the crowd. He approached the captive waving his fist and cursing at him. He pushed the captive along side the neck with his fist. Krahn was pulled away by some other spectator. (R 9, 11, 12, 14, Pros. Exs. 1, 4, 5, 7, 8) There is no evidence in the record indicating this captive did any act to provoke or justify this assault on himself.

b. Defense - The accused Kremer remembered the day in question and seeing an American captive airman, but does not remember striking this captive. The accused was suffering from nervous disorder which prevented him from remembering events when excited. (R 17, 18, 19) The accused Krahn does not remember striking the captive, but does state that it was a possibility because of

the fact he was waving his fist at the captive to "enforce my words." The testimony of other witnesses seems to coincide with this accused's story of a "push" rather than a "blow." (R 14, 15, 16, 11, 8)

4. Discussion and Opinion.

a. at the close of the prosecution's case, the defense moved for a finding of not guilty in the case of the accused Krahn on the ground there was insufficient evidence in the record to sustain a conviction. In ruling on such a motion, the court must resolve all doubts in the evidence in favor of the prosecution and, if there is any evidence tending to establish the offense, the motion should be denied. Since there is in this record sufficient evidence to sustain a conviction, had one been returned, it follows the court did not err in denying this defense motion.

b. While there may have been doubt as to whether or not the accused Krahn struck this captive, doubt on this single point in the evidence would not warrant the acquittal of this accused. The accused was alleged to have "wilfully, deliberately, and wrongfully encourage, aid, abet and participate in an assault" upon a prisoner of war. There was sufficient evidence in the record to sustain a conviction on the charge and particular in this case as it was drawn. The accused admits and describes overt acts which amount to aiding, abetting, encouraging and participating in the offense alleged. The court having had jurisdiction of the person and offense in this case, the acquittal operates as a complete bar to any further proceedings against this accused for this offense and no action can be taken on review to alter the acquittal pronounced by the court.

c. As to the accused Kremer, the evidence is amply sufficient to sustain the finding of guilty. 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 the rules of fairness and justice applicable in Military Government Courts.

d. The sentence imposed upon the accused Kremer was legally within the power of the court to impose and was appropriate for the offense proved.

5. Recommendations.

a. Though in error, it is recommended the finding in the case of Krahn be approved.

b. It is recommended the findings and sentence in the case of Kremer be approved and upheld.

c. Appropriate orders for carrying out these recommendations are 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, USAF