

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

11 June 1947

UNITED STATES)

vs)

Case No. 12-1911

Hermann BRUECKNER, Arno
BOERNSCHEIN, German nationals)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany
Date: 10 - 12 March 1947
General Military Government Court

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
BRUECKNER, Hermann Gustav Adolf	Age 55 German national Civilian internee	Life imprisonment
BOERNSCHEIN, Arno Otto	Age 52 German national Civilian internee	acquittal

CHARGE: Violation of the Laws
and Usages of War.

Pleas Findings

PARTICULARS: in that Hermann
BRUECKNER and Arno BOERNSCHEIN,
German nationals, did, on or
about 29 July 1944, at or near
Buttstadt, Kreis Weimar, Germany,
wilfully, deliberately and
wrongfully encourage, aid, abet
and participate in the killing
of a member of the United States
Army, believed to be 2nd Lt.
Charles A. Norby, who was then
and there an unarmed and surren-
dered prisoner of war in the custody
of the then German Reich.

BRUECKNER	NG	G
BOERNSCHEIN	NG	NG

2. RECOMMENDATIONS: That the findings and sentence be approved.

3. EVIDENCE:

For the Prosecution. On or about 29 July 1944 an American
airman, 2nd Lt. Charles A. Norby, parachuted to safety near
Buttstadt, Germany, surrendered to an unknown farmer and was es-
corted to a police station at Buttstadt, from where he was removed
by two auxiliary policemen, Hermann BRUECKNER and Arno BOERNSCHEIN,

in an automobile driven by Dr. Becker (P-Ex 1, 2a). They left ostensibly for Weimar. After they reached the edge of the town of Buttstädt on the road to Weimar, BRUECKNER ordered Dr. Becker to turn the car around and take another road to Weimar. When Becker stopped the car to turn it around, BRUECKNER, BOERNSCHNEIN and the American airman got out of the car, the airman walking fast into the wheat field which was by the side of the road. BRUECKNER ordered him to halt. The airman obeyed and squatted in the wheat and thereupon BRUECKNER shot him to death, through the right front temple (P-Ex 3, 4a, 5). BRUECKNER afterwards boasted to various friends that he had killed an American flyer (P-Ex 5). BRUECKNER kept his eyes on the airman from the time he got out of the automobile until he shot him and the airman was kneeling when shot by BRUECKNER. Arno BOERNSCHNEIN stated in Exhibit P-3 that he thought BRUECKNER received an order from Hoffman to kill this American airman on the way to Weimar and not to take the airman to Weimar, and that he could tell from the expression on the faces of the men who were his superiors to whom BRUECKNER made his report that they were well pleased with BRUECKNER for having killed the American airman.

For the Defense: When Dr. Becker stopped the car to turn it around, BRUECKNER, who was sitting in the rear of the airman, jumped out of the car, walked around to the rear of it in order to assist Becker from backing into the ditch (R 69). While BRUECKNER was in the rear of the car the airman opened the door on his side, (R 69) got out, walked a few steps, then ran into the wheat field (R 55). BRUECKNER saw him, ran after him and hollered "halt" two or three times (R 60). The airman halted, squatted and faced BRUECKNER, who walked up to him and told him to go back to the car (R 69, 70). When BRUECKNER came close enough to the airman he sprang at BRUECKNER and grasped him by the sleeve of the arm in which BRUECKNER held the pistol, which accidentally went off and shot the airman through the

right front temple (R 69, 70, 72) killing him instantly (R 70, 72, 76, 77). BRUECKNER ran away from the scene (R 64, 71, 72) and never boasted to anyone that he had killed an airman (P-Ex 3, page 5), but on the other hand expressed regret that it had to be done (R 51).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMMENTS: There was sufficient evidence before the Court to establish beyond a reasonable doubt that the accused Hermann BRUECKNER was guilty of the charges and particulars in accordance with the findings of the Court.

The Court was presented with an abundance of evidence in connection with the intent of the accused Hermann BRUECKNER to murder the American airman (P-Ex 3, 5, 7). The only evidence before the Court against Arno BOERNSCHEIN was that he was present when the shooting was done but there was no evidence before the Court that the accused BOERNSCHEIN intended to kill the airman or knew that he was to be killed. Defense counsel objected strenuously to the introduction of Hoffman into the trial (R 7) but the interests of the accused were not prejudiced by the introduction of such testimony in regard to Hoffman and in Exhibit P-3, page 16, it was stated by BOERNSCHEIN that he thought that BRUECKNER received an order from Hoffman "to kill the American airman on the way to Weimar and not to bring the airman to Weimar". Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

The prosecution tried this case entirely on the record from exhibits marked P-1, 2, 2a, 3, 4, 5, 6, 6a, 7. These exhibits were received by the Court. It is true that prosecution put one witness upon the stand, Hermann Heinrich Jakob, but the evidence given by him, in fact, had no bearing upon the case one way or another.

6. CLEMENCY: There are no Petitions for Review filed by the defense nor are there any Petitions for Clemency accompanying the record of trial.

7. CONCLUSIONS:

- a. It is recommended that the findings and sentence be approved.
- b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ O'Pierre Lee

O'PIERRE LEE

Attorney

Post Trial Branch

Having examined the record of trial, I concur.

/s/ C. E. Straight

C. E. STRAIGHT, Colonel JAGD

Deputy Judge Advocate
for War Crimes