

HEADQUARTERS THIRD ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
WAR CRIMES BRANCH
APO 403 US ARMY

Ludwigsburg Detachment

26 April 1946

THE UNITED STATES

vs

Gustav Sauter

Case No: 12-1950

REVIEW AND RECOMMENDATIONS OF STAFF JUDGE ADVOCATE

1. TRIAL:

The accused, a German male civilian, was tried at Ludwigsburg, Germany, on 11 & 12 March 1946 by a General Military Government Court sitting as an Intermediate Military Government Court, appointed by Par. 5, Special Order #70, Headquarters Seventh US Army (Western Military District), APO 758, 11 March 1946.

2. CHARGES, PLEAS, FINDINGS AND SENTENCE:

Charge and Particulars	Plea	Finding
Charge: Violation of the Laws of War	G	G
Particulars:	G	G
	(The Court on its own motion entered a plea of Not Guilty on behalf of the accused)	

In that Gustav Sauter, a German national, did, at Flehingen, Germany, on or about 21 July 1944 wrongfully commit an assault upon two unknown members of the United States Army, who were then unarmed, surrendered prisoners of war in the custody of the then German Reich, by hitting him with a cane.

Sentence:

The Court by at least two thirds vote of the members present at the time the vote was taken concurring, sentenced the accused as follows:

Gustav Sauter to be imprisoned for a term of three years (3) commencing the 13th of August 1945 at such place as may be designated by competent military authority.

3. JURISDICTION:

a) It is settled law that civilian nationals of one belligerent nation may be tried and punished before a duly constituted tribunal of another belligerent nation for violations of international laws governing land warfare. When a civilian wrongfully assaults enemy persons who have fallen into their hands as prisoners of war, or aids, abets or participates in such wrongful assault it is an offense falling within the scope of the rule (Par. 348 FM 27-10).

b) This Intermediate Military Government Court was duly and legally appointed and the charge and particulars against the accused were properly referred to this Court for trial by the Commanding General, Seventh United States Army, Western Military District of Germany. The required jurisdictional number of not less than three members of the Court panel were present throughout the trial. The accused was properly represented by Counsel and said Counsel announced readiness for trial (R 2). The Court was vested with full power to try the accused for the offense alleged. The sentence was legally within the power of the Court to impose (Art. III MG 02).

4. EVIDENCE:

a) For the Prosecution: On 21 July 1944, about 1100 hours the defendant Gustav Sauter, a German national, and the farm-leaders Lieb and Funk were pricing grain in the fields near Flehingen, Germany (R 12). Sauter states that he saw a single plane fly overhead, followed by waves of planes, when suddenly one of them caught fire and 7 or 8 fliers parachuted to the ground. Two of the fliers landed in the vicinity (R 3) about 300 to 400 meters from where Sauter was working (R 13). He ran to the place where the fliers were, but when he arrived there a number of persons had already taken them as prisoners; among those gathered were Siegfried Weber, Lingenfölsner, two Gestapo employees and the Buergermeister Becker (R 7). Sauter helped search the fliers for weapons and none were found. Thereupon Sauter, without any provocation on the part of the fliers, struck them each two or three blows across the back with his cane (R 15). In this act he was encouraged by a sign from at least one of the Gestapo agents (R 7). About 1130 to 1200 hours (R 5) the fliers were taken to Flehingen, where in front of the town-hall-door Sauter again struck them 2 or 3 blows (R 15). The witness Luise Roth states that Sauter also struck one of the fliers 5 or 6 times while in her office inside the town-hall, the blows being of sufficient force to knock the flier to the floor (R 6). In a sworn statement signed by the accused on 28 August 1945, he admitted the particulars with which he is charged (R 11-17). According to the testimony, neither of the fliers suffered any serious injury or ill effects from the mistreatment (R 24). Towards evening of the day in question a Major of the German Air Force arrived in an automobile and took the fliers away (R 23).

b) For the Accused: The accused substantially admitted the assault with which he is charged (R 11-17), but attributed his acts to the excitement of events (R 14). In testifying on his own behalf, Sauter explained that his acts in mistreating the fliers were due to his nervous condition, nightly air-raids and "pneumonia and various ills like that" (R 19); that Gestapo officials who were

present incited his actions, and that he allowed himself to be "carried away" by their influence (R 20). Sauter stated that he didn't want "to hurt them (the fliers) badly" (R 21) and that they were not injured by his beatings. Hermann Becker, a former Buergor-moister of Flehingen and a witness for the accused testified that he did not notice any injuries on the persons of the fliers after the mistreatment, but that the fliers stood around, smoked cigarettes and smiled at each other "happy that they had been saved". He stated that the accused's character and reputation were good and attributed the acts of mistreatment to Sauter's nervousness and the excitement caused by frequent air attacks at night (R 24).

5. DISCUSSION:

a) The testimony and exhibits appearing in the record of the trial of this case show no dispute of any salient facts between the statement of charges of the prosecution and the defense set up by the accused. There is no real conflict of testimony. The witnesses of both the prosecution and of the defense tell substantially the same story concerning the sequence of events on the day in question, and the mistreatment of the fliers is not denied by the accused. The record indicates that the accused entered a plea of "guilty", but the court on its own motion changed it to "not guilty".

b) The prosecution has presented all elements necessary to establish the offense with which the accused is charged. Testimony showing the accused to be a German national was introduced (R 1, 18); that the date and place of the offense was 21 July 1944 in Flehingen, Germany (R 3, 9); that the accused committed a wrongful assault with a cane (R 3, 6, 7, 9, 14, 15); that the fliers assaulted were members of the US Army (R 17, 19); that the fliers were unarmed, surrendered prisoners of war in custody of the German Reich (R 6, 7). The defense has not denied or refuted any of the above allegations. The testimony of the witnesses for the prosecution was clear and concise and made by persons who were personally acquainted with the accused. Nor has the accused denied the offense with which he is charged. The evidence of the accused's guilt was overwhelming.

c) Objections of Counsel for the defense to the admission of the statement made by Sauter previously to the trial was properly overruled by the Court (R 11). "To admit in evidence a confession of the accused, it need not be shown such confession was voluntarily made and the Court may exclude it as worthless or admit it and give it such weight as in its opinion it may deserve after considering the facts and circumstances of its execution" (R 12 (1) (2), Rules of M.G. Courts). The Court here had an opportunity to examine the statements of the witnesses for the prosecution, and to hear the testimony of the accused in person. It was for the Court to decide how much weight, if any, to give the document and to determine whether the circumstances under which said statement was made were proper.

d) All of the evidence introduced at the trial was admissible under the rules of procedure established by the order creating the Military Government Courts. There is no question of law involved in this case, and there were no irregularities in the proceedings which prejudiced the rights of the accused. He was ably defended by both counsel of his own choice and Government defense counsel appointed for said purpose. No reasonable doubt exists as to his guilt.

e) The sentence imposed on the accused is legal and appropriate under the international rules of land warfare (Art. III, MG 02).

6. DATA AS TO ACCUSED:

Gustav Sauter, the accused formerly resided in Flehingen, Germany (R 1). He is 47 years of age (R 1), married and has two children (R 11). He attended public school for 6 years, during which period he failed to pass on three occasions (R 21). He is a veteran of the 1st World War and was a prisoner of war from 1918 to 1920. He is a farmer by occupation (R 11). In the year 1934 the accused joined the NSDAP (R 12) and voluntarily (R 10) remained a member. He was District-Farm-Leader in 1934-1935, Substitute Blockleader in 1933, and Agricultural Adviser to the Town Government (R 12).

7. PETITION FOR REVIEW:

No petition for review was filed on behalf of the accused in this case.

8. RECOMMENDATION FOR CLEMENCY:

No recommendation for clemency has been filed on behalf of the accused, nor do the facts warrant such action.

9. RECOMMENDATION:

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

/s/ M. C. Setzekorn
M. C. SETZEKORN
Capt. Inf.
Chief, Trial Section

I concur.

/s/ Charles E. Cheever
CHARLES E. CHEEVER
Col. JAGD
Staff Judge Advocate