

HEADQUARTERS THIRD ARMY
JUDGE ADVOCATE WAR CRIMES
TRIAL SECTION
APO 403 US ARMY

11 April 1946

THE UNITED STATES

VS

Erich Dietzschold
Case No 12-2009

Trial held at Ludwigsburg, Germany

March 11, 1946

Before a General Military Government Court

1. Summary of the Charges, Pless and Findings:

Erich Dietzschold, the accused German male, was charged with wrongfully committing an assault upon an unknown American airman, a prisoner of war of the German Reich, by kicking him in the neck. The time and place of the offense was alleged to have been on or about 21 June 1944 at or near Kospa, Germany. The accused, who was present in Court, pled not guilty to the Charge and Particular. At the conclusion of the trial the Court announced a finding of Not Guilty.

2. Jurisdictional Matters:

(a) It is settled law that a national of one belligerent country may be tried and punished by the duly constituted tribunals of another belligerent country for violations of the International Laws of Land Warfare. When such a national wrongfully commits an assault upon 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 General Military Government Court was duly and legally appointed, and the charge and particular against the accused were properly referred for trial, by the Commanding General, Seventh United States Army / Western Military District, Germany. The reference of the charge and particular to a General Court, instead of to an Intermediate Military Government Court, as directed by letter, Deputy Theater J. A.'s Office, WCB, USFET, 11 January 1946, file No. 000,5, subject Case of United States vs Erich Dietzschold, (included in original copy of record of trial), would not appear to have any significance insofar as is concerned the matter of jurisdiction. The required number of Court members was present throughout the trial. The charge and particular were served on the accused prior to trial. The Court was vested with full jurisdiction to try the accused for the offense alleged. The Court had power to acquit the accused.

3. Evidence Summary.

(a) Prosecution -- On 21 June 1944 at about 1330, an unidentified American airman landed by parachute in the field near

the village of Kospa, Germany (R 4, 9, 13). A large crowd congregated about the airman, who raised his arms in token of surrender. Thereupon one Alfred Eisold fired one shot from a pistol at the American, wounding him in the right side of the neck, and causing him to fall to the ground, where he lay as dead. (R 4, 9, 13, 19). Shortly thereafter the accused was seen to kick the airman twice, "twice in the neck on the opposite side from the wound" as seen by one witness (R 15), or "in the left side and in the left cheek" as seen by another (R 10-11). Wehrmacht soldiers who then arrived at the scene dispersed the crowd and had the airman removed to a hospital in Eilenberg (R 15,17).

(b) Defense -- The following pertinent facts were developed by the initial interrogation of the accused by the Court (R 4, 6), the statement of the accused offered in evidence by the Prosecution (R 19-21, Exhibit D), and by the testimony of the accused while on the stand as the sole defense witness (R 23-30): At the time of the alleged offense, the accused was a Wehrmacht soldier, holding the rank of Oberreiter or private first class, and was stationed on a state-owned horse breeding farm in Kospa (R 19). He bicycled to the field where the airman had landed, and there found the American lying on his back on the ground (R 4-5, 19, 25). Having heard from the bystanders, of whom there were some fifty or sixty, that Dietzschold had shot the airman, and seeing the airman lying as though dead, he touched the airman twice with his foot in an effort to determine whether he still lived (R 4, 20, 25). The accused was of the opinion that the airman was dead right up until the time, a few minutes after touching him, that the airman moved on the ground (R 5, 20, 25). It was not until after touching him that the accused saw the bleeding wound on the neck of the airman (R 5). The accused stated that he considered it his duty as a soldier to determine whether the airman was dead or alive, in order to transport him to a proper place (R 25). He stated it was his duty to assist in the capture of parachuted pilots, having received Wehrmacht orders to this effect (R 24).

4. Discussion and Opinion:

The trial was well and fairly conducted and no errors of procedure or admissibility of evidence appear to the principles of justice. It would appear that the court based their decision on the pivotal question of fact brought before it, *to-wit*: whether the accused, in pulling his foot to the neck of the American airman, did so with intent to assault or with intent merely to determine whether the airman was alive. One witness, whose affidavit was offered in evidence by the prosecution, was himself of the opinion that the airman was dead.

5. Recommendations:

It is recommended that the record of trial be approved and that the findings of the Court be affirmed.

/s/ M. C. Setzekorn
/t/ M. C. SETZEKORN
Captain, Infantry
Reviewing Officer

I CONCUR.

/s/ Charles E. Cheever
/t/ CHARLES E. CHEEVER
Colonel, JAGD
Staff Judge Advocate