

DEPUTY JUDGE ADVOCATE'S OFFICE  
7708 WAR CRIMES GROUP  
EUROPEAN COMMAND  
APO 178

2 July 1947

UNITED STATES )

v. )

Fritz SCHMAUDER )

Case No. 12-2157

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 20 May 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Fritz SCHMAUDER, a German national, did, at or near HUELLEN, Germany, on or about 6 September 1943, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then and there a wounded and unarmed prisoner of war in the custody of the then German Reich.

III. EVIDENCE AND RECOMMENDATIONS:

1. FRITZ SCHMAUDER

Nationality: German

Age: 27

Civilian Status: Butcher

Party Status: Unknown

Military Status: Drafted into labor service May 1940 to September 1940; drafted into army 2 October 1940; captured by Russians 30 July 1944.

Plan: NG

Findings: G

Sentence: Life imprisonment

Evidence for Prosecution: On or about 6 September 1943 several American fliers parachuted to earth following an air fight over Huelben, Germany, in the district of Dettingen, Germany, and either one or two American planes crashed nearby (P-Ex 2a, pp. 1, 2;

P-Ex 7, p. 1, P-Ex 8a, p 2). According to the extrajudicial sworn testimony of the accused, he started on a bicycle toward the area where he saw one flier coming down. En route, he climbed a tree, saw a burning plane and proceeded in that direction. After going a few meters he heard a shot, returned to the village, procured a rifle and about forty minutes later returned to the area. He found a flier lying on the ground some meters distant from the place where the shot had been fired. The flier, who was lying on his stomach with his face against the ground, moved his head. The accused felt of the flier's left hand which was still warm and then fired one shot into the flier's neck, killing him ( P-Ex 8a, pp 2, 3; P-Ex 9a, 10a, 12a). He searched the flier and removed several small items including 8 to 10 round paper discs with English words printed on them. He later burned the discs. With the aid of a local policeman, he carried the dead flier to the edge of the forest (P-Ex 11a, p 2). The testimony of accused is corroborated by hearsay testimony of four witnesses who testified extrajudicially during an investigation made by the French rural police ( P-Ex 2a). One of these witnesses testified that four American fliers were buried in September 1943 in the locality of Dettingen (a village near Huelben (P-Ex 7, p 1) ) following an aerial combat. The charred remains of three of these men were found under one of the planes (P-Ex 2a, p.3). Another of these witnesses testified that on 6 September 1943 he made coffins for four American fliers. Two of the bodies were charred beyond recognition, a third had a huge wound in the stomach and a fourth had a bullet hole in the forehead and at the back of the neck. No identification tag was found on the body of the man with the bullet wound and the cross on the grave of that man bore the inscription "unknown" (P-Ex 2a, pp 3, 4; see also P-Ex 6). The report of the French rural police further showed that these policemen found the graves of the four Americans, one of whom was an unidentified American flier, and that the markers on the graves of all four bore the inscription "6-9-43" indicating that they were buried 6 September 1943 (P-Ex 2a, p 4). An extract from a Missing Air Crew

Report lists the names of ten members of a bomber missing on 6 September 1943 and three of the names on the list are the same as those on three of the grave markers found by the French police (P-Ex 3).

Evidence for Defense: The accused elected to testify under oath in substance as follows: At the time of the incident for which he was being tried he was on convalescent furlough after having been wounded in Russia. He was en route to the scene of the landing for the purpose of helping the flier when a shot which he believed to have been fired by the flier came within three or four meters of him. He was excited by this shot and remembered a scene in Berlin where he had a few days previously seen debris and bodies of women and children after an air attack. He went back to get a carbine and in his excitement later fired the shot (R 41, 42). He did not commit a murder (R 49). He did not intend to shoot the flier (R 50). Prosecution exhibit P-Ex 7 was never shown to him but was read to him in German and contains incorrect statements (R 45).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Included with the record of trial is a letter dated 2 June 1947, subject: "New Evidence in the Case of Fritz SCHMAUDER", addressed to Assistant Chief, Counsel Section, Dachau Detachment, 7708 War Crimes Group, filed by Leon B. Poullada, Major, OMC, Defense Counsel. Information contained therein does not present evidence sufficient to warrant any clemency action.

Recommendation: That the findings and sentence be approved.

IV. QUESTIONS OF LAW: It is clear that the Court had jurisdiction of the person of the accused and of the subject matter. Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

V. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Nora G. Springfield  
/t/ NORA G. SPRINGFIELD  
1st Lt., WAC  
Post Trial Branch

Having examined the record of trial, I concur.

/s/ C. E. Straight  
/t/ C. E. STRAIGHT  
Lieutenant Colonel, JAGD  
Deputy Judge Advocate  
for War Crimes