

24 November 1947

UNITED STATES)

v.)

Case No. 11-52

Bernhard KOEHNKE)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 15-16 September 1947 before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE I: Violation of the Laws and Usages of War.

Particulars: In that Bernhard KOEHNKE, a German national, did at or near LA VILLABEAU, France, on or about 15 June 1944, wrongfully kill a member of the United States Army, who was then and there unarmed and in the act of surrendering himself to the then German Reich.

CHARGE II: Violation of the Laws and Usages of War.

Particulars: In that Bernhard KOEHNKE, a German national, did at or near LA VILLABEAU, France, on or about 15 June 1944, wrongfully commit an assault upon a member of the United States Army, who was then and there unarmed and in the act of surrendering himself to the then German Reich.

III. DATA AS TO ACCUSED:

Bernhard KOEHNKE

This accused was acquitted (R 95).

IV. SUMMARY OF EVIDENCE: On or about 15 June 1944 several American airmen parachuted from their damaged plane, landing at or near La Villabeau, France. Three of the airmen, upon being informed that the Germans were looking for them, hid in the woods nearby (R 6, 7, 31, 32; P-Exs 2, 3). The three airmen were unarmed (R 13, 14, 35; P-Ex 5, p. 4). The accused, armed with an automatic pistol, participated, with others, in searching the woods for the airmen (R 76). During the search, one of the airmen was shot to death and another received shot wounds in both

legs (R 13, 31, 32; I-Exs 2, 3). The accused was the only one who fired at the three airmen. He fired five to seven shots (R 34, I-Ex 4, pp. 2, 4).

The extrajudicial sworn testimony of two witnesses tended to support the prosecution's case that the accused wrongfully shot to death the one airman and wrongfully wounded the other (R 31, 32; I-Exs 2, 3).

The accused testified that he saw a man in uniform lying on his back; that he loudly and clearly called to him in German: "Hands up" (R 77); that the man was working his right hand to his right and his left hand to the left as if he were searching for something (R 78). After he called at least three times, he shot into the ground and not in the man's general direction (R 79).

Two additional soldiers then surrendered. The accused did not make any attempt to shoot the second time when the two additional soldiers appeared and surrendered (R 80). The accused denied that he wounded the other airman (R 35; I-Ex 5, p. 6).

The Court had jurisdiction of the person of the accused and of the subject matter.

V. CONCLUSIONS:

It is recommended that the record of trial be filed in the records of this office and that a copy of this Review and Recommendations be forwarded to the Judge Advocate, European Command, for his information.

EMMANUEL M. MILLER
First Lieutenant TC
Post Trial Branch

Having examined the record of trial, I concur this _____ day
of _____ 1948

C. E. STRAIGHT
Lieutenant Colonel, JAGD