

DEPUTY JUDGE ADVOCATE'S OFFICE  
7708 WAR CRIMES GROUP  
EUROPEAN COMMAND  
APO 407

13 November 1947

UNITED STATES )

v. )

Case No. 12-966-1

Eberhard HAGENBUCH )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 18 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War

Particulars: In that Eberhard HAGENBUCH, a German national, did, at or near HILDEN, Germany, on or about 16 April 1945, wrongfully encourage, aid, abet and participate in the killing of three members of the United States Army, believed to be 2nd Lt. Hugh L. McINNIS, ASN 0-555568, T/S Robert K. WHITING, ASN 3-194659, and Pfc. Rex SLBIN, ASN 17078810, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On or about 16 April 1945, three American soldiers who emerged from a burning tank in the vicinity of Hilden, Germany, surrendered and were shot by a German Lieutenant Wippermann. As the victims lay in a ditch, the accused fired a shot at one of the prisoners. All three victims were found and the same day by an American medical officer. The incident in this case is the same as in the case of the United States v. Wippermann, Case no. 12-966, in which accused Wippermann was sentenced to 20 years imprisonment.

IV. EVIDENCE AND RECOMMENDATIONS:Eberhard HAGENBUCH

Nationality:	German
Age:	25
Civilian Status:	Student
Party Status:	None

Military Status:	Wehrmacht Lieutenant
Place:	NG
Findings:	G
Sentence:	1 year, commencing 12 April 1947

Evidence for Prosecution: The accused, a lieutenant in the Wehrmacht (R 13), arrived at the scene of the killings while the captured Americans were lying in the ditch and after they had been shot by Wipperrmann (R 7, P-Ex 5). The three victims were lying face down (R 6, P-Ex 3; R 7, P-Ex 5). One of the Americans was moaning; whereupon the accused fired a shot at him (R 6, P-Ex 4; R 7, P-Ex 5), after remarking that he wanted to relieve the man from his agony (R 6, P-Ex 4). The shot was directed into the head (R 7, P-Ex 5). The accused admitted firing one shot at one of the Americans (R 5, 9). No other Americans were captured on 16 April 1945 in the vicinity of Hildon by the unit to which the accused belonged (R 7, P-Ex 5). Three dead American soldiers were found a few minutes after the killings by J. I. Froeborn, Captain, Medical Corps. Two of the soldiers each had one gunshot wound in the head, and one had two gunshot wounds in the head (R 7, 8; P-Exs 6, 7, 8). None of the victims had any other head wounds.

Evidence for Defense: The accused testified that he heard the shots fired (R 15); that when he arrived on the scene the accused spoke to Wipperrmann (R 15); that the three Americans were seen lying in the ditch (R 15); that he fired one shot at one of the Americans (R 14); that this shot was directed to the heart (R 16); that he hoped thereby to terminate the suffering of the victim (R 16) even though he believed the man already dead (R 14, 17); that he did not recall whether he had fired a shot into the heart of each of the other two (R 16); and that he stood immediately over the Americans at whom he fired.

Sufficiency of Evidence: The testimony of the accused alone is sufficient to clearly establish his participation in the killing

of the three American prisoners. - His participation is shown by the accused's testimony that after hearing the shots he went to the scene; that after speaking to Wipperfurth he fired a shot at at least one of the subjects in the ditch.

The findings of guilt are warranted by the evidence. The sentence is not excessive.

Findings: no petitions for review nor petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved. by Major Edward E. ...

Jurisdiction: 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 results in injustice to the accused.

VI. CONCLUSIONS:

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

2. Legal Services Nos. 15 and 16 to accomplish this result are attached hereto, should it meet with approval.

HAROLD BLITT  
Lieutenant Colonel  
1st Trial Branch

Having examined the record of trial, I concur, this \_\_\_\_\_ day  
\_\_\_\_\_ 1948.

C. E. STANIGAN  
Lieutenant Colonel, JAGC  
Deputy Judge Advocate  
for War Crimes