

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207-1

25 July 1947

UNITED STATES)
 v.)
Johann GROSS)

Case No. 12-1109

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 4 June 1947, at a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War

PARTICULARS: In that Johann GROSS, a German national, did, at or near ALTWIED, Germany, in or about the month of January or February 1945, 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 an unarmed and surrendered prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: In January or February 1945 a surrendered and unarmed American flier was being removed by foot from confinement in Regensdorf, Germany, to the Gestapo office in Altwied, Germany, some three and one-half kilometers distant. He was in the custody of accused GROSS and another Gestapo man. The flier was marched into a nearby wood and shot to death. Accused GROSS admitted firing some shots but claimed they were warning shots fired because the flier was attempting to escape. GROSS contended the fatal shots were fired by his Gestapo companion.

IV. EVIDENCE AND RECOMMENDATIONS:

1. JOHANN GROSS

Nationality: German
Age: 35
Civilian Status: Assistant Gestapo Commissar
Party Status: NSDAP since 1933
Military Status: None

Plea: NG
Findings: G
Sentence: Life imprisonment

Evidence for Prosecution: Witness Muschoid testified that at 2200 hours one night in February 1945 an American flier was brought to the office of the Mayor of Regensburg, Germany, where witness worked; that witness prepared a receipt for the personal effects of the flier; that witness assisted the flier who had a badly swollen leg in his walk from the Mayor's office to the place where the flier was locked up for the night; and that the next morning he saw the flier being taken from the place of confinement by two Gestapo men who proceeded toward the town of Altwied where a Gestapo office was located (R 8-19). Witness Reuschenberger testified to seeing a limping American flier and two Gestapo men who were going toward Altwied turn into a woods and to hearing two shots a short time later (R 19-23). Witness Kuehbacher testified that GROSS and another Gestapo man were sent from the Gestapo Headquarters to get a flier at Regensburg, and that they later returned without the flier, the witness being told that they had had to shoot the flier; Kuehbacher further testified that the Gestapo man with GROSS was seen wearing an American flier's jacket and witness was told the flier had been required to remove the jacket before the shooting so as not to get holes in it (R 23-30). Witness Ruppert testified that GROSS and the other Gestapo man took a burial detail of Russian prisoners toward the woods between Regensburg and Altwied, and that witness later saw a Russian wearing American boots which the Russian stated had been removed from a flier (R 30-40). GROSS, in an extrajudicial sworn statement, admitted firing shots at the flier and by his testimony in Court he admitted firing warning shots at the flier and that the flier was killed while he and the other Gestapo man were conducting him to Altwied (R 43, 45, 7; P-Ex 2a).

Evidence for Defense: GROSS, in sworn testimony, denied that he knew about the injured foot of the flier (R 42); that accused fired random warning shots, which did not hit the flier; that shots were fired because the flier tried to escape; that the other Gestapo man fired the

shots which killed the flier (R 43); that he (GROSS) carried the flier's jacket from the police station (R 54). In said extrajudicial sworn statement, GROSS stated the flier attempted to escape into the woods during what appeared to be an imminent air attack, and that he would not have fired had not the flier tried to escape (R 7; P-Ex 2c).

Sufficiency of Evidence: It is improbable that the injured victim would have tried to escape to woods 200 feet distant, while being followed by two men with machine pistols. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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 resulted in injustice to the accused.

VI. 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/ George M. Lentz
/t/ GEORGE M. LENTZ
Captain, J.G.C.
Post Trial Branch

Having examined the record of trial, I concur.

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

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757

Aug 21, 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Johann GROSS (Case No. 12-1109)TO : Commanding General
First Military District
APO 1, U.S. ArmyReference is made to letter, No. USFET, file AG 383 JAG-AGO,
subject: "Designation of Prisons for War Criminals," 26 February 1947
and to the inclosed copies of the Order on Review in the above entitled
case as to accused Johann GROSS.Upon compliance with the Order on Review the certificate below
will be completed and returned to the Deputy Judge Advocate for War
Crimes, 7708 War Crimes Group, APO 207-1, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
/t/ Wm. E. BERGIN
Brigadier General, USA
Adjutant General1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review was
carried into execution at War Criminal Prison No. 1, Landsberg, Germany,
on 29 August 1947, at 0800
(Date) (Hour)/s/ Lloyd A. Wilson
(Signature and Rank)/t/ LLOYD A. WILSON
Captain CMP
Asst. Prison Officer
(Organization)/s/ Joseph H. Williams
(Counter-signature and Rank of
Witnessing Officer)/t/ JOSEPH H. WILLIAMS
First Lieutenant, Inf.