

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

5 February 1948

UNITED STATES )

v. )

Stefan PALKO )

Case No. 000-Nordhausen-6

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 3-12 December 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Stefan PALKO, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about December 1943 wrongfully encourage, aid, abet and participate in the killing of an unknown non-German national, an inmate of Nordhausen Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Stefan PALKO, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about July 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown non-German national, an inmate of Nordhausen Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Stefan PALKO, a German national, did at or in the vicinity of Nordhausen, Germany, in or about March 1944, wrongfully encourage, aid, abet and participate in committing an assault upon two unknown French nationals, inmates of Nordhausen Concentration Camp, who were then in the custody of the then German Reich.

(NOTE: Pursuant to authority granted by the Deputy Judge Advocate for War Crimes, Charges II and III of the original charge sheet, dated 14 November 1947, and served 14 November 1947, were amended by the substitution of Charges II and III as appears on the charge sheet dated 19 November 1947, and served 20 November 1947 (R 2, 3; P-Exs 2, 2A).

III. SUMMARY OF EVIDENCE: The accused was an SS corporal and block leader in Nordhausen Concentration Camp from November 1943 to 5 April 1945. Each of the three charges relates to separate incidents. These will be hereinafter referred to as Incidents Nos. 1, 2, and 3, respectively.

Regarding Incident No. 1, in the winter of 1943, the accused beat a French inmate of the camp with a cable until he collapsed and then kicked



him repeatedly. Following this beating and kicking, the inmate complained of difficulty in breathing. Subsequently he was selected to leave camp on a transport of sick inmates who were unable to work. He died on the day the transport left the camp. His name was entered on the death list used to record the death of inmates of this particular transport. He was identified as Armand Dan Pierre.

Concerning Incident No. 2, in July 1944 the accused severely beat a Russian inmate of the camp, causing a fracture of the skull and ribs. Within a short time after the beating the victim died from the injuries sustained. Permission was requested of the SS doctor to perform an autopsy on the body of the victim. However, the body was cremated before the autopsy could be performed.

Respecting Incident No. 3, in March 1944 the accused severely beat two French inmates of the camp who were too weak to move a barrel which was used as a latrine. As a result of the beating, one of the victims suffered a permanent injury to his eye, partially impairing the vision thereof.

The trial of the case was continued on 3 December 1947 as the defense counsel was also involved in another case. The Court reconvened on 11 December 1947, after an associate counsel had been appointed. (See certificate by the associate defense counsel, 8 March 1947, bound with the record of trial, certifying that he was ready to proceed with the trial.)

#### IV. EVIDENCE AND RECOMMENDATIONS:

##### Stefan PALKO

Nationality:	German
Age:	31
Civilian Status:	Barber
Party Status:	Unknown
Military Status:	SS Corporal; Block Leader
Plea:	NG, Charge I; NG, Charge II; NG, Charge III
Findings:	G, Charge I; G, Charge II; G, Charge III
Sentence:	25 years, commencing 2 May 1945

Evidence for Prosecution: The accused was an SS corporal and performed



November 1943 to 5 April 1945 (R 13, 87; P-Ex 7A, p. 1).

Respecting Incident No. 1, Michel, a French national, Major in the French Army during the war and former inmate of the camp, testified that in December 1943 he saw the accused beat French inmate Armand Dan Pierre, with a rubber covered electric wire [cable]. The accused beat him indiscriminately in the region of the chest and ribs. The cable was about 50 centimeters long and 3 centimeters in diameter. At the time the victim was beaten, he was standing near a tunnel in the camp. The inmates worked in the tunnel (R 28, 36, 37). As a result of the beating, the victim collapsed. The accused continued to kick him while he was lying on the ground. The victim was taken to the invalid block and excused from work (R 28, 29). He continually complained about difficulty in breathing. He was required to attend roll call, which he managed to do with the aid of two other inmates (R 29). About ten days later the victim was selected to leave on a transport of sick inmates who were unable to work. The witness saw the victim at 0000 hours the day the transport left and at that time the victim said it was gradually becoming more difficult to breathe. The witness saw the victim each day during the interval between the beating and the departure of the transport. The French inmate died on the day the transport left. His name was entered on the death list used to record the death of inmates on this particular transport. The witness had the list in the labor statistics office (R 28, 29, 34, 35, 42). Sespiva and Lauth, former inmates of the camp, the first a Czech doctor, the other a French national, testified that they heard from other inmates of the camp that the accused had beaten to death a French national, Dan Pierre (R 12-14, 43-45).

Regarding Incident No. 2, Sespiva the Czech doctor, testified that in July 1944 a Russian inmate was brought to the hospital where he was assigned, suffering from a serious head injury. An examination revealed that he was suffering from a fracture of the skull and ribs. There was an open wound on the back of the head about six to seven centimeters long. The victim was unconscious. Upon inquiry concerning the cause of the injuries, Lumir Zapletal a first-aid man who helped bring the victim to the hospital told



the witness that he saw the accused severely beat the victim in the tunnel. That evening the victim died. The following day he reported the matter to Doctor Kahr, the SS camp doctor. He also requested permission to perform an autopsy on the body. Permission was granted a day later. In the meantime, because of the stench from dead bodies, the Russian's body had been cremated (R 14, 15). A fourth witness, Doctor Kahr, the SS doctor in the camp, corroborated the testimony of the foregoing witness respecting the report of the incident; the identity of the perpetrator as a member of the SS; the request for permission to perform the autopsy; and the premature cremation of the body (R 51, 52).

Concerning Incident No. 3, Sespiva testified that in March 1944, two French nationals, inmates of the camp, were brought to his ward suffering from cuts and bruises. One of the victims was suffering from an injury to the cornea of his eye. The injury was permanent and partially impaired the vision. At the time he was told that the accused beat both inmates because of their inability to move a barrel, which was used as a latrine, due to their weak physical condition (R 16, 17, 20). In his extrajudicial sworn statement, the accused stated that in the summer of 1944, he beat two Russians, inmates of the camp, with his bare hands because of thefts (R 87; P-Ex 7A, p. 3).

Evidence for Defense: The accused was advised of his rights by the Court, but declined to take the stand (R 85).

In connection with Incidents Nos. 1, 2, and 3, two witnesses, Bruesser, a member of the SS and clerk of the guard company in the camp, and Finkenzeller, a former capo, testified that during the time they were connected with the camp, from August 1943 to June 1944, and November 1943 to 4 April 1945, respectively, they never heard that the accused beat any inmates to death (R 64-66, 71, 72). Finkenzeller admitted that he saw the accused beat inmates on several occasions with his hands. However such beatings did not result in injuries (R 73, 74). This witness had been sentenced to imprisonment for two years as a war criminal for beating inmates. He also admitted four previous convictions for theft, fraud, burglary, and attempted



murder between 1919 and 1932 (R 74, 75).

More particularly in connection with Incident No. 1, Fett, a former inmate of the camp and clerk in the troop dispensary, testified that he knew Michel, one of the foregoing witnesses, who testified concerning Incident No. 1. He further testified that Michel worked in the dispensary with him, and that he never heard him say that the accused beat the French inmate Dan Piarre to death. He also testified that he never heard that the accused had beaten any inmates of the camp (R 76-78, 82). Fett admitted two previous convictions for breach of trust and bankruptcy fraud between 1920 and 1934 (R 80).

Sufficiency of Evidence: No reason is seen to doubt the sincerity of any prosecuting witness. As to the offenses alleged in Charges II and III hearsay evidence maybe very persuasive under some circumstances. However, the hearsay evidence tending to involve the accused in these two offenses lacks satisfactory persuasiveness. In each instance, insofar as the evidence reveals, the witness<sup>es</sup> informant did not adequately develop the details of the incidents and particularly what he personally saw. On this meager information the Court could not appropriately conclude that the guilt of the accused as to Charges II and III is proved beyond a reasonable doubt. As to Charge I, the appearance of the victim<sup>s</sup> on a death list of those who had left on the transport is not very persuasive as to the alleged death. Moreover, the lapse of ten days between the beating and the supposed death, together with the possibility of violence on the transport, decreases the probability that the death of the inmate on the day in question was in fact the direct result of and resulted solely from the beating by the accused. Also, the principal witness apparently did not conclude that the victim's <sup>in some</sup> death was impending when he talked to him on the morning the transport left, the supposed date of the death. However, that the accused severely beat the inmate and that serious injuries resulted therefrom is established beyond a reasonable doubt. The assault with a cable, which is established by the evidence, is necessarily included in the offense alleged in Charge I. The sentence imposed is disproportionate to this proved offense.



Petitions: A Petition for Review, 17 December 1947, was filed by Claudio Delitala, assistant defense counsel. A supplementary Petition for Review, undated, was filed by Lieutenant Eldon O. Haldane, Chief Defense Counsel. The supplementary petition urges that the findings and sentence be set aside for lack of adequate pretrial investigation; improvident substitution of defense counsel and legal insufficiency of the evidence. Lieutenant Eldon O. Haldane was appointed Chief Defense Counsel by Letter of Assignment dated 8 October 1947. The original charge sheet was served upon the accused on 14 November 1947, and trial set for 24 November 1947. The amended charge sheet was served upon the accused on 20 November 1947 and the trial set for 30 November 1947. The trial actually commenced on 3 December 1947 with the Chief Defense Counsel actively representing the accused. The Court adjourned after the forenoon session on that day because of the Chief Defense Counsel's engagement in another trial. It did not reconvene until 11 December 1947. In the meantime Mr. Claudio Delitala, civilian attorney, was appointed assistant defense counsel. He consulted with the accused, the Chief Defense Counsel, and the witnesses for the defense and according to his appraisal was fully prepared to proceed with the trial of the case. A certificate by him, Mr. Delitala, to this effect is attached to and bound with the record of trial. It is not apparent that the accused had insufficient time in which to prepare his defense, nor is it apparent that the associate defense counsel failed to ably defend the accused.

Recommendation: That the findings of guilty as to Charges II and III be disapproved; that only so much of the findings as to Charge I be approved as involves findings of guilty of an assault by beating with a cable and that <sup>the</sup> sentence be approved, but reduced to imprisonment for 15 years.

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 in the conduct of the trial which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. That the findings of guilty as to Charges II and III be disapproved; that only so much of the findings as to Charge I be approved as involves findings of guilty of an assault by beating with a cable, and that sentence be approved, but reduced to imprisonment for 15 years.


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



RONALD DADAMIO  
2nd Lt. Inf  
Post Trial Branch

Having examined the record of trial, I concur, this 2nd day of

April 1948.

  
C. E. STRAIGHT  
Lieutenant Colonel, JAGD  
Deputy Judge Advocate  
for War Crimes