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

1 October 1947

UNITED STATES)
)
v.) Case No. 12-3205
)
Kurt DECKER, et al.)

FINDINGS AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 10-14 April 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Kurt DECKER, Waldemar FELDMEIER, Erich MUELLER, August SCHUBERT, Oswald CONRAD, Herbert MOSIMEIER, and Harry HAUENSCHILD, German nationals, did, in or about May, June or July 1944, at or near HELMSTEDT, Germany, wilfully, deliberately, and wrongfully encourage, aid, abet and participate in the killing of four members of the United States Army, who were then and there unarmed, and surrendered prisoners of war in the custody of the then German Reich.

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

Particulars: In that Kurt DECKER, Karl SCHROEDER and Hans Willi FLEKL, German nationals, did, in or about July 1944, at or near HELMSTEDT, Germany, wilfully, deliberately and wrongfully, encourage, aid, abet and participate in the killing of two members of the United States Army, who were then and there unarmed and surrendered prisoner of war in the custody of the then German Reich.

On motion made by the prosecution, the particulars under Charge I were amended to read..."encourage, aid, abet and participate in the killing of four unknown members of a nation then at war with the then German Reich"...instead of..."encourage, aid, abet, and participate in the killing of four members of the United States Army"... and the particulars under Charge II were amended to read ...."encourage, aid, abet and participate in the killing of two unknown members of a nation then at war with the then German Reich" ...instead of..."killing of two members of the United States Army"

III. SUMMARY OF EVIDENCE: In about June 1944 accused DREGER was directed by Landrat Von Hinueber to kill four captured Allied airmen. Accused DREGER, accompanied by accused FELDMEIER, MUELLER, SCHUBERT, CONRAD, MOSIMANN and HAUENSCHILD, took the airmen to a wooded area near Marienthal airport in the vicinity of Helmstedt, Germany. Pursuant to instructions from DREGER, the airmen were shot by MUELLER, SCHUBERT, CONRAD and Hauenschild. FELDMEIER then fired two shots into the body of one of the airmen who was still alive.

In about July 1944, accused DREGER was directed by Landrat Von Hinueber to kill two additional captured Allied airmen. Accused DREGER, accompanied by accused SCHROEDER and FINKE, took the airmen to the same place where the other airmen mentioned in the preceding paragraph had been killed. DREGER told FINKE and SCHROEDER that they had to shoot the airmen but FINKE refused to comply. Then DREGER and SCHROEDER shot and killed the airmen.

(The references to Colonels William G. Holder and John P. Kaye on page 2 of the record as Lieutenant colonels are obviously typographical errors.)

IV. EVIDENCE AS TO INDIVIDUAL ACCUSED:

1. ACCUSED DREGER

Nationality:	German
Age:	35
Civilian Status:	Electrical engineer
Party Status:	NSDAP
Military Status:	Army sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused admitted in his extra-judicial sworn testimony that pursuant to his orders four captured American airmen were killed in about June 1944; that two more were

killed in July 1944; and that he personally fired the shot which killed one of the airmen. But he asserted that he acted pursuant to orders from Landrat Von Hinueber (R 11, 16; P-Exs 1, 7). The accused testified that on the two occasions he was ordered by Landrat Von Hinueber to take charge of shooting details to kill captured airmen who apparently had been convicted by a summary court (R 53, 54, 58, 59). On the first occasion, he accompanied the execution detail and the four captured airmen to the place of execution where the detail shot and killed the victims pursuant to his order (R 55, 56). On the second occasion, he also accompanied the detail and the two captured airmen to the place where the victims were shot and killed by one member of the detail and the accused (R 60, 61). ROSENHEUER testified that he drove one of the trucks which carried the shooting detail and the four captured airmen to Marienthal woods in the vicinity of Helmstedt, Germany, sometime in the summer of 1944; that he saw the airmen lined up in front of accused FRADNER, MUELLER, SCHUBERT, CONRAD and HAUENSCHILD and shot; and that the bodies were put into the trucks and delivered to the Marienthal airport (R 20-23). Accused FINKE testified that sometime in 1944 he drove a car containing accused SCHROEDER and two captured Allied airmen to a place near the Marienthal airport; that this accused accompanied them, driving his own car; that when the cars were stopped, this accused ordered FINKE to shoot one of the airmen; that when he refused, his pistol was taken by accused SCHROEDER; that this accused and SCHROEDER shot and killed the two airmen; and that the bodies were delivered to the Marienthal airport (R 33, 34, 39, 40).

Evidence for Defense: The accused testified that he thought that the orders he received to kill the captured airmen were lawful orders issued by a court; that he disliked the assignment because he was opposed to capital punishment; and that he was afraid to refuse to carry out the orders for fear of punishment (R 53, 54, 58, 59, 60, 61). Two witnesses testified that the

the accused joined the army he saved the life of an American soldier at the risk of his own in spite of knowledge that the Americans had previously fired on German prisoners of war (R 115, 116, 121). An additional witness testified that he and his son and a friend were shot by a strafing American plane near Helmstedt (R 122-124).

Sufficiency of Evidence: The killings were accomplished at a distant point with no superior present. The Court might well have concluded that the accused did not in fact believe that the victims had been convicted by any court; that the accused's desire to co-operate with and please his superiors and party officials was greater than other considerations; that he did not unwillingly participate in the killings; that he did not act under immediate compulsion; and, that concerning superior orders, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

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.

2. [illegible]

Nationality:	German
Age:	37
Civilian Status:	Merchant
Party Status:	Kreisorganizationleiter
Military Status:	Volksturm
Plea:	NG Charge I
Findings:	G Charge I
Sentence:	Life Imprisonment

Evidence for Prosecution: The accused admitted in his extra-judicial sworn testimony that he accompanied the shooting detail to the woods near Mariental airport and that, when the first

a finishing shot (R 13; P-Ex 2). The accused testified that he received an order from the landrat to take charge of the shooting detail to shoot the four captured airmen, but that he evaded the order. However, he accompanied the detail and after the four airmen were shot he gave one of the victims who did not appear to be dead a mercy shot (R 87-89, 95, 96). MOSENHEUER testified that this accused was one of the group that shot and killed the four airmen (R 22, 23). Accused DREGER in his extrajudicial sworn testimony stated that this accused fired two shots into the body of one of the four airmen who was not yet dead (R 11; P-Ex 1).

Evidence for Defense: The accused testified that the landrat told him that the airmen had been sentenced to death by a court (R 93, 94, 97-100).

Sufficiency of Evidence: The accused admitted by his own testimony that he evaded an order given to him by the landrat to take charge of the shooting detail, but nevertheless he accompanied accused DREIER, who was placed in charge of the detail, and also voluntarily fired a mercy shot into the body of one of the flyers who had not died immediately. The killing was accomplished at a distant point with no superior present. The Court might well have concluded that the accused did not in fact believe that the victims had been convicted by a court; that the accused's desire to co-operate with and please superiors was greater than other considerations; that he did not unwillingly participate in the killing; that he did not act under immediate compulsion; and that, concerning superior orders, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

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.

3. ERICH MUHLER

Nationality: Germany

Age:	44
Civilian Status:	Automobile mechanic
Party Status:	Unknown
Military Status:	Unknown
Plea	NG Charge I
Findings:	G Charge I
Sentence:	20 years, commencing 4 March 1946

Evidence for Prosecution: The accused admitted in his extrajudicial sworn testimony that he was a member of the shooting detail but asserted that he only fired into the ground (R 13; P-Ex 3). Accused DREGER stated in his extrajudicial sworn testimony that this accused was a member of the shooting detail that shot the four captured airmen; that all four airmen fell after being shot; and that only the airman in front of accused CONRAD required a finishing shot by accused FELDMEIER (R 11; P-Ex 1).

Evidence for Defense: The accused asserted in his extrajudicial sworn testimony that he did not shoot the airmen in front of him but only shot into the ground (R 13; P-Ex 3).

Sufficiency of Evidence: 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.

4. AUGUST SCHUBERT

Nationality:	German
Age:	52
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG Charge I
Findings:	G Charge I
Sentence:	20 years, commencing 4 March 1946

Evidence for Prosecution: The accused admitted in his extra-judicial sworn testimony that he was a member of the shooting detail that shot and killed the four captured airmen; that he borrowed MOSEN[illegible]'s pistol; and that when he fired the airman in front of him fell. But he asserted therein that he was given an order to shoot by accused DREGER (R 14; P-Ex 4). The latter stated in his extra-judicial sworn testimony that the accused was a member of the execution detail that shot the four airmen; that all four airmen fell after being shot; and that only the airman in front of accused CONRAD required a finishing shot by accused FELDMEIER (R 11; P-Ex1).

Evidence for Defense: The accused asserted in his extra-judicial sworn testimony that he fired on orders from accused DREGER (R 14; P-Ex 4).

Sufficiency for Evidence: There is no evidence other than the accused's own assertions indicating that he reluctantly participated. However, it appears from the sentence imposed that the Court may well have fully taken into consideration the fact that the accused may have acted to some degree under the immediate compulsion of orders by a superior who was present.

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.

5. OSWALD CONRAD

Nationality:	German
Age:	47
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG Charge I
Findings:	G Charge I

Evidence for Prosecution: The accused admitted in his extra-judicial sworn testimony that he was a member of the shooting detail; that he fired at the airman in front of him; and that the shot struck the airman in the upper right arm (R 15; P-Ex 5). Accused DREGER stated in his extrajudicial sworn testimony that this accused was a member of the shooting detail that shot the four airmen and that the airman in front of the accused required a finishing shot by FELDMEIER (R 14; P-Ex 1).

Evidence for Defense: In his unsworn statement at the trial, the accused said that he received an order from Captain Crome in the office of the Landrat, to participate in the execution and that he was threatened with death if he refused. He tried twice to get away at the place of execution but he was told by accused DREGER that he had to shoot or be court-martialed and shot (R 136).

Sufficiency of Evidence: There is no evidence other than the accused's own assertions indicating that he reluctantly participated. However, it appears from the sentence imposed that the court may well have fully taken into consideration the fact that the accused may have acted to some degree under the immediate compulsion of orders by a superior who was present.

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.

6. HERBERT MOSENHEUER

This accused was not served nor tried (R 1).

7. HARRY HAUENSCHILD

Nationality:	German
Age:	45
Civilian Status:	Unknown
Party Status:	Unknown

Military Status: Unknown

Plea: NG Charge I

Findings: G Charge I

Sentence: 20 years, commencing 15 May 1946

Evidence for Prosecution: The accused admitted in his extra-judicial sworn testimony that he was a member of the shooting detail that shot the four airmen; that he aimed at the airman in front of him; that he did not know whether or not he fired; but that the airman in front of him fell after the first volley (R 15; P-Ex 6). Accused DRODE stated in his extrajudicial sworn testimony that the accused was a member of the shooting detail that shot the four airmen; that all four airmen fell to the ground after being shot; and that only the airman in front of CONRAD required a finishing shot by FELDMEIER (R 11; P-Ex 1).

Evidence for Defense: The accused testified that he was not sure that he fired a shot; that he was ordered by the Landrat through FELDMEIER to participate in the shooting; and that he thought that it was lawful (R 138, 139).

Sufficiency of Evidence: The Court might well have concluded that the accused did not in fact believe that the shooting was within the law. Inconsistent with his position that he thought the shooting was within the law, the accused also appears to rely upon superior orders. There is no evidence other than the accused's own assertions indicating that he reluctantly participated. However, it appears from the sentence imposed that the Court may well have fully taken into consideration the fact that the accused may have acted to some degree under the compulsion of orders by a superior who was present.

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.

8. KARL SCHROEDER

Nationality:	German
Age:	54
Civilian Status:	Laborer
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG Charge II
Findings:	G Charge II
Sentence:	Life imprisonment

Evidence for Prosecution: The accused admitted in his extra-judicial sworn testimony that in June or July 1944 he received an order from accused DREGER to go along with him to shoot two captured American airmen; that he, accused FINKE and DREGER took the two airmen to a wood near the Marienthal airport; that accused DREGER ordered accused FINKE to shoot one of the airmen; that FINKE refused to shoot; and that he and DREGER shot and killed the two airmen (R 17; P-Ex 8). DREGER stated in his extra-judicial sworn testimony that he received an order from Landrat Von Hinueber that two American airmen had to be shot; that he, FINKE and this accused took the two airmen to the woods near the Marienthal airport; and that, after accused FINKE refused to shoot, he and SCHROEDER shot and killed the two airmen (R 16; P-Ex 7). FINKE testified that he, DREGER, and this accused took the two airmen to the woods near the Marienthal airport; that he refused to execute DREGER's order to shoot; that he gave his pistol to this accused; and that DREGER and SCHROEDER shot and killed the two airmen (R 33, 34, 40).

Evidence for Defense: The accused asserted in his extra-judicial sworn testimony that he was ordered by accused DREGER to participate in the shooting of the two airmen (R 17; P-Ex 8).

Sufficiency of Evidence: The accused was aware of the fact that FINKE refused to comply with the order to shoot the flyers and that no compulsion was used by DREGER to force him to shoot

The killings were accomplished at a distant point from the superior, Landrat Von Hinueber, who originally ordered the flyers to be shot. The Court might well have concluded that the accused's desire to co-operate with and please superiors was greater than other considerations; that he did not unwillingly participate in the killings; that he did not act under immediate compulsion; and that concerning superior orders, the accused failed to meet the burden of proof required by pertinent authorities discussed in Section V, post.

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.

9. HANS WILLI FINKE

This accused was not served nor tried (R 1).

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Superior Orders: The question of superior orders was raised on behalf of the defense to justify the actions of each of the convicted accused in this case, except MUELLER. Compliance with superior orders does not constitute a defense to the charge of having committed a war crime (Trial of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives. Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Dominikus Thomas, December 1945; and United States v. Alfons Klein, et al., (Hadamar Murder Factory Case), February 1946). This rule is followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13 How. 115, and "Manual for Courts-Martial, U.S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received and order from a superior directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945 Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U.S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies", found in footnote, page 53, "Military Occupation and the Rule of the Law", by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in U.S. v. Albert Bury and Wilhelm Hofner, September 1945, U.S. v. Dominikus Thomas, December 1945, and U.S. v. Gerd Bock and Otto Weinreich, December 1946).

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 sentences be approved.

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

/s/ Thomas C. Marmon
/t/ THOMAS C. MARMON
Major, Cavalry
Post Trial Branch

Having examined the record of trial, I concur, on this 9th day of October 1947.

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