

12-1104

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER
APO 176

11 December 1946

UNITED STATES)

v

Gerd BECK and Otto WEINREICH,
German Nationals.)

Case No: 12-1104

REVIEW AND RECOMMENDATIONS OF THE
DEPUTY THEATER JUDGE ADVOCATE
FOR WAR CRIMES

1. TRIAL: The accused were tried on 7 May 1946 at Ludwigsburg, Germany, by a General Military Government Court appointed by paragraph 1, Special Order #01 100, Headquarters, Third United States Army, APO 403, US Army, dated 20 April 1946.

2. FINDINGS: The offense involved was:

CHARGE: Violation of the Laws of war:

Particulars: In that Gerd BECK and Otto WEINREICH, German Nationals, acting jointly did at Wolfenbittel, Germany, on or about 28 September 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, whose name is unknown, who was then unarmed and a prisoner of war in the custody of the then German Reich.

	<u>Pleas:</u>	<u>Findings:</u>
BECK: Charge	NG	G
Particulars	NG	G
WEINREICH: Charge	NG	G
Particulars	NG	G

3. SENTENCE: The court, by at least a two-thirds vote of the members present at the time the vote was taken concurring sentenced the accused BECK to death by hanging and the accused WEINREICH to life imprisonment. The record of trial has been forwarded to the Commanding General, United States Forces, European Theater for final action (see paragraph 8d, Letter, Headquarters, United States Forces, European Theater, File AG 000,5 JAG-400.

subject: "Trial of War Crimes Cases," dated 14 October 1946.)

4. DETAILS AS TO THE ACCUSED: The accused Gerd BECK is 23 years old, a German national and a resident of Wolfenbuettel. He was a baker by trade and had been a member of the German Armed Forces subsequent to January 1940.

The accused Otto HEINRICH is 46 years old, a German national and a resident of Wolfenbuettel. He was a mechanic by trade and a Party member subsequent to April 1933 (R. 64). He became Party administrator of Wittmar a year later (R 65).

5. RECOMMENDATION: It is recommended that the sentences of both accused be approved and ordered executed.

6. EVIDENCE:

a. For the Prosecution:

The prosecution's case consisted entirely of extra-judicial sworn testimony. The case originally came up for trial on 20 December 1945. At that time a representation was made to the court that the accused BECK was insane, and a sanity hearing was requested. A number of witnesses were present whose testimony was vitally necessary to the trial of this case. The court therefore allowed the prosecution to reduce this testimony to writing and it is thus presented as exhibits at this hearing. The right of cross-examination was accorded the accused. A sanity hearing was subsequently had and the report was introduced into the testimony as Prosecution's Exhibit 2 (R-5).

One day during the month of September 1944 an American flyer parachuted from his plane during an air raid on the city of Wolfenbuettel, Germany (Pros. Ex. 2, 12, 15, 21). During this descent his parachute fouled on the roof of a house and the flyer became suspended before a window (Pros. Ex. 2), with his hands raised in token of surrender (Pros. Ex. 4). Several people entered the house from which the parachutist was suspended, and he was pulled in through a window (Pros. Ex. 3). The people entering the house wore Army and Party uniforms (Pros. Ex. 2). The parachutist

was identified as wearing an American uniform (Pros. Ex. 8). Later the accused BECK was seen coming from the house with bloodstained hands and clothing. Upon being questioned he stated, "I have just shot an American" (Pros. Ex. 22). He later gave reasons for his actions (Pros. Ex. 24). The body of the victim was next seen in the yard of the house (Pros. Ex. 3, 8, 9), from whence it was removed (Pros. Ex. 4).

The room in which the alleged killing took place was described. The window was broken and a trail of blood led from the opening to a nearby chair (P. Ex. 7). A blood spot, three inches in diameter was on the carpet (Pros. Ex. 9). The location of the body in the yard disclosed a blood spot about 12 inches in diameter (Pros. Ex. 9). An empty small caliber cartridge was later found in the room (Pros. Ex. 9). Among those seen to enter the house prior to the fraying of the parachutist were GRENZ, HUEDER, JOFFI, a policeman, a Party member and one Captain KANTSCHET (Pros. Ex. 16).

On 29 December 1945 additional extra-judicial sworn testimony was recorded and admitted in evidence in this case by stipulation (Pros. Ex. 28). The wife of the accused BECK testified to a conversation she had had with her husband in which he admitted having committed the homicide, saying that it had been done under orders of the aforementioned Captain KANTSCHET (P. Ex. 30). She also testified to increased nervousness of the accused, presumably due to battle injuries (Pros. Ex. 31). Another defense witness, one Major LANDECKE, was examined. He corroborated statements of the accused similar to those aforementioned (Pros. Ex. 34, 35). As a former army officer he stated that members of the German armed forces were not required to carry out illegal orders (Pros. Ex. 40).

The prosecution introduced the signed and sworn statement of the accused BECK, in which he admitted the homicide, claiming that it was done on order of Captain KANTSCHET and that he used the accused WEINREICH's pistol (P. Ex. 18). WEINREICH's statement was

then introduced. In it he admitted furnishing the pistol "which was used to shoot an American prisoner of war through the head". (R21).

The defense of the accused BECK was predicated on obedience to orders (Capt. KUNTSCHEP's) and "mental blackout" due to over-excitement caused by combat injuries (R 23). Accused claimed that he was unable to remember any of the details of the actual shooting (R 23). He remembers subsequent details such as bloody hands (R 25). He explained his statement by saying he made it under threat of immediate violence (R 45, 46). He had considerable combat experience, had sustained nine wounds, and was the holder of seven medals, among which was included the Iron Cross, First Class (R 77, 78).

The accused WEINRICH claimed that he loaded his pistol in the room into which the flyer was taken, in order to protect himself and the flyer from the throbbing crowd which had gathered outside. The pistol was suddenly taken from his hand by an unknown soldier and without his consent (R 60). He could not explain how he got his pistol back or what became of the soldier (R 61). He claimed that his pre-trial statement was dictated to him and that he suffered a beating before he signed it (R 62, 63). He then alleged the blame for the actual shooting on BECK (R 64), claiming that he later learned BECK's identity and of BECK's part in the affair (R 61).

7. JURISDICTION: The Military Government Court which heard the case was properly constituted and had jurisdiction over the subject matter and each of the accused. When a civilian or enemy soldier wrongfully kills a prisoner of war who has fallen into his hands, it is an offense against the international laws governing land warfare and as such may be tried and punished by the duly constituted tribunals of an occupying belligerent nation. A general discussion of the jurisdiction of Military Government Courts, with appropriate citation of authorities is contained in prior reviews of cases written by this office and need not be repeated here (See US vs Clemens WEINRICH, opinion D.M.C., November 1945).

8. DISCUSSION: The findings in this case are bottomed to a material degree on circumstantial evidence. However, when taken in conjunction with testimony and written confessions of the two accused it forms a chain of circumstances sufficient to warrant the findings of the court.

The most satisfactory story of the events, which must be culled from the statements of bystanders in the street, who did not see the killing itself, and from the testimony of the two accused, is that the flyer was cut down from where he swung in his parachute and pulled into a room on one of the upper floors of a house. In this room were an undetermined number of male Germans, most, if not all of them, in uniforms. Some may have been soldiers. Among them was Captain KANTSCH, who seems to be attached to a local Wehrmacht hospital with the duty of frequently indoctrinating its patients with National Socialism's tenets. The two accused were also there, BECK having been attracted by either curiosity or a desire, as he stated it, of keeping the gathering popular from the room. WEINREICH, a Party official from a small town nearby, claimed to have come for the altruistic purpose of protecting the flyer from the mob, coupled with a curiosity as to what would happen to the flyer.

KANTSCH, a rather fanatic Nazi, ordered BECK to shoot the flyer. BECK took WEINREICH's pistol and did so, apparently while the flyer's back was turned. WEINREICH testified during the trial that BECK seized the pistol from him and perpetrated the act before WEINREICH could do anything to prevent it. BECK claimed at the trial that if he shot at all (he professed to have forgotten all the important details of the action, due to his excitement at the time) it was because of his habit as a German soldier of immediate and unquestioning obedience to all orders of his military superiors. In a pre-trial statement he claimed that WEINREICH gave him the pistol voluntarily. Another pre-trial statement by WEINREICH is to the same effect. Both accused claimed at the trial that their

pre-trial statements were extorted from them by force. Other than their own allegations, there is no other evidence of mistreatment. Insofar as BECK is concerned, there is corroboration of his admission to the investigating officers in the fact that he voluntarily admitted the same thing to his wife and his doctor. The proof of guilt, however, is not necessarily dependent upon the pre-trial confession of the accused.

Nobody will probably ever know the complete details of what happened in the room where the American flyer was killed. Under the Anglo-American theory of criminal law all those present might also have been convicted of the crime, had they been apprehended, on the basis that they stood in the position of accomplices, who under the circumstances, would be principals. By its findings the court adjudged the culpability of the two accused in different degrees. WEINREICH was not shown to have participated in the homicide to the extent that BECK did.

In support of accused BECK's defense of superior orders, he claimed that Captain KNEISCHKE not only ordered him to shoot the flyer, but was present to supervise the carrying out of the order. However, certainly the testimony does not establish the presence of a superior, plus a threat of force to impel compliance with an admittedly illegal order. There is lacking any threat of force. Moreover, the superior in question was not an officer in the German army as such but an officer responsible for local political indoctrination assignments.

The action of the court does not appear to be unwarranted, and the sentences imposed are adequate. A General Military Government Court may impose any lawful sentence, including death or life imprisonment in proper cases. The maximum punishment for all war crimes is death, although a lesser punishment may be imposed. The court in this case, judged the various degrees of culpability of the two guilty accused and assessed their penalties accordingly.

There are no errors or irregularities which affect any of the substantial rights of either of the accused. The trial was conducted with impartiality and adequate opportunity was given to each accused to present any matters in his defense which he might desire. The Petition for Review dated 31 May 1946, and plea by Doctor HUSLGER, accused's German counsel, raises no questions that were not decided by the court upon the hearing of the evidence presented. Two-thirds of the members of the court concurred in the findings and sentence.

9. CLEMENCY. The offense of which these two accused stand convicted is a war crime. All war crimes are subject to the death penalty, although a lesser penalty may be imposed (par. 357, FM 27-10, Manual of Land Warfare). From the sentence imposed upon accused WERHANICH it may be inferred that the court concluded that the degree of culpability on his part was not as strongly shown as in the case of accused BECK. No petitions for clemency have been filed by or in behalf of WERHANICH, and, on the basis of the record, none is recommended.

A petition for clemency, dated 29 May 1946, has been filed by Karl BECK, father of accused BECK. It contains numerous annexes, written by the chief director of the town of Appertal, the pastor of accused's church, his primary school teacher, and a neighbor. All this material attests to his previous good character and record. None of it contains any new evidence. There is also attached a petition from accused BECK, himself, dated 3 November 1946, and addressed to General McNarney. In it accused states that "the case is too mysterious to explain it,....in this letter," but that his action was "in passion on my part, by special circumstances, and by the sudden order of my commanding officer." Accused requests a new trial and permission to defend himself.

The report of the examining psychiatrist found accused BECK of fully sound mind at the time of trial. His actions at the time

of the offense and subsequently there to indicate no mental disorder, and throughout the trial he gave every indication of an unusual degree of shrewdness. While he is a young man, his offense is a grave one, without justification, and it cost the life of a man who as a soldier in a similar position accused was doubly bound to protect. Accused claimed to have been wounded nine times during the war, but he did not claim that any serious permanent injury resulted therefrom. Neither the record nor any extraneous facts indicate any clemency, and none is recommended.

10. CONCLUSION: It is accordingly believed that the sentences of the court as to both accused should be approved. Forms of action to accomplish this result, should it meet with your approval, are submitted herewith.

/s/ David P. Harvey,
/t/ DAVID P. HARVEY,
Attorney,
Post Trial Section

Having examined the record of trial I concur:

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