

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

29 October 1947

UNITED STATES )

v. )

Wilhelm KANSCHAT )

Case No. 12-1104-1

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 25-28 August 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Wilhelm KANSCHAT, a German national, did, at or near WOLFENBUTTEL, Germany, on or about 28 September 1944, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Sgt. Sheppard KERMAN, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: On 28 September 1944 an American flyer parachuted from his disabled plane over Wolfenbuettel, Germany. His parachute caught on the roof of a house and he was pulled through a window into a room on the second floor. Otto Weinreich, Gerd Beck and accused KANSCHAT were present in the room together with several other people. The accused ordered the soldiers out of the room and then ordered Beck to shoot the flyer. Beck got a pistol from Weinreich and shot the flyer to death. Beck and Weinreich were tried for their participation in this killing in the case of United States v. Beck, et al., Case No. 12-1104. Beck was sentenced to death by hanging and Weinreich to life imprisonment. Both sentences were approved. The sentence of Beck to death by hanging was later commuted to imprisonment for life.

IV. EVIDENCE AND RECOMMENDATIONS:

Wilhelm KANSCHAT

Nationality:

German

Age:

57

|                  |                              |
|------------------|------------------------------|
| Civilian Status: | Merchant                     |
| Party Status:    | Nazi Party since 1933        |
| Military Status: | Captain in Wehrmacht Reserve |
| Plea:            | NG                           |
| Findings:        | G                            |
| Sentence:        | Death by hanging             |

Evidence for Prosecution: The accused was a reserve captain in the Wehrmacht (R 10, 26, 27, 51, 52, 157, 164) serving as a welfare officer at the hospital of injured soldiers in Wolfenbuettel, Germany (R 167), a city of 20,000 inhabitants (R 157). Political matters were included among the subjects discussed by the accused in formal meetings of patients in the hospital (R 171). On 28 September 1944, an American flyer parachuted from his plane (R 11, 22, 26, 29, 40, 41, 48, 51; P-Ex 2 p. 1). His parachute caught on the roof of a house at 28 Krumme Street in Wolfenbuettel, Germany (R 12, 27, 41, 49). He was pulled through a window into a room in the second story of the house (R 22, 27, 41, 49; P-Ex 2 p. 1). Beck, a sergeant in the German Army (R 10), Weinreich, a political leader, i.e., a labor supervisor (R 13, 27, 32), the accused and several other people were in the room with the flyer (R 13, 27, 31, 33, 34, 36, 42, 46, 51, 80, 65; P-Exs 3 p. 2, 4 p. 1). The flyer was apparently uninjured (R 49, 50). Gerd Beck, Weinreich and Bolm testified that the accused ordered all of the soldiers to leave the room. However, Beck and Weinreich qualified the testimony by stating that they assumed it was the accused because he was the only officer in the room and only an officer could have given the order. On the other hand both Beck and Weinreich positively so stated in their extrajudicial sworn statement concerning this case in 1945 (R 14, 18, 36, 52, 61, 80, 65, 91; P-Exs 3 p. 2, 4 p. 2). Bolm testified that he then left the room (R 52, 53). Gerd Beck testified that the accused made him stay in the room (R 15, 19, 80, 100; P-Ex 3 p. 2). Gerd Beck and Weinreich testified that the accused then ordered Beck to shoot the flyer. Beck and Weinreich were inclined to be hesitant to testify positively that the accused gave the

order and reasoned that he did because he was the only officer, if not the only other person, in the room. However, they were positive as to the matter in their extrajudicial sworn statements given prior to their own trial (R 16, 19, 21, 37, 58, 59-61, 62, 63, 64, 80, 65, 93, 94, 100, 106; P-Exs 3 pp. 2, 3, 4 pp. 4, 5). Defense witness Remmert testified that during the afternoon after the killing it was talked in Wolfenbuettel that Beck had killed the flyer on orders of the accused (R 110, 112). And Erika Beck testified that her husband, Gerd Beck, soon after the killing told her that he had shot the flyer on orders of the accused (R 140, 143). Beck obtained a pistol from Weinreich possibly as a result of requesting it and shot the flyer to death (R 16, 37, 38, 62, 80, 65; P-Exs 3 pp. 2, 3, 5 4 p. 3). The body of the flyer was then carried to the courtyard near the house (R 22, 43, 44; P-Ex 2 p. 5). The accused did not leave the building until after the shooting of the flyer (R 80, 30; P-Ex 3 p. 2). Gerd Beck testified that, shortly before this trial, the accused attempted to bribe him to not testify that he, the accused, gave the order to shoot (R 83).

Evidence for Defense: The accused testified that prior to the shooting Beck had developed a dislike for him resulting from a misunderstanding about promotions (R 167, 168). The accused testified that he could not give an order to a soldier to kill anyone (R 175). The crowd was threatening the flyer and because thereof he went to the place where the flyer was in order to save him (R 178, 179). The accused further testified that he turned the flyer over to the police and the political leader in the room where the flyer was captured (R 179). The accused thought the flyer was hurt. In view of that fact and the fact that the crowd outside the house was angry, he did not take the flyer with him (R 181). He admitted that he did order the soldiers to leave the room, but he did that because the air raid alarm was still on and he had to see that they got back to the air raid shelter (R 186). The flyer was alive when he left the room (R 187). He testified that he did not hear that the flyer had been shot to death until April 1945. However he later qualified the statement and admitted he heard rumors of it

before that time (R 198). He did not hear a shot fired (R 180), but he did see the body of the dead flyer lying in the back yard about 10 minutes after he left the room (R 182). He was informed that the flyer had died from a back injury (R 183).

Kemmert testified that when she first saw Gerd Beck after the killing he had blood on his hands and he said that he had killed an American flyer and that at first he did not say anything about having received an order from anyone (R 109). Brecht stated in her extrajudicial sworn statement that immediately after the killing Beck did not say anything about having received an order (R 114; D-Ex 2A). Mrs. Hartenstein testified that she talked with the accused during the air raid and that he said that the flyer was alive when he left him and wanted to know how the flyer had been killed (R 115, 116, 122). This was corroborated by Ursula Hartenstein (R 129; D-Ex 3A).

Witness Obermann testified that at the time of the incident he was a sergeant in the Wehrmacht and a patient in the local hospital (R 145); that he was in the room where the flyer was alleged to have been later shot; that more than 15 people were there (R 151, 152); that the accused came into the room shortly after he arrived; that a man in the uniform of a political leader told him and other soldiers to leave the room; that the accused said something but did not know, or possibly remember, what it was; that he did not know whether the accused left the room; and that when he left the room he did not see the accused therein (R 152, 154, 155).

The accused further testified that he could not give orders to political leaders, but to soldiers only (R 174, 175). He went to the scene of the incident, taking some soldiers with him, to protect the flyer from the crowd. After leaving the room where the flyer was and after leaving him with the political leader, he returned to the hospital. He heard there something had happened to the flyer. Thereupon, he returned to the house and saw the flyer lying in the yard. Someone told him the flyer was dead. He only remained a moment, because the air raid was still on, and returned to the hospital (R 178, 179, 181, 182).

Sufficiency of Evidence: It is established by the admissions of the accused and other evidence that he was present in the room prior to the shooting of the flyer; that the accused ordered the room cleared except for Beck and Weinreich who were tried in the former case. It is not necessary to support the findings and sentence with proof beyond a reasonable doubt that he ordered or compelled the shooting, inasmuch as it is established that he participated throughout the incident and was a major moving force in the illegal shooting of the flyer.

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

Petitions: A Petition for Review was filed by defense counsel, George A. McDonough, 17 September 1947 and attached thereto a Petition for Review by defense counsel, Dr. Johann Wessel, 6 September 1947. Petitions for Clemency were filed by Guenter Rode, 5 September 1947; Franz Unstaetter, 25 November 1947.

Recommendations: 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.

Motions: At the close of the prosecution's case the defense made a motion for a finding of not guilty as to the accused for the reason that the prosecution had failed to prove his guilt beyond a reasonable doubt. This motion was denied. The Court's action on this motion was proper. It is never error for a war crimes tribunal to overrule a motion for a finding of not guilty made at the close of the case for the prosecution if it believes there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5 "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, U.S. Forces, European Theater, 30 November 1945 and Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). A similar practice is followed in Courts Martials (Paragraph 71.d., "Manual for Courts-Martial, U.S. Army", 20 April 1943).

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.

*Floyd E. Lundberg*  
FLOYD E. LUNDBERG  
Major JAGD  
Post Trial Branch

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

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