

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
WAR CRIMES BRANCH
UNITED STATES FORCES, EUROPEAN THEATER

UNITED STATES

v

Anton Schosser, a German
National.

1 December 1945

Case No. 12-1149

REVIEW AND RECOMMENDATIONS OF
THE DEPUTY THEATER JUDGE ADVOCATE

1. TRIAL. The accused was tried at Dachau, any, on 14 September 1945, before a Military Commission appointed by paragraph 3, Special Orders No. 251, Headquarters, Third U. S. Army, 10 September 1945.

2. <u>FINDINGS</u> : The Offense involved was:	<u>Pleas</u>	<u>Findings</u>
CHARGE: Violation of the Laws of War	NG	G
Specification: In that Anton Schosser, Josef Goldbrunner, and Alfons Jacob Wilm, German civilians, did, at or near Moosinning, Germany, on or about 20 July 1944, wilfully, deliberately and wrongfully encourage, aid, abet, and participate in the killing of Arthur W. Manoch, a member of the United States Army, who was unarmed and a prisoner of war in the custody of the then German Reich		
	NG	G

Upon motion by counsel for all accused, the Commission granted a severance of trial as to accused Alfons Jacob Wilm and Josef Goldbrunner, whereupon the prosecution elected to proceed with the trial of accused Schosser.

5. SENTENCE:

The Commission, by at least a two-thirds vote of the members present at the time the vote was taken, sentenced accused Schosser to be hanged by the neck until dead. Said sentence was upheld on review by the Reviewing authority on 31 October 1945. The record of trial has been forwarded to the Commanding General, United States Forces, European Theater, for final action (Letter, Headquarters, United States Forces, European Theater, AGO 250.4 JAG-AGO, 25 August 1945, subject: "Military Commissions").

4. DATA AS TO ACCUSED: Accused is a German civilian, and is

43 years of age. He joined the National Socialist German Workers Party in September 1933, and at the time of the offense for which he was tried, he was the district business leader of the Party for the Kreis (district) of Erding. No other information concerning him appears in the record.

5. RECOMMENDATION: That the action of the Military Commission and of the Reviewing Authority be confirmed.

6. EVIDENCE:

(a) The evidence is clear that on or about 20 July 1944 several American fliers parachuted from a disabled airplane and landed in the vicinity of Moosinning, Germany. Two of them, George Bernall, and deceased, Arthur W. Manoch, were brought to the police station of that village (R 8, 9; Pros. Ex. 1, 2). Later in ^{the} day, accused Schosser, together with Wilm, Goldbrunner, and Burgomeister Eschbaumer, attempted to obtain physical possession of the fliers from one Johann Braun, the chief of police. Their announced purpose was to take the fliers to Kreisleiter Breitenstein for interrogation (R 10, 11). Braun objected, but after Schosser had made several telephone calls, Braun was instructed by a Lt. Col. Wellner, the commandant of a nearby German airfield, to deliver one of the Americans to accused Schosser, Goldbrunner and Wilm (R 11). Braun refused accused's request for the use of Braun's duty pistol (R 11, 23).

Schosser, Goldbrunner and Wilm left the station at Moosinning in the direction of Erding, with the flier Manoch in their custody (R 11). At about 1400 that day one Lorenz Liegl was cutting hedges near the canal bridge in Moosinning. He saw a car drive slowly past him, and observed an American prisoner sitting in the back seat with accused Schosser and another German civilian. The car stopped on the far side of the bridge and Liegl heard a shot fired. The car drove "a little further" - perhaps 120 to 130 meters - down the road, and Liegl heard more shots. He ran back across the bridge and observed the flier sitting on the edge of the

road, trying to arise. Accused Schosser and Wilm were standing near him. Schosser got a machine pistol or light machine gun from Wilm, aimed at the flier, and shot him in the neck at a distance of four or five meters. The flier died as a result, and his body was thrown into the canal upon Schosser's orders (R 13-16, 20, 21, 43-45).

(b) accused Schosser elected to take the stand and was sworn as a witness (R 24). His testimony concerning his efforts to take custody of the American flier is generally similar to that of the prosecution's witnesses (R 24-26). His purpose was to take the flier to Kreisleiter Breitenstein, who intended to exhibit the flier publicly, in order to "show this murderer of women and children to the public" (R 24). By talking to the commandant of the nearby airfield he persuaded the police chief to release the flier (R 24). Accused denied asking the chief of police for his pistol (R 36). Burgomeister Eschbauer went home, and accused, Wilm, and Goldbrunner started for Erding in accused's car (R 26, 27). There was room for only three of them. Accused walked ahead with the flier, and Wilm and Goldbrunner followed in the car (R 27, 37, 38). As they reached the outskirts of the town, the car, with Wilm and Goldbrunner, passed them and drove on about 100 meters ahead (R 27). According to accused, this was two or three kilometers distant from the bridge which figures in the testimony of the prosecution's witness Liegl. Accused denied ever having gone near this bridge with the flier (R 36), or ever having seen Liegl (R 28).

Meanwhile, three, four or five German air corps soldiers accosted accused and the flier, asked to see accused's identification papers, and wanted to know what he was doing with the flier. They told accused that they were specialized searching troops, with the task of taking into custody all parachutists. They took the flier away from accused, who never saw him again. Accused then joined Wilm and Goldbrunner in the automobile, and himself drove to

Erding (R 27, 28, 37, 38). He told Wilm and Goldbrunner he had turned over the flier to the soldiers, and to their questions as to why, said he was glad to be rid of the whole matter (R 39). All this took place only about 600 meters from the police station where they had got the flier (R 37).

According to the accused, the actual delivery by the accused of the flier to the German soldiers was witnessed by one "Austol-leiter" Krere (or Kresere), who cannot now be found (R 28, 38, 42). Accused does not know whether Goldbrunner or Wilm observed this act, although they "must have" done so (R 30, 37). Accused denied any part in killing any American flier (R 28). When they got to Erding they reported to the Kreisleiter. In response to his question where the flier was, accused gave him a "circumventing" answer, since he feared that the Kreisleiter would be angry because the flier had not been brought to him as he had ordered. The Kreisleiter asked them if they had killed the flier. Accused nodded affirmatively, to give the false impression that they had. Nothing more was said about the matter (R 30-32).

Accused admitted that there was a 7.63 caliber pistol and a machine pistol in his car on the day of the incident (R 32, 33). He denied asking Goldbrunner to give him the machine pistol out of the car. He did not know whether the German soldiers to whom he turned over the flier were armed (R 38).

(d) Both Goldbrunner and Wilm testified briefly as rebuttal witnesses for the prosecution to the effect that they saw accused Schosser shoot deceased. Their testimony was not developed further than this, and they were not cross-examined by counsel for defense (R 43-45).

(d) Further detailed evidence will not be set forth here, but the recapitulation contained in the review of the Staff Judge Advocate, Third U.S. Army, appended hereto, is adopted in its entirety.

7. JURISDICTION:

(a) The Military Commission which heard this case was properly constituted and had jurisdiction over the subject matter and of the accused. A military commission has jurisdiction over the inhabitants of an occupied enemy country held by the right of conquest (Par. 7, FM 27-10, Rules of Land Warfare; Coleman v. Tennessee (1878), 97 U.S. 509). Military commissions are not restricted in their jurisdiction by territorial limits. (United States v. Hogg, et al (1865), 8 Rebellion Records, Series II, 674, 678; 56 Harv. Law Review, 1059, 1065). Thus, an offense against the laws of war committed in a country prior to its occupation may properly be tried by a military commission of the victorious army upon occupation. (Memorandum by the Judge Advocate General (SPJGW 1943/17671, subject: Jurisdiction to Punish War Criminals, 13 December 1943; Dig. Op. JAG, 1912, p 1067; Trial of Henry Wirz (1868), 40th Cong. 2nd Sess, House of Representatives, Ex. Doc. No. 23; see also cases cited on pages 207-216 in Universality of Jurisdiction Over War Crimes (Cowles), reprinted from 33 California Law Review (June 1945). Civilian nationals of a belligerent power are bound to accord to lawful enemy combatants the treatment required under customary and conventional international law (Art. 2 of the Geneva (Prisoners of War) Convention, 27 July 1929; Art. 23, par (c) of the Annex to the Hague Convention No. IV of 18 October 1907, Change 1, 15 Nov. 1944, par. 345.1, FM 27-10, Rules of Land Warfare). Both the United States and Germany were signatory powers to the cited conventions. The killing of the unarmed prisoner of war in the instant case was intrinsically so barbarous and inhumane that it can properly be said to violate not only the written law of nations, but also those implied concepts and standards of decency to which the nationals of every belligerent are bound by the unwritten law of nations. The offense closely approximated common law murder.

The jurisdiction of the Commission over the offense and over the accused is beyond question.

8. DISCUSSION:

(a) There is little conflict in the evidence supplied by the witnesses for the prosecution. Two of them were entirely disinterested, being the police chief who turned over the flier to accused upon the orders of the commandant of the airfield, and Liegl, the gardner at the bridge, who saw accused sser fire a bullet from a machine pistol into the flier's neck. The other two witnesses were Goldbrunner and Wilm, jointly accused but not on trial at the same time. They gave evidence against accused Schosser. Their testimony, given after careful warning concerning their rights, is compatible insofar as it goes, with the testimony of the disinterested witness Liegl. While it may be said that they had every reason to attempt to save themselves, an analysis of their testimony will show that even if they are considerably shrewder than they appear from the record to be, they have undoubtedly told the truth in this particular respect. They said nothing upon the witness stand which, taken by itself, would exculpate them in their own future trial, from the charge of participating in this crime, even though neither of them fired the fatal shots. To that extent their testimony is made more worthy of belief.

(b) The prosecution's case contains every element of proof of the offense of which accused Schosser has been convicted, and is such as to warrant sustaining the conviction even if the testimony of Goldbrunner and Wilm, because of their own interest, is entirely disregarded.

(c) Accused told a story similar to that of the prosecution's witnesses, up to the time he took the flier from the police. Thereafter, his story is entirely different. He testified that deceased was taken from him by several German soldiers and that he does not know what became of him thereafter. He does admit, however,

that he had with him in the car a machine pistol of a nature similar to that described by witness Liegl. He further admits that he allowed the Kreisleiter at Erding to believe that he had shot the flier. His explanation of the latter act is more ingenious than ingenuous, and is more damning than it is of help to him. By his own testimony he was willing to accept guilt at that time of the commission of a criminal offense, in order to avoid a scolding by the Kreisleiter for his failure to comply with his orders. He should not now be allowed to avoid this guilt in the face of no better explanation than this, and in the face of forthright testimony to the effect that he did kill the flier. It is further worthy of note that he did not cross-examine Goldbrunner and Wilm upon their testimony. While they were witnesses for the prosecution, and while their testimony did not touch upon this aspect of the case, nevertheless, they were certainly present at the time he led the Kreisleiter to believe that deceased had been disposed of, and could have corroborated Schosser's testimony, if true, in this respect. Likewise, instead of relying upon them to establish his claim that the flier had been taken from him by the German soldiers, he relied upon the unobtainable testimony of a witness named Krere, whom no one else mentions, and who cannot now be found. Innocent men may have been convicted in the history of the law, under such circumstances, but there is nothing in the record, or in inferences reasonably to be drawn therefrom, to suggest that this is such a case.

(d) The Commission was not bound to believe accused's testimony, and had the right, in weighing all the evidence, to reject any part or all of it. There is nothing in accused's story which suggests or compels belief. On the contrary, it is full of evasion, of obvious inconsistencies, and of patent and thinly disguised falsehoods. It is the desperate attempt of a man fighting to save his life, and willing to perjure himself to do so despite his oath. While Goldbrunner and Wilm are admittedly in almost the

same position, their stories are substantiated by the testimony of another disinterested witness. The prosecution's evidence clearly shows accused's guilt of the offense of murder and warrants confirmation of the sentence of the Commission.

(e) The severance of trial granted by the Commission, upon motion of the defense counsel, was proper in the discretion of the Commission. While the exact nature of the defense expected to be interposed by Goldbrunner and Wilm is only hinted at in the statements of defense counsel and in their testimony, it appeared that they would attempt to blame Schosser for the murder, and that their defenses would therefore be almost diametrically opposed to his. The same defense counsel could not represent both Schosser and the two other accused in the same trial, with any degree of fairness to any of them. The fact that they were both called to the stand as witnesses against Schosser was not error. They had been removed as accused in this trial; they were carefully warned of their rights as witnesses; and they were subject to cross-examination by defense counsel as witnesses for the prosecution. The fact that they were not so cross-examined appears not to have been due to any failure on counsel's part to represent Schosser to the best of his ability, nor from any desire on his part to favor Goldbrunner and Wilm, but rather to have been because of a feeling that to cross-examine these witnesses on their testimony would only be to enmesh Schosser deeper in a web of guilt.

(f) At the close^{of the} defense's case, the prosecution moved to delete the names of Wilm and Goldbrunner from the charge sheet in accordance with the severance granted by the Commission (R 42). After granting the severance requested, the Commission permitted the prosecution to elect which accused should be tried first. As pointed out by the Staff Judge Advocate in his review both actions were technically incorrect. The Commission should have made its own decision as to which of the two sets of accused should have been

tried first. Likewise, it is proper for an accused to be tried separately on a specification which alleges a joint offense (CM ETO 3927, Fleming). No actual physical deletion of the names was ever made. Neither error prejudiced any substantial right of the accused.

(g) All the evidence introduced at the trial was admissible under the rules of procedure established by the order creating the Commission. The essential facts were established by the direct testimony of eye-witnesses, including the identity of the deceased as alleged in the specification. Two of these witnesses were charged jointly with accused Schosser, but were granted a separate trial. The Commission was properly constituted and had jurisdiction over the subject matter and of the accused. It was authorized to impose the death penalty. Both findings and sentence were approved by at least a two-thirds vote of the members of the Commission present. There were no irregularities in the proceedings which prejudiced any of the substantial rights of the accused. He was ably defended by both counsel of his own choice and the defense counsel appointed for the Commission. He received a fair trial, consistent with Anglo-Saxon standards of justice. No reasonable doubt exists as to his guilt.

9. CLEMENCY:

The offense for which accused stands 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, Rules of Land Warfare). Accused's offense was characterized by particular wantonness. The victim was a defenseless American prisoner of war. Accused had succeeded in taking deceased from the safe custody of police officials, with the ostensible, and possibly actual purpose, of taking him to a nearby Kreisleiter, who in turn planned to exhibit the prisoner to public ridicule as a "murderer". Accused's preconceived intent himself to kill the prisoner may be inferred by his request of a pistol from the police chief. He later shot the defenseless prisoner in cold-blood, and caused his body to be thrown

into a canal in full view of passers-by. Accused does not even seek to lighten his guilt by any plea that he was ordered to commit the act, ^{or} that he acted in a moment of rash anger. He denied his guilt in a fantastic and obviously false story. No petition for or recommendation of clemency accompanies the record. If one believes the story told by the prosecution's witnesses, as the Commission obviously did, no clemency is warranted.

10. CONCLUSION:

It is accordingly believed that the sentence of the Commission should be confirmed. A form of action prepared to accomplish this result is attached hereto.

6 Dec 1945

/s/ Samuel Sonenfield
SAMUEL SONENFIELD
Captain, JAGD

I concur.

/s/ C. B. Mickelwait
C. B. MICKELWAIT
Col. JAGD
Deputy Theater Judge Advocate