

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

15 September 1947

UNITED STATES)
) v.)
Franz MONTSCHER, et al.)

Case No. 12-2581

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 12-15 May 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Franz MONTSCHER, Hans SCHLIMM, Johann ENGELHARDERHAMMER, Ludwig OBERMAYER, Max MAIER, Anton FRILITZER, Bartholomaeus MISSLINGER, Johann LISER and Karl RUELHLING, German nationals, did, at or near Munich, Germany, on or about the 9th day of April 1945, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be 3/Sgt Morris Peter THOMPSON, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: Following a bombing attack upon the Munich-Reims Airport near Munich, Germany, 9 April 1945, an American flier, believed to be Staff Sergeant Morris Peter Thompson, parachuted to earth from his disabled plane, landing near the Munich East Railroad Station where he was immediately taken prisoner by two German soldiers and a civilian. A group of civilians and men from the Uniformed Workers Service (Reich Arbeit Dienst, hereinafter referred to as RAD) rapidly gathered, and with the aid and encouragement of two SS men the flier was forcibly taken from his original captors, beaten, and possibly shot, resulting in his death. All of the convicted accused except RUELHLING and OBERMAYER were shown to have been present

and to have participated in varying degrees in the beating and killing.

IV EVIDENCE AND RECOMMENDATIONS:

1. Franz MONTSCHLER

Nationality:	German
Age:	35
Civilian Status:	Staff Sergeant, R.A.D.
Party Status:	Member NSDAP
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: Witness Heckel testified that members of the SS and R.A.D. administered the blows which killed the flier (R 20). Witness Schuehrer testified that many R.A.D. men participated in the beating and that the soldiers were prevented from taking the flier prisoner by the R.A.D. men (R 26, 34). Witness Roeckl, in extrajudicial sworn testimony, identified the accused as one of the R.A.D. men who attacked the flier and, in his oral testimony, identified the accused as being very close to the flier (R 40, 43; P-Lx 2). Witness Hagenbusch testified that the accused apparently injured his hand while beating the flier (R 40, 53). Witness Schweinsteiger testified that the flier was given a death blow with a piece of cement by an R.A.D. man (R 130). Accused SCHELM testified he saw the accused push through the crowd toward the flier. In his extrajudicial sworn testimony, SCHELM stated that he saw the accused beat the flier (R 79, 201; P-Lx 4a). Ecker, in his extrajudicial sworn testimony described how MONTSCHLER "rushed furiously at the flier like a bull, tore off his uniform, searched him and knocked him down with his fists", and how the accused further beat the flier causing blood to be scattered

over a two meter area (R 91; P-Ex 10a). Witness Artinger testified that he saw the accused beat the flier several times (R 73). The accused admitted being present during the incident (R 185).

Evidence for Defense: Witnesses Steger and Artinger testified that an SS man shot the flier (R 78-84). The accused testified that he did not injure his hand during the incident; that the injury occurred before he reached the place where the flier landed; that he only put out his hand in an attempt to arrest the flier; and that he never struck the flier (R 186).

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

Petitions. Petitions for Review were filed by defense counsel, Claudio Delitala, 24 May 1947, and by German attorney Dr. Stefan Witwitsky, 21 May 1947. A Petition for Clemency was filed by Heinrich Holzschuhner, 18 August 1947.

Recommendation. That the findings and sentence be approved.

2. WINS LOHME

Nationality:	German
Age:	36
Civilian Status:	Leather Worker; Staff Sergeant, 3-5
Party Status:	Pledgee ASDAP
Military Status:	None
Plea:	KG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: Witness Beckel testified that members of the SS and RAD administered the blows which killed the flier (R 20). Witness Schuchrer testified that many RAD men beat the flier and that they prevented the soldiers from taking the flier prisoner (R 26, 34). Witness Beckel, in his

extrajudicial sworn testimony, identified the accused as one of the R.A.D men who attacked the flier and he testified in Court to the effect that the accused was very near the flier during the incident (R 40, 43; P-Ex 2a). Witness Hagenbusch testified that the accused apparently beat the flier and that he saw and heard the accused inciting the crowd against the flier (R 49). Witness Krabis testified that shortly after the flier was killed, the accused was with a group of R.A.D men, some of whom boasted of having killed the flier (R 51, 32). Witness Schweinsteiger testified that the flier was given a death blow with a piece of cement by an R.A.D man (R 130). Witness Leker, in his extrajudicial sworn testimony, stated that the accused fired shots into the flier's head (R 91; P-Lx 10a). The accused, in his oral testimony and in his extrajudicial sworn statement, admitted beating the flier twice (R 79, 200; P-Lx 4a).

Evidence for Defense. Witnesses Steger and Artinger testified that an SS man shot the flier (R 78, 84). The accused testified that he only beat the flier because he believed the flier might shoot him (R 200).

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

Petitions: Petitions for Review were filed by defense counsel, Major Samuel P. Roach, 11 June 1947, and by German attorney, Dr. Bergtoltz, 4 July 1947. A Petition for Clemency was filed by accused's wife, Dertl Lehmann, 15 September 1947.

Recommendation: That the findings and sentence be approved.

3. Johann ENGELNIEDERHOLM

Nationality:	German
Age:	42
Civilian Status:	Railroad Official
Party Status:	Unknown
Military Status:	None

Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: witness Heckel testified that he learned railroad officials had participated in the beating and killing of the flier (R 23). Witness Schürer testified to seeing a railroad worker, whom he identified (such identification not being absolutely positive) as the accused, beat the flier with a rifle while the flier was on the ground trying to get up (R 27, 28). Witness Simmet testified that the accused stated he had "finished off" the flier and later boasted of his deed (R 62, 65). Accused PFLIFFER testified that the accused stated that an SS man had shot the flier and that he, the accused, had given the flier a blow with his rifle butt because the flier was going to attack him (R 156). Accused SCHEML testified that he saw railroad workers shoot the flier (R 202). Accused MAIER, in his extrajudicial sworn testimony, stated that the accused admitted hitting the flier in the stomach with his rifle butt and that the accused justified his action by referring to the people who may have been killed by the flier's bombs (R 85; P-Lx 6a). Gierth, in his extrajudicial sworn testimony, described how the accused boasted of giving the "American something which would last him" (R 89; P-Lx 3a). Accused OBLERGER, in his extrajudicial sworn testimony, stated that the accused was identified to him as one of the men whom he saw beating the flier (R 90; P-Lx 9a). The accused, in his extrajudicial sworn testimony, admitted being present at the beating and admitted hitting the flier with his rifle butt (R 85; P-Lx 5a).

Evidence for Defense: Witnesses Artinger and Steger testified that an SS man shot the flier (R 78, 84). Witness Schweinsteiger testified that an R.D. man administered the death

blow on the flier's head with a piece of cement (R 130).
Accused ~~WILHELM~~ testified that he did not see any railroad
workers at the scene of the incident (R 178). The accused,
in his extrajudicial sworn testimony, stated that he hit the
flier with his rifle butt only because he believed the flier
was attempting to take his rifle from him (R : P-Lx 5a).

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

Petitions. A Petition for Review was filed by defense
counsel, Claudio Delitala, 24 May 1947. Petitions for Clemency
were filed by German attorney, Ludwig Hoffman, 23 May 1947,
1 July 1947 and 21 July 1947.

Recommendation. That the findings and sentence be
approved.

4. Ludwig OLLMAYR

Nationality: German

Age: 42

Civilian Status: Farmer

Party Status: None

Military Status: None

Place: RG

Findings: G

Sentence: 10 years, commencing 7 August 1946

Evidence for Prosecution: Witness Rosina Baumgartner
testified that the accused went to the scene of the incident
(R 108). Witness Inge Baumgartner saw the beating of the flier
and identified the accused as being present during the incident
and testified that he kicked the body of the downed flier (R 94).
During the trial and after she testified the first time, witness
Inge Baumgartner was urged by defense witness Peter Simmet to
change her testimony so as not to be against this accused. In
fact, he virtually threatened her (R 21+). Witness Kaiser

testified that she saw the accused at the scene of the incident and that the flier was kicked by someone while the accused was very close to him, and further that the accused was the closest one to the flier (R 218). Accused Schmidt testified he saw a civilian beat the flier (R 208). Witness Heckel, in his extrajudicial sworn testimony, identified the accused (though not positively) as being present at the beating of the flier. He also stated that the accused offered to stab the flier, and that the accused threatened the air force officer who was attempting to protect the flier (R 43; P-Lx 3a).

Evidence for Defense: Witness Heckel, who was a neighbor of the accused, testified that by a remark of the accused at the scene, he appeared to disapprove of the killing (R 20). Prosecution witness Inge Baumgartner testified that the accused did nothing to the flier until after the flier was dead; however, it was not shown that the accused was within her view all of the time. Witness Rosina Baumgartner testified that the accused was excited because the flier had been killed; that he later upbraided some members of the KdF for killing the flier; and that a French laborer told the witness that the accused had not beaten the flier (R 109, 119).

Sufficiency of Evidence: The findings of guilty are not warranted by the evidence. There was no direct evidence which positively identified the accused and which at the same time indicated he participated in the mistreatment of the flier. When the evidence offered the court is considered with recent statements in the form of Petitions for Clemency of three former French prisoners of war, one of whom went with the accused to the scene of the incident, it is apparent that the conviction of this accused should not be sustained.

Petitions: .. Petition for Review was filed by defense counsel, Claudio Delitola, 24 May 1947. Petitions for Clemency

were filed by German attorney, Dr. Stehr, 9 July 1947, and by three former French prisoners of war of the then German Reich, Kremer, Valls and Setrot, 5 July 1947, 24 June 1947, and 18 June 1947, respectively.

Recommendation: That the findings and sentence be disapproved.

5. Max Mueller

This accused was acquitted (R 105).

6. Anton Pfeiffer

This accused was acquitted (R 238).

7. Bartholomaeus Kerschinger

Nationality:	German
Age:	34
Civilian Status:	Clerk; Staff Sergeant, R.D
Party Status:	Not known
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Life imprisonment

Evidence for Prosecution: Witness Heckel testified that members of the SS and R.D administered the blows which killed the flier (R 20). Witness Schuhrer testified that the R.D men prevented the soldiers from taking the flier prisoner and that they beat the flier (R 26, 34). Witness Schweinsteiger testified that an R.D man administered the death blow on the flier's head with a piece of cement (R 130). Accused KORTSCHER testified that he saw R.D men take part in the beating (R 139). Witness Artinger testified that the accused hit the flier on the head several times with his helmet (R 72, 73).

Evidence for Defense: Witness Artinger and Stoger testified that an SS man shot the flier (R 78, 84). The

accused testified that he was not closer than 10 meters to the flier and denied hitting the flier with his helmet (R 170).

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

Petitions: A Petition for Review was filed by Claudio Delitala, defense counsel, 24 May 1947. No petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

8. Johann LIDL

This accused was acquitted (R 105).

9. Karl RUEHLING

Nationality:	German
Age:	36
Civilian Status:	Forest Laborer; Captain, RAd
Party Status:	NSDAP since 1933
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	7 years, commencing 14 April 1947

Evidence for Prosecution: Witness Heckel testified that members of the SS and RAd administered the blows which killed the flier (R 20). Witness Schuehrer testified that the RAd men prevented the soldiers from taking the flier prisoner and that they beat the flier (R 26, 34). Witness Schweinsteiger testified that an RAd man administered the death blow on the flier's head with a piece of cement (R 130). Accused MONTSCHLER testified that he saw RAd men taking part in the beatings and that the accused was only 200 to 300 meters away from the scene of the incident (R 189, 194). Witness Rueckl testified that the accused was in charge of the transport of RAd men and that they were continuously on duty during the transport (R 46).

The accused, in his extrajudicial sworn testimony, admitted seeing the flier parachuting down and stated that a crowd rapidly gathered. He was also able to name accused KORNISCHER, who was one of the R.D. men under his command, as being present at the incident (R 86; P-Lx 72).

Evidence for Defense: Witnesses Artinger and Steger testified an SS man shot the flier (R 78, 84). The accused, in his extrajudicial sworn testimony, claimed he was called to the telephone as the flier descended and that there was such a large crowd he did not go over to the scene of the incident. He denied instructing his R.D. men to kill fliers (R 86; P-Lx 7a).

Sufficiency of Evidence: The findings of guilty are not warranted by the evidence. There is no showing that he directly participated; that he was at the scene of the crime; that he directed others to aid therein; or that he gave encouragement thereto. Moreover, it is not adequately shown that he knew the flier was being mistreated.

Petitions: A Petition for Review was filed by Claudio Delitala, defense counsel, 24 May 1947. No Petitions for Clemency were filed.

Recommendation. That the findings and sentence be disapproved.

V. QUESTIONS OF LAW:

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

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 all the findings and sentences be approved, except that the findings and sentences as to accused Karl RULAND and Ludwig GEBERHAR be disapproved.

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

GEORGE M. LLITZ
Captain, JAGD
Post Trial Branch

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

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