

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

28 October 1947

UNITED STATES

v.

Case No. 12-2823

Max Bruno GARTMANN, et al.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 2-3 June 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Max Bruno GARTMANN, Heinrich HANNE, Josef HUTLER, Friedrich MEYER and Willi DEHNOSTEL, German nationals, did, on or about 4 November 1944, at or near BAD SALZDETfurTH, Germany, wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be Sgt. Leon SYNFELT, ASN 32740429, 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 about 4 November 1944, while the No. 1 Polizei Landesschutz Company, Bad Salzdetfurth, Germany, was returning from an exercise, a flyer bailed out of his disabled plane and landed in a nearby woods. Accused GARTMANN, a captain, was company commander. The other accused were members of his company. Accused GARTMANN took from 10 to 25 men of his company, including the other accused herein, to the woods to search for the flyer (R 11-14; T-Exs 6, 7, 8, 10). When they got to the edge of the woods, civilians, Hitler Youth, and SS personnel were already there searching. The crowd was yelling such things as "We'll hang him," and "We'll lynch him" (R 11; T-Ex 6). In the woods the flyer was found in the custody of unidentified Wehrmacht soldiers, who turned the flyer over to accused GARTMANN (R 11-13; T-Exs 6, 8, 9). He ordered the flyer to stand in a ditch alongside a path in the woods and told his men the flyer would be shot. Accused HANNE, MEYER, and DEHNOSTEL, together with Adler and Spreitz, also members of his company, formed a firing detail

to shoot the flyer. Upon accused GARTMANN'S order to aim and fire, the detail fired a volley at the flyer (R 11-14; T-Exs 6-10). Accused PUTLER was present at the scene during the shooting, but was engaged in holding back a crowd of civilians who had gathered there. After the shooting, accused GARTMANN ordered Spreitz and accused PUTLER to guard the body (R 11, 14, 45, 55, 68; T-Exs 6, 10). The flyer was tentatively identified as an American, Leon Synfelt, ASN 32740429 (R 17; T-Ex 14). Adler was subsequently tried for his participation in the same incident, Case No. 12-2823-1. The trial resulted in an acquittal. Spreitz has never been apprehended.

Accused GARTMANN stated in an extrajudicial sworn statement that he ordered the civilians back; that he did not ask for volunteers; that he could not remember lining up any men or giving any command to the effect that the flyer would be shot, but did order, "Take aim," "Fire" (R 11; T-Ex 6). The record of trial contains conflicting evidence as to how the detail was formed or how the men were selected, or whether accused GARTMANN ordered any named persons to form the firing detail or whether he asked for volunteers. The same is true as to whether he stated the flyer would be shot or merely expressed the view that in his opinion the flyer should be shot (R 11-13, 55, 75, 76, 79, 81; T-Exs 6-9). The detail was described as consisting of various numbers of men, from two to eight. However, most placed it at five to six (R 11-14, 16; T-Exs 6-11). There was creditable evidence to the effect that accused GARTMANN ordered no named men to participate in the shooting but said in effect that five or six men will get ready for the shooting (R 12, 13, 55, 68, 79; T-Exs 7, 8). Accused BAENE and MEYER stated in their extrajudicial sworn statements that they did not aim at the flyer, while accused DEHNROSTEL stated he aimed at the upper part of the body (R 12, 13; T-Exs 7-9). In their testimony all three denied they shot at the flyer (R 56, 68, 79). Two spectators at the scene, Wittenberg and Seekamp, and accused GARTMANN and BAENE only spoke of one volley in their extrajudicial sworn statements, Wittenberg stating that he examined the flyer and he was dead (R 10, 11, 12, 14, 16; T-Exs 6, 7, 10, 11).

Accused DEHNOSTEL stated in his extrajudicial sworn statement that the flyer appeared to be dead after the volley (R 13; P-Ex 9). Accused MEYER and DEHNOSTEL, and the additional participant, Adler, asserted that at least one subsequent shot was fired (R 13, 16; P-Exs 8, 9, 12). Spectator Kleine asserted that he was quite sure no one stood over the flyer and shot him in his head (R 17; P-Ex 13). Adler stated in his extrajudicial sworn statement and accused HAHNE testified that the flyer still showed signs of life after the volley (R 16, 55; P-Ex 12). Accused MEYER stated that someone examined the body and found four wounds (R 12; P-Ex 8). Accused MEYER and DEHNOSTEL testified that no protest was made by any members of the shooting detail as to serving thereon or as to the shooting, but later accused DEHNOSTEL qualified his testimony to the effect that the members hesitated for a moment as to falling in line (R 75, 76, 78, 79, 81).

Accused GARTMANN stated in his extrajudicial sworn statement that he reported the flyer was shot while attempting to escape (R 11; P-Ex 6). Accused HAHNE testified that on the way home, accused GARTMANN said to say the flyer was shot while attempting to escape, should anyone ask (R 55, 56).

Two witnesses, who were members of the police company, testified that the police company was not a military organization (R 23, 25, 26, 27). Accused HAHNE, as well as witness Wittenberg who was also a member of the company, referred to members of the company as policemen (R 12, 14; P-Exs 7, 10). On the other hand, there was testimony that the unit was assigned from orders from the Wehrmacht, and that it belonged to the army and received the same training (R 28, 51). The prosecutor agreed in Court that the Polizei Landesschutzen corresponded to what was called the home guard in the United States (L 31, 32).

IV. EVIDENCE AND RECOMMENDATIONS:

1. Max Bruno GARTMANN

Nationality:	German
Age:	55
Civilian Status:	Merchant, Captain, No. 1 Polizei Landesschutzen Company

Party Status:	Nazi Party
Military Status:	Unknown
Allegation:	MG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused was the commanding officer of No. 1 Polizei Landesschutzen Company, stationed in Bad Salzdetfurth, Germany (R 11, 12, 13; P-Exs 6, 7, 8, 9). The Polizei Landesschutzen was a home guard organization (R 31, 32, 43). On about 4 November 1944, while the No. 1 Polizei Landesschutzen Company was marching to Bad Salzdetfurth from an exercise, a flyer parachuted from his disabled plane and landed in a nearby woods (R 11, 12, 13, 14, 16; P-Exs 6, 7, 8, 9, 10, 11, 12). Accused HAHNE, MEYER, and DE NROSTEL, and four other witnesses, stated in extrajudicial sworn statements, that the accused ordered men of his company to proceed to the woods and search for the flyer. In the woods the searching party found the flyer in the custody of unidentified Wehrmacht soldiers. The accused took custody of the flyer.

The accused ordered the flyer to stand in a ditch alongside a path in the woods. He told his men that the flyer would be shot. Thereupon he ordered the formation of a firing detail. Accused HAHNE, MEYER, and DE NROSTEL, together with Adler and Spreitz, also members of his company, were members of the firing detail. Upon his order to aim and fire, the firing detail fired a volley at the flyer, and he fell to the ground (R 12, 13, 14, 16, 17, 55, 69, 82; P-Exs 7, 8, 9, 10, 11, 12, 13). There was evidence that as the flyer lay on the ground he showed signs of life and that Adler fired another shot at him pursuant to an order from the accused (R 16, 55, 68; P-Ex 12). The accused ordered Spreitz and accused BUTLER to guard the body. The rest of the company went to their billets 500 meters away (R 11, 14, 16, 17, 55, 68; P-Exs 6, 10, 11, 13). The accused kept and wore the victim's wristwatch (R 11, 14; P-Exs 6, 10).

The victim was tentatively identified as an American, Leon Synfelt, ASN 32740429. The victim was buried in the communal cemetery at Bad

Salzdettfurth on 4 November 1944. The body was exhumed and removed by United States authorities on about 10 June 1945 (R 17; T-Ex 14). The accused admitted in his extrajudicial sworn statement that he ordered his men to fire at the flyer, and that the flyer was killed as a result. However, he asserted that he ordered the flyer shot in compliance with an order received from the police commander, Major Hohenauer, to the effect that parachuted flyers were to be destroyed. This order was transmitted to the accused at a meeting of police officers in Hanover, Germany, sometime in May 1944 (R 11; T-Ex 6).

Evidence for Defense: The accused did not elect to take the stand (R 83). One witness testified that at a meeting of police officials held in 1944, attended by the accused, Major Hohenauer issued a secret order that captured flyers were to be shot (R 27).

Sufficiency of Evidence: It has been clearly established that the accused ordered the flyer shot and that none of his superiors were present or in the vicinity. With regard to the evidence offered in support of his acting pursuant to superior orders, the Court might well have concluded that the accused willingly directed that the flyer be shot; that his desire to please superiors was more important than other considerations; that he did not act under immediate compulsion; and that he 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: A Petition for Review was filed by Donald J. Boss, defense counsel, 12 August 1947.

Petitions for Clemency were filed by Frida Gartmann and Ilse Gartmann, wife and daughter, respectively, of the accused, 2 September 1947; Hans Kirsten, 1 September 1947; Heinrich Flentje, 30 August 1947; Alwine Boljes, 26 August 1947; Wilhelm Adams, 1 September 1947; Herwig Blume, 25 August 1947; Servatius Tillmann, 2 September 1947; Emil Nause, 3 August 1947; and Dr. Helmut Freytag, 1 September 1947.

Recommendation: That the findings and sentence be approved.

2. Heinrich HAHNE

Nationality:	German
Age:	47
Civilian Status:	City official; Technical Sergeant in Polizei Landesschutzen
Party Status:	Unknown
Military Status:	Unknown
Flea:	NG
Findings:	G
Sentence:	10 years, commencing 17 August 1946

Evidence for Prosecution: The accused was a member of No. 1 Polizei Landesschutzen Company, commanded by accused GARTMANN. In his extrajudicial sworn statement, the accused admitted that he went to the woods to search for the flyer as directed by accused GARTMANN, and that he participated in the shooting of the flyer as a member of the firing detail pursuant to accused GARTMANN's order. However, he asserted that he purposely fired over the flyer's head (R 12; E-Ex 7). Adler stated in his extrajudicial sworn statement that the accused was a member of the firing detail that fired at the flyer (R 16; E-Ex 12). This is corroborated by the testimony of accused MEYER and DEHNPOSTEL (R 69, 78).

Evidence for Defense: The accused testified that when he arrived at the spot in the woods where the flyer was standing he heard accused GARTMANN order the flyer shot. Accused GARTMANN then ordered five or six men, including this accused, to assemble. Upon accused GARTMANN's order to aim and fire, the squad fired a volley at the flyer. When the flyer showed further signs of life, accused GARTMANN ordered him shot again (R 55). The accused asserted that he did not shoot at the flyer, but aimed over his head (R 56). One witness testified that after the flyer was killed the accused asserted that he had not shot at the flyer, but aimed over his head (R 24).

Sufficiency of Evidence: The Court might well have concluded that the status of all members of the shooting detail was more similar to that of policemen than soldiers; that the accused and all other members were very

mature men; that neither the accused nor any other member of the shooting detail was ordered by name to be a member thereof; that the accused's superior merely ordered that the detail be formed; that the accused without objection placed himself therein; that the accused did not object to the shooting; that, although the superior was present, the accused had little reluctance, if any, to shooting the flyer; and that the accused intended to and did shoot at the flyer. It appears that the Court, in accordance with the authorities discussed in Section V, post, gave ample consideration to such immediate compulsion as may have resulted from the presence of the superior and his orders to shoot. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Donald J. Loss, defense counsel, 12 August 1947.

Petitions for Clemency were filed by Ilse Kahne, wife of the accused, 30 December 1947; police master Wittenberg, 11 December 1947; Emil Harkendell, 3 December 1947; and Friedrich Busche, 30 August 1947.

Recommendation: That the findings and sentence be approved.

3. Josef HUTLER

This accused was acquitted (R 97).

4. Friedrich MEYER

Nationality:	German
Age:	43
Civilian Status:	Farmer; Corporal in Polizei Landesschutzen
Party Status:	Unknown
Military Status:	Unknown
plea:	NG
Findings:	G
Sentence:	10 years, commencing 17 August 1946

Evidence for Prosecution: The accused was a member of No. 1 Polizei Landesschutzen Company stationed in Bad Salzdetfurth. The accused admitted in his extrajudicial sworn statement that in the early part of November 1944,

he was one of the 25 men ordered by accused GARTMANN, the company commander, to proceed to a nearby woods to search for a flyer who landed there. After the flyer was taken into custody, accused GARTMANN ordered him shot. Accused GARTMANN formed a firing detail composed of five or six men, including the accused, to shoot the flyer. Upon GARTMANN's order to aim and fire, the detail fired a volley at the flyer. The flyer fell to the ground. Accused GARTMANN ordered another shot fired into the flyer's body to make certain his death. The accused admitted that he acted as a member of the firing detail, but claimed he fired over the flyer's head (R 13; P-Ex 8). The evidence that the accused was a member of the firing detail is corroborated by the testimony of accused HARNE and DEHN STEL (R 12, 13, 55, 73; P-Exs 7, 9).

Evidence for Defense: The accused testified that while in the woods searching for the flyer he arrived at the spot where the flyer was in accused GARTMANN's custody. Accused GARTMANN gave an order to shoot the flyer. He ordered five or six men, including this accused, to form a firing detail. Upon accused GARTMANN's order to aim and fire, the detail fired a volley at the flyer. The accused further testified that he did not aim at the flyer but fired over his head. When the flyer continued to show signs of life, accused GARTMANN ordered him shot again (R 67, 68). One witness, the accused's father-in-law, testified that while the accused was home on a furlough in 1945 he told him that he took part in the shooting unwillingly and purposely fired over the flyer's head (R 30, 32).

Sufficiency of Evidence: The Court might well have concluded that the status of all members of the shooting detail was more similar to that of policemen than soldiers; that the accused and all other members were very mature men; that neither the accused nor any other member of the shooting detail was ordered by name to be a member thereof; that the accused's superior merely ordered that the detail be formed; that the accused without objection placed himself therein; that the accused did not object to the shooting; that, although the superior was present, the accused had

little reluctance, if any, to shooting the flyer; and that the accused intended to and did shoot at the flyer. It appears that the Court, in accordance with the authorities discussed in Section V, post, gave ample consideration to such immediate compulsion as may have resulted from the presence of the superior and his orders to shoot. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Donald J. Ross, defense counsel, 12 August 1947.

Petitions for Clemency were filed by Friedrich Busche, 30 August 1947; M. Meyer, wife of the accused, 28 August 1947; Schulz, 1 September 1947; Church Board, Hinteln, 30 August 1947; Kreis Agricultural Office, 1 September 1947; Dr. Faber, 1 September 1947; Busche, 24 April 1947; school record of accused, 26 August 1947; Church Committee, Beckedorf, 7 May 1947; and Nolte, 21 April 1947.

Recommendation: That the findings and sentence be approved.

5. Willi DEHNPOSTEL

Nationality:	German
Age:	47
Civilian Status:	Farmer; member of Volizei Landesschutzen
Party Status:	Unknown
Military Status:	Unknown
Plea:	NG
Findings:	G
Sentence:	10 years commencing 17 August 1946

Evidence for Prosecution: The accused was a member of No. 1 Volizei Landesschutzen Company, stationed in Bad Salzdetfurth, Germany. The accused admitted in his extrajudicial sworn statement that in early November 1944, he was one of the 25 men ordered by accused GARTMANN to proceed to a nearby woods to search for a flyer who landed there. After the flyer was taken into custody by accused GARTMANN, he directed that the flyer be shot.

Accused GARTMANN ordered five or six men, including this accused, to form a firing detail to shoot the flyer. Upon accused GARTMANN's order to aim and fire, the detail fired a volley at the flyer. The accused aimed at the upper part of the flyer's body. The flyer fell to the ground dead (R 13, 38, 78; I-Ex 9). The evidence that the accused was a member of the firing detail is corroborated by the testimony of accused HAHNE and MEYER (R 55, 69).

Evidence for Defense: The accused testified that while in the woods searching for the flyer, he saw accused GARTMANN take over custody of the flyer from some soldiers (R 78). Accused GARTMANN ordered the flyer shot, and for this purpose formed a firing detail, comprised of this accused and others, to carry out the shooting. Upon accused GARTMANN's order to aim and fire, the detail fired a volley at the flyer. The accused testified that he could not aim at the flyer (R 79). A witness testified that he heard the accused, when home on furlough, tell his wife he was forced to participate in the shooting (R 37).

Sufficiency of Evidence: The Court might well have concluded that the status of all members of the shooting detail was more similar to that of policemen than soldiers; that the accused and all other members were very mature men; that neither the accused nor any other member of the shooting detail was ordered by name to be a member thereof; that the accused's superior merely ordered that the detail be formed; that the accused without objection placed himself therein; that the accused did not object to the shooting; that, although the superior was present, the accused had little reluctance, if any, to shooting the flyer; and that the accused intended to and did shoot at the flyer. It appears that the Court, in accordance with the authorities discussed in Section V, post, gave ample consideration to such immediate compulsion as may have resulted from the presence of the superior and his orders to shoot. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for review was filed by Donald J. Ross, defense counsel, 12 August 1947.

Petitions for Clemency were filed by Friedrich Rusche, 30 August 1947; Willi Stockmann, 27 and 30 August 1947; Martha Dehnbostel, wife of the accused, 29 August 1947; F. Schrader, 17 August 1947; and Karl Laubach, 27 August 1947.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: The Court had jurisdiction of the persons of the accused and of the subject matter.

Superior Orders: All of the accused in this case sought to justify their actions by offering evidence of compliance with superior orders. 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, Copenhagen, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Thomas, opinion DJAWC, December 1945; United States v. Klein, et al., (Hadamar Murder Factory Case), opinion DJAWC, February 1946); and French Republic v. Wagner, et al., Court of Appeals, July 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 an order from a superior in fact, 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; United States v. Bury, et al., opinion DJAWC, September 1945; United States v. Thomas, supra; and United States v. Beck, et al., opinion DJAWC, December 1946).

Motions: After the prosecution had rested, the defense made a motion on behalf of the accused HAHNE, MEYER, DEHNROSTEL, and HUTLER to quash the charge and for a finding of not guilty upon the ground that as members of a firing squad they should not be held responsible for the validity of the sentence carried out, citing in support of this motion "Report to the President of the United States", 7 June 1945, by Mr. Justice Jackson (R 19, 20). This opinion has no application to the facts of this case. It presupposes some form of legal proceedings inasmuch as it speaks of a sentence in the following words: ".....If a conscripted or enlisted soldier is put on a firing squad, he should not be held responsible for the validity of the sentence he carries out.....". Inasmuch as all of the accused were in the immediate vicinity when the flyer parachuted to earth, was captured and shot, they cannot be heard to say that they did not know that no legal proceedings or color of legal proceedings were resorted to before the flyer was shot. Accused GARTMANN summarily ordered the flyer shot at the spot of capture. The accused members of the firing squad knew or should have known as reasonably prudent men that the order given by accused GARTMANN was palpably illegal. The Court properly denied the motion (R 21).

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.

RONALD DADAMIC
2nd Lt., INF
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