

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

25 August 1947

WCT Rpt # 507.
UNITED STATES)

v.)

Waldemar FREITAG)

Case No. 12-2887

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 24 June 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Waldemar FREITAG, a German national, did at or near WULFSFELDE, Germany, on or about 25 July 1943, wrongfully commit an assault upon a member of the United States Army, believed to be William BOHAN who was then and there unarmed and in the act of surrendering himself to the then German Reich.

III. SUMMARY OF EVIDENCE: On 25 July 1943, an American airman, Captain William Bohan, parachuted to earth from his disabled plane and landed safely near Wulfsfelde, Germany. He heard someone calling and saw the accused running toward him with a pistol in his hand. The airman raised both hands above his head and walked toward the accused who fired one shot which struck the airman in the chest and another which went into the air. The accused struck the airman with his hand after shooting him.

IV. EVIDENCE AND RECOMMENDATIONS:

1. WALDEMAR FREITAG

Nationality:	German
Age:	53
Civilian Status:	Farmer
Party Status:	S/1, Sergeant

Military Status:	None
Plea:	NG
Findings:	G
Sentence:	2 years, commencing 24 February 1946

Evidence for Prosecution: Captain Bohan, the alleged victim, said in his extrajudicial sworn testimony that when he landed he heard someone calling to him; that he turned and saw an elderly man, armed with a pistol, running toward him; that he raised both hands and walked toward his captor; that his captor stopped and fired two shots, one of which struck him in the breast; that his captor then knocked him about with his free hand and at the same time called out phrases out of which "English" and "Americaner" were the only words he understood; and that he had surrendered to his captor at the time he was shot (R 6; P-Ex 2). The accused gave two items of extrajudicial sworn testimony and one pre-trial statement. He admitted shooting the airmen but claimed self defense (R 6, 7, 11; P-Exs 3-5). In a pretrial statement a witness stated that the accused shot the airmen and attacked him as he lay on the ground (R 12; P-Ex 6). Lehn stated in his pretrial statement that after he and the accused had searched the airmen, the accused struck the victim on the chin (R 29; P-Ex 7). Lehn, a hostile witness, testified at the trial that he heard the accused call halt several times (R 15, 20); that he saw the airmen advancing toward the accused in a crouch with his hands beside him (R 19, 20); that he did not see the accused strike the airmen (A 16); that he heard the airmen speaking German (R 21); that he and accused searched the airmen and found him unarmed (R 16); and that the part of his pretrial statement (P-Ex 7) which stated that he saw the accused strike the airmen was not true and was not read to him at the time he signed the statement (A 18). A rebuttal witness testified that he was the investigator who took Lehn's statement (P-Ex 7) and that it was read back to Lehn in German before he signed (R 28).

Evidence for Defense: Lahn stated in his pretrial statement that when he first came to the scene he saw the airman walking towards the woods and that the accused shouted at the airman who then began walking in the direction of the accused in a somewhat crouched position. The accused then called to the airman six or seven times and fired a warning shot into the air, but the airman continued to walk towards the accused. The witness further stated that he thought the airman was going to attack and that the accused then shot the airman in the left shoulder causing him to fall to the ground. The airman had no weapon (R 38; D-Ex 1). Two witnesses testified at the trial that they talked to the airman in German after he was shot by accused, however, they were not present during the shooting or capture (R 41, 43, 48, 49). One of these witnesses stated that the accused was present at the scene and tried to assist in bandaging the victim. The accused did not show any apparent anger toward the flyer (R 42).

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 Lieutenant Colonel Irving R. Crawford, defense counsel, 22 July 1947. No Petitions for Clemency were filed.

Recommendation: 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.

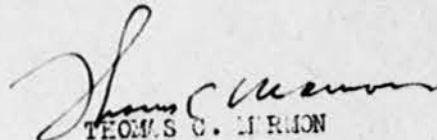
Motion: At the close of the prosecution's case the defense moved for a finding of not guilty. The motion was properly overruled (R 34-37). It is not error for a war crimes tribunal to overrule a motion for a finding of not guilty made at the close of the case for the prosecution, if it is believed there 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 Office of Military Government for Germany (US),

27 March 1947, 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", 28 April 1943).

Examination of the entire record fails to show 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.


THOMAS C. MERRION
Major, Cavalry
Post Trial Branch

Having examined the record of trial, I concur,
this _____ day of _____ 1947.

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

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

IPO 757
10 Dec 1947SUBJECT: Execution of Sentence in the Case of the United States vs.
Waldemar FREITAG (Case No. 12-2887).TO : Commanding General
First Military District
APO 1, U. S. Army.

Reference is made to letter, Hq USFET, AG 383 JAG AGO,
26 February 1947, subject, "Designation of Prisons for War Criminals,"
and to the inclosed copies of the Order on Review in the above entitled
case as to accused Waldemar FREITAG.

Upon compliance with the Order on Review the Certificate
below will be completed and returned to the Deputy Judge Advocate
for War Crimes, 7708 War Crimes Group, APO 407, U. S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Edward Donerty
/t/ EDWARD LOHERTY
Lt. Colonel, AGD
Acting Adjutant General

1 Incl:
1 Form No. 13 (in dup)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on Review
was carried into execution at War Criminal Prison No. 1, Landsberg,
Germany, on 19 December 1947, at 1130.
(Date) (Hour)

/s/ Lloyd A. Wilson
(Signature and Rank)
/t/ LLOYD A. WILSON
Captain CMP
Prison Director
(Organization)

/s/ David A. Oakley
(Countersignature and Rank of
Witnessing Officer)
/t/ DAVID A. OAKLEY
1st Lieutenant CmlC
Asst. Prison Director

MILITARY GOVERNMENT COURT
MILITARGERICHT

Order on Review
Verfugung nach Uberprufung

Case No. 12-2887 Order No.
Strafsache Nr. 12-2887 Verfugung Nr. _____

Whereas one Waldemar FREITAG
(Name of Accused) (Name des, der, Angeklagten)

was convicted of the offence of assaulting a member of the United States Army who was in the act of surrendering

wegen der folgenden strafbaren Handlung Uberfall auf einen Angehörigen der Streitkräfte der Vereinigten Staaten, der in Begriff war, sich zu ergeben

by the ~~XXXXXX~~ * ~~XXXXXX~~ Military Court at Dachau, Germany
* General in Dachau, Deutschland
* ~~XXXXXX~~
vom * ~~XXXXXX~~ Militargerichte (Address of Court.)
* Oberen (Anschrift des Gerichts)

and sentenced to imprisonment for two years, commencing 24 February 1946
schuldig erkannt und zu zwei Jahren Gefangnis verurteilt mit Wirkung ab 24 Februar 1946

by Judgement dated the 24 June 1947 and
durch Urteil vom 24 Juni 1947
(Date) (Datum)

Whereas the case has come before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

Diese Strafsache ist mir zur Uberprufung vorgelegt worden und nach entsprechendem Studium des Sachverhaltes und in Ausubung der mir ubertragenen Befugnisse verfuge ich:

That the findings and sentence are approved. The Commanding General, First Military District, will confine Waldemar FREITAG in War Criminal Prison No 1, Landsberg, Germany, for a period of two years, commencing 24 February 1946.

Dass der Befund und das Urteil bestatigt werden. Der Kommandierende General, von Militarbezirk I, wird die Inhaftierung von Waldemar FREITAG in Kriegsverbrechergefangnis Nr. 1, Landsberg, Deutschland, fur die Dauer von zwei Jahren, mit Wirkung ab 24 Februar 1946.

Dated this 8 December 1947
Gegeben am

/s/ J. L. Harbaugh, Jr.
(Signature of Reviewing Authority)
(Unterschrift der nachprufenden Behorde)
/t/ J. L. HARBAUGH, Jr.,
Colonel, JAGD,
Judge Advocate
(Title)
(Titel)

* Strike out words not applicable.
* Nichtzutreffendes ist zu durchstreichen.

12-2887

8 December 1947

507

SUBJECT: United States vs. Waldemar PRSITAG
MEMORANDUM TO: Colonel J. L. Harbaugh, Jr.

1. An examination of the Record of Trial in the subject case reveals the following dates:

- a. A copy of the charges was served on the accused on 27 May 1947.
- b. The case was referred to trial on 23 June 1947.
- c. The personnel of the prosecution and defense were appointed on 27 May 1947.
- d. The case was tried on 24 June 1947.

Edward F. Breece

EDWARD F. BREECE
Colonel AGO
Chairman, War Crimes Board of Review