

22 October 1947

UNITED STATES)

v.)

Karl DRESSLER)

Case No. 12-413

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 18 April 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that the accused, Karl DRESSLER, a German national, did, at or near QUIRNBACH, Germany, on or about 20 March 1945, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a member of the United States Army, believed to be 2nd Lt. Jack RIVES, O-832696, who was then and there surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: In March 1945 an American pilot made a forced landing near the village of Quirnbach, Germany. He was taken into custody by a member of the Gestapo named Figel and was then escorted to Gestapo headquarters in Quirnbach by the accused and Heitkamp, Gestapo members. The chief of the Gestapo ordered the accused to kill the flyer. The accused, accompanied by Heitkamp, who was close to and virtually an aide to the Gestapo chief, escorted the flyer into a woods near the village and shot him to death.

IV. EVIDENCE AND RECOMMENDATIONS:

1. KARL DRESSLER

Nationality:

German

Age:	38
Civilian Status:	Distillation expert; Gestapo member
Party Status:	Unknown
Military Status:	M/Sgt Wehrmacht until 28 May 1942
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: In March 1945 an American plane made a crash landing near the village of Quirnbach, Germany. A man named Figel, who was a member of the Gestapo, took the pilot into custody (R 9). Two other members of the Gestapo, the accused and Heitkamp, took the pilot from Figel and escorted him through the village to the office of Captain Wurstdorfer who was the chief of the Gestapo at Quirnbach (R 9, 24, 32). Captain Wurstdorfer interrogated the flyer and ordered the accused to shoot him (R 6; P-Ex 2 p. 3). About 15 to 20 minutes later the pilot was escorted out of the village by Heitkamp and the accused (R 10). On orders of Captain Wurstdorfer, the accused and Heitkamp marched the airman into a woods near Quirnbach whereupon the accused, on the order of Heitkamp, shot the flyer to death (R 6; P-Ex 2 pp. 3, 7). Later the accused and Heitkamp returned without the airman (R 11). The next morning the witness Thon saw the body of the flyer lying under the branch of a tree in a woods near Quirnbach and recognized it as that of the flyer he had seen the day before. Upon the order of the accused he helped pick up the body and place it in a hole which he had helped to dig and covered it with a few inches of dirt. He saw six or seven bullet holes in the flyer's body (R 12). Thon asked the accused to allow him to build across to mark the grave, but the accused refused such permission and said, "I shouldn't pay any attention to this and that if we said

one word about what had been happening here that the same thing would be happening to us" (R 13). Upon the order of Wurstdorfer, the accused made a false written report that the flyer was shot while trying to escape (R 6; P-Ex 2 p. 8). Approximately three weeks after the Americans had captured the village of Quirnbach, witness Thon helped in the exhumation of the flyer's body. The body was the same as the one he had helped to bury. He also recognized the body as that of the flyer he had seen walking in the village with the accused (R 17, 18).

Evidence for Defense: The accused, in his extrajudicial sworn testimony which was admitted in evidence as Prosecution's P-Ex 2 and also as a witness on his own behalf, testified to the effect that when a man joined the Gestapo he had to take an oath to follow orders of his superiors. If one didn't follow the orders of his superiors, he would be punished by imprisonment or death (R 46, 47). Wurstdorfer, the chief of the Gestapo, told the accused that he would not only shoot the man himself who didn't obey his orders, but take all of his relatives into custody and take care of them (R 48). Heitkamp was a very close friend of Wurstdorfer and was his aide or adjutant (R 48). Wurstdorfer gave an order to the accused to take the American flyer out and shoot him. He twice requested Wurstdorfer to release him from the order, whereupon Wurstdorfer became very angry and called the attention of the accused to the fact that orders had to be followed and also to the order concerning relatives (R 50). He left with the flyer hoping to meet an officer of the Luftwaffe so that he could deliver the flyer to him, which could justify the accused for not shooting the airman (R 6, 51; P-Ex 2 p. 6). Before he could deliver the flyer to an officer of the Luftwaffe, Heitkamp arrived and told a lieutenant, who had stopped to speak to the flyer, that he had an order for the airman and thereupon they proceeded through the village (R 51, 52). The accused and Heitkamp, together with the

flyer went into a woods near the village; and after arriving in the woods, Heitkamp who was armed with a pistol and was one step behind the accused gave the order to shoot the flyer which the accused then and there did (R 52, 53, R 6; P-Ex 2 p. 7). The accused then reported the shooting to Wurstdorfer who said "That is good" (R 53). After returning to his billet, he became hysterical. He asked Wurstdorfer that the body of the flyer be put in a coffin which request was refused (R 54).

Sufficiency of Evidence: While it does not appear that Heitkamp was the accused's superior in rank, the record does indicate that the former was very close to the chief of the Gestapo and that he, in effect, served as an aide to him. There is evidence which indicates that it was with some degree of reluctance that the accused participated after receiving an order from one greatly his superior. Furthermore, while the real purpose of Heitkamp's accompanying the accused to the scene of the shooting is not too apparent, the Court might well have concluded that he went to supervise or to assure effective execution of the Gestapo chief's order. This presence of a watchman who was close to the chief of the Gestapo created a degree of immediate compulsion. With regard to the evidence offered in support of superior orders, the accused met the burden of proof required by pertinent authorities discussed in Section V, post, and proved that he acted under immediate compulsion to a comparatively small degree.

The findings of guilty are warranted by the evidence. The sentence is excessive.

Petitions: Petitions for Review were filed 22 April 1947 by First Lieutenant Emanuel Miller, Chief Defense Counsel, and by the German defense counsel, name not legible, 16 June 1947. Petitions for Clemency were filed by the accused, 15 May 1947;

by Elsie Dressler, mother of the accused, 9 May 1947, 17 May 1947, and 24 June 1947; by Luise Dressler, wife of the accused, 10 June 1947; and by First Lieutenant John H. Pohlman, Chief Prosecutor, 13 August 1947.

Recommendations: That the findings and the sentence be approved, but that the sentence be commuted to life imprisonment.

V. QUESTIONS OF LAW:

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

Petition for Review: In the Petition for Review filed by the Chief Defense Counsel, it is contended that Prosecution's Exhibits P-Exs 3, 4, should not have been admitted into evidence on the ground that no proper foundation for the admission of these exhibits was established at the trial. The record discloses that a proper foundation was laid and that these exhibits were properly admitted into evidence for such probative value as they might have (R 18-20).

It is also contended that the Court erred in admitting all of Prosecution's Exhibit P-Ex 6 into evidence as only part of the exhibit was admitted by stipulation of counsel and the Court should not have seen the exhibit in its entirety. The portion of the Exhibit that was stipulated to was read to the Court and the exceptions to part of the Exhibit were noted by the Court. It must therefore be presumed that the Court did not consider that portion of the Exhibit that was excluded by the stipulation. Examination of Prosecution's Exhibit P-Ex 6 discloses that it is all on one page and it would therefore be a physical impossibility to have taken part of the Exhibit without taking all. The defense failed to object to the admitting into evidence the entire Exhibit; therefore the defense is now estopped from pleading error.

Superior Orders: The accused's defense was based solely upon the grounds of superior orders and that he was compelled through

fear of Heitkamp, who was armed and accompanied him to the scene of the shooting. 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, Oppenheim, "International Law", paragraph 253, page 453; Llandovery Castle Case, 16 American Journal of International Law, page 708; United States v. Dominikus Thomas, Opinion of the DJAWC, December 1945; and United States v. Alfons Klein, et al. (Hadamard Murder Factory Case), Opinion of the 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 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; and opinions of the Deputy Theater Judge Advocate for War Crimes in U.S. v. Albert Bury and Wilhelm Hofner, September 1945, U.S. v. Dominikus Thomas, December 1945, and U.S. v. Gerd Beck and Otto Weinreich, December 1946).

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 but that the sentence be commuted to life imprisonment.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Elmer Moody
ELMER MOODY
1st Lt., Inf.
Post Trial Branch

Having examined the record of trial, I concur, this 27th day of October 1947.

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

LEGAL FORM NO. 16
HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

AGO 757
25 Nov 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Karl DRESSLER. (Case No. 12-413)

TO : Commanding General
First Military District
APO 1, U. S. Army

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

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/ Wm. E. Bergin
Wm. E. BERGIN
Brigadier General, USA
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 29 November 1947, at 1130 hrs.
(Date) (Hour)

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

/s/ David A. Oakley
(Countersignature and Rank of
Witnessing Officer)
DAVID A. OAKLEY, 1st Lt. Cm1C
Asst. Prison Officer

Do NOT
FILM