

HEADQUARTERS THIRD ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
WAR CRIMES BRANCH
AFO 403 US ARMY

22 May 1946

WET Rpt # 539

THE UNITED STATES

VS

KARL IOESCH

REVIEW AND RECOMMENDATIONS OF STAFF JUDGE ADVOCATE
Case No: 12-1457

1. TRIAL:

The accused was tried at Ludwigsburg, Germany, on 30 April 1946, by a General Military Government Court appointed by Paragraph 3, as amended by Paragraph 23, Special Orders 100, Headquarters Third United States Army, dated 20 April 1946.

2. CHARGES, PLEAS, FINDINGS AND SENTENCE:

Charge and Particular	Plea	Finding
Charge: Violation of the Laws of War	NC	G
Particular:	NG	G

In that Karl Loesch, a German national, did, in conjunction with Konrad Wald, at or near Giessen, Germany, on or about 27 March 1945, wilfully, deliberately, and wrongfully encourage, aid, abet and participate in the killing of Lieutenant Darwin R. Nichols, a member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

Sentence:

The Court by at least two-thirds vote of the members present at the time the vote was taken concurring, sentenced the accused Karl Loesch as follows:

To imprisonment for a term of eleven (11) years commencing 12 May 1945, at such place as may be designated by competent military authority.

3. DATA AS TO ACCUSED:

Karl Loesch is a male civilian, German citizen, 47 years of age, married, one child, and a resident of Giessen, Germany (R 2, 29). Accused has been a police officer since 1921, and at the time of the commission of the offense herein was criminal secretary of police at Giessen, Germany. He was transferred to the Gestapo Branch in 1939 (R 21). He has no previous civilian convictions (R 29). There is no evidence

in the record indicating membership in the NSDAF or any of its affiliates and the record affirmatively states he was not a member of the SS. Accused was arrested 12 May 1945 (R 5).

4. EVIDENCE:

a. By the Court:

Upon being examined by the Court the accused testified as follows: On or about 27 March 1945, I was on duty as criminal secretary in the Gestapo Building at Giessen, Germany. At about 1:00 o'clock in the morning I reported on request to Gestapo Chief Kuerpel. Konrad Wald, an SS man, was present at the time. Kuerpel said to me, "Loesch, you go along and one man has to be killed". I then went to the basement of the building and Kuerpel said, "Be careful that he won't escape". On arriving in the basement I noticed a man standing two or three paces away from the corner. Wald and I then placed his hands behind his back in a crossed manner and I tied his hands together with a rope. We then left the building and as we were leaving Wald said, "We go to the Lahn", and I went along (R 5 and 6). I was wearing my service pistol (R 5). We walked for about 20 to 25 minutes until we came to a small road and "Wald went ahead and he passed me and all of a sudden in the dark I heard a shot and I saw that the man was falling. At that time I was about 8 to 10 paces behind Wald" (R 3). Visibility at the time of the shooting was good for about 20 to 25 meters. When the shot was fired Wald was approximately one meter from the pilot and I was about 15 meters from Wald and the pilot. The only conversation between Wald and myself occurred immediately after the shooting when he stated the pilot had fallen in the Lahn River. Wald and I then returned to the city building and I reported to Kuerpel, saying, "I am back. The order has been carried out" (R 3 and 6).

b. For the Prosecution:

Heinrich Gimpel, a prison guard, testified as follows: The Gestapo Field Detachment operated a jail in Giessen. Hauptsturmfuehrer Kuerpel was in charge of this prison. Wald was warden of the jail (R 7). For about seven months prior to the shooting, the American airman had been a prisoner in this jail. The pilot's name was Darwin Nichols and he was an American Flight Lieutenant. On the morning of 27 March 1945, at about 1:00 o'clock, we brought him to the main building (R 8). When we arrived at the main building, Wald and the American Lieutenant went upstairs and I never saw the Lieutenant again. Later in the morning, at about 5:00 o'clock, Wald, when asked what had been done with the Lieutenant, said, "I shot him and threw him in the Lahn (River)" (R 9). On or about June 1945, I identified a body at the morgue in Giessen, Germany, as that of Lieutenant Nichols. I concluded that it was Lieutenant Nichols from his clothes, hands, and fingers (R 10). On the 27th of March, the American Army was approximately 15 kilometers from Giessen (R 11). We had been notified that a state of emergency existed and no one was allowed to go home and if anyone committed any offenses he would be shot (R 11). There were three other murders earlier in the evening in and about the jail at Giessen. The Prosecution offered in evidence four exhibits, to-wit, a paper addressed "To Whom

It May Concern", and signed, "Lieutenant Darwin R. Nichols, ASN 0-77038", in which it was asked that consideration be given to the guard Heinrich Gimpel for the kind treatment given the signatory while he was incarcerated in the jail: a signed statement of accused Karl Loesch; a report of an examination of accused Loesch in question and answer form taken by War Crimes Investigator; a statement of the qualifications of the interpreter who was used in the taking of the statements out of court. The two exhibits containing testimony of accused taken out of court do not differ materially from the testimony given by accused in court when examined by members of the Court.

c. For the Defense:

Accused testified as follows: On or about 27 March 1945, I was criminal secretary of police at Giessen, Germany, and my duties consisted of work on theft and control violations of workers from the East. In the early part of the evening March 26, 1945, I had a fight with Gestapo Kueppel, Chief of our Section (R 21). Kueppel had asked me to report to Wald at the jail as a few men had to be shot. This conversation ended by Kueppel stating to me, "Get out of here. Leave this room immediately. I am a responsible and competent man for this section and I do what I intend to do. One more thing like that and you will be punished and punished severely". However, I did not take any part in the murders earlier in the evening. Kueppel was a member of the SS and held the rank of Hauptsturmfuehrer. It is my belief that I was only ordered to participate in the murder of this American so that punitive action could be taken against me in case of my refusal to obey the order, as it was generally that where members of the Gestapo disobeyed an order from a superior, they would be summoned before an SS or Police Court. My only explanation for my participation in tying the American and in accompanying Wald on the death march was my fear of punishment if I refused to obey his superior orders, and the fact I was so excited that I was not thinking (R 26). I admit that before I started on the trip with Wald and the American airman I knew the pilot was to be shot. The defense introduced in evidence a photograph of the body of a human being, which in the course of the original preliminary investigation was reported to have been the body of the victim. There is no contention, and witness Gimpel definitely states that it is not the body that he identified. (R 14; Exh. "A").

5. JURISDICTION:

a. The General Military Government Court which heard this case was properly constituted and had jurisdiction over the subject matter and of the accused. (Par. 7, Field Manual 27-10, Rules of Land Warfare; letter, Headquarters, United States Forces, European Theater, dated 16 July 1945, AG 000.5-2, subject: "Trial of War Crimes and Related Cases.") It is well recognized that the offense in the instant case, aiding, abetting and participating in the killing by a German civilian of a member of the United States Armed Forces, who was then a surrendered prisoner of war, is a violation of the laws of war and properly tryable in a Military Court having custody of accused. The sentence was legally within the power of the Court to impose.

b. In letter, Deputy Theater Judge Advocate's Office, War Crimes Branch, United States Forces, European Theater, dated 21 January 1946, AGO. 5, subject, "Case of U.S. vs Karl Loesch", trial by a General Military Government Court was directed. The Charge and Particular against the accused were preferred by Howard F. Bresee, Colonel, CMF, and referred to trial by C. R. Bard, Colonel, JAGD, Judge Advocate. The Charge Sheet was served on accused 27 April 1946. Six members of the Court were present throughout the trial. The accused was represented by an American officer, an attorney, and a German civilian attorney of the Ludwigsburg Bar. Challenges for cause were permitted.

6. DISCUSSION:

There is no substantial conflict in the evidence material to the essential elements of the offense for which the accused has been charged, convicted and sentenced. The victim, an American airman, had been in the jail at Giessen for approximately seven months preceding his death. On the evening of the offense SS Hauptsturmfuehrer Kueppel, Gestapo Chief, ordered his subordinate, the accused Loesch, criminal secretary of police at Giessen, and one Conrad Wald, warden of the jail, to kill the American airman. In pursuance to this order accused Loesch and Wald tied the hands of the victim behind his back and took him from the jail to the bank of the Lahn River. The accused did not fire the fatal bullet. He remained from eight to 25 meters behind Wald, heard a shot, and immediately the pilot fell. Loesch and Wald then reported back to Gestapo Chief Kueppel and stated that the order had been carried out. Wald admitted a few hours after the incident that he had killed the American airman. The body of the airman was identified in June 1945, by witness Gimpel, a prison guard, who had had daily contact with the pilot for some months.

It is provided by Paragraph 37, FM 27-10, Rules of Land Warfare, that a prisoner of war "must at all times be treated with humanity and protected, particularly against acts of violence, insults, and public curiosity" and a violation thereof is a war crime. For such a violation of the laws of war the Court could have imposed any sentence up to and including death. The war crime for which accused has been charged, sentenced and convicted approximates the common law offense of aiding and abetting in a murder. In the federal practice no distinction is made between aiders, abettors, or accessories -- all are principals. (U.S. Code, Title XVIII, Section 550). The accused has one defense, that of superior orders. Hauptsturmfuehrer Kueppel ordered him to kill the airman and he was afraid of severe punishment if he refused to carry out the order. The question of superior orders has been discussed at length in previous reviews. As has been stated, the defense of superior orders is not an absolute defense, but may be taken "into consideration in determining culpability either by way of defense or in mitigation of punishment". (Change 1, 345.1, FM 27-10 Rules of Land Warfare). Apparently the Court took into consideration such superior orders for the usual penalty for murder among civilized nations is life imprisonment or death. The sentence of imprisonment for a term of eleven (11) years is considered fair and just and as lenient, if not more so, than a Court would impose for such an offense in the federal courts.

The identity of the victim as an American, and as an individual was sufficiently established by the testimony of the prison guard Gimpel. The accused's testimony that he heard a shot and saw the airman fall and the admission of Wald that he had killed the pilot, together with Gimpel's identifying the body in June as that of the American who had been incarcerated in the jail, was sufficient to establish the corpus delicti.

No errors or irregularities occurred during the course of the trial which prejudiced the substantial rights of the accused and prevented him from having a fair, just and full trial.

7. PETITION FOR REVIEW:

No petition for review in behalf of the accused has been filed in this case. On page 30 of the record appears the statement "Counsel for the defense does not intend to file a petition for review or a petition for clemency in this case."

8. CLEMENCY:

Since the preparation of the review and recommendation a petition for pardon in behalf of the accused has been filed by his German civilian defense counsel. No new or additional facts are set forth by the petitioner which do not already appear in the record of trial. The substance of the petition is a plea for a mitigation of the sentence imposed by the Court for the reason that the accused had "no power to stop the killing of this prisoner of war. For this purpose he would have had to kill the SS man". Petitioner further alleges that the accused never joined the SS and that he freely admitted from the beginning his participation in the instant case. These facts have been discussed in paragraph 6. It does not appear to the reviewer that the accused was under any unusual or special duress when he carried out the order of Kueppel. It is true that he testified that he refused to participate in the murder earlier in the evening. From his own testimony the only punishment received by him was a reprimand. When he received the order to kill the American in the instant case he made no protest or resistance to this order. It is the belief of the reviewer that the Court in the imposition of sentence took into consideration the superior orders, and it is recommended that no further mitigation is warranted in this case.

9. RECOMMENDATION:

It is recommended that the finding and the sentence be approved. The proper order for carrying out this recommendation has been appended for signature of the reviewing authorities.

/s/ M. C. Setzekorn

/t/ M. C. SETZEKORN

Civilian

Chief of Trial Section

I Concur:

/s/ Charles E. Cheever

/t/ CHARLES E. CHEEVER

Colonel

JAGD

Staff Judge Advocate

R E S T R I C T E D

HEADQUARTERS
THIRD UNITED STATES ARMY
AIO 403

GENERAL MILITARY GOVERNMENT)

COURT ORDER NUMBER

20)

11 June 1946

Before a General Military Government Court which convened at Ludwigsburg, Germany, on 30 April 1946, pursuant to paragraph 3, Special Orders No. 100, this headquarters, dated 20 April 1946, as amended by paragraph 23, Special Orders No. 100, this headquarters, 20 April 1946, was arraigned and tried:

Karl Loesch, German National

CHARGE: Violation of the Laws of War

Specification: In that Karl LOESCH, a German national, did, in conjunction with Konrad WALD, at or near GIESSEN, Germany, on or about 27 March 1945, wilfully, deliberately, and wrongfully encourage, aid, abet and participate in the killing of Lieutenant Darwin R. NICHOLS, a member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

FLEAS

To the Specification of the CHARGE:
To the CHARGE:

Not Guilty
Not Guilty

FINDINGS

Of the Specification of the CHARGE:
Of the CHARGE:

Guilty
Guilty

SENTENCE

To be imprisoned for a term of eleven (11) years, commencing 12 May 1945, at such place as may be designated by competent military authority.

The sentence was adjudged 30 April 1946.

The findings and sentence are approved and upheld and the sentence duly executed. Landsberg Prison, Landsberg, Germany, is designated as the place of confinement.

BY COMMAND OF LIEUTENANT GENERAL KEYES:

/s/ WM. R. SCHMIDT
Major General, General Staff Corps
Chief of Staff

/s/ Thomas Robinson
/t/ THOMAS ROBINSON
Colonel, Adjutant General's Department
Adjutant General

R E S T R I C T E D

MILITARY GOVERNMENT COURT
Order on Review

Case No. 12-1457

Order No. _____

WHEREAS KARL LOTSCH was convicted of the offense of wrongfully aiding, abetting and participating in the killing of a prisoner of war by a General Military Government Court at Ludwigsburg, Germany, and sentenced to imprisonment for a term of eleven (11) years, commencing 12 May 1945 at such place as may be designated by competent military authority by a judgment, dated 30 April 1946.

AND WHEREAS this case comes before me by way of review and after due consideration and in exercise of the powers conferred upon me, I hereby order:

THAT the findings and sentence are approved and upheld and the sentence duly executed. Landsberg Prison, Landsberg, Germany, is designated as the place of confinement.

Dated 11 June 1946

/s/ Geoffrey Keyes
(Signature of Reviewing Authority)
/t/ GEOFFREY KEYES
Lieutenant General, U. S. Army
Commanding
(Title)

GERICHT DER MILITAERREGIERUNG
Revisionsanordnung

Strafsache No. 12-1457

Order NO. _____

WOBEI KARL LOTSCH des Vergehens, unrechtmässige Mithilfe, Unterstützung und Teilnahme an der Tötung eines Kriegsgefangenen von einem Oberen Gericht der Militaerregierung in Ludwigsburg, Deutschland, fuer schuldig erklart und zu Gefaengnis fuer die Zeitdauer von elf (11) Jahren, beginnend am 12. Mai 1945 an dem Ort, der von der zustandigen Militaerbehoerde bezeichnet wird, durch Urteilsspruch, datiert vom 30. April 1946, verurteilt wurde.

UND WOBEI diese Strafsache mir jetzt zur Ueberpruefung vorgelegt wurde, und nach gebuehrender Erwaegung und in Ausuebung der mir uebertragenen Befugnisse ordne ich hiermit an:

DASS das Untersuchungsergebnis und das Urteil gebilligt und aufrechterhalten werden und das Urteil demgemass vollstreckt wird. Das Zentralgefaengnis in Landsberg, Deutschland, ist als Ort der Haft angegeben.

Datum _____ 1946

(Unterschrift der Revisionsbehoerde)

(Titel)