

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207-1

8 August 1947

UNITED STATES

v.

Case No. 12-1217

Erich HINKEL and Adolf SCHMIDT.

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, on 25 April 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

FIRST CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Erich HINKEL and Adolf SCHMIDT, German nationals, did, on or about 18 March 1945, at or near Winterkasten, Germany, 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. Robert L. VAN HORN, ASN O-715064, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

SECOND CHARGE: Violation of Par. 1(d), Article II of Control Council Law No. 10.

PARTICULARS: In that Erich HINKEL and Adolf SCHMIDT, German nationals, were members of organizations declared criminal by the International Military Tribunal in Case No. 1, i.e., Die Geheime Staats Polizei (commonly known as the Gestapo) and Die Schutzstaffeln der National Sozialistischen Deutschen Arbeitspartei (commonly known as the SS), after 1 September 1939, with knowledge that the said organizations were being used in the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, annexed to the agreement establishing the Tribunal, dated 8 August 1945 and were personally implicated in the commission of such criminal act.

The Court granted the defense's motion to strike the second charge and particulars thereunder from the charge sheet. The prosecution then proceeded to trial on the first charge and particulars.

III. SUMMARY OF EVIDENCE: On 18 March 1945, in the vicinity of Reichelsheim, Germany, an American flyer crashed in his plane. The flyer was captured by several people and a German State policeman.

The latter turned the flyer over to the accused and another Gestapo agent in the vicinity of Lindenfels, Germany. The accused and the other Gestapo agent, SCHMIDT, placed the flyer in the sidecar of a motorcycle. With the accused driving and SCHMIDT seated behind him, they proceeded toward Winterkasten, Germany. On reaching a wooded area in the vicinity of Winterkasten and while the motorcycle was still in motion, SCHMIDT shot the American flyer three times in the head.

IV. EVIDENCE AND RECOMMENDATIONS:

1. ERICH HINKEL

Nationality:	German
Age:	38
Civilian Status:	Apprenticeship in Father's business until 1938
Party Status:	Member NSDAP since 1932
Military Status:	SS Sergeant/Major. Member of the Gestapo from 1938
Flea:	NG First Charge; Second Charge stricken from the Charge Sheet
Findings:	G First Charge
Sentence:	20 years, commencing 8 May 1945

Evidence for Prosecution: Accused was employed by the Gestapo as a driver from April 1938 to capitulation. On 18 March 1945, accused received orders from Girke, the chief of the Gestapo office at Bensheim, to proceed to Lindenfels by motorcycle and sidecar with one SCHMIDT, a Gestapo agent, to secure a prisoner (R 14; I-Ex 3). The accused knew of and had received orders, along with SCHMIDT, to shoot the captured flyer. He told SCHMIDT to watch for a suitable spot in the woods. Near Lindenfels they picked up the flyer from a German policeman. The flyer was placed in the sidecar. With the accused driving and SCHMIDT seated behind him, they then proceeded in the direction of Winterkasten. As the road entered a woods near the Winterkasten cemetery, accused said to SCHMIDT "now you can shoot".

SCHMIDT then drew his pistol and shot the American flyer three times in the head. HINKEL and SCHMIDT then removed the flyer's body from the sidecar and placed him in the woods several meters off the road. On returning to their Headquarters at Bensheim they reported to Girke that the order to shoot the flyer had been executed, HINKEL pointing out the exact location of the flyer's body on the map (R 15; I-Ex 4).

Evidence for Defense: The accused admitted his participation in the events leading up to the killing of the American flyer but disclaimed any knowledge that the prisoner to be picked up was an American flyer or that there was an order to kill the flyer. The killing by SCHMIDT of the flyer was a surprise to him (R 26-34). The accused denied the truth of that portion of SCHMIDT'S extrajudicial sworn testimony regarding the accused's knowledge of the order to kill the flyer (R 36). The accused stated that if he had known of the order to kill the flyer, he would have refused to make the trip (R 14; I-Ex 3). Five extrajudicial sworn statements were introduced into evidence to the effect the accused treated prisoners with kindness, fed them and helped them with their differences with the Gestapo (R 21; D-Ex 1, R 22; D-Ex 2, R 23; D-Ex 3, R 23; D-Ex 4, R 24; D-Ex 5).

Sufficiency of Evidence: The accused was a member of the Gestapo and participated in the killing of an American flyer.

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. ADOLF SCHMIDT

The name of this accused was stricken from the charge sheet and he was not before the Court (R 2).

V. QUESTIONS OF LAW:

Jurisdiction: The Court was legally constituted and had jurisdiction of the person 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 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.

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

Having examined the record of trial, I concur.

13 Sept 1947

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