

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COLLEGE

12 May 1947

UNITED STATES)

vs)

Gustav HEIDMANN and
Erich SCHNELLE, German
nationals.)

Case No. 12-1422

REVIEW AND RECOMMENDATIONS

1. TRIAL: The accused were tried at Dachau, Germany on 8-9 July 1946 before a General Military Government Court appointed by paragraph 20, Special Orders No. 184, Headquarters, United States Forces, European Theater, AJO 757, dated 3 July 1946. The record does not mention the source of this order and quotes the paragraph and number incorrectly. This is patently a typographical error and does not affect the court's jurisdiction. The personnel named in the order quoted herein are the same as those who sat on the court (R 1).

2. FINDINGS: The offense involved was:

	<u>FILED</u> by both accused	<u>FINDINGS</u> as to both accused
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CHARGE: Violation of the Laws of War.	NG	G
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Particulars: In that Gustav HEIDMANN and Erich SCHNELLE, German civilians, did, at or near TIDDISCHE, Germany, on or about 30 May 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the United States Army, who was then an unarmed surrendered prisoner of war in the custody of the then German Reich, by shooting him with guns.

	NG	G
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3. SENTENCE: The Court, by at least a two-thirds vote of the members present at the time the vote was taken concurring, sentenced the accused HEIDMANN to death by hanging and the accused SCHNELLE to be imprisoned for a period of twenty years commencing 28 April 1945.

4. DATA AS TO ACCUSED: The accused HEIDMANN is a German national, 47 years old. He resided at TIDDISCHE, Germany, and was a cabinet maker by trade (R 56). He had been married 25 years and had one daughter. He had served in the German army (1917-18 and 1939-40)

and was the head of the home guard in his community (R 93, 94). He joined the National Socialist Party in 1933 (R 56).

The accused SCHNELLE is a German national, 46 years old, and claims military status (R 3). He was a resident of TIDDISCHE and a farmer. No further personal information is available.

5. RECOMMENDATION: That the findings and sentences of the Court as to both of the accused be approved.

6. EVIDENCE:

a. For the Prosecution: Shortly after noon on 30 May 1944 an American plane crashed near the town of TIDDISCHE, Germany. The pilot bailed out and made a parachute landing about 300 meters from the spot where the plane crashed (R 8,9,59). The accused HEIDMANN, as temporary commander of the home guard, went to the scene of the crash and found the pilot in custody of three German soldiers (R 61). The pilot was taken in charge by HEIDMANN and the party started in the direction of the village. While en route they met one FUNKE, HEIDMANN's superior, and HEIDMANN turned the pilot over to him (R 69). The flyer was identified as American (R 10). The flyer was then taken to the local headquarters of the police and FUNKE was seen to strike the pilot as he entered the headquarters (R 10). HEIDMANN left the office and returned some 45 minutes later on FUNKE's order (R 64). He stayed a short while, left, and was again ordered to return (R 66). This time he was ordered to detail two men to go with FUNKE and execute the flyer (R 66). He selected SCHNELLE, and FUNKE then ordered SCHNELLE and HEIDMANN to accompany him (R 64, 71). The group, composed of the victim, FUNKE, HEIDMANN, and SCHNELLE, was seen to enter the woods in the vicinity of the village (Pros. Ex. 2; R 43) and FUNKE was seen to shoot the victim in the woods. The American swayed and HEIDMANN then was seen to shoot him. The three men were seen to leave the woods and return to the village (Pros. Ex. 3, R 44). Another witness, while passing on the road heard shots (R 23, 29). Upon investigation he found FUNKE, HEIDMANN and SCHNELLE in the woods, with the flyer,

apparently dead, lying at their feet (R 27). The two accused were identified (R 30). A general directive from higher authority was proved. This directive called for the killing of parachuted Allied flyers in such a manner that the public would not hear about it (R 34). A prosecution witness testified concerning a conversation he had with the accused HEIDMANN in which the latter described the entire incident. HEIDMANN thus told how FUNKE had shot the victim and how later he (HEIDMANN) had done likewise at FUNKE's insistence, but under protest (R 35). Prosecution's Exhibits 2, 3, 4, 5 and 6 were introduced in evidence. Exhibit 2 was a statement by one Otto MEYER who saw the victim at FUNKE's house and witnessed mistreatment (R 43). Exhibit 3 was a statement by one Damian SCZEFANIAK, a Polish slave laborer who witnessed the actual shooting by FUNKE and HEIDMANN (R 44). Exhibit 4 was a statement by one Tadeusz MERKWA, another Polish slave laborer, who saw FUNKE, HEIDMANN and SCHNELLE lead the flyer from his landing place to the village and who later assisted in the burial of the victim (R 46). Exhibit 5 was the statement of the accused SCHNELLE. Among other things, he stated that HEIDMANN admitted the shooting to him (R 47). Exhibit 6 was HEIDMANN's signed statement. He witnessed the shooting by FUNKE, and claimed that his own pistol went off as he drew it from the holster, but that the projectile did no damage (R 47).

b. For the Defense: Chief witness for the defense was the accused HEIDMANN. He admitted his membership in the Party, which he joined in June 1933 (R 56). FUNKE was his superior in the home guard with the rank of rural police master sergeant (R 57). He described how he picked up the parachuted pilot and took him to the village as heretofore shown (R 60, 61, 62). Treatment in the police office was described (R 63, 64). The witness then described FUNKE's order to accompany him (FUNKE) and the prisoner to the wood, as well as how FUNKE shot the victim (R 69, 73, 75). Accused then corrected his own statement wherein he said that his pistol had fired into the air. He admitted on the stand that he did shoot the victim after FUNKE's two

shots had taken effect in order to put him out of his pain, and also to put himself in a better light with the local Party organization (R 76). He admitted to SCHNELLE that he had administered a coup de grace (R 79). The witness SCHNELLE did not take the stand (R 90).

7. JURISDICTION: Particulars alleged a violation of the laws and usages of war which was committed before 9 May 1945 by enemy nationals against a member of the United States Armed Forces at a time when a state of war existed between Germany and the United States of America. Accordingly, the Court, which was specially appointed to hear the case had jurisdiction of the persons and subject matter in accordance with previous decisions of this office in similar cases.

8. SUFFICIENCY: The findings of the court with regard to the accused HEIDMANN are supported by ample evidence. This is one of the few cases of this type which has come up for review in which there has been an actual eye witness to the homicide. His extrajudicial sworn statement was admitted according to the pertinent rules of evidence and was convincing (Iros. Ex. 3, R 45). HEIDMANN attempted to show that his shot was fired after the fatal shots had been administered by FUNKE and under the stress of FUNKE's orders. By his own admission the pilot was still breathing when he fired his weapon, as he claims, to put him out of his pain (R 76). This constitutes the crime of murder.

"Therefore to kill a dying person, whether such a person be dying a natural death or be dying from a wound inflicted by another is murder, if the other elements of this crime are present". (Miller on Criminal Law, 1934 Ed. p. 252, Par. 82 (a)).

To kill a person thus is considered murder by the most elementary principles of criminal law. The other elements of the crime are also present. Every crime has two elements, a criminal intent and overt act. HEIDMANN was aware of the purpose of taking the victim from the police station. He testified that FUNKE told him, "Immediately afterward he will be bumped off" (R 66). The intent of the participants is thus established. The overt act has been heretofore discussed.

The culpability of the accused SCHNELLE cannot, on the other hand, be considered as great. It is true that he did not inflict a fatal wound. He participated to the extent of accompanying the party to the actual scene of the crime and he did his share in guarding the prospective victim and forcing him to proceed to the place where he met his tragic end. Such were the inferences the Court may have drawn from the evidence in reaching their conclusion. The evidence thus viewed amply supports the findings and sentence.

Examination of the entire record fails to discover any error or omission which resulted in injustice to the accused.

10. CLEMENCY: The following Petitions for Review and Petitions for Clemency have been received:

Dr. Aheimer	18 July 1946	Petition for review (HEIDMANN)
Dr. Burger	20 July 1946	Petition for review (SCHNELLE)
Hilde Schnelle	17 July 1946	Petition for clemency (SCHNELLE)
Hartman (Burgomeister)	17 July 1946	Petition for clemency (SCHNELLE) containing 91 signatures
Evangelical pastor	5 August 1946	Petitions for clemency (signature illegible)
	4 August 1946	Appeal for clemency (50 signatures)
Branko Vickelic	24 August 1946	Appeal for clemency
Frieda Heidmann (wife)	15 July 1946	Appeal for clemency, also signed by daughter and son-in-law
Burgomeister of Community of Tiddische.	15 July 1946	Appeal for clemency (123 signatures)
W. Althoff, Chairman, Seven-days Adventists' Community Central Germany Union	12 December 1946	Petition for clemency

None of the material herein presented is such that it would tend to alter the findings and sentences of the court. No clemency is thus indicated and none is therefore recommended.

11. CONCLUSIONS:

- a. It is recommended that the findings and sentences be approved.
- b. Forms of action to accomplish this result are attached hereto, should it meet with your approval.

/s/ Robert S. Bates
/t/ ROBERT S. BATES
Major FA
Chief, Lost Trial Section

Having examined the record of trial, I concur.

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