

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

19 January 1948

U N I T E D S T A T E S)

v.)

Case No. 000-Flossenburg-4

Helmut FRITZSCHE)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 30-31 October 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Helmut FRITSCHE, a German national, did, at or in the vicinity of Neu-Hirschstein, Germany, in or about October 1943, wrongfully encourage, aid, abet and participate in the killing of an unknown Italian national, an inmate of Flossenburg Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Helmut FRITSCHE, a German national, did, at or in the vicinity of Neu-HIRSCHSTEIN, Germany, in or about November 1943, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish national, an inmate of Flossenburg Concentration Camp, who was then in the custody of the then German Reich.

(Upon motion by the prosecution and with the agreement of the defense, the Court amended the particulars of Charge I by changing the phrase "an unknown Italian national" to the phrase "two unknown Italian nationals", R 3.)

(Surname of FRITSCHE actually spelled FRITZSCHE, R 4.)

III. SUMMARY OF EVIDENCE: In October and November 1943 accused FRITZSCHE, a Waffen SS corporal, served as a guard and dog leader at subcamp Neu-Hirschstein of the Flossenburg Concentration Camp. During that period two Italian inmates escaped and were recaptured. The accused participated in the killing of the two recaptured Italian inmates. The Court found the accused not guilty of Charge II.

NARA DATE 3/13/80
NOV 15 1952

IV. EVIDENCE AND RECOMMENDATIONS:

Helmut FRITZSCHE

Nationality:	German
Age:	24
Civilian Status:	Farmer
Party Status:	None
Military Status:	Waffen SS Corporal
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	15 years, commencing 6 May 1945

Evidence for Prosecution: In the fall of 1943 a subcamp of the Flossenburg Concentration Camp was established at Neu-Hirschstein for the purpose of renovating a castle, which was to be used for the internment of the Belgian king (R 11, 70; P-Ex 10). The accused was a member of the guard detail from October until December 1943 (R 67, 68, 70; P-Exs 7, 9, 10), was also a dog leader (R 10, 12, 35, 48, 70, 80; P-Ex 10), and held the rank of corporal (R 12, 49).

At an evening roll call in October or November 1943, it was discovered that two Italian inmates were missing (R 15, 49, 80, 81) and search parties were organized to find them (R 15, 49, 81). One party which proceeded to the castle consisted of the accused and staff sergeant Abbe, both of whom took their dogs, and several capos and inmates (R 15, 81). The two Italians were found by this party underneath the wooden floor of the attic (R 16). They were brought back to the camp and lodged in the guardhouse for the night (R 17, 81).

The next morning a witness who was on the square outside the castle and a witness who was looking out of one of the castle windows saw the accused, with his dog, taking one of the two Italian inmates down a slope of the castle grounds toward the Elbe R (R 17, 36). When they were out of sight of the witnesses, t

NARA Date 3/31/60
M775032

heard a shot (R 17, 36). About two hours later these two witnesses saw the dead body of the Italian inmate carried back to the camp by other inmates (R 17, 36) and deposited in a wagon shed (R 18, 36). These two witnesses and two additional witnesses saw the body when it was exhibited to all the inmates at the noon roll call and heard the detail leader, master sergeant Richter, tell them that the same thing would happen to them if they attempted to escape (R 18, 36, 51, 81). Three of these witnesses saw that the body was badly mutilated by dog bites (R 18, 37, 81), and one of them saw a blood stain in the vicinity of the heart which he was told was a gunshot wound (R 18).

In the afternoon of the same day two of these witnesses saw the accused and staff sergeant Abbe, together with their two dogs, taking the second Italian inmate toward the Elbe River (R 52, 82). Within about five minutes after they were out of sight one of these witnesses heard the sound of at least two gunshots (R 53, 54). About half an hour later this witness and one of the foregoing witnesses saw the dead body of the Italian inmate returned to the camp on a cart pushed by the accused and Abbe (R 18, 19, 54). Two of these witnesses saw the corpse exhibited at the evening roll call and observed that it had a gunshot wound (R 19, 82).

One of these witnesses was told by the accused that he had shot one of the Italian inmates in the heart from a distance of ten meters (R 19, 20). (However, the record is not clear as to which of the two Italians he was referring.)

Evidence for the Defense: The accused did not testify. One witness for the defense testified that he heard that two Italian inmates escaped and that Abbe shot them (R 74). The witness, who was a guard at Neu-Hirschstein, stated that he heard about the shooting of the two Italian inmates after it occurred, but that he did not see the incident (R 74).

Prior extrajudicial sworn statements of the prosecution

MAFA DE 3/31/50
M775032

the defense for the purpose of impeachment of these witnesses (R 44, 61; D-Exs. 1, 2).

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

Petitions: No Petitions for Review were filed. A Petition for Clemency was filed by the accused, 16 November 1947.

Recommendation: That the findings and sentences be approved.

V. QUESTIONS OF LAW:

Universality of War Crimes Jurisdiction: The particulars under Charge I, as amended, allege that the accused participated in the killing of two unknown Italian nationals on or about October 1943. In so far as the evidence adduced is concerned, it may be that the victims were killed prior to 1500 hours Greenwich time, 13 October 1943, when the Badoglio Italian government declared war on Germany, thus terminating its status as a co-belligerent of Germany. Although not raised during the trial, the question arises as to whether the Court would have jurisdiction, if the victims were in fact killed prior to the time that Italy terminated its status as a co-belligerent of Germany.

International law is comprised of that body of rules and principles which govern the conduct of nations in their relations and intercourse with each other. The law of war constitutes a portion of that body of law. A violation of the law of war is a war crime. For an illegal act to be a war crime certain elements must be present, viz., (1) the act must be a crime in violation of international law; (2) there must be disparity of nationality between the perpetrator and the victim; and (3) the criminal act must have been committed as an incident of war.

It is obvious, in view of the disparity of nationality of the accused and the victims, that an international crime was involved. Whether this violation of international law constitutes a war crime depends upon whether the crime was committed as an incident

MM 775032
NARA Date 3/21/60

Flossenburg Concentration Camp and the evidence establishes that as such they were being used as slave labor at Neu-Hirschstein, Germany, in renovating a castle to be used for the detention and internment of the King of Belgium. It is clear that the German slave labor program formed a part of the Nazi concept of waging total war, that the project of renovating the castle to be used in detaining the King of Belgium was an incident of war, and that the crime involved was an incident of war and, hence, a war crime. ("International Military Tribunal, Nuremberg", Volume I, pages 232-238).

A validly constituted court of an independent state derives its power from the state. A state is independent of all other states in the exercise of its judicial power, except where restricted by the law of nations (S.S. Lotus, France v. Turkey, 2 Hudson World Court Reports 23). Concerning punishment for a crime of the type involved in the instant case, it has been stated that the sovereign power of a state extends "to the punishment of piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed" (Wheaton's "International Law", Sixth Edition, Volume I, page 269). Recognition of this sovereign power is contained in the provision of the Constitution of the United States which confers upon Congress power "to define and punish offenses against the law of nations," (Winthrop, "Military Laws and Precedents", Second Edition, Reprint 1920, page 831).

Any violation of the law of nations encroaches upon and injures the interests of all sovereign states. Whether the power to punish for such crimes will be exercised in a particular case is a matter resting within the discretion of a state. However, it is axiomatic that a state, adhering to the law of war which forms a part of the law of nations, is interested in the preservation and enforcement thereof. This is true, irrespective of whether

SEARCHED
SERIALIZED
INDEXED
FILED
MAR 1952
FBI - NEW YORK

where the crime was committed, the belligerency status of the punishing power, or the nationality of the victims. ("Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pages 177-218; "Law Reports of Trials of War Criminals", by United Nations War Crimes Commission, 1947, hereinafter referred to as "Law Reports", Volume I, pages 41, 42, 43, 103; United States v. Klein, et al., Hadamar Murder Factory Case, opinion DJAWC, February 1946; United States v. Weiss, et al., Dachau Concentration Camp Case, opinion DJAWC, March 1946; United States v. Becker, et al., Flossenburg Concentration Camp Case, opinion DJAWC, May 1947; United States v. Brust, opinion DJAWC, September 1947; and United States v. Otto, opinion DJAWC, July 1947.) A British court sitting in Singapore tried Tomono Shimio of the Japanese army and sentenced him to death by hanging for illegally killing American prisoners of war at Saigon, French Indo-China (Law Reports, Volume II, page 128).

Jurisdiction: It is clear that the Court 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 sentence be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

JOHN H. POHLMAN
1st Lt. INF
Attorney
Post Trial Branch

MM715032
3/18/48
NARA DATE

Having examined the record of trial, I concur, this _____ day
of _____ 1948.

C. W. PHIFER
Lieutenant Colonel, USAF
Acting Deputy Judge Advocate
for War Crimes

MM 715032
NARA Date 3/21/60