

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

30 April 1947

WCT Rpb 533

UNITED STATES

vs

Case No. 12-1733

Eduard Karl Ludwig CURDTS,
Fritz WARNEKE, German nationals)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

ACCUSED

Tried at Dachau, Germany
Date: 22-23 January 1947
General Military Government
Court
Sentence: Death by Hanging

Married, two children
24 and 27 years
Age 56
Police Master Sergeant

CHARGE: Violation of the Laws
of War

Fleas Findings

NG G

PARTICULARS: In that Eduard Karl
Ludwig CURDTS and Fritz WARNEKE,
also known as Friedrich WARNEKE,
German nationals, did, at or near
SEESSEN, Germany, in or about June
or July 1944, wilfully, deliber-
ately 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.

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2. RECOMMENDATIONS: That the findings and sentence be approved.

3. EVIDENCE: The charges against Fritz WARNEKE were withdrawn and
he was not tried.

For the Prosecution. It was shown that during the month of June
or July 1944, a plane crashed and an unidentified American flyer was
captured near SEESSEN, Germany (R 10, 13, 14). The accused CURDTS, a
police master sergeant, with his immediate superior, 1st sergeant
CLEVE and one WARNEKE, a lieutenant of the rural police took charge
of the flyer (R 14, 48). Witness MACKENSEN testified WARNEKE and ac-
cused CURDTS drove the airman to the wrecked plane and WARNEKE asked
the accused, "Do you want, or should I", meaning shoot the flyer

(R 14, 15, 18). WARNEKE and accused took the victim into woods about 200 meters distant and accused shot the flyer in the head, killing him instantly (R 17, 22, 34, 35, 51). The victim was unarmed and made no attempt to escape (R 54). Witness JACKMAN and others buried the body that same day (R 51). The accused in an extrajudicial statement admitted the murder of the pilot (Ex 1, R 7). The flyer was an American (R 10). The accused is a German national (R 47).

For the Defense. Accused testified in his own defense; he admitted the killing (R 51) but claimed he acted under superior orders from WARNEKE (R 51). He failed to refute testimony of witness LACKENSEN (R 15, 16) that he was given choice of shooting or not shooting the flyer.

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the person of the accused and of the offense.

5. CRIMINALS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused. Defense counsel objected to the jurisdiction of the Court (R 3, 4, 5), on the grounds that Articles II and III, Military Government Ordinance No. 2, "Technical Manual for Legal and Prison Officers", Second Edition, published by Supreme Headquarters Allied Expeditionary Force, which was superseded at the time of this trial by Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, United States Forces, European Theater, 30 November 1945, failed to define the penalty for the commission of such crime. The defense claimed that, if no statutory penalties were provided for the courts to impose, the court itself was without jurisdiction to hear this case. That point is disposed of by reference to Criminal Law from American Jurisprudence, Volume 26, Paragraph 580, Page 567, which reads as follows:

"The punishment which may be inflicted upon conviction of any of the grades or degrees of homicide is usually provided by statute. If, however, no penalty is prescribed by statute in respect of any grade of culpable homicide, the punishment to be inflicted must be that prescribed by the common law, as, at

common law, under the statutes of most states, murder or first degree murder is punishable by death ***."

In other words even if no statutory penalties were set out, the common law would still govern and the courts would be entitled to impose the death sentence in a first degree murder case. All war crimes are subject to the death penalty, although a lesser may be imposed (FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", Paragraph 357).

6. CLEMENCY: There was a Petition for Review filed 19 March 1947 by Frank L. Walters, Chief Defense Counsel, on behalf of accused CURDTS, alleging (1) the defense of superior orders as a complete defense and (2) that the Court erred in not considering the superior orders as a mitigating circumstance. Defense counsel contended that on the date of the killing, the defense of superior orders was a complete and valid defense in both the American and German armies (FM 27-10, Paragraph 347, Page 87). Said provisions merely constituted a temporary self imposed policy of the United States concerning the imposition of punishment for violations of the laws and usages of war under the conditions therein contemplated and in no way altered the existing law of nations. Moreover, by this expression of policy which permitted of a very lenient administration and enforcement of the laws of war, the United States could not be said to have attempted to abrogate valid and existing provisions of international law then obtaining. The expressed policy of the United States has since been changed as indicated by FM 27-10, War Department, U.S. Army, "Rules of Land Warfare", Paragraph 345.1, Change No. 1.

As to the second allegation in the Petition for Review, namely, the consideration of superior orders as a mitigating circumstance in imposing sentence, the testimony of prosecution witnesses and the defendant himself show this killing to be a cold blooded murder without any extenuating circumstances. Furthermore it was shown by the prosecution and not rebutted by the defense that 1st Sergeant VARNEKE asked the accused whether he, CURDTS, would do the killing or should VARNEKE do it himself. Accused had the election of killing or not

killing the flyer. Under these circumstances, the court was fully justified in the sentence it imposed.

7. CONCLUSION:

- a. It is recommended that the sentence be approved.
- b. Legal Forms Nos. 13 and 16 are attached hereto, should it meet with your approval.

/s/ Robert J. Travis
/t/ ROBERT J. TRAVIS
Attorney
Post Trial Section

Having examined the record of trial, I concur.

/s/ C. E. Straught
/t/ C. E. STRAUGHT
Colonel VAGD
Deputy Judge Advocate
for War Crimes

MILITARY GOVERNMENT COURT
MILITÄRGERICHTOrder on Review
Verfuegung nach UeberpruefungCase No. 12-1733
Strafsache Nr. 12-1733Order No. _____
Verfuegung Nr. _____Whereas one Eduard Karl Ludwig CURDTS
(Name of Accused) (Name des (der) Angeklagten)was convicted of the offence of wrongfully participating in killing a
prisoner of war
wegen der folgenden strafbaren Handlung rechtswidrige Teilnahme an der
Ermordung eines Kriegsgefangenenby the ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
*Generalat Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)vom ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
*Oberenand sentenced to Death by hanging
schuldig erkannt und zu Tod durch den Strangby Judgment dated the 23 January
durch Urteil vom 23 Januar 1947 and
(date)
(Datum)Whereas the case has now come before me by way of review and after
Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden unddue consideration and in exercise of the powers conferred upon me, I
nach entsprechendem Studium des Sachverhaltes und in Ausuebung der mirhereby order:
uebertragenen Befugnisse verfuege ich:That the findings and sentence are approved. The Commanding
General, First Military District, will carry the sentence into execution
at War Criminal Prison No. 1, Landsberg, Germany, at a time to be deter-
mined by him.Dass der Befund und das Urteil bestaetigt werden. Der kommand-
ierende General, vom Militaerbezirk I, wird die Vollstreckung des
Urteils im Kriegsverbrechergefaengnis No. 1, Landsberg, Deutschland,
zu einer von ihm festgesetzten Zeit, veranlassen.Dated this
Gegeben am 23 June 1947

CERTIFIED A TRUE COPY:

WADE M. FLEISCHER
Lt. Col. AC/s/ Lucius D. Clay
(Signature of Reviewing Authority)
(Unterschrift der nachpruefenden
Behoerde)
LUCIUS D. CLAY
General USA
Commander in Chief
(Title)
(Titel)*Strike out words not applicable.
*Nichtzutreffendes ist zu
durchstreichen.

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

27 Jun 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Eduard Karl Ludwig CURDTS and Fritz WARNTKE (Case No. 12-1733).TO : Commanding General
First Military District,
APO 1, U.S. Army.

Reference is made to letter, Ho. USFET, file 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 Eduard Karl Ludwig CURDTS

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 178, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ Wm. E. Bergin
/t/ Wm. E. BERGIN
Brigadier General, USA
Adjutant General

1 Inc.:
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 15 July 1947, at 1016.
(Date) (Hour)

/s/ L. H. Johnson Jr., Maj
(Signature and Rank)

Hq. 1st Mil Dist
(Organization)

/s/ George T. Lagish
(Countersignature and Rank
of Witnessing Officer)
Maj. Inf