

HEADQUARTERS  
EUROPEAN COMMAND  
Office of the Judge Advocate

War Crimes Board of Review No. 6

17 March 1948

U N I T E D   S T A T E S   :   7708 War Crimes Group APO 407  
v.   :   Trial by General Military  
Eduard ERB   :   Government Court convened at  
Dachau, Germany, during the  
Case No. 000-Mauthausen-1   :   period 26 March - 2 April 1947.  
The court sentenced the accused  
as follows:  
Eduard ERB   :   Life imprisonment.

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Report of War Crimes Board of Review No. 6.  
BRESEE, DWINELL and COSTELLO

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- I            The record of trial in the above case has been reviewed by the War Crimes Board of Review No. 6.
- II    DISCUSSION:    The accused, Eduard ERB, was tried on four separate charges, involving the killing of inmates in the Mauthausen Concentration Camp or one of its subcamps. The court acquitted the accused of Charges I, III and IV, but found the accused guilty under Charge II. The evidence established the fact that in June 1944 the accused hanged a Russian prisoner in a wash-room of the subcamp Schwechat. The evidence has been amply supported by the testimony of eye witnesses. Immediately before the defense rested, the accused testified as follows:

"I took it upon myself as a human duty to help the prisoners with their quarters, with their clothing, with their food. I also know that everything is being said against us today, but whether it happens to be the truth or whether it is not the truth--the former prisoners do not ask that anymore. I also know that I did wrong when I beat prisoners, but my conscience and I myself can truly say that I did not kill anyone, that I did not take part at any killings, and that I did not take part at any occasions at which prisoners had to be sent to the hospital. I had no interest in doing away with people who could not defend themselves and who had done nothing in that manner." (R. 295).

In order to refute this evidence the prosecution introduced two extrajudicial statements of witnesses in rebuttal. One of these statements contains evidence that on February 19, 1945 at subcamp St. Valentin the accused beat two inmates to death, (R. 303; P.Ex.1). The other statement contained evidence that in January and February 1945 also at subcamp St. Valentin the accused ordered punitive physical exercises for inmates; that he kicked inmates and that on one occasion an inmate was carried away dead after being kicked by the accused. The defense objected to the introduction of the rebuttal evidence and requested a continuance of the trial to investigate the "Charges", and to refute the "additional Charges" (R. 312). The court denied the motion of the defense and stated: "There were two affidavits presented by the prosecution. They were offered and only admitted by the court for the purpose of refuting certain statements volunteered by the accused and would only be considered by the court in that light." (R. 314).


Although the evidence submitted by the prosecution exceeded the scope of allowable rebuttal evidence, nevertheless in war crimes proceedings evidence concerning independent crimes committed by the accused can be disregarded when there is sufficient admissible evidence to sustain the findings as to the crime charged. An examination of the entire record reveals that no injustice resulted.

III CONCLUSIONS: The court was legally constituted and had jurisdiction of the accused and the offense. No errors or irregularities were committed during the trial resulting in any injustice to accused. The Board of Review is of the opinion that the evidence in the record of the trial is legally sufficient to support the finding of the court and that the sentence recommended for approval by the Deputy Judge Advocate for War Crimes is legal, fair and just. The review of evidence submitted by

by the Deputy Judge Advocate for War Crimes is accurate and complete and fully sets forth all material facts.

IV RECOMMENDATIONS: It is recommended that the finding and sentence as to the accused be approved.

  
HOWARD P. BESSIE, COL, AGD  
Chairman

  
JOHN S. DWINELL, LT.COL, JAGD  
Member

  
JAMES E. COSTELLO, LT.COL, Cml. C.  
Member