

Dr. 96

Sisal against

Max Grind

&

2 others.

MILITARY COURTS FOR THE TRIAL OF WAR CRIMINALS

D.J.A.G's Case No. 19/886

Name of Accused (including Rank, if any)	Arm or Former Arm of the Service	Age	Date and Place of Trial
Meister Max FRINDT Peter HAFNER Christian PFALZER	All German nationals		4 April 1946 MILAN
			Convened by
			Commander No. 2. District

CHARGES

Joint Charge COMMITTING A WAR CRIME in that they at BRESSANONE, Italy, on or about 1 October 1944 in violation of the laws and usages of war were concerned in the killing of three unknown British soldiers.

President and Members of the Court (except Legal Member)	Judge Advocate Legal Member
Colonel A.J.L. PURVES, M.C., Royal Scots Lt. Col. T.F. GOODWIN, D.S.O., 179 CRE Works, R.E.	Lt-col. J.B. TAYLOR, M.B.E. Som L.I. Solicitor

Pleaded	Finding
All pleaded Not Guilty	<u>GUILTY</u> FRINDT <u>NOT GUILTY</u> PFALZER HAFNER

Sentence and Minute of Confirmation

FRINDT 15 years imp

Confirmed by Commander No.2 District
on 3 May 1946

When and where Promulgated :— 7 May 1946

Date of Receipt	To whom sent	Date sent	Purport

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GENERAL REPORT OF THE PROCEEDINGS OF A MILITARY COURT
HELD AT MILAN ON 4-6 APRIL 46 FOR THE TRIAL OF

MAX FRINDT

PETER HAFNER

CHRISTIAN PF/LZER

CHARGE : COMMITTING A WAR CRIME

in that they

at BRESSANONE, ITALY, on or about 1 Oct 44 in violation of the laws and usages of war were concerned in the killing of three unknown British Soldiers.

PLEA : ALL ACCUSED NOT GUILTY.

PROSECUTION :

1st Witness : Emilio RAFFAELLI.

On the morning of 1st Oct 44, he was told that three Englishmen had been sleeping in his barn; these men left at about 0600 hrs, after having been given food and cigarettes, and returned at about 1900 hrs that evening. The witness was worried about the presence of these men, and after having informed them of what he proposed to do, sought the advice of Peter HAFNER. HAFNER came to the farm at about 2100 hrs that evening, accompanied by about five German policemen. Witness was taken to the back door of the barn which led onto the top storey, (the barn being built into a slope) by a German officer and the German policeman FRINDT. HAFNER and others went to the front door of the barn which led onto the ground floor. Witness heard four or five shots fired from inside the barn; the German officer descended to the middle floor where the Englishmen were; witness followed and, looking down the stairs, saw two men with their hands up, one man lying groaning in the hay, FRINDT holding a pistol and a German policeman NICOLET. Witness then left and, as he was returning to the farm he heard more shots; at the same time he saw HAFNER. NICOLET then joined HAFNER saying that they had shot the three men. FRINDT had been in the barn all this time. Later FRINDT asked for a cart to take the bodies away. Witness was forced to assist in putting the bodies into a cart; they were riddled with bullets. Witness believed the three men were unarmed.

Cross examined by the defending advocate witness stated that his wife told him the men were English; one of the three spoke bad Italian. Witness could see HAFNER while the second series of shots were being fired, but not at the time when the first shots were fired. When NICOLET spoke to HAFNER he did not say who had fired the shots.

2nd Witness - Sebastiano GALLONETTO.

Witness, who worked on the same farm as RAFFAELLI, reiterated the preliminaries of the shooting incident. Witness accompanied HAFNER and a German policeman to the front door of the barn; climbing to the middle storey they saw three men asleep in the hay. The German policeman shouted a few words in German and fired four or five shots; one of the men was hit. Witness then escaped and was later followed by HAFNER. After he had left he heard more shots fired; HAFNER was with him at the time.

Cross examined by the defending advocate witness stated that NICOLET fired the first shots, killing or wounding the Englishman; he identified NICOLET from photographs which were handed into Court.

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Examined by the Court witness stated that he could not say whether or not FRINDT was in the room at the time of the shooting.

3rd Witness Paolo ZORZI.

Witness related finding three bodies lying in the cemetery chapel, two with their arms outstretched and one with its arms by its side.

4th Witness - Maria JAIST.

Witness was the keeper of a wine shop in BRESSANONE. She heard NICOLET say that he had shot the prisoners.

5th Witness - 1st Lieutenant William T. KETTERING - US Army.

Witness produced two statements of FRINDT in which he first disclaimed all knowledge of the incident, but subsequently stated that NICOLET, BARTSCH and the Lieutenant did the shooting; these two statements taken on 18 May 45 and 20 May 45 respectively exhibited a considerable number of discrepancies. In particular the statements were inconsistent with respect to the footwear which the victims were wearing and to FRINDT's movements during the shooting. Witness produced a statement of HAFNER, in which he stated that it was NICOLET who fired the first shots. HAFNER left the barn after the first shots were fired. FRINDT, NICOLET and BARTSCH appeared after the second series of shots had been fired.

6th Witness - J. J. PARTIGLER.

Witness produced his translation of the statement of PFALZER in which it was stated that PFALZER first remained on guard over the cars which had brought the party to the farm and subsequently over the bodies in the barn.

The Prosecutor officer produced to the Court the statements of FRINDT and HAFNER, taken on 9 July 45. In his statement FRINDT maintained that he remained on guard at the front door of the barn while his two corporals NICOLET and BARTSCH, the interpreter HAFNER and the Lieutenant entered the back door. He did not arrive on the middle storey of the barn until after the first shots had been fired. He maintained that NICOLET had shot the first man and subsequently shot the second two without orders, when he, FRINDT, had turned away after questioning them.

HAFNER, in his statement, corroborated that FRINDT had arrived on the scene after NICOLET had fired the first series of shots. HAFNER then descended the stairs after which he heard more shots.

The case for the prosecution closed.

The defending advocate submitted that no prima facie case had been made against PFALZER. The Court found him not guilty and he was accordingly discharged.

The DEFENCE.

1st Witness ; the accused FRINDT.

Witness stated that on the evening of 1st Oct 44 he was informed by PFALZER that there were parachutists about. A party was formed, PFALZER being ordered to come, HAFNER and Lieut LEIR coming voluntarily, and the two policemen, NICOLET and BARTSCH, who were not under FRINDT's command, also volunteering. On arrival at the farm PFALZER was left to guard the cars.

/to sheet three.

FRINDT and LEIR want to the back door, NICOLET, BARTSCH and HAFNER to the front. Witness heard shots. He descended to the ground floor level and then went upstairs inside the barn. He saw NICOLET with a pistol in his hand and one man lying in the hay. FRINDT ordered that there should be no more shooting. NICOLET said he had fired because the man had not raised his hands. Witness turned away preparatory to taking the prisoners to the cars. There were more shots and the remaining two prisoners fell. NICOLET said he had fired because the men had wanted to drop their hands.

In cross examination FRINDT stated that he did not approve of NICOLET's action; he did not consider the shooting justified, but could not say whether the prisoners intended to drop their hands. FRINDT had no right to put NICOLET under arrest.

2nd Witness : The accused HAFNER.

Witness related entering the barn with NICOLET. Three men were lying in the hay. NICOLET shouted "hands up" and fired two or three shots into the hay; two of the men got up, the other was kneeling when NICOLET fired more shots, hitting him. Witness then fled downstairs. FRINDT arrived just before witness descended the stairs.

The Prosecuting Officer addressed the Court.

There was no evidence that either of the accused actually killed the three men; they were principles not in the first but in the second degree.

The Defending Advocate addressed the Court.

There was no common intent between NICOLET and FRINDT. FRINDT did not intend that the three men should be shot; he had no opportunity to prevent the killing.

The Court considèd its finding and sentence.

HAFNER	NOT GUILTY.	DISCHARGED.
FRINDT	GUILTY.	15 YEARS INPRISONMENT.

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THE PETITION OF MAX FRINDT.

The petition in respect of the accused FRINDT, made by his Defending Advocate, Major Dr. WEINLICH, set out the following points:-

1. When NICOLET shot the first British prisoner, FRINDT was not present.
2. FRINDT was justified in accepting NICOLET's explanation of the first shooting incident; NICOLET was a more experienced policeman and knew under what circumstances the use of arms would be justified.
3. FRINDT had no reason to imagine that NICOLET would subsequently shoot the other two prisoners.
4. FRINDT had to be circumspect in his dealings with NICOLET, who was an old and influential member of the NAZI Party.
5. FRINDT was already in bad odour with the Party, having three times in the previous eleven years, in his capacity as a policeman, attempted to effect the arrest of Party members for criminal acts done by them. In each case he suffered persecution as a result.
6. Even though FRINDT might have had doubts as to NICOLET's right to shoot he would have been compelled to act warily at the risk of being denounced as pro-British.
7. The second shooting incident occurred so rapidly and unexpectedly that FRINDT had no opportunity to prevent it.
8. The killing of the prisoners was against FRINDT's own interests, in that their identification and interrogation was rendered impossible.
9. FRINDT did his duty as a policeman and rendered a full and truthful report to his superiors.
10. Even when warned by a friend ⁱⁿ May 1945, that information had been laid against him which would result in his arrest he did not attempt to flee, being confident that his innocence would be proved at his trial.

On 3 May 46 the finding and sentence of the Court were confirmed by Major General C.A. HEYDEMAN, G.O.C. No 2 District.

On 25 June 46, On review the Supreme Allied Commander remitted 12 years imprisonment from the sentence awarded by the Court.
