

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

WET Rpt # 665

3 June 1947

UNITED STATES)

vs)

Alwin REINKE, a German national)

Case No. 12-2337

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

ACCUSED

Tried at Dachau, Germany
Date: 29, 30 January 1947
General Military Government Court
Sentence: Death by hanging

Married, two children
Age 47
Court Executory Employee

Facts

Findings

CHARGE: Violation of the Laws
of War.

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PARTICULARS: In that Alwin REINKE,
a German national, did, at or near
ASCHENBURG, Germany, on or about 21
May 1944, wilfully, feloniously and
unlawfully kill a member of the
United States Army, believed to be
Robert A. HILDEBRAND, who was then
an unarmed and surrendered prisoner
of war in the custody of the then
German Reich, by shooting him with
a gun.

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

3. EVIDENCE:

For the Prosecution. In May 1944 a flyer parachuted to safety in
the vicinity of ASCHENBURG, Germany, and either landed in or ran into a
small forest (a 32, 33, 46, 53, 54). According to the testimony of
Heinz Schnack, an eye-witness, Schnack and a friend (Reese), both boys
or young men, saw the parachutist descending and ran toward the small
forest. Enroute they met the accused REINKE with his Shepherd dog. As
they entered the forest, REINKE chased the boys back but they returned.
REINKE sent the dog ahead to pick up the scent, the dog began to bark
and they saw the pilot sitting behind a tree. REINKE called the dog
off and they went toward the flyer. REINKE chased the boys away a
few times but they followed. The accused called to the flyer, "Come
here" and the flyer approached REINKE with his hands raised. Schnack

and Reese were standing about five to six meters behind REINKE (R 33, 34, 37). The accused asked the flyer where his parachute was, then said "March". As the flyer walked ahead of REINKE to show him the parachute, REINKE shot him with a pistol and killed him. The flyer fell forward on his face. At the time REINKE fired he was standing still, 2 or 3 meters from the flyer. The bullet entered the back of the flyer's head and came out over his eyes (R 35, 37, 44, 45). REINKE removed several items from the flyer's pockets. Several people were present when REINKE searched the body, including two men, Banck and Geest, who arrived from the same direction that REINKE and the boys had come. The parachute was found buried four to six meters away from the flyer (R 36, 37, 41, 45).

One witness, Harold Witt, who testified that he was standing behind a tree watching REINKE and the flyer when REINKE shot the flyer, substantially confirms Schnack's story of the shooting (R 6 thru 9).

Two witnesses, Johannes Banck and Heinrich Geest, testified that while searching for the flyer they met REINKE, Schnack and a friend of Schnack's named Reese near a small woods. REINKE was on his bicycle and had his German Shepherd dog with him (R 46, 47, 54, 56, 57). REINKE and the two boys went to the left along the edge of the woods and Banck and Geest to the right (R 47 thru 49, 57). Banck and Geest entered the woods on the right and Geest could see REINKE entering on the left. Schnack and Reese were in the immediate vicinity of REINKE (R 57, 58). REINKE left his bicycle lying in an open field against a hedge (R 57). When Banck and Geest were about ten meters into the woods they heard a shot about 100 meters to the left (R 47, 54). When Geest heard the shot he looked through the trees and saw REINKE standing by the flyer. He could see REINKE all of the time as he walked through the woods toward him, and as he approached he saw Schnack and Reese in the immediate vicinity. When Geest and Banck arrived, Schnack and Reese were standing near REINKE and REINKE's dog was there (R 55, 59). The pilot was lying on his back. There was a small wound on the front of his forehead and the blood was pouring

out (R 55, 56). REINKE had a pistol in his hand and fired one shot into the ground after the two men arrived at the scene (R 48, 55). Geest did not hear anyone call his name before or after the original shot was fired (R 58, 62). Banck heard nothing from the time he left REINKE at the edge of the woods until he heard the shot (R 49, 50). Identification tags found on the body bore the name of Robert A. HILDBRAND (R 73). The pathologist report on Robert A. HILDBRAND, an American airman, showed that there was no evidence of injury in the skull but stated, "Body in such advanced state of decomposition that cause of death could not be determined" (F-Ex 1, 2).

For the Defense. On cross-examination by defense counsel, Schnack was questioned concerning extrajudicial sworn testimony given on 10 October 1945 in which he said, "On the way we met REINKE with his dog and bicycle"; Schnack answered, "I can't remember very well now whether he had a bicycle or not" (R 40). Schnack was also questioned concerning other testimony given at the same time, "We heard the shot and went forward and found the airman lying on the ground dead"; on the witness stand Schnack answered, "I saw him being shot to death" and stated that when previously questioned he had also said that he had seen him shot to death (R 44, 45). (The entire testimony given by Schnack on 10 October 1945 was not introduced in evidence).

On cross-examination by defense counsel, Harold Witt admitted several discrepancies between extrajudicial sworn testimony previously given and statements made on the witness stand (R 10 thru 27), but denied that he had cause for revenge against REINKE (R 29, 30). When cross-examined by defense counsel, Banck testified that he did not see Harold Witt at the scene (R 49). Geest testified that he saw Witt when he was about to leave the scene of the shooting (R 60). Geest further testified that none of the trees in the immediate area were large enough for a man to hide behind (R 61).

Banck, a witness for the prosecution, testified on direct examination that when he arrived immediately after the shooting and asked REINKE, "Why did you do that?", REINKE answered, "He wanted to escape" (R 47). Geest,

on cross-examination, testified that he criticized REINKE, saying, "We have to think about the fact that we also have sons out there fighting"; and REINKE answered, "That is all the same", and added afterwards, "If he tries to escape" (R 60). On cross-examination Geest first testified that Schnack and Reese were in the immediate vicinity of REINKE when REINKE entered the forest (R 57); however, he later testified that Schnack and Reese entered the woods from the same direction that he and Banck entered and not from the direction that REINKE entered, but he did not know the direction they took after they entered the woods (R 59, 60).

The accused, Alwin REINKE, elected to testify in his own behalf in substance as follows:

On 21 May 1944 REINKE was leader of the country guards, emergency militia. He had instructions to capture parachuted flyers and if they tried to escape he was instructed to "stop" and shoot if they did not stop. He had never before attempted to capture a parachuted flyer (R 92 thru 94). REINKE, in search of the flyer, met Geest and two young people (Schnack and Reese (R 122) in an open clover pasture. Banck was not there at the time (R 95). He told Geest to go into the forest on the right and he would go in on the left side. REINKE followed the boys riding his bicycle and keeping a little to the left until he reached a little hill. He left his bicycle leaning against the hill and told his dog to lay down. His dog did not follow him and was not with him in the forest. After the incident he found his dog 800 to 1000 meters away on the road when he was enroute home. REINKE walked on up the street around a corner and found Schnack and Reese in front of another wall (,or hill). One of the boys said, "He is sitting up there". REINKE chased the boys away, saying, "Go further back. It is possible that he is armed." The boys went to the right. Again he told them to go off to the right and they went (R 98 thru 100, 114). REINKE looked into the forest and saw the flyer crouching and looking to the side in the direction of the young people. REINKE drew his 7.65 pistol and went over the wall, which was about three feet

high, into the forest (R 100, 101, 120). When REINKE got over the wall he saw the flyer coming toward him, but when the flyer saw him, he looked over his right shoulder and started running in the other direction (R 101). The flyer never raised his hands as a symbol of surrender (R 121). The flyer increased his pace and REINKE ran after him. The flyer was about ten paces ahead when he started to run and gaining distance because REINKE could not run fast (R 102). REINKE stopped, loaded his pistol, and then started to run again but saw that he could not catch the flyer, yelled "Stop, stop", and the flyer ran faster. REINKE called "Halt" once more, slowed down to a pace between walking and running, raised his pistol, fired a shot and the pilot fell forward (R 103, 104). REINKE was approximately 20 meters behind the flyer when he fired (R 106). He was "somewhat between walking and running" when he fired and was aiming at the flyer's right shoulder. He went up to within five meters of the flyer and saw a spot on the left side over the flyer's eye, which was bleeding. He did not approach the body immediately because he was "flabbergasted" (R 104). After going to the body REINKE wanted to find Geest so he took a few steps to the right in the direction Geest had taken and saw the two young men at the edge of the woods. He called for Geest, Geest answered, "Do you have him, did you get him"; REINKE answered, "Yes, here". REINKE went a little further toward the body of the flyer but did not see Geest. He did not know whether he had the safety on or whether his pistol was cocked, so he fired one shot into the ground. He then saw Geest coming toward him. Geest asked, "Did you just shoot now?" and REINKE answered "yes". Geest and REINKE went down to the body of the flyer together (D-Ex 1, R 108, 109). Reese and Schnack arrived at about the same time (R 121). REINKE and the two young men looked for the parachute and found it buried with a little portion not covered (R 110). Several articles were taken from the body of the flyer and turned over to REINKE, who distributed some candy and cigarettes that were taken from the body to the people who had gathered (R 126). The other articles were later turned over to the proper authorities. As REINKE left the

scene of the shooting and came out of the woods he saw Harold Witt (R 112). The statement of Schnack that REINKE asked the pilot where the parachute was and the pilot turned to show him is a false statement. REINKE was not required to make a written statement concerning the shooting (R 125). REINKE, in his official position, reported Harold Witt to the police for firing a 6 mm rifle in the yard of a wood farm and later talked to Witt's family. On this occasion Mrs. Witt told REINKE, "That boy can sure lie. I don't know what will ever become of him" (R 127, 128).

A witness, Rimmle, testified that he arrived in the forest and met REINKE leaving. REINKE told him that he had shot the flyer while he was trying to escape (R 135). REINKE's dog was with him. It always stayed a few meters from its master (R 142). Harold Witt told Rimmle shortly before the trial that he did not see REINKE shoot the flyer (R 136).

Schnack told Rimmle that he saw Witt only after the whole thing was over. Harold Witt had a reputation in the community for being a bad boy (R 137). The dog tags taken from the body of the flyer showed that the flyer's name was Robert A. HILDEBRAND (R 141). The terrain in the forest where the incident occurred is of an even level; however, there are holes in the forest where, years ago, trees were removed (R 145, 146).

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

5. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

6. CLEMENCY: Consideration was given to a Petition for Review dated March 1947 signed by Frank L. Walters, Chief Defense Counsel, accompanied by a Recommendation of Commutation of Sentence dated 13 March 1947, signed by Henry F. Gantt, Colonel, FA, President of the Court, and Harry F. Holz, Lt. Colonel, Inf., a member of the Court.

This recommendation, together with a 1st Indorsement dated 5 May 1947, signed by Henry F. Gantt, Colonel, FA, written in reply to a letter dated 1 May 1947 from the Deputy Judge Advocate, shows that two

members of a court composed of five members at the time of trial and still believe that the death penalty is too severe a punishment in view of unstated and undescribed extenuating and mitigating circumstances surrounding the commission of the crime, although one of these members voted for the death penalty after the court had been unable to reach an agreement. It is emphasized that, irrespective of whether Witt's testimony is to be believed, the witness Schnack stated that he was at the scene and observed the shooting, that he withstood vigorous cross-examination, and that two apparently reliable witnesses, Banck and Geest, confirm the fact that he was there. Further, the accused's story to the effect that he ran after the victim for a while, stopped and loaded his gun, started running again, losing ground all the time, and then slowed down to almost a walk and shot the victim at 20 meters while the latter was running very fast, appears to be strong evidence against the accused. Thus, the Court could well have concluded that a cold-blooded killing had been established. Therefore, no clemency is recommended.

7. CONCLUSIONS:

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

/s/ Nora G. Springfield
/t/ NORA G. SPRINGFIELD
1st Lt., WAC
Post Trial Branch

Having examined the record of trial, I concur.

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

HEADQUARTERS
EUROPEAN COMMAND

AG 383

AFO 757
23 July 1947

SUBJECT: Execution of Sentence in the Case of the United States vs.
Alwin REINKÉ (Case No. 12-2337).

TO : Commanding General
First Military District
AFO 1, U. S. Army

Reference is made to letter, Hq. 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 Alwin REINKÉ.

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, AFO 178, U. S. Army.

BY COMMAND OF GENERAL CLAY:

1 Incl:
1 Form No. 13 (in dup)

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

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 August 1947, at 1004 .
(Date) (Hour)

/s/ L. H. Johnson Jr., Maj
Hqs 1st Mil Distr.

/s/ George T. Lagish, Maj., Inf
Witnessing Officer

MILITARY GOVERNMENT COURT
MILITÄRGERICHT

ORDER ON REVIEW
VERFUEGUNG NACH UEBERPRUEFUNG

Case No. 12-2337
Strafsache Nr. 12-2337

Order No.
Verfuegung Nr.

Whereas one Alwin REINKE
(Name of Accused) (Name des (der) Angeklagten)

was convicted of the offence of wrongfully killing a prisoner of war
wegen der folgenden strafbaren Handlung rechtewidrige Ermordung eines
Kriegsgefangenen

by the General Military Court
vom Mittleren Militaergerichte

at Dachau, Germany
in Dachau, Deutschland
(Address of Court)
(Anschrift des Gerichts)

and sentenced to death by hanging
schuldig erkannt und zu Tod durch den Strang

by Judgment dated the 30 January 1947
durch Urteil vom 30 January 1947 and
(date) (datum)

Whereas the case has now come before me by way of review and after
due consideration and in exercise of the powers conferred upon me, I
hereby order:

Diese Strafsache ist mir zur Ueberpruefung vorgelegt worden und
nach entsprechendem Studium des Sachverhaltes und in Ausuebung der mir
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 Criminals
Prison No. 1, Landsberg, Germany, at a time to be determined by him.

Dass der Befund und das Urteil betaetigt worden. Der Kommandierende
General, Militaerbezirk I, wird die Vollstreckung des Urteils in dem
Kriegsverbrecher gefaengnis No. 1, Landsberg, Deutschland, zu einer von
ihm festgesetzten Zeit veranlassen.

Dated this
Gegoben am 18 July 1947.

/s/ Lucius D. Clay
/t/ LUCIUS D. CLAY
General USA
Commander in Chief