

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 207-1

669
5 August 1947

UNITED STATES)

v.)

Case No. 12-3121

Wilhelm LANGELOH)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 10-11 April 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Wilhelm LANGELOH, alias Felix BAUER, a German national, did, at or near APPEN, Germany, on or about 18 June 1944, wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of an unknown member of the armed forces of a nation then at war with the then German Reich, who was then and there a surrendered and unarmed prisoner of war in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: Following a bombing attack in Germany, 18 June 1944, an American flyer parachuted to earth from his disabled plane, landing in Appen-Etz. The flyer was taken into custody and immediately delivered to the local police. Within an hour or so the flyer was taken over by the accused, a party member, led just outside of the town, shot in the back of his neck and left for dead. The flyer, however, was not dead but died the next day in a Hamburg hospital as a result of the wound.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Wilhelm LANGELOH

Nationality:	German
Age:	55
Civilian Status:	Clerk
Party Status:	1st Lieutenant SA and Kreisorganizationleiter NSDAP
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: During the forenoon of Sunday, 18 June 1944, an unknown American airman parachuted into the village of Appen-Etz, Germany. He was taken into custody and immediately delivered to the police, Johnny Wohlers and Hans Runge at about 1100 hours (R 30, 31). He was taken to the police station by way of the mayor's office (R 50). The flyer was in uniform and unarmed (R 7).

Within an hour or so, Wohlers received a telephone call from the Kreisleitung at Pinneberg, inquiring if a flyer was in custody. When this fact was confirmed, instructions were given to the effect that the flyer was to be turned over to NSDAP party member LANGELOH (the accused) who would arrive in a few minutes. Wohlers demurred by stating that he intended to deliver the flyer to military authorities as a prisoner of war. Whereupon the caller from the Kreisleitung stated that the flyer would be delivered to LANGELOH by order of the Landrat (P-Ex 1, pp 3, 6, R 8, 9, 32). The accused, Wilhelm LANGELOH, arrived within a few minutes and stated, "I'll undertake the transport of the flyer to the airport. Whether he gets there, I don't know". When they left, wohlers sent Runge behind to observe the actions and conduct of LANGELOH (R 32, 33, 38). The party of three

went on foot in the direction of Utersen Air Base which was two or three kilometers away. After they had gone 150 or 200 meters from the village, LANGELOH who was walking behind the American prisoner, shot him in the neck from the rear. The flyer sank forward. The accused with his feet rolled him into a ditch. The accused then left the scene (R 11).

Hans Runge testified that the flyer did not try to escape at any time and that LANGELOH was wearing the uniform of a First Lieutenant in the SA. That the flyer was unarmed (P-Ex 1, p. 7, R 10). No conversation was had with the prisoner. When he was shot he appeared to be dead for a time after LANGELOH left but in about five minutes the flyer began to talk. When LANGELOH returned the first time, he was told by Runge, "the flyer is still alive. Why this agony?". LANGELOH replied, "He shall croak like this in the ditch". LANGELOH then left for the second time and said he would ride to the airport and make a report there (R 11). Runge turned the wounded flyer's head so that he could breath easier. The blood had clogged on his mouth (R 17). In time some soldiers came by and learned the details from Runge. Runge asked one of them to notify the police sergeant of the situation (R 22). Wohlers came to the scene and got a vehicle and transported the flyer to the airport dispensary (R 23). LANGELOH returned for the third time on his motorcycle and said, "That is not the first one. It isn't a matter of one human life", then waved his pistol in the air and as he left again he said, "Heil Hitler". He went in the direction of Pinneberg (R 24).

Runge testified further that in May 1945 Dr. Wright of the Utersen Airport who had treated the flyer told him (Runge) that the flyer died in the hospital at Hamburg a day or so after the shooting (R 13, 18, 26).

Johnny Wohlers testified that at the dispensary the flyer was treated by Dr. Wright (R 35).

Dr. Edwin Wright testified that in June 1944 he treated the American flyer in the dispensary at the Utersen Airport for "a shot wound in the back of the neck adjoining the spine". He then gave the order that he was to be taken immediately to Reserve Hospital No. 5 in Hamburg. He was transported to Hamburg at approximately 1500. That "an injury to the part of the spine at the neck, respectively (sic), the soft tissues of the neck, is always a serious injury" (R 54, 55). He further testified "that the next morning a telephone call was received by the personnel of my hospital from the Reserve Hospital in Hamburg that the flyer who had been sent by me to that hospital had died" (R 56). Hamburg is thirty kilometers (18 3/4 miles) from Utersen (R 18).

The pretrial statement of the accused, Wilhelm LANGELOH, taken on 22 August 1946, was introduced as prosecution exhibit (P-Ex 1). It showed the accused on 20 June 1945 assumed the alias of Felix Bauer because he knew the Allies were looking for him under his regular name, LANGELOH. That the accused joined the NSDAP in April 1942 and in 1942 he became Kreisorganisationsleiter (P-Ex 1, pp 2, 3). That in May 1944 official announcement was made by the Kreisorganisationsleiter to all party members and others that all flyers were to be killed (P-Ex 1, p 4). That after "about four or five days we got notice that the flyer had died". This information was given him by Kreisleiter Sievers whom he supposed had been called to the airport. The burial of the flyer was described by the accused as follows:

Q "Where did they bury this American flyer?"

A "The flyer was buried in the air base, Utersen (name of base)".

Q "Near what town is the air base?"

A "The air base is northwest from Pinneberg (about 10 kilometers from Pinneberg).

Q "Was there a special burial ground at Utersen?"

A "There was a special burial ground for German and other military personnel". (P-Ex 1, p 7).

Evidence for Defense: The accused did not testify at his trial in court but introduced into evidence as defense exhibit marked D-Ex 1, a written statement he had made for the assistance of his attorneys two days before trial on 9 April 1947. In this exhibit he stated that he shot the flyer solely with the intention of merely injuring him. That the shot was from a distance of 3 or 4 meters, the flyer collapsed and the injury was in the flyer's neck. He emphasized that he did not intend to kill the flyer and offered as proof the fact that he used a small 7.65 pistol and did not arm himself on that day with his larger pistol (D-Ex 1, p 3).

Sufficiency of Evidence: The position of the defense that corpus delicti was not proven is untenable. With regard to the evidence offered in support of superior orders the accused failed to meet the burden of proof required by pertinent authorities. Both propositions are discussed in Section V, post. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was timely filed by Mr. Thomas L. Nair and Dr. Max Burger, attorneys for the accused, 16 April 1947, in which the proof of corpus delicti was challenged.

A Petition for Clemency was filed by the accused's wife, Harriet Langeloh and his sister, Elfrieda Langeloh, dated 31 May 1947, in which a reduction of punishment is requested.

Section 357, Field Manual 27-10, "Rules of Land Warfare", provides

357. War Crimes subject to death penalty. --
All war crimes are subject to the death
penalty, although a lesser penalty may
be imposed. ****

There is no basis for any change or modification in the
sentence presented by anything contained in the petitions.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction
of the person of the accused and of the subject matter.

Corpus Delicti: The corpus delicti contention set out in
the Petition for Review is without merit as corpus delicti was
proven in two ways, viz:

(a) By the accused on Page 7 of his statement introduced
as P-Ex 1 wherein he states where the flyer was buried and (b)
by the hearsay testimony of three witnesses, Hans Runge, Johnny
Wohlers and Dr. Wright (R 13, 42, 56). Hearsay testimony is
admissible in General Military Government courts in the trial
of war crimes.

Superior Orders: Accused LANGELOH as shown in Section IV,
paragraph 1, supra, sought to justify his actions by offering
evidence to show that he was acting in compliance with "superior
orders". Compliance with superior orders does not constitute a
defense to the charge of having committed a war crime (Trial
of Henry Wirz, 40th Congress, 2nd Sess., House of Representatives,
Ex. Doc. No. 23, page 812; Vol. II, Sixth Edition, Oppenheim,
"International Law", paragraph 253, page 453; Llandovery Castle Case,
16 American Journal of International Law, page 708; United States v.
Dominikus Thomas, December 1945; and United States v. Alfons Klein, et
al., (Hadamard Murder Factory Case), February 1946. This rule is
followed in Anglo-American jurisprudence (Mitchell v. Harmony, 13

How. 115, and "Manual for Courts-Martial, U. S. Army", 1928, paragraph 148).

Compliance with superior orders may, under certain circumstances, be considered in mitigation of punishment. However, an accused who seeks relief on such grounds assumes the burden of establishing (a) that he received an order from a superior directing that he commit the wrongful act, (b) that he did not know or, as a reasonably prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements, the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (See London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare", paragraph 345.1, Change No. 1, 15 November 1944; Oppenheim, "International Law", supra, and the Llandovery Castle Case cited therein; "Manual for Courts-Martial", supra; "Report to the President of United States", 7 June 1945, by Mr. Justice Jackson, U. S. Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of our Enemies", found in footnote, page 53, "Military Occupation and the Rule of the Law", by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for War Crimes in U. S. vs Albert Bury and Wilhelm Hofner, September 1945, U. S. v. Dominikus Thomas, December 1945, and U. S. v. Gerd Beck and Otto Weinreich, December 1946).

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

/s/ D. S. PURL
/t/ D. S. PURL
Major Cml. C.
Attorney
Post Trial Branch

Having examined the record of trial, I concur.

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