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Additional Information

USA & EUR JAG

War Crimes Case File 1945-55

Case # 12-1104

RECORDS OFFICER'S SUMMARY OF THE CASE

1. Name: BECK, Gerd Case No. 13-1104
2. Date and place of birth: 17 Oct 1922 Wuppertal, Northrhine/Westphalia
3. Nationality: German
4. Previous criminal convictions: None
5. Name of court and place of trial: General Military Court, Ludwigsburg
7-14 May 1946
6. Offense: Violation of the Laws of War. Particulars charge that BECK and one Otto Weinreich did wilfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of a surrendered and unarmed American flyer.
7. Sentence: 14 May 1946; death by hanging
11 Jan 1947 - sentence approved by reviewing authority
8. Clemency: 14 May 1947 - sentence commuted to life imprisonment. No clemency was recommended by the EUCCOM War Crimes Modification Board during the 1950-1951 modification program.
9. Sentence expires: Life imprisonment
10. Description of Offense: On 28 September 1944, an American flyer parachuted from his disabled plane and landed on the roof of a house at 2 Krummestrasse, Wolfenbuettel, Germany. A crowd gathered in the street outside and about fifteen men, including BECK and Otto Weinrich, entered the house and pulled the flyer through a window into a room. At this time, the victim was uninjured, unarmed, and had his hands raised above his head in surrender. A Wehrmacht Captain named Kanschat appeared and ordered all Wehrmacht personnel out of the room. At this time, the American flyer was standing with his back to BECK. A pistol belonging to Weinreich was taken by BECK who fired one shot through the flyer's head. All present in the room then left and went outdoors, leaving the body in the room. The victim was then carried out into the backyard and later taken away by automobile.
11. Extent of Participation: The facts as set out above appear uncontroverted. The point in issue at the trial was whether the Wehrmacht Captain Kanschat ordered BECK to kill the flyer, the defense being based solely on "superior orders." BECK and Weinreich, who was a political leader (ortsobmann), were tried jointly and the Wehrmacht Captain Kanschat was tried several months later. BECK and Weinreich testified against Kanschat at his trial but Kanschat had not been apprehended at the time of this trial, and was not available as a witness. BECK was a member of a German paratroop unit, and the only person at the scene of the incident in paratrooper uniform.

a. Evidence for the Prosecution:

Several witnesses testified to the fact that a flyer had parachuted into the town, had been taken into the house by a group of men, one of whom was a paratrooper, and that later a body was seen lying in the back yard of the house.

One witness testified that she heard the paratrooper say, "Well, we finished this one." However, the witness could not positively identify BECK as the man who made the statement.

Witness Earnst Meier, 38, and Ursula Renner, residents of Wolfenbuettel correctly identified BECK and testified that after the incident occurred a group stood around discussing it and BECK said, "I have just killed an American pilot," and further stated that he had done so because his comrades in arms were treated the same way by the Allies.

Prosecution also introduced into evidence a sworn pretrial statement by BECK that he had killed the American flyer on the direct order of Captain Kanschat.

b. Evidence for the Defense:

At the trial, BECK, at his own request, made the following unsworn statement. He stated that he entered the service in January 1940. He belonged to a parachute outfit and had been taught that whoever gave an order, assumed full responsibility for it and that if a subordinate realized that the order given to him was illegal, the subordinate still had to carry it out. Whenever a German soldier wanted to say something or intervene, the soldier was usually told, "Leave the thinking to the horses. They have got a bigger head."

BECK, in his statement, described the events leading up to the capture of the flyer as established by previous witnesses. He could see the parachutist hanging on top of one of the houses and the parachute itself was on the roof while the ropes lay on one of the top floor windows. He passed the crowd and entered the house. The moment he entered the room after having gone upstairs to the house, he was very frightened because standing in front of him in uniform was a political administrator who was loading a pistol with the barrel pointing toward BECK's stomach. The political administrator loaded the weapon, cocked it, and seemed to be very much excited himself. BECK did not know what the man intended to do with the pistol. While the pistol was being loaded, Captain Kanschat, whom BECK knew very well, and who at that time was his superior officer, gave the order that all soldiers had to leave the room. BECK testified that besides himself, there were from five to seven soldiers in the room, none of whom he recognized. The soldiers were talking in loud voices and the order which Captain Kanschat gave was intended for them. The Captain not only gave the order, but, in fact, chased the soldiers out of the room by herding them toward the door. BECK, who was standing on the right hand side of the door and because the barrel of the pistol was pointing at him, testified that he subconsciously stepped to the right and stood with his back to the wall. He further testified that up to that time he had not yet seen the flyer, probably because there were so many people in the room taller than he, and who stood in front of him. At the very moment after the soldiers left the room Captain Kanschat gave another order and used these words, "Shoot that soldier." BECK testified that what happened after that, he couldn't remember. He could not remember the exact details and all he could say was that any details he did recall were after the air raid was over and he returned to his home and sat down at the table with his head in his hands and began thinking * * *.

He recalled after some thinking that he did not remember having fired the shot nor did he remember anyone else firing the shot. He did not even remember seeing the person who was shot. He thought he must have fired the shot because he did remember that the order was given and then later somebody showed him blood on his hands. He did not recall having grabbed the pistol from the co-accused Weinreich. Later on, when he was back in his house, the only recollection he had of seeing the American flyer was that of a shadow with his hands up. He could not remember whether or not the flyer had weapons or whether they had been taken away from him. That it could not have been more than a few seconds between the time Captain Kanschat issued the order and when the shot had been fired. The statement which had been introduced in evidence

by the prosecution had been dictated to him by an American Captain and he had repeatedly refused to sign the confession even though he had been threatened with a weapon, but finally did sign. He had been wounded nine times and at the time of the incident was in the hospital because of his wounds. These wounds cause him to suffer occasional dizzy spells and headaches which pass after two or three hours. On cross-examination BECK testified that his conscience would never have let him carry out the order of Captain Kanschak if he had complete power of thinking at the time even though he knew that according to German law, he would have had to carry out the order knowing that nobody could have ever made him responsible for what he had done. He had never been taught the difference between a legal and an illegal order, but if allowed to think about it, a man's conscience lets him know whether or not an order is legal or illegal. He believed the order was from Captain Kanschak because he (Captain Kanschak) looked directly at BECK when he gave it. He presumed that he killed the man but would not be able to so state under oath. BECK stated that after being taken into custody, he was questioned on several occasions by American officers, and that before the first interrogation he had spent approximately one week in confinement with his co-accused Weinreich. BECK admitted that during the interrogations he tried to answer the questions according to the truth as far as he could remember the incident. He stated that during the interrogation, he had tried to make the incident plausible to himself, knowing that the Captain would bear the full brunt of the responsibility for the actions. He told the investigating officer that the American flyer was standing opposite him about two meters from the window and he disliked saying that he shot the man from the back. He was not sure whether or not the pistol was handed to him by co-accused Weinreich but to the best of his recollection he could say that he received the pistol from him and that he did not grab it from him. The following questions were asked:

Question: "Now you want us to believe that you gave the American officer an account of what you had done because someone told you what you did, is that right?"

Answer: I stated this morning that when I was told what had happened, I relied upon the order that had been given to me. In other words, I backed behind the order and, therefore, when I was asked to relate the incident, I could only tell what was told me.

Question: And who told you those things?

Answer: Above all the one who told me most of the story was the first witness, Hubert Bolm. Another one who told me a lot about it was my co-defendant, Weinreich. The rest of the story I probably figured out myself because when I sat down to think about it, I had to come to some conclusion or another and that is when I was told this morning that I gave an original answer, namely, that I stood two meters from the wall, that is probably because I had figured by myself that is the only place where I could have been standing.

Question: Bolm wasn't in that room when you and Kanschak and Weinreich were there at the time the killing took place, was he?

Answer: I don't know because I was unable to recognize anybody who was there after that. When I was leaving the room I did not see Weinreich nor did I see Captain Kanschak."

The defense offered in evidence a statement of BECK's wife, Erica BECK. She stated that in September 1944, her husband was home in Wolfenbuettel as a walking patient from the hospital and during the air raid alarm, she was in the shelter with her husband. During the course of the air raid, her husband left and was gone approximately ten minutes. She met him upon his

return and at that time, he had blood on his uniform. Also at that time, her husband told her that he had shot an American parachutist and that he had acted on the order of Captain Kanschat.

The defense introduced in evidence the testimony of Doctor Karl Landgraf. He stated that in September 1944, he was working in the hospital in Wolfenbuettel and knew the accused. BECK told the witness that on the day the flyer came down, he ran to the place and entered the room and saw Captain Kanschat and the political administrator. The political administrator had pulled a pistol and wanted to shoot the flyer but he hesitated and after that Captain Kanschat sent the other people outside the room and to the best of the witness' recollection, BECK then told him that Kanschat had taken the pistol from the political leader and had given it to BECK, and that when he had the pistol in his hand, Kanschat ordered him to shoot the flyer, whereupon the order was executed.

c. Collateral Evidence:

At the time of BECK's trial Wilhelm Kanschat had not been apprehended. Kanschat was tried 16 months later for his part in this homicide. Because BECK's defense was predicated solely on the theory of an order given by Kanschat, a Wehrmacht Captain, it is felt that a proper review of the case of BECK cannot be made without consideration being given to certain portions of the testimony developed in the trial of Kanschat. Therefore, a brief synopsis of pertinent testimony from the case of the US vs Kanschat as it pertains to the accused BECK is set out below:

(1) BECK, when called as a witness against Kanschat, before any remark was addressed to him, asked the Court why he should take an oath. After considerable discussion and a recess, the prosecution announced BECK would take an oath. BECK repeated, substantially the testimony he gave in his own defense in his case except that he would not say that he knew that it was Kanschat who gave the order. However, the order was given, and Kanschat was the only officer present in the room. He maintained that a statement taken from him during the investigation in which he said Kanschat told him to shoot the soldier was forced from him by a member of the CIC.

(2) Weinreich, a co-accused, tried with BECK, testified in his own defense that someone cried out, "Shoot that man" and that it was Kanschat. BECK then shot the flyer with the witness' (Weinreich's) gun. The witness testified against Kanschat under oath as follows however:

Question: "You have just mentioned about an order being given by Captain Kanschat, just what was that order?"

Answer: The order was: 'Shoot the man' or 'Shoot the guy', but I found that out only from the accused BECK.

Question: And who said 'Shoot him'?

Answer: I cannot say that. That can only have been an officer.

Question: Now, did you hear Captain Kanschat say in that room in Krummestrasse, 'Kill that man'?

Answer: I didn't hear that. All I heard was somebody say 'Shoot that man'.

(3) Kanschat testified he ordered all Wehrmacht soldiers out and then left the room. He returned later and the flyer had been shot.

12. Concerning the Application for Clemency

BECK's application for clemency dated 11 December 1953 is accompanied by numerous supporting papers and affidavits of good character. Most of the

papers are merely re-statements of the evidence at his trial and offer no new facts to alter the original record.

Dr. Karl Landgraf's testimony in the case of Otto Weinreich in July of 1952 states that he (the Doctor) believes that Captain Kanschat did issue the order for BECK to shoot the flyer as indicated by Kanschat's guilty manner at the time and his desire to have a medical certificate made stating that the flyer died of internal injuries sustained during landing.

A medical report dated 23 April 1953 states that BECK suffers from a nervous condition of hypertension and instability but is otherwise in good health.

13. Comments of the Records Officer: The evidence at BECK's trial was sufficient to warrant the finding of guilty made by the court. The defense was based entirely upon a "superior order." The only conflict between BECK's unsworn statement at his own trial, and his sworn testimony at Kanschat's trial, is that at Kanschat's trial BECK would not say that it was Kanschat who gave the order. BECK has, however, consistently maintained that the order was given.

The fact that BECK acted under the direct order of his superior, Kanschat, however, does not relieve BECK of the consequences of his act, because such order was patently illegal. BECK, after being a combat soldier for five years, must have known how a surrendered enemy soldier was to be treated when captured. He certainly must have known that it was contrary to the rules of war and illegal to kill a surrendered enemy. He must also have known that while strict obedience to orders was demanded, he was not obliged to carry out an order unlawful on its face. Paragraph 47 of the German Military Code provides that if one who has to carry out an order knows beforehand the order is illegal, then he becomes responsible if he carries out the order, together with the one who issues the order.

The medical evidence and reports show that BECK is a highly nervous person and at the time of the incident was undergoing hospital treatment for wounds received in combat.

The findings of the court and sentence in the cases of Wilhelm Kanschat and Otto Weinreich are as follows:

	<u>Original Sentence</u>	<u>Review</u>	<u>Present</u>
Kanschat	Death	Sentence approved, then commuted to life imprisonment	20 yrs Imprisonment commencing 1 Jan 1947
Weinreich	Life imprisonment	Sentence approved	No modification

BECK has no Nazi Party record and nothing derogatory is known about him prior to his connection with the incident described above.

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