

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

4 April 1947

UNITED STATES)

vs)

Case No. 11-18

Erwin Wilhelm Konrad
SCHIENKIEWITZ, a German
national)

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

ACCUSED

Tried at Dachau, Germany
Date: 13 February 1947
General Military Government
Court
Sentence: Life imprisonment

Married, 3 children
Age 35
Enlisted Man Waffen SS
from 10 November 1939
Master Sergeant from June
1944
Prisoner of war in cus-
tody of American Army
from July 1944

CHARGE I: Violation of the Laws
and Usages of War.

<u>Pleas</u>	<u>Findings</u>
NG	G

PARTICULARS: In that Erwin Wilhelm Konrad SCHIENKIEWITZ, a German national, did, at or near MONTMARTIN EN CRAIGNES, France, on or about 17 June 1944, wilfully, deliberately and wrongfully, encourage, aid, abet and participate in the killing of two unknown members of the United States Army, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich.

NG G

CHARGE II: Violation of Par. 1(d) Article II of Control Council Law No. 10.

NG NOLLE PROSEQUI

PARTICULARS: That the accused, Erwin Wilhelm Konrad SCHIENKIEWITZ, was a member of an organization declared criminal by the International Military Tribunal in Case No. 1, i.e., Die Schutzstaffeln der National Sozialistischen Deutschen Arbeitspartie (commonly referred to as the SS), after 1 September 1939, with knowledge that the said organization was being used in the commission of acts declared criminal by Article 6 of the Charter of the International Military Tribunal, annexed to the agreement establishing the Tribunal, dated 6 August 1945, and was personally implicated in the commission of such criminal

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

3. EVIDENCE:

For the Prosecution. The case for the Prosecution is based entirely on extrajudicial sworn testimony. Prosecution's Exhibits 1 and 2 consist of testimony of accused SCHIENKIEWITZ. Prosecution's Exhibit 3 consists of testimony of Gerhard SCHILD.

According to the testimony of accused, on or about 17 June 1944, around noon, near Montmartin, France, 70 American prisoners of war were brought to the Headquarters of the 38th Regiment of the 17th SS Panzer Grenadier Division (p 4, P. Ex. 1; pp 2, 3, P. Ex. 2). Two of the prisoners were selected to be executed in retaliation for the death of two German soldiers who had been found strangled a few days before (p 4, P. Ex. 1; p 2, P. Ex. 2). During one interrogation accused stated that Lt. Colonel HORSTMANN, Regimental Commander, and Captain WAHL, Regimental Adjutant, made this selection by first selecting six men who did not look like members of the white race, and returning four of them. When asked their nationalities, two said they were Spanish, two were Polish and the other two were supposed to have been Jewish (pp 18, 19, P. Ex. 1). During a later interrogation the accused stated first that WAHL alone made the selection by just pointing to the two men standing near him, and then stated that WAHL chose six prisoners and sent four away, but used no special method of selection (p 2, P. Ex. 2). The other 60 prisoners were transferred, after dark the same day, to a division gathering place (p 7, P. Ex. 1). Accused SCHIENKIEWITZ, who was 1st/Sgt of the Headquarters Company, 38th Regiment, was ordered by Lt. Colonel HORSTMANN to take charge of the two prisoners chosen for execution and find two men who would volunteer to shoot them (pp 4, 11, P. Ex. 1; p 2, P. Ex. 2). Accused did not object in any way when he received

Sergeant SCHNEIDER volunteered to do the shooting (p 2, P. Ex. 2). Although the men were to be shot immediately, SCHIENKIEWITZ postponed the execution until that night, left the area around 3 o'clock to procure rations, and returned around midnight (pp 6, 7, 8, P. Ex. 1). When accused returned he went directly to SCHNEIDER and SCHAEFER, asked them if they had carried out the order and they said they had not. SCHIENKIEWITZ assumed that there was no change in the order, so told SCHNEIDER the order would have to be executed now. He asked SCHNEIDER and SCHAEFER if they had anything against doing it, they said no, and together with SCHIENKIEWITZ picked up the two prisoners, marched them to the edge of the woods and SCHNEIDER and SCHAEFER each shot one of them. The two prisoners were buried in the area in a grave SCHAEFER had prepared that afternoon (pp 9, 10, 18, P. Ex. 1; pp 2, 3, P. Ex. 2). Accused stood nearby smoking a cigarette when they were shot. He was armed with a 7.65 pistol but did not use it (p 17, P. Ex. 1; pp 3, 4, P. Ex. 2).

According to the extrajudicial testimony of Gerhard SCHILD, accused SCHIENKIEWITZ told SCHILD prior to the execution that the two men were to be shot because they were Jewish (p 11, P. Ex. 3). SCHILD believes that SCHIENKIEWITZ originated the idea of killing these captured Americans (p 8, P. Ex. 3). SCHILD heard SCHIENKIEWITZ ask the group of prisoners if there were any other Jews among them (p 7, P. Ex. 3). During the night following the selection of the two men for execution SCHILD, together with several other men, heard SCHIENKIEWITZ give the order to two men to take care of the two prisoners. He heard that SCHIENKIEWITZ gave the order for two men of the Headquarters Company to shoot them (pp 5, 8, P. Ex. 3).

For the Defense. Accused SCHIENKIEWITZ elected to testify in his own defense in substance as follows:

SCHIENKIEWITZ was a clerk and was not in the fighting . troops. Lt. Colonel HORSTMANN ordered him to give orders to the anti-tank company to execute the two men under guard, and it was not up to him to criticize a Lt. Colonel (R 20, 21). Accused assumed that the Colonel had a good reason for the execution and he would have been court-martialed and shot for having refused to obey the order (R 22). SCHIENKIEWITZ was actually a messenger between HORSTMANN and SCHNEIDER (R 27). Colonel HORSTMANN told SCHIENKIEWITZ to tell SCHNEIDER, who was the responsible man for the anti-tank company, to get the firing squad ready. Captain WAHL ordered the guards to take the two prisoners who had been selected for execution and go with SCHIENKIEWITZ. The two prisoners did not look like Jews. SCHIENKIEWITZ told SCHNEIDER off the record that he should take two volunteers because he should not force a man to do anything like that (R 23, 24, 25). SCHIENKIEWITZ advised SCHNEIDER to kill the men in the evening to spare the hardships of warfare to these young men. He wanted to "drag the thing out" in the hope that something would happen; for instance, that someone superior to the Regimental Commander would arrive. SCHIENKIEWITZ could not give SCHNEIDER an order because SCHNEIDER was commander of the anti-tank platoon (R 26). SCHIENKIEWITZ could not speak English and did not ask the prisoners if they were Jews. The prisoners were surrounded by a chain of guards and accused could not approach them (R 24). SCHIENKIEWITZ was standing nearby when the Americans were executed because he came back with his vehicle and had gone to the message center to find out if there was any news. In the meantime, SCHNEIDER prepared for the execution and when SCHIENKIEWITZ saw that he stood still and smoked a cigarette because he had not eaten all day. He waited until he heard the noise of the shoveling and then went by the grave with his vehicle. SCHNEIDER reported when he drove by and looked into the grave, "These are those two Americans". SCHIENKIEWITZ had

to know they were buried because he kept records (R 27). Gerhard SCHILD is a "common, ordinary deserter" (R 24). (See p 4, P. Ex. 3, in which SCHILD admits that at the time of his capture he was a deserter from the German Army). SCHILD had reason to dislike SCHIENKIEWITZ because SCHIENKIEWITZ ordered him to the front lines (R 25). SCHIENKIEWITZ volunteered information in connection with this execution while a prisoner of war in America because he wanted to help prevent such things in the future (R 28, 29).

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, undated, filed by George A. McDONOUGH, U.S. Civilian, Defense Attorney. There are no Petitions for Clemency.

7. CONCLUSIONS:

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

NORA G. SPRINGFIELD
1st Lt., WAC
Post Trial Section

Having examined the record of trial, I concur.

C. E. STRAIGHT
Colonel, JAGD
Deputy Judge Advocate
for War Crimes