

C O N F I D E N T I A L

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HEADQUARTERS
FIRST UNITED STATES ARMY
APO 230

250.5 (JA)

Office of the Staff Judge Advocate
13 September 1944

SUBJECT: Review of Proceedings of Military Commission in case of United States v. Rottenfuhrer Gunther Ohletz, 21 SS Panzer Grenadier Regiment, German Army.

TO : Commanding General, First United States Army,
APO 230, U. S. Army.

1. Accused was tried before a Military Commission at Headquarters First United States Army, near La Perray, France, 7 September 1944 on the following charge and specification:

CHARGE: Acting as a Spy.

Specification: In that Rottenfuhrer Gunther Ohletz, 21st SS Panzer Grenadier Regiment, German Army, did, in the zone of operations of the Armies of the United States near Saint Georges de Rouelle, France, on or about 10 August 1944, act as a spy by endeavoring, while disguised in civilian clothes, to obtain information with intent to impart same to the enemy.

He was found guilty as to both and was sentenced "to be hanged by the neck until dead."

2. Location of opposing forces. Units of the 2nd Armored Division occupied St. Georges de Rouelle, hereinafter referred to as St. Georges, on 9 August 1944. On 10 August there were no regular lines but strong points. The Germans held Mortain and Ger and their forward elements were approximately along the line shown in light red (Pros. Ex. 1). Combat Command B of the 2nd Armored Division was advancing along the Barenten-Ger road with the mission of cutting the Mortain-Ger road at Ger. The 82nd Armored Reconnaissance Battalion, protecting the right flank of Combat Command B, was operating north from St. Georges. Its right was on the St. Georges-Loulay Abbaye Road. Advance elements of the American Forces are shown in green (Pros. Ex. 1). Patrols from St. Georges were operating to Loulay Abbaye (R. 21-22). An assault gun and some vehicles were at the bridge 712/075, north of St. Georges (R. 15). Vehicles in patrol formation were passing over the road from St. Georges to the bridge on an average of about one every hour (R. 17). Light enemy patrols were operating in the area (R. 15).

3. Narrative of events. About 1600 hours 10 August 2nd Lieut. Max M. VanPatton, Company D, 82nd Armored Reconnaissance Battalion, started from St. Georges to the gun position at 712/075 in a car. He was accompanied by another officer and two soldiers. After going about one and one-half or two miles they met accused dressed in civilian clothes. Accused wore a small straw hat, a light jacket of thin material, a white shirt, light trousers and rubber boots. Lieut. VanPatton, believing accused to be a French civilian stopped to ask if he knew the location of the enemy. Lieut. VanPatton said "Le bach" and pointed in the direction accused had come. Accused replied "Nix compre". This aroused suspicion so one of the men searched accused and found a Luger pistol shoved in his belt. He was returned to St. Georges

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(R. 15-16). When the car stopped, Sergeant O'Brien exclaimed that accused was the same man he had seen in St. Georges about 1000 hours that morning (R. 18). The sergeant was positive as to his identification (R. 6-9). A thorough search of accused revealed a soldbuch (Pros. Ex. 2), a note in longhand in the book (Pros. Ex. 3) and a German Army identification tag (Pros. Ex. 4). The point at which Lieut. VanPatton apprehended accused is shown by an "X"-mark in ink on Prosecution's Exhibit No. 1 and is at 717/066.

4. Interrogation of accused. Accused was interrogated by Master Sergeant Newman of Military Intelligence Interpreter Team No. 422 on 17 August. Accused stated that he was born in Oberhausen, in Rheinland, 26 April 1924. He volunteered for the SS at 16 years of age but was deferred one year then assigned to the 22nd Regiment, Fruntsberg Division. When the invasion started his division was transferred to Normandy. His regiment was so nearly wiped out that it was dissolved and the remnants, including accused, were transferred to the 21st SS Panzer Grenadier Regiment. His rank of Rottenfuhrer would correspond to Corporal. He identified his soldbuch (Pros. Ex. 2), the note (Pros. Ex. 3) and his identification tag (Pros. Ex. 4) (R. 26-29).

Accused further stated that some time during the afternoon of 10 August his platoon sergeant asked him to put on civilian clothes and try to locate the American positions. The sergeant said, "I am sending all these guys to go on patrol, they go out, lie down in the grass and they all rest and come back and tell me that they haven't seen anything. I am completely in the dark as to where the enemy is. I would like you to go out on a patrol in civilian clothes, get yourself some civilian clothes in one of these houses." (R. 29). Accused was given a Paper (Pros. Ex. 3) in order to get through the German outpost line. Translated it reads:

"O.U. Field Post No. 28383 C. The SS Rottenfuhrer Gunther Ohletz is temporarily dressed as civilian in order to be able to carry out without trouble a certain reconnaissance in still occupied French villages and surroundings. Signed Seel, SS Oberscharfuhrer."

Before leaving his CP accused heard some shooting a few hundred yards to the South. He made a sketch of his journey (Pros. Ex. 5). His CP was at "B". At "C" where apparently the firing had occurred he found the tracks of an armored vehicle not German and some empty cartridge cases. Point "D" was his platoon outpost line and there were supposed to be two men at that point with whom he would check out. He found pieces of equipment but no trace of the men. Later he met one of the men in the PW enclosure. At point "E" he again saw tracks of an allied armored vehicle. He crossed the river at "P" and just after crossing left the main road and went cross-country to "G", where he struck another road going south. He passed a water mill at "H". After proceeding south for about 15 minutes he met the American car. He tried to play dumb when asked if he had seen any Germans, but when one of the Americans drew a swastika he felt he had to say something as every child knows what that means. He was smoking a German issue cigarette but the Americans did not recognize it. Accused pointed out his route on a map and from this witness deduced that the point at which he was captured was about one kilometer or slightly more north of St. Georges (R. 27-34).

5. Defense. The defense did not call any witnesses but accused elected to take the stand. His testimony was in substance the same as the statements made to Sergeant Newman. He admitted being sent on the reconnaissance mission in civilian clothes and stated that he was to report back as soon as he met the first elements of the enemy. Accused stated that he was captured at a point on the road about 500 yards south of a stone marker which read "2 kilometers to St. Georges" (R. 39). Asked why

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he made a statement to the interrogator accused replied that he was told it would be better if he told the truth (R. 40). Asked what kind of information he was to get on the mission accused replied; "I was to point out the forward elements of the enemy and if I would have reached those forward elements I would have immediately returned to my CP".

The defense made a plea for clemency based on the youth of accused, who is 20 years of age.

6. Findings. Winthrop states that an enemy soldier discovered in disguise within our lines is to be treated as being prima facie a spy. This presumption may be rebutted but only by the clearest proof that his presence was for a comparatively innocent purpose. (Winthrop, Military Law and Precedent, 1920 Reprint, p. 767; Par. 142, MCM 1928.) However, the direct evidence introduced by the prosecution went further and established all elements of the offense. This accused was captured in civilian clothes. Documents on his person showed his identity as an enemy soldier and his mission to secure information respecting the United States forces. Accused in his statements to the interrogator and on the stand affirmed the authenticity of the documents and the purpose of his mission. In my opinion the fact that he did not intend to penetrate the American lines is immaterial. The offense is complete when a member of the enemy forces is apprehended within the zone of operations of our Army, acting clandestinely, and seeking to obtain information with the intention of conveying it to the enemy. The only possible question in the case is whether the place at which accused was apprehended was in fact within the zone of operations of the United States forces. I am satisfied that this was established beyond a reasonable doubt. Accused left his own outpost line at a point where it had just been attacked by an American armored vehicle and proceeded several kilometers in the direction of our lines. He passed the track of another allied armored vehicle. The road on which he was captured was being regularly used by our forces for communication between established positions. The Hague Convention in defining the term "spies" uses but does not define the phrase "zone of operations". Therefore the phrase should not be given its ordinary meaning. In my opinion it means that zone or area within which the forces of the belligerent are in fact operating. There is no question but that the place where accused was captured on 10 August 1944 was well within the area over which United States Forces were in fact operating. Upon a consideration of all the evidence it appears probable that Sergeant O'Brien was mistaken in his identification of accused as to the man he saw in St. Georges on the morning of 10 August, but this is not material.

7. Sentence. Sentence of death is mandatory for an accused convicted of spying in violation of the 82nd Article of War. While this accused was tried under the general laws of war rather than the 82nd Article of War, the reasons for the mandatory sentence are equally applicable. The sentence "to be hanged by the neck until dead", is appropriate in the case of a spy (Winthrop, Military Law and Precedents, 1920, Reprint, p. 418).

Authority to appoint a military commission for the trial of such cases was delegated by the Commanding General, European Theater of Operations, to the Commanding General, Twelfth Army Group and redelegated by the latter to the Commanding General, First United States Army. The appointment of this commission and its proceedings were in conformity with the authority so delegated.

8. Recommendation.

The following action is recommended:

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"In the foregoing case of Rottenfuhrer Gunther Ohletz, 21st SS Panzer Grenadier Regiment, German Army, the sentence is approved. The Record of trial is forwarded to the Commanding General, Twelfth Army Group for confirmation."

E. M. BRAUNON,
Colonel, JAGD,
Staff Judge Advocate.

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