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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

M. Ellery
our
#164

Yokohama, Japan
27 August 1948

UNITED STATES OF AMERICA VS HICHIRO TSUCHIYA

Review of the Staff Judge Advocate

1. The attached record of trial of Hichiro Tsuchiya at Yokohama, Japan, tried on 10 and 11 September 1947, by a Military Commission appointed by paragraph 2, Special Orders Number 211, Headquarters Eighth Army, United States Army, dated 9 September 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Hichiro Tsuchiya	DATE OF CONFINEMENT: 24 April 1946
AGE: 42 years	DATE OF ARRAIGNMENT: 10 September 1947
RESIDENCE: Shiroyama, Osarizawa-Machi, Kazuno-gun, Akita Prefecture.	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 10 and 11 September 1947
RELATIVES: Father, mother, adopted mother, brother, sister, wife and four sons.	DATE OF SENTENCE: 11 September 1947
EDUCATION: Six years of elementary school.	SENTENCE: CHL for fifteen (15) years.
VOCATION: Laborer (formerly mine foreman)	
MILITARY CAREER: April 1927 - June 1927 (pvt) and July 1942 - January 1943 (Pfc).	
CURRENCY RECOMMENDED BY COMMISSION: No	

2. Synopsis of Charge, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused at times and places set forth in specifications hereinafter listed, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War	NG	G	Yes
Sp 1: Between 1 and 31 March 1945, accused did willfully and unlawfully mistreat and abuse William H. Arterburn, an American P., by beating him into unconsciousness with a pick handle.	NG	G	Yes
Sp 2: Between 1 November 1944 and 15 March 1945, accused did willfully and unlawfully mistreat and abuse Dillard D. Darneal, an American P., by beating him with fists and a club.	NG	G except the word "one", substituting therefor the words "twenty-seven" also the words "fists and". Of the excepted words Not Guilty; of the substituted words, Guilty.	Yes

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Sp 3: On or about 7 April 1945, accused did willfully and unlawfully mistreat and abuse Vernon C. Reed, an American PW, by forcing him to stand at attention and by beating him into unconsciousness.	NG	G	Yes
except the words "by forcing him to stand at attention" and "into unconsciousness". Of the excepted words, Not Guilty.			
Sp 4: Nolle Prosequi.			
Sp 5: Between 1 November 1944 and 30 November 1944, accused did willfully and unlawfully mistreat and abuse Michel J. Telendo, an American PW, by beating him.	NG	G	Yes
except the word "one" substituting therefor the words "twenty-seven". Of the excepted words, Not Guilty, of the substituted words, Guilty.			
Sp 6: Between 1 March 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse Donald E. Sollenberger, an American PW, by beating him with a pick handle.	NG	G	Yes
Sp 7: At divers times between 1 March 1945 and 15 August 1945, the accused did willfully and unlawfully mistreat and abuse Thomas M. Litch, an American PW, by beating him.	NG	G	Yes
Sp 8: At divers times between 1 March 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse John Lemanski, an American PW, by beating him.	NG	NG	---
Sp 9: Between 15 September 1944 and 15 August 1945, the accused did willfully and unlawfully mistreat and abuse Edward T. White, an American PW, by beating him with a pick handle.	NG	G	Yes
except the words "fifteen September" substituting therefor the words "twenty-seven November"; and except the words "beating" and "pick handle", substituting therefor "hitting" and "sledge hammer". Of the excepted words Not Guilty, of the substituted words, Guilty.			
Sp 10: Between 15 September 1944 and 15 August 1945, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous Allied Prisoners of War.	NG	G	Yes
except the words "fifteen September" substituting therefor the words "twenty-seven November"; and except the word "torture". Of the excepted words Not Guilty, of the substituted words, Guilty.			

Sentence Imposed: Confinement at hard labor for fifteen (15) years.

Maximum Legal Punishment: Death.

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3. Summary of the Evidence:

a. For the Prosecution:

The Osarazawa Mining Company, a concern employing Prisoners of War held captive by the Japanese Army, operated a copper mine near Sendai Area Prisoner of War Camps No. 6 and 7, Hanawa, Honshu, Japan (R-7). Between 27 November 1944 and 15 August 1945, Hichiro Tsuchiya, hereinafter called the accused, a Japanese civilian, mine foreman in charge of American Prisoners of War who worked in the mine as drillers, car loaders and car pushers, committed several unprovoked and violent assaults upon American Prisoners of War who worked in the mine, which acts constituted the bases for the Charge and Specifications in this trial, each of which is hereinafter discussed:

As to Specification 1: Two affidavits of William H. Arterburn admitted without objection by the defense as Prosecution's Exhibit #1 and 2 (R-4), stated that Arterburn, while an American prisoner of war at the Sendai Area PW Camp Number 6, Hanawa, Japan, was assigned to a work detail in a copper mine a short distance from camp. About March 1945, a civilian Japanese foreman known to him as "Patches", approached him from behind and beat him with a pick handle until he lost consciousness.

As to Specification 2: The affidavit of Dillard D. Darneal admitted without objection by the accused as Prosecution's Exhibit #3 (R-4, 5), stated that during the winter of 1944-1945, a civilian Japanese mine foreman, known to him as "Patches" slapped him with the heel of his hand across the face and struck him on the back with a wooden club when Darneal asked to be excused from pushing a cart because he was ill.

As to Specification 3: The affidavit of Vernon C. Reed, admitted without objection by the accused as Prosecution's Exhibit #4 (R-5), states that while working as a driller in the copper mines adjacent to the Sendai Area PW Camp No. 6, on or about 7 April 1945, a civilian Japanese mine foreman known to him as "Patches", struck him with his fist on the back of his head and beat him with a pick handle. Reed further identified a photograph of accused as the "Patches" to whom he referred.

As to Specification 5: The affidavit of Mitchel J. Telendo, admitted without objection by the defense, as Prosecution's Exhibit #5 (R-5), stated that during November 1944 a civilian Japanese mine foreman known to him as "Patches" beat him severely on his face while he was loading cars in a mine near the Sendai Area PW Camp No. 6.

As to Specification 6: The affidavit of Donald E. Sollenberger admitted without objection by the defense as Prosecution's Exhibit #6 (R-5), stated that in March 1945 a Japanese civilian mine foreman, known to him as "Patches", whose real name he knew as "Tsuida", beat Sollenberger with a pick handle because Sollenberger was sick with a chest ailment and could not work as fast as "Patches" desired. Sollenberger identified a photograph of the accused as the Japanese known to him as "Patches" (Ex. No. 7).

As to Specification 7: The affidavit of Thomas E. Litch, admitted without objection by the accused as Prosecution's Exhibit #9 (R-6), stated that as one of a group of American PW's working in a copper mine near Hanawa Camp No. 6, Sendai Area, Japan, the mine foreman, whom he knew as "Patches" hit his legs with a small mine tool and otherwise beat and abused him. This incident is corroborated by the affidavits of Sollenberger (Ex. #6) and Pratz (Ex. #8). Litch identified a photograph of the accused as "Patches" referred to in the above incident (R-6).

As to Specification 9: The affidavit of Edward . . . White accepted without objection by the accused as Prosecution's Exhibit #10 (R-6), stated that early in 1945 he was part of a work detail in a copper mine at the Sendai PW Camp No. 6, when the civilian Japanese mine foreman, whom he knew as "Patches" knocked him unconsciousness by hitting him on the head

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with the "business end" of a sledge hammer. This incident is corroborated by the affidavits of Reed (Ex. #4), Sollenberger (Ex. #6), Litch (Ex. #9), and Merritt (Ex. #11).

As to Specification 10: The affidavit of Albino Lopez admitted without objection by the accused as Prosecution's Exhibit #12 (R-6, 7) stated that "Patches" customarily struck with his fists or with a club all prisoners of war in the prison detail which the accused supervised. Specifically, about 9 September 1944, Lopez witnessed "Patches" beat all the prisoners of war in his prison detail and strike the men on the head with a sledge hammer. This is corroborated by the affidavit of Philip B. Tripp (Ex. #13).

Albert Pratz, Warrant Officer, United States Marine Corps, called as a witness for the prosecution, stated that as a prisoner of war at the Hanawa PW Camp No. 6, between 15 December 1944 and 31 January 1945, he saw the accused mistreat and abuse American PW's on numerous occasions (R-8). The accused struck his victims from behind either with his fists or with a pick handle about 2½ to 3 feet long and 3 inches in diameter (R-8). The accused was given the nickname "Patches" because he wore a pair of trousers which were all patches (R-13). Warrant Officer Pratz positively identified the accused as the "Patches" to whom he referred (R-8, 13).

b. For the Defense:

Counsel for accused requested a copy of the letters requesting statements of the persons whose affidavits were admitted into evidence, which request was denied as they were not available (R-14).

Counsel for accused then made motions for findings of Not Guilty as to Specifications 8 and 10, which motions were denied (R-16).

Counsel for accused then presented stipulations agreed to by the Prosecution, Defense and the accused, that if the camp commander, prison doctor and prison medical orderly of the PW Camp were present they would testify that they had received no complaints from American Prisoners of War or Japanese personnel that accused struck or mistreated American PW's which stipulations were accepted (R-16).

The accused after being advised of his rights as a witness, elected to take the stand and testify under oath on his own behalf (R-16). The accused stated that he was 42 years of age, the father of four boys, a graduate of elementary school, and had served in the Army as a Private from 1927 to 1930 and from July 1942 to 7 January 1943 (R-17). Accused began working for the Osarizawa Mining Company in 1936 as an ordinary laborer and worked there continuously except for his Army service (R-18). Accused stated that he had struck one prisoner of war with his open palm once (R-19), had struck another prisoner of war in order to have him leave a dangerous spot in the mine (R-19), and that in all he had struck about three PW's (R-19). However, he stated he did not know any of the persons whose affidavits were admitted into evidence (R-18), had not struck any of them, and did not come in contact with any P's until about April 1945 (R-18, 19). He stated that the trousers which he wore at work contained two or three patches (R-21), but on cross-examination, he identified a pair of trousers which he wore at work, which trousers contained approximately 70 patches (R-24).

The Prosecution, Defense and accused stipulated that the accused's name was listed on a roster of Foreman of Prisoner of War Laborers in the Osarizawa Mining Company from 27 November 1944 to 13 August 1945 (R-23).

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. There is no evidence that the accused was not sane at the time of the commission of the alleged acts or

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