

EXHIBIT NO. 3135

(33)

Translated by
Defense Language Branch

JUDGMENT

P.W. Captain Lionel Collin MATHEWS,

31 years old.

Place of birth: Stepney, in the suburbs of the City of Adelaide,
Southern Australia, Australia.

Formerly attached to: Signal Corps of 8th Division, Australian Army.

P.W. 1st Lieutenant Roderick Graham WELLS,

24 years old.

Place of birth: Town of Tatura, Victoria, Australia.

Formerly attached to: same as above.

P.W. Sergeant Alfred STEVENS,

30 years old.

Place of birth: City of Perth, Western Australia (otherwise unknown).

Formerly attached to: A company of 4th Machine-gun Corps, same Division
as above.

P.W. Corporal John Alan McMILLAN,

38 years old.

Place of birth: Town of Caura, New South Wales, Australia.

Former attached to: Headquarters of 22nd Infantry Regiment, Division
as above.

P.W. Corporal Walter Geoffrey LOFFY (PHONETIC), 30 years old.

Place of birth: John Street, Town of Bexley, New South Wales,
Australia.

Formerly attached to: 84th Automobile Repair Corps, same division
as above.

Def. Doc. # 1818

With regard to the criminal case of MATHEWS, accused on the charge of espionage, preparations for the enemy's invasion, violation of the War Prisoners Penal Law and spreading false reports and wild rumors; of WELLS and STEVENS, accused on the charge of spreading false reports and wild rumors, and violation of War Prisoners Penal Law; of MacMILLAN and LOFFY (EHOETIC) accused on the charge of violation of War Prisoners Penal Law, this court-martial has, with the participation of the Prosecutor, Judiciary Captain WATANABE Haruo, completed trials and hereby gives judgment as follows:

Text of the Judgment.

The accused, MATTHEWS shall be punished with death.

The accused Wells, shall be punished with 12 years' imprisonment with hard labor.

The accused STEVENS, shall be punished with 5 years' imprisonment with hard labor.

The accused MacMILLAN, and ^{the} accused LOFFY, shall respectively be punished with 1 year and six months imprisonment with hard labor.

One six-chambered revolver (Exhibit No. 1) which was seized shall be confiscated.

Reasons.

The five defendants, who participated in the Greater East Asian War, respectively attached to the above-mentioned units or corps, were taken prisoners by the Japanese forces at Singapore on the 15th of February in the 17th year of SHOWA (1942). Since July 18th same year

Def. Doc. # 1818

they have been detained in the 1st Branch of the Borneo War Prisoners Internment Camp, located at Sandakan, Eastern Province, Northern Borneo, I. Lionel Collin MATTEWS, whose hostile feeling was so strong even after surrender that he could not reconcile himself to the life of war prisoner was secretly looking for a chance of escaping from the camp.

(1) After his arrival at the camp he was every day engaged in cultivating the camp farm situated outside the camp. About August 1942, availing himself of the comparatively slack surveillance, he approached, and formed friendship with, ABIN (PHONETIC) a Dosunese (PHONETIC) and Chief of the Lubbock Road 8th Mile Branch of the Sandakan Police Station, and a few policemen under the Chief MATSUP (PHONETIC) a Dosunese and keeper of the Ranch attached to the 8th Mile Experimental Farm of Eastern Province, Alexander FAN (PHONETIC), a Chinese farmer, residing at 7th Mile on, the said Lubbock Road, and several other inhabitants of the neighbourhood. Notwithstanding he was well aware of the fact that about October the same year communication and contact with inhabitants outside the camp had been strictly forbidden by the order of Chief of the camp, 1st Lieutenant HOSHIJIMA Susumu, MATTEWS kept in touch with them, and seduced ABIN, and others, saying that these who would give every assistance to himself and other prisoners, would be favorably treated in the future, when the British administration was re-established. Continually holding criminal intent from about the middle of March, 1943 to about July the same year, he chose the neighborhood of the said farm as a rendezvous, where he secretly met ABIN and made the latter relay communications with

Def. Doc. # 1818

the outside, as stated below. MATTHEWS also had frequent meetings there and kept in contact with, other inhabitants.

(2) About August in the 17th year of Showa (1942) he asked the said Alexander FAN to draw a map each of British Northern Borneo and the vicinity of Sandakan with a view to using them at the time of escape, when receiving the maps he heard from the said FAN about the rumour that U. S. and Philippine forces of considerable strength were stationed in Sulu Archipelago and there were signs of their shortly making an attack on Sandakan.

Believing in the possibility of its realization, MATTHEWS, entertained a design, in the event of the attack, to pull together all the prisoners and destroy the camp in response.

He asked the said ALEXANDER and obtained a revolver together with six cartridges, which were owned by the Chinese.

Besides, he made ALEXANDER promise to come to the outside of the camp and blow a whistle immediately when the U. S. and Philippine forces should arrive. He also handed the same person a letter addressed to the commanding officer of the U. S. and Philippine forces, in which he drew a topographical map of the camp's vicinity and stated

Def. Doc. # 1818

a request that the prisoners be saved from the camp. He also confided his design to the policeman ABIN, and asked him and obtained his consent to put 5 guns and 150 cartridges, with which the branch station was provided at the prisoners' disposal on the occasion of their uprising. Thus he was secretly making preparations.

In addition, with a view to reporting to U. S. and Philippine forces, when they might invade, he made strenuous efforts to collect general information regarding the Japanese forces. Towards the end of August in the same year, he asked ALEXANDER to draw a map of the Sandakan area showing the details of ^a disposition and strength of the Japanese forces stationed in Sandakan; and about December the same year, he asked MAJINAL (PHONETIC) a Dusunese (PHONETIC) employed as clerk of the Experimental Farm, to draw a map of the vicinities of the said Farm and the Internment Camp and received the map and, at about the end of September the same year, he got the said MATSUDA to persuade LI Kueifu, a nurse of the Sandakan Citizens Hospital, to draw a map showing quarters and numbers of Japanese occupation forces and residents at Sandakan. Besides receiving these maps, MATHEWS, during his several meetings with ABIN, heard, from the

Def. Doc. # 1318

latter whether there were any movements of Japanese forces as well as the British and American internees, concerning the vessels coming in and out Sandakan harbour, and regarding the demand and supply of daily necessities for the inhabitants.

(Phonetic)

(3) About November 1942, when WAININGTON and RICARD, prisoners of the said camp, secretly manufactured a radio receiving set and listening to British and American news, circulated it among the prisoners, and as it contained much that was unfavorable to the Japanese, MITTHEMS contemplated transmitting it secretly to the British and American internees and residents under surveillance in the area to stir up hostile feeling among them. In anticipation that such news might be propagated among the general inhabitants of the same region through such Britishers and Americans, he asked WAINTON and got a copy each of news. Thus he kept with his treacherous designs and through the policeman ABIN, endeavored the dissemination of news as follows:

(a) From the middle of November 1942 to the latter part of February the following year, he sent news in writing more than ten times to Smith, ex-Governor of British Northern Borneo, interned in Bahala Island at the entrance of Sandakan Bay and other

British internees, stating, that the Japanese Navy had suffered a heavy loss as a result of a severe Japano-American naval battle in the Solomons, and that the Japanese forces in New Guinea had sustained immense losses from the British and American air raids, and also giving many other reports of the war situation which were unfavorable to the Japanese,

(b) Over twenty times from about December 1942 to about July 1943, he furnished TAILOR, an English doctor, who was then ordered to work at the Sandakan Citizens' Hospital under surveillance, with various reports about the war unfavorable to Japan, including the news that the U. S. Air forces had attacked Japanese transports in the adjacent seas of the Bismarck Archipelago, sinking 22 transport ships and shooting down a large number of Japanese airplanes.

(c) Several times from around May 1943 to the middle of July the same year he also gave PHILLIP, an Englishman who then was confined under surveillance in his own house at 5th Mile, Lubbock Road, in the outskirts of the City of Sandakan, some news unfavorable to the Japanese, concerning the war situation the Solomons and New Guinea.

(d) From about May 1943 MATTHEWS attempted, following the example of WALINTON to manufacture a radio-receiver for himself, and listen to the British and American broadcasts. He disclosed his intention to WALINTON and WELLS; and in collusion with them gradually procured necessary parts through the policeman ABIN and with WELLS was secretly engaged in assembling them under WALINTON'S guidance until about July, when they were detected by the watchman and failed to accomplish this purpose.

Def. Doc. # 1818

II. The accused, RODERICK GRAHAM WELLS had also a strong hostile feeling and felt a great repugnance for his lot of being a prisoner.

(1) Notwithstanding he knew very well that the prisoners, as stated above, had been strictly prohibited about October 1942 by order of the Camp chief to correspond or to keep in contact with any inhabitants residing outside the camp, WELLS about May 1943 secretly sent war news to the Englishman MAYVER, who, he heard from the accused, STEVENS, was then resident under surveillance and employed as electrical engineer at the Sandakan Power Plant. Till about July the same year, with the view of stirring up MAYVER'S hostile feeling, WELLS continued to exchange correspondence with MAYVER once a week through the intermediary of STEVENS and CHEN Ping, a worker of the power plant attached to the internment camp, with a code consisting of the Roman alphabet and arabic figures. By this means WELLS sent to MAYVER about ten communications concerning the above mentioned reports, conveyed by WAINTON, that the U. S. Air forces had attacked the Japanese transports and convoy off the Bismarck Archipelago and the greater part of the Japanese warships and transport vessels had been sunk and many Japanese airplanes shot down, and other news unfavorable to the Japanese.

(2) About May 1943 WELLS acceded to the persuasion of MATTHEWS to work together on the manufacture of a radio-receiver as stated above. And, till about July the same year, he was engaged in constructing the radio-receiver in collusion with MATTHEWS under WAINTON'S guidance, eluding the watch of the guards.

Def. Doc. # 1818

(3) At the beginning of June 1943, while WAINTON was confined in the guard-room as punishment for violating the disciplinary regulations, WELLS used the radio-receiver and listened to ^{the} British and American broadcasts for him for a few days.

Thus he continued his treacherous intent and spread among the war prisoners below the rank of officer, either in writing or verbally, the news that the Japanese forces in Rangoon area had sustained serious losses by the bombing of the British and American air forces, and that the Japanese forces in China had also been fighting hard battles against the Chungking troops who put up stiff resistance at different places, and some other news regarding the war situation, which was adverse to the Japanese Army.

III. About the end of October 1942, the defendant ALFRED STEVENS was ordered to operate the machinery of the camp power plant outside the camp premises. Notwithstanding he at that time knew well that contact and correspondence with any inhabitants residing outside the camp had been strictly prohibited by order of the camp chief as already stated, he performed the followings acts.

(1) Several times from about January 1943 to July the same year, he told WU Hokuang (PHONETIC) and Chen Ping, electrical workers in the power plant, as told by WAINTON, that the U.S. air forces had attacked the Japanese transports and convoy in the adjacent seas of the Bismarck Archipelago and had sent Japanese ^{vessels} to the bottom and gave other news of the war unfavourable to the Japanese Army.

(2) From about May 1943 to about July the same year, he acted as intermediary some twenty times between the accused, WELLS and MAYVER, delivering the correspondence exchanged between the two and forwarding the parcels of radio-set parts sent from MAYVER to WELLS, through the defendants MACMILLAN, defendant LOFFY, and said CHEN ping. Further, towards the end of June the same year, he thrice conveyed messages between MATHEWS, the prisoner, and ABIN, the policeman.

IV. The defendant MACMILLAN, from about September 1942 and, the defendant LOFFY from about February 1943, were respectively engaged in gathering firewood in the outskirts of the Internment Camp, and in spite of the

camp chief's order forbidding all communication and contact with inhabitants outside the camp, they continued their treacherous intent and

availing themselves of the ^{slack} surveillance committed the following offences.

(1) From about the end of May 1943 to about the middle of June the same year, they twice received the letters and parcels of MAYVER, referred to above, from STEVENS and CHEN Ping and handed them to the addressee WELLS, and also they handed WELLS's letters to the said STEVENS and CHEN Ping to be delivered to the addressee, MAYVER.

(2) From about the middle of June 1943 to about the middle of July the same year, LOFFY thrice received from WELLS letters addressed to MAYVER and handed them to STEVENS and CHEN Ping to be delivered to MAYVER. Also, receiving from STEVENS the letters and parcels of MAYVER addressed to WELLS, he delivered them to WELLS. The above-mentioned facts, excepting that of the continuation of criminal intent, are deemed conclusive judging collectively from the statements which were made respectively by the five defendants at this court; the military judicial

Def. Doc. # 1818

police hearings on the defendant MATTHEWS; the prosecutor's hearings on the ALEXANDER GORDON WAINTON in ^{the} records (Records No. 16, 1943) of the criminal case of WAINTON and four others on the charge of violation of the War Prisoners Penal Laws and of spreading false reports and wild rumors; the prosecutor's hearings on the defendants, ABIN BINANGON (PHONETIC) MATSUF BINGUNGAO (PHONETIC), ALEXANDER FAN, DAI MAGINAL (PHONETIC) LAI Kueifu, WU Hokuang, and CHEN Ping, in the records (Records No. 21, 1943) of the criminal case of ERNEST GAGAN (PHONETIC) and thirty-eight others on the charge of violation of military regulations, obtained from the Military Discipline Council of NADA No. 9801 Unit; the military judicial police hearings on the defendants MAYVER, JAMES TAILOR, and ALFRED PHILLIPS in the records (Record No. 22 1943) of the criminal case of GERARD MAYVER and three others on the charge of violation of military regulations; one six-chambered revolver, one radio receiving-set, 18 radio accessories and one diary (Exhibits No. 1-4) which were seized. And, as regards the continuation of criminal intent, it is hereby judged to be conclusive from the fact that similar offences were repeatedly committed by the defendants in short periods of time. Of the defendant MATTHEWS' acts mentioned above those referred to in I (1) come under Article 5 paragraph 1 of the War Prisoners Penal Law; acts of espionage in I (2), under Article 85, paragraph 1, and Article 60 of the Criminal Code; the preparations for the enemy's invasion mentioned in I (3), under Articles 88 and 86 of the same code; the acts in I (3) under Article 99 of the ^{Criminal Code and} Military Article 100 of

Def. Doc. # 1818

the Naval Criminal Code; those in I (4) under the latter part of Article 11 of the War Prisoners Penal Law.

The two crimes referred to in (1), (2), (3) are a single kind of act but are against several laws; and in addition, they were committed with the continuation of criminal intent. Therefore, the provisions of the first half of Article 54, paragraph 1, and Articles 55 and 10 of the Criminal Code are applicable to the two crimes of (1) and (3), and out of the prescribed penalties death penalty, the severest punishment for the crime of espionage shall be selected and imposed on the accused. And, although this crime and that of the violation of the War Prisoners Penal Law are concurrent offences according to the first half of Article 45 of the Criminal Code, yet, no other penalties shall be inflicted upon the accused according to Article 46, paragraph 1 of the same code, because a death penalty shall be imposed on the accused for the said crime of espionage.

As regards the accused WELLS' acts mentioned above, those in II (1) fall under Article 5, paragraph 1 of the War Prisoners Penal Law, Article 99 of the Military Criminal Code, and Article 100 of the Naval Criminal Code; those in II (2) under the latter part of Article 11 of the War Prisoners Penal Law, and those in II (3) under Article 99 of the Military Criminal Code and article 100 of the Naval Criminal Code.

However, as the offences in II (1) and (3) are the same act forming several offences, and there was continuation of criminal intent in these two crimes, penal servitude for a term, i.e., the severest penalty

Def. Doc. # 1818

the severest penalty provided for in the War Prisoners Penal Law shall be imposed in accordance with the first part of paragraph 1, Article 54, Article 55, and Article 10 of the Criminal Code; as regards the offence in II (2) penal servitude shall be chosen; and as the above offences form concurrent crimes as provided for in the first part of Article 45 of the Criminal Code, the accused WELLS shall be sentenced to 12 years imprisonment with hard labour within the limit of the term legally aggregated on the severer penalty, by applying Articles 47, 10, 14 of the Criminal Code.

The acts committed by the accused STEVENS, as mentioned in III (1) and (2), come under Article 5, paragraph 1 of the War Prisoners Penal Law; and the act of spreading false reports and wild rumors under Article 99 of the Military Criminal Code and Article 100 of the Naval Criminal Code. However, because the above offences are one and same kind of act and form different crimes, and there was the continuation of Criminal intent, the P. W. Penal Law, in accordance with the first part of paragraph 1, Article 54, Article 55, and Article 10 of the Criminal Code; shall be applied, and selecting penal servitude for a term according to the provision for violation of the War Prisoners Penal Law the accused STEVENS shall be sentenced to 5 years imprisonment with hard labour within the limits of the term prescribed in the Law.

The offences committed by the defendant MCMILLAN and LOFFY, as referred to in IV above, come under Article 5, paragraph 1 of the War Prisoners Penal Law and Article 55 of the Criminal Code, and selecting

Def. Doc. # 1818

penal servitude for a term according to penal provisions of the laws, **MacMILLAN** and **LOFFY** shall be sentenced to one year and six months imprisonment with hard labour within the limits of the term provided for.

One six-chambered revolver (Exhibit No. 1) shall be confiscated in accordance with Article 19 of the Criminal Code on the ground that the said revolver was obtained by the accused **MATTHEWS** in committing crime of preparations for the enemy's invasion and belongs to no other people than the convict concerned. In accordance with the reasons stated above, we give decision as in the text.

On this 2nd day of March in the 19th year of Showa (1944)

A Provisional Court-Martial

of

N.M. No. 9801 Unit.

Chief Judge: (President) Leut. Colonel **EGAMI, Sohei.**

Judge: (member) Military Judiciary Major **NISHIBARA, Shuji.**

Judge: (member) Captain **TSUTSUI, Yoichi**

Def. Doc. # 1818

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I hereby certify that the copy of Judgment hereto attached,
is one that was submitted to the War Ministry by the NADA No. 9801
Unit, that is, by the Headquarters of the 37th Army, as a copy of the
original judgement which had been given at a provisional court-martial
by the NADA No. 9801 Unit, and was actually in the custody of the 1st
Demobilization Bureau.

On this 17th day of June, the 22nd, year of Showa (1947)

/S/ CYAMA, Fumio (seal)
Chief of the Judicial Investigation
Section, 1st Demobilization Bureau.