

SERVED: November 25, 2009

NTSB Order No. EA-5490

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 24th day of November, 2009

_____)	
J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18703
v.)	
)	
DOUGLAS E. GILLISS,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on October 21, 2009.¹ In the initial decision, the law judge granted respondent's appeal as to one count of the

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

Administrator's emergency revocation order,² and denied respondent's appeal concerning another count, based on respondent's alleged violation of 14 C.F.R. § 61.59(a)(2).³ Based on his finding that respondent violated § 61.59(a)(2), the law judge affirmed the Administrator's emergency order of revocation of respondent's airline transport pilot (ATP) certificate, and any other certificate respondent holds, with the exception of respondent's ground instructor certificate. We deny respondent's appeal.

The Administrator issued the emergency revocation order, which became the complaint in this case, on September 28, 2009. The complaint alleged that, on or about July 4, 2009, respondent signed a flight review endorsement sticker indicating that David Zweigle had completed a flight review in an Aero-Vodochody model L-29 aircraft on July 4, 2009. The complaint further alleged that this endorsement was fraudulent or intentionally false, because respondent did not give Mr. Zweigle a flight review on

² This case proceeds pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709(e) and 46105(c), and in accordance with the Board's Rules of Practice governing emergency proceedings, codified at 49 C.F.R. §§ 821.52-821.57.

³ The pertinent portion of § 61.59(a) prohibits any person from making or causing to be made, "[a]ny fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part."

July 4, 2009. The complaint also stated that a flight review endorsement is required for a pilot to act as pilot-in-command (PIC) of an aircraft in compliance with 14 C.F.R. § 61.56(c).⁴

The law judge held a hearing, at which he segregated the evidence into the two counts that the Administrator's complaint charged.⁵ At the hearing, Dennis Zweigle, who is the brother of David Zweigle, testified that his brother died on July 4, 2009, during an aviation accident in Tehachapi, California. Dennis Zweigle testified that, in the days immediately following the accident, he found some of his brother's personal effects in the center console of the truck his brother was driving for the City of Tehachapi. Dennis Zweigle identified a copy of the endorsement sticker in question, which he stated he attached to his brother's city identification and delivered to his brother's widow. Exh. A-15. Dennis Zweigle testified that he did not

⁴ Section 61.56(c) requires that all PICs: (1) accomplish a flight review in an aircraft for which the pilot is rated by an authorized instructor, and (2) obtain a logbook endorsement from the instructor who gave the review, certifying that the pilot satisfactorily completed the review. The regulation requires that such reviews occur every 24 months.

⁵ In a count separate from the falsification charge, the complaint also alleged violations of 14 C.F.R. §§ 91.119(b) and 91.319(c), and 49 U.S.C. § 44711(a)(1), based on respondent's operation of his L-29 on two flights over densely populated areas of Tehachapi, California, during which he made low passes. The law judge found that the Administrator did not provide adequate evidence to prove the allegations concerning this count. This opinion only considers the Administrator's allegation that respondent violated § 61.59(a)(2).

find a pilot logbook in the truck, but found his brother's flight bag and gas receipts. Tr. at 26.

The Administrator's counsel also called Gaston Patterson, who works in the airport department for the City of Tehachapi, to testify. Mr. Patterson testified that he was at the Tehachapi airport on July 3, 2009, when respondent arrived, and the he did not see respondent fly with David Zweigle at any time. At the conclusion of Mr. Patterson's testimony on direct examination, respondent's counsel stipulated that respondent did not fly with David Zweigle at any time on July 3 or 4, 2009. Tr. at 29-30. Mr. Patterson testified on cross-examination that David Zweigle flew with Robert Chamberlain⁶ on July 3, 2009.

The Administrator's counsel called Terrence McMaster, an aviation safety inspector at the Flight Standards District Office in Van Nuys, California, to testify. Inspector McMaster served as an investigator for the fatal July 4, 2009 accident, and interviewed respondent for the accident investigation. Inspector McMaster stated that the FAA obtained the endorsement sticker from David Zweigle's widow, and sought Mr. Zweigle's logbook because they were interested "in trying to determine if Mr. Zweigle was current and qualified in his recent flight

⁶ During his opening statement, respondent's counsel described Mr. Chamberlain as "an ex-military pilot with thousands of hours, a certified straight-flight instructor in the L-29 aircraft, and current in the L-29 aircraft." Tr. at 14.

history prior to the mishap." Tr. at 35. Inspector McMaster testified that it is common for investigators to review such endorsements after an accident occurs, and that the FAA depends on such records to show compliance with the Federal Aviation Regulations (FAR). Inspector McMaster recalled that respondent told him that he had never flown with David Zweigle, and had never given Mr. Zweigle a flight check. Tr. at 39, 41.

Inspector McMaster stated that, in discussing the events of July 3 and 4, 2009, with him, respondent confirmed that his signature was on the endorsement sticker, and that he had filled out the sticker in advance because he intended to fly with David Zweigle. On cross-examination, Inspector McMaster acknowledged that respondent informed him that Mr. Chamberlain had completed the flight review for David Zweigle on July 3, 2009. Inspector McMaster also stated that he had not found a current pilot logbook for David Zweigle, as the most recent logbook he had located was from 2002.

At the hearing, respondent also testified on his own behalf. Respondent recalled that he received a telephone call from David Zweigle on July 1 or 2, 2009, in which Mr. Zweigle requested that respondent complete a flight review for him. Respondent stated that he typically pre-prints documents, certificates, and endorsements in order to save time and because it appears neater than if he handwrites on them. Tr. at 55.

Respondent confirmed that he pre-printed the endorsement sticker for David Zweigle on July 2, 2009, because he anticipated completing the flight review with Mr. Zweigle on July 4, 2009. Respondent testified, however, that plans changed and Mr. Chamberlain completed the flight review with David Zweigle on July 3, 2009. Respondent described the meetings and activities of July 3 and 4, 2009, and stated that the endorsement sticker remained in the briefing room until the accident on July 4, 2009, after which he did not know the location of it or how it got into the truck David Zweigle had been driving.

In support of his case-in-chief, respondent also called Robert Stambovsky, Donna Knighton, Reginald Clark, and William Gamble to testify. Mr. Stambovsky testified that he saw Mr. Chamberlain on July 3, 2009, and that Mr. Chamberlain told him that he had conducted a flight review for David Zweigle earlier that day. The law judge did not allow Donna Knighton to provide testimony concerning the issue of the flight endorsement, because respondent had failed to list Ms. Knighton as a fact witness in discovery for the count concerning the flight endorsement. Mr. Clark testified that respondent had conducted a flight review for him, and that respondent's standard procedure was to place the endorsement sticker in his logbook at the end of the flight. Mr. Gamble testified that

flight endorsements are related to safety. Also in support of his case, respondent submitted into evidence a deposition transcript and personal statement of Elias Casillas, who was at the Tehachapi airport on July 4, 2009, and testified that he knew that Mr. Chamberlain gave David Zweigle a flight review on July 3, 2009. Exh. R-1 at 7; Exh. R-2.

In rebuttal, the Administrator's counsel again called Mr. McMaster, who testified that an endorsement sticker need not be placed in a logbook to make it "operative." Tr. at 91. Mr. McMaster stated that the FAR does not require that the flight endorsement sticker be placed in a logbook. Mr. McMaster also testified that the fact that a flight review may have occurred on July 3, 2009, does not make the endorsement sticker any less significant, given that respondent signed the sticker and dated it July 4, 2009.

At the conclusion of the hearing, the law judge determined that respondent violated § 61.59(a)(2), as charged, because respondent did not dispute that he had filled out the endorsement sticker, indicating that he had conducted a flight review for Mr. Zweigle on July 4, 2009, when no such flight review occurred. The law judge summarized testimony at the hearing, at which witnesses testified that respondent did not administer a flight review. The law judge acknowledged that respondent testified that he never delivered the endorsement

sticker to Mr. Zweigle, but the law judge further noted that respondent did not attempt to explain how the endorsement could have gotten into the truck Mr. Zweigle was driving. The law judge concluded that the endorsement sticker that respondent completed for Mr. Zweigle was false, and consequently determined that respondent violated § 61.59(a)(2). The law judge ordered revocation of respondent's ATP certificate, on the basis that "intentional falsification is grounds for revocation." Initial Decision at 249.

On appeal, respondent contends that the law judge erred in numerous respects. Respondent argues that certain evidentiary rulings that the law judge made prejudiced him, and that the law judge incorrectly summarized the evidence.⁷ Respondent's principal argument appears to rest on the assertion that respondent never delivered the endorsement sticker to David Zweigle, and that respondent therefore did not violate § 61.59(a)(2). In this regard, respondent argues that the Administrator did not fulfill the intentional falsification standard because he has not established that the mere act of

⁷ In his appeal brief, respondent disagrees with the law judge's statement that it was dark when Mr. Chamberlain and respondent arrived at the Tehachapi airport, and the law judge's description of Mr. Stambovsky as a "long standing" acquaintance of respondent's. Appeal Br. at 9-10. Respondent also disagrees with the law judge's statement that a town party with alcohol was taking place at the airport, and the law judge's assessment that David Zweigle locked the truck he was driving.

respondent filling out the endorsement sticker in advance was capable of influencing the FAA. The Administrator opposes each of respondent's arguments, and urges us to affirm the law judge's decision.

With regard to the issue of falsification of a logbook entry or other such record, we have long adhered to a three-prong standard to prove a falsification claim; in this regard, in intentional falsification cases, the Administrator must prove that a pilot (1) made a false representation, (2) in reference to a material fact, (3) with knowledge of the falsity of the fact.⁸ We have also held that a statement is false concerning a material fact under this standard if the alleged false fact could influence the Administrator's decision concerning a certificate.⁹ In Administrator v. McCarthney, 7 NTSB 670, 671 (1990), we rejected the respondents' argument that false logbook entries were not material because they did not reflect time that the respondents were required to keep. We stated as follows:

In our view, all flight time recorded in the logbook (or other "reliable" record) an airman is required to keep (see section 61.51(a)) is material information because it is important to determinations respecting

⁸ Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

⁹ Administrator v. McGonegal, NTSB Order No. EA-5224 at 4 (2006); Administrator v. Reynolds, NTSB Order No. EA-5135 at 7 (2005); see also Janka v. Dep't of Transp., 925 F.2d 1147, 1150 (9th Cir. 1991).

the airman's currency and qualifications and his future entitlement to additional ratings and certificates. The materiality of such flight time is thus a function of its placement in a logbook that has been or will be produced for inspection by the Administrator on reasonable request; it is not immaterial simply because the airmen did not have to log it.

Id. (citing Cassis v. Helms, 737 F.2d 545 (6th Cir. 1984), in which the Sixth Circuit held that false entries in pilot logbook for additional 150 hours of flight time were material misrepresentations, even though there were enough accurate entries to fulfill 1,500 hour requirement, since false entries were capable of influencing decision whether applicant had 1,500 hours of flight time and, if left intact, could be used by applicant to show compliance with other sections of the FAR).

With regard to whether the Administrator has fulfilled his burden in establishing that respondent intentionally falsified the endorsement sticker under the longstanding Hart v. McLucas precedent, we have carefully examined the evidence that could prove each of the necessary elements. We note that the law judge appeared to make a credibility determination that did not credit respondent's testimony that he had no knowledge of how the endorsement came to be in the vehicle, even though respondent did not conduct a flight review. In this regard, we defer to law judges' credibility assessments unless they are arbitrary, capricious, or contrary to the weight of the

evidence.¹⁰ Respondent does not deny that he completed, signed, and dated the endorsement sticker for David Zweigle at least 2 days in advance. Respondent contends that he never delivered the sticker to Mr. Zweigle, and states that he does not know how the sticker came to be in the truck that Mr. Zweigle was driving, along with Mr. Zweigle's other personal effects. Moreover, respondent does not deny that he did not dispose of the sticker after realizing that the flight review would not occur.

To the extent that respondent takes issue with the law judge's evidentiary rulings and credibility assessments, we hold that such arguments do not help respondent's case. Respondent points out certain statements that the law judge made in the initial decision that are contrary to the evidence. The indisputable accuracy of these statements, however, is not critical to the outcome of this case. As discussed above, we resolve the issue of whether respondent falsified the endorsement sticker by concluding that respondent signed and dated the sticker, indicating that David Zweigle completed a satisfactory flight review with respondent, when no such flight review occurred. If Mr. Zweigle completed the flight review with Mr. Chamberlain, that does not change the fact that

¹⁰ See, e.g., Administrator v. Schwandt, NTSB Order No. EA-5226 at 5 (2006) (citing Administrator v. Smith, 5 NTSB 1560, 1563 (1987)).

respondent signed the sticker, which included the date of July 4, 2009. Respondent does not deny that the sticker contained false information.

Similarly, respondent's arguments regarding the law judge's evidentiary rulings and evaluation of the evidence are also unhelpful, as respondent has not established that the law judge's rulings were an abuse of discretion.¹¹ As described above, the law judge did not allow Ms. Knighton to testify with regard to the intentional falsification issue because respondent did not identify Ms. Knighton as a fact witness for the issue during discovery. Respondent contends that Ms. Knighton would have confirmed that Mr. Chamberlain completed the flight review for David Zweigle. As described above, however, the fact that Mr. Chamberlain may have completed the flight review is not relevant to the allegation that respondent signed and dated the endorsement sticker for a flight review, when he never completed a flight review for Mr. Zweigle, and then allowed it to come into Mr. Zweigle's possession. As such, respondent has not established that the law judge's exclusion of Ms. Knighton's testimony prejudiced him.

¹¹ We have long held that law judges have wide latitude in their oversight of discovery and hearings, and that we review law judges' evidentiary rulings, when such rulings resulted in prejudice, for an abuse of discretion. See, e.g., Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Seyb, NTSB Order No. EA-5024 at 2-3 (2003); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001).

Finally, we find that the law judge did not err in ordering revocation of respondent's certificate. We have previously held that, "even one intentional falsification compels the conclusion that the falsifier lacks the necessary care, judgment and responsibility required to hold any airman certificate." McCarthy, supra, at 672 (citing Administrator v. Berry, NTSB Order No. EA-2689 (1988), and stating that, "[i]n a rare exception to such precedent, the Board affirmed a sanction less than revocation in circumstances where the airman, after submitting a logbook containing false entries, promptly sought to set the record straight. Administrator v. Fallon, NTSB Order [No.] EA-2678 (1988)").¹² In the case at hand, respondent's identification of aviation safety articles that he has authored, in an attempt to mitigate the sanction in this case, do not provide a compelling reason for us to depart from our long-established precedent concerning the sanction for falsification.

Based on the foregoing, we find that respondent has violated 14 C.F.R. § 61.59(a).

¹² See Administrator v. Guerin, NTSB Order No. EA-3827 at 5 (1993) (affirming revocation of a mechanic's certificate, finding that falsification of aircraft logbooks affected the respondent's non-technical qualification to hold a certificate, and indicating that the issue was trust, rather than inability); see also Administrator v. Morse, NTSB Order No. EA-3766 at 12 (1992) (stating that, "[a]n individual who does not ensure the scrupulous accuracy of his representations in records on which air safety critically depends cannot be said to possess the necessary care, judgment, and responsibility" to hold a certificate).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and
3. The Administrator's emergency revocation of respondent's ATP certificate, and any other certificate respondent holds, with the exception of respondent's ground instructor certificate, is affirmed.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *
In the matter of: *
*
J. RANDOLPH BABBITT *
ADMINISTRATOR, *
Federal Aviation Administration, *
*
Complainant, *
v. *
DOUGLAS E. GILLISS, *
*
Respondent. *
* * * * *

Docket No.: SE-18703
JUDGE GERAGHTY

NTSB Courtroom
1515 West 190th Street, Suite 555
Gardena, California

Wednesday,
October 21, 2009

The above-entitled matter came on for hearing,
pursuant to Notice, at 9:19 a.m.

BEFORE: PATRICK G. GERAGHTY,
Administrative Law Judge

APPEARANCES:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a proceeding before the National Transportation Safety Board on the appeal of Douglas E. Gilliss, hereinafter Respondent, from an Emergency Order of Revocation, as amended, which seeks to revoke his airline transport pilot certificate. The amended Emergency Order of Revocation serves herein as the complaint and was filed on behalf of the Administrator, Federal Aviation Administration, herein the Complainant.

1 Board the ease of assessing the evidence, both in my instance
2 and by the full Board, in the event of an appeal with respect
3 to each count individually. I will discuss the counts in
4 inverse order as they appear in the complaint; that is,
5 discussing Count II first and then turning to Count I.

6 With respect to Count II, the Complainant alleges
7 that by reason of the factual allegations contained in Count
8 II, that the Respondent operated in regulatory violation of
9 Sections 91.119(b) and 91.319(c) of the Federal Aviation
10 Regulations and also the provisions of 49 United States Code,
11 Section 44711(a)(1). Those provisions will be recited as
12 appropriate subsequently.

13 Before discussing the evidence, I do observe,
14 however, that in assessing the evidence, I take into account
15 the demeanor of the witnesses, I make appropriate credibility
16 determinations based upon my evaluation of the presentation of
17 the particular witness, the logical consistency of the
18 testimony given, reasonable inferences that can be drawn from
19 that testimony. However, it also is primarily borne in mind
20 that the burden of proof in this case rests at all times with
21 the Complainant. And the Complainant must carry that by a
22 preponderance of the reliable and probative evidence. Now,
23 that is the criteria against which I have viewed the evidence.

24 Turning first to the testimony of the Complainant
25 with respect to Count II, the first witness was Mr. Dennis

1 Zweigle. He sponsored videos that he took on the date in
2 question, which is July 4 of 2009, in the vicinity of the
3 Tehachapi Airport and the town of Tehachapi. So when I talk
4 about July, if I say July 3 or July 4, we're talking about
5 2009.

6 With respect to his videos, he conceded on his
7 testimony that he had no idea of what the altitude of the jets
8 were that he was filming. He also conceded that he was using
9 zoom lenses or zoom lens on the camera at the time he was
10 taking the photographs and that he's not a pilot and eventually
11 essentially conceded that he could not tell what the altitude
12 of the aircraft were of when they did their flyby, which is
13 what he considered them to be. And quite frankly, looking at
14 the videos, for me to attempt to discern the altitude of the
15 aircraft based upon the videos presented by Ms. Zweigle, I
16 decline to do that. I don't think that is with sufficient
17 clarity on those videos. There's distortion because of the
18 zoom. There's topography itself, the hills in the background,
19 which can give the impression of the aircraft being lower than
20 they are with respect to the lower plane level, that is, the
21 ground leading up to the up slope of the particular hills or
22 mountains, whatever you would call them in this area. They
23 look like hills. So in any event, I decline to make any
24 judgment based upon the video. I do not believe that they
25 sufficiently demonstrate a definitive choice as to a statement

1 of flight altitude by the jet aircraft.

2 Mr. Jessie Waldowski also testified and sponsored a
3 video A-1C. Essentially this video, as far as I was concerned,
4 I could discern by looking at the videos that in each one of
5 the three aircraft, as they were on the ramp prior to their
6 departure, that there were two individuals in each one of the
7 aircraft. And frankly, based upon the subsequent testimony,
8 there's no real dispute as to the fact that on the flights in
9 question conducted by the Respondent, that he did, in fact,
10 carry two people, one a Mr. Patterson and the other a
11 Mr. Stambovsky. So that's really not disputed. So it doesn't
12 add much. Mr. Patterson testified that he was at the airport
13 on the Fourth. He was there all day. He observed the first
14 flight by Mr. Stambovsky, and he was a passenger on the second
15 flight, which again is not disputed. He was taking photographs
16 or pics, as he said, on that flight using the Respondent's
17 camera. So obviously he was not a required crew member. But
18 there, as I will subsequently discuss, there's no requirement
19 in any of the pertinent data that an individual be a required
20 crew member. That's not what we're discussing here. But what
21 he did state was that he never looked at any of the flight
22 instruments and he really had no idea of what the altitude was
23 or what the traffic pattern altitude of the airport was, as I
24 understood his testimony.

25 With respect to the Fourth, there was obviously an

1 affair or an event taking place in the town of Tehachapi.
2 There was supposed to be a parade on the testimony. The parade
3 was delayed or went off earlier. I think it was delayed and
4 that, according to the witness, his flight took place before
5 there was any parade down F Street in the town of Tehachapi.

6 Mr. McMaster is an Aviation Safety Inspector with the
7 Federal Aviation Administration who testified with respect to
8 Count II. He testified essentially as to measurements that he
9 took, based upon his measurements in Tehachapi, indicating F
10 Street and the railroad tracks are about 500 feet from the
11 airport and 900 feet approximately from E Street and the
12 Central Park line, I took it for those measurements.

13 In his other testimony he read portions of a deposition from a
14 Ms. Leach. Ms. Leach testified in several places in the
15 deposition, page 10, 20, 35, with reference to her estimate of
16 the altitude of the aircraft, describing two white aircraft and
17 one gray one. She didn't remember seeing any gear, that is,
18 tires on these aircraft. She said not that she didn't see
19 them; she just couldn't recall, don't remember. Her estimates
20 were based upon a stated height of a tree, which she estimated
21 as 100 feet, and said the aircraft were two or three trees
22 high, which would put it at the outside of 300 feet.

23 On cross-examination, as pointed out by counsel, or
24 as on page 9, line 24 of the deposition of Ms. Leach, she
25 stated in response of her question as to altitude that quote,

1 "I couldn't give you feet," so she was unable to make estimates
2 in feet but she did, as I've already indicated, referenced
3 trees. Of course, Mr. McMaster also testified he went out and
4 looked at a tree and he estimated it as 100 feet also being the
5 same tree.

6 Ms. Leach, however, significant to me, did put
7 herself at an alcohol beer booth where she had a table in front
8 of her. There was a van, a refrigerated truck or something
9 behind that booth with beer in it keeping it cold and that the
10 booth itself was covered. So we have, in my view, a question
11 of actually what her line of sight was. And that was never
12 testified to, that she had a clear sight, that she used
13 glasses. You know, there was just nothing there. Also
14 significant to me, Complainant never established where this
15 alcohol beer booth was on the airport. It would make a
16 difference to what she was observing. Was it at the departure
17 end of the runway? Was it at the approach end when the
18 aircraft were landing? What portion of the flight was she
19 observing? I don't know because we don't know where she was.

20 And lastly she conceded that the Central Park, and
21 there are two parks at this airport, a small park apparently,
22 in looking at A-4 and listening to testimony, a small park
23 located as part of the airport grounds and the larger park
24 which is in town called Central Park. But this witness
25 conceded Central Park could be within the traffic pattern of

1 the airport.

2 Respondent testified on his own behalf with respect
3 to Count II. He testified that the entire time that the
4 flights were conducted, both flights, that the aircraft, all
5 three of them, remained within the traffic pattern of the
6 airport and that at all times that the aircraft were at 1000
7 feet or better, that is, 5100 feet to 5150, and I didn't look
8 closely enough at the sectional to see what the MSL/AGL
9 difference is. I take it nobody disputed it. It's about 1100
10 AGL.

11 Witness testified this was a formation flight.
12 They're flying formation. One was a trail and the other was a
13 finger of a V-type formation, however you want to describe it,
14 modified parade for formation flight. And, of course, one in a
15 formation follows the leader. The eyeballs are mostly on the
16 leader to maintain position with respect to the leader and the
17 other aircraft that are in the formation flight. Witness said
18 that he did check his altimeter, you know, would obviously do a
19 quick scan, but eyeballs are mainly outside. And you do follow
20 the leader. But in any event, that's the testimony of the
21 Respondent.

22 Mr. Elias Casillas was the flight leader for this
23 three-ship formation. He arrived at the airport on July 4th.
24 He was not there on July 3rd, and therefore, and I observed
25 that here, a little bit out of sequence, that he would have no

1 knowledge, personal knowledge of conduct of biannual flight
2 review or a BFR to be conducted either by Mr. Gilliss, the
3 Respondent, or by Mr. Chamberland or anybody else. He wasn't
4 there. And there's stipulation that the Respondent did not
5 conduct a BFR either on the 3rd or the 4th. But in any event,
6 Mr. Casillas has no information.

7 His testimony, in my view, was directed to Count II.
8 He supports essentially the testimony of the Respondent. He
9 also testified that while he was the lead aircraft upon the
10 first flight, they flew the flight at 190 knots, which is well
11 below the max speed for this aircraft, which I think is 350,
12 350 --

13 MR. BRIEN: 443 knots, so.

14 ADMINISTRATIVE LAW JUDGE GERAGHTY: -- knots
15 somewhere up in there, it's been a long time, at 5,000 feet.
16 In fact, they were in the traffic pattern at all times, went
17 east to west, always at 1000 feet. They followed railroad
18 tracks. And if they had to go over the park, that is, the park
19 at the airport, it was for purposes of landing or for takeoff.
20 Again, his testimony is essentially a straight and level flight
21 above 1000 feet or at 1000 feet on both flights, to summarize.
22 No time were any acrobatics or any kind of unusual flight
23 attitudes demonstrated by any of the aircraft until
24 unfortunately on the second flight, I guess that was, it was at
25 the number three aircraft apparently pitched out and went

1 vertical and rolled over the top of everybody else and in. So
2 unfortunately because of that fatal, we don't have testimony
3 from Mr. Chamberland, obviously, or Mr. David Zweigle since
4 they were deceased. But as far as this goes on the testimony
5 of these witnesses, straight and level flight within the
6 traffic pattern at all times.

7 Mr. Hugo Waigand is a private pilot. He's based
8 locally at Tehachapi Airport, has about 600 hours. He
9 apparently keeps his aircraft there. And as I understood it,
10 he flies about twice a week out of that airport. He was there
11 on July 4th. He had his airplane parked at the Airport Park
12 when they were taking pictures, I guess, or showing off the
13 airplane. He observed the first fly-over. According to him,
14 except for the takeoff and landings, it looked to him as he
15 would estimate it that the aircraft were at all times at
16 traffic pattern altitude of 1000 feet and maybe a 100 to
17 200 feet more. At all times he observed the aircraft were in
18 straight and level altitudes, and as I would indicate, except
19 for purposes of takeoff or landing. So again, no demonstration
20 of capabilities of the aircraft, aerobatics, or unusual
21 attitudes, anything like that. I attach significant weight to
22 Mr. Waigand's testimony. It has shown he has absolutely no
23 interest in this and apparently found out about this whole
24 event by a blog on the internet. I guess you can find anything
25 on the internet nowadays.

1 With respect to the charges of violation of the
2 operation limitations, there's no question but Exhibit A-12 is
3 a special airworthiness certificate. This aircraft,
4 Mr. Gilliss', the Respondent's aircraft, is an L-29. It's an
5 experimental aircraft, and it is governed by the experimental
6 operating limitations, which are received as A-13. The two
7 paragraphs of A-13, which are pertinent here, are Paragraph
8 Four, which are discussed first.

9 Paragraph Four says that, and I'm quoting, "Except
10 for takeoff or landings, the aircraft may not be operated over
11 densely populated areas or congested airways." And it goes on
12 from there. On the testimony in front of me, the only time
13 this aircraft was over the densely populated, and I do take it
14 from looking at A-4 and the testimony of Mr. McMaster, that
15 although Tehachapi is apparently a small town, it is
16 nonetheless still on the edges there, around the Central Park
17 area, what I would consider congested or densely populated.
18 However, the evidence also is that the traffic pattern places
19 the aircraft out over the railroad tracks and either over the
20 Central Park area or alongside it. We're also dealing with
21 these jet aircraft. And although they were only flying at 190
22 knots, that's still a significant airspeed over what one would
23 be flying if you were operating a Cessna 172, 182 or even, you
24 know, Piper Aztec. So they're going to be a little bit further
25 out when they're casting out. And there's no description

1 really, I'm not really sure how the aircraft maneuvered in the
2 traffic pattern. There was a statement as to teardrop, but I
3 don't know whether they actually did a brake or just came
4 around in a teardrop. In any event, depending on the angle of
5 bank, and there's no indication that severe angle of banks were
6 performed, the aircraft would necessarily, as turned into
7 downwind, proceed further out from the downwind edge of the
8 runway. I believe the testimony was about three feet out from
9 the edge of the runway was normal traffic pattern, wingtip
10 distance. And there also was no testimony about when these
11 aircraft would deploy landing gear. Sometimes in formation
12 flight gear is put down right after the brake, and other times
13 it's not put down until you start your turn back in around. It
14 depends on how you're going to brief the flight. And again,
15 there's no testimony. So depending on when the gear was
16 supposed to be extended for these aircraft, of course, it would
17 make a difference. And I don't know whether this aircraft were
18 using speed brakes or not, but it would make a difference where
19 they would drop their gear because they're going to affect the
20 characteristics of flight for the aircraft and the speeds. So
21 that would also affect the testimony of Ms. Leach. Of course,
22 we don't know where she was, and we don't know when the
23 aircraft or extending gear. So in my view the -- the testimony
24 and the evidence here does not support on a preponderance of
25 the evidence a finding that there was a violation of Paragraph

1 4 of the operating limitations for pertaining to this aircraft
2 as alleged in Paragraph 20 of the complaint.

3 Paragraph 22 states, "No person may be carried in
4 this aircraft," meaning Respondent's aircraft, "during the
5 exhibition of the aircraft's flight capabilities, performance,
6 or unusual characteristics unless essential for the purposes of
7 flight. There's absolutely no testimony that there was any
8 demonstration of unusual characteristics. There's no
9 demonstration of capabilities. All the testimony in front of
10 me is that a straight and level flight. Complainant's
11 witnesses were essentially talking about altitude, not about
12 anything else. There was no discussion about performance. And
13 by that I would mean, you know, slow flights, high speed turns,
14 I don't know what because it seems you're jumbling things
15 together, capabilities, performance, almost the same thing,
16 unusual characteristics. But in any event, again, on the
17 evidence in front of me, I think it preponderates in favor of
18 the Respondent that the flights were conducted at 1000 feet or
19 better and straight and level flight, that any downwind portion
20 that took them over a congested or dense area of Tehachapi was
21 still because of the traffic pattern. Therefore, without
22 belaboring the rest of the Count II, there's no question it was
23 established that there were passengers in the aircraft, that
24 they weren't there for purposes of being essential to flight.
25 Yes, having a qualified pilot in the back seat, another set of

1 eyes, even if it's your own son and you tell him to look out
2 right window and if you see somebody, yell. It's a safety
3 help. So that's all established, but the essential charge is
4 unnecessary operation over dense areas at below specified
5 altitudes. And that's not established here.

6 I therefore find and conclude upon the evidence in
7 front of me that the Complainant has failed to sustain his
8 burden of proof with respect to Count II by a preponderance of
9 the reliable and probative evidence. I therefore find that the
10 Complainant has failed to establish and, in fact, did not
11 establish that the Respondent in the conduct of his two flights
12 on July 4th, 2009, at Tehachapi Airport acted in regulatory
13 violation of 91.119(b), 91.319(c), nor of 49 U.S.C.
14 United States Code, Section 44711(a)(1.) And I dismiss those
15 charges.

16 Having said that, I now turn to Count I of the
17 complaint. Count I of the complaint charges that the
18 Respondent, by filling out an endorsement which purports to
19 indicate that Respondent gave a biannual flight review of BFR
20 to the deceased, Mr. David Zweigle, on July, 4, 2009, was, in
21 fact, a false entry, false statement, and therefore, that the
22 Respondent is in regulatory violation of the provisions of
23 Section 61.59(a)(2) of the Federal Aviation Regulations, which
24 prohibits any person from making or causing to be made any
25 fraudulent or intentionally false entry in any logbook, record,

1 or report as required to be kept, made, or used to show
2 compliance with any other requirement of the Federal Aviation
3 Regulation."

4 Mr. Dennis Zweigle was the first witness called by
5 Complainant with respect to this Count. He testified that with
6 his other brother, he went out to the airport after the
7 accident on July 4th, in which David Zweigle was deceased
8 because of the aircraft crash, and they went out to obtain
9 personal effects from the personal vehicle of David Zweigle,
10 which had been parked at the airport. That's how Mr. Zweigle,
11 David Zweigle, had arrived at the airport apparently for the
12 events on July 4th.

13 Mr. Dennis Zweigle testified that when they arrived
14 there, either the 5th or 6th of July, that they looked in the
15 truck and obtained personal items. They found those under the
16 console, which I take it was in the front part of the vehicle,
17 a truck. It was a lift-up area. And within that they found
18 David Zweigle's city ID badge or credentials and also with it
19 either attached to it, or however with it, the endorsement
20 which was received as Exhibit A-15. That endorsement does show
21 that the biannual flight review endorsement was rendered
22 purportedly to Mr. David Zweigle on July 4, 2009, in an L-29
23 aircraft and signed by the Respondent with his CFII number and
24 the expiration date on his flight instructor certificate. It's
25 not disputed that the Respondent actually filled out this form.

1 What's disputed is what happened with the form.

2 Mr. Dennis Zweigle also testified that within the
3 console and in the truck itself, they did not find his
4 brother's pilot logbook. They did not find any maps, charts,
5 or any other type of documents. What they found, as I
6 understood the testimony, were gas receipts or other receipts
7 that would show activities that Mr. Dennis Zweigle had been
8 engaged in and simply left it as trash inside the truck.
9 Specifically on cross-examination the witness again reiterated
10 that the only thing aside from the badge and the endorsement
11 document were gas receipts, no file folders, no flight bag, no
12 pilot logbook, none of those items were in the truck.

13 Mr. Gaston Patterson testified, he works for the city
14 of Tehachapi in the aviation department, his testimony
15 essentially became superfluous since it was stipulated that the
16 Respondent never flew with David Zweigle on either July 3rd or
17 July 4th of 2009, therefore, never prefilled the requirements
18 of a biannual flight review which requires one hour of ground
19 school and at least one hour of flight time. So that's not an
20 issue.

21 Mr. Terry McMaster also testified with respect to
22 Count I. He's an Aviation Safety Inspector with the Van Nuys
23 FSDO, been with the FAA about 13 years. He's an A&P, has
24 inspection authorization, flight engineer, et cetera.

25 His involvement became as a result of being on

1 accident alert. That's not an issue in front of me, just that
2 that's how he essentially became involved. As part of the
3 investigation, as he testified, it is required and common that
4 they check out the qualifications currency of an individual
5 that might be involved in the particular accident. Therefore,
6 they're always looking for the pilot logbooks, current medical
7 certificates, anything like that. That's well within the
8 Board's knowledge. In any event, this witness testified that
9 they were, meaning the FAA, looking for David Zweigle's pilot
10 logbook as part of the accident investigation. And what they
11 were looking for was, and they found, after this was given to
12 the FAA by Mrs. Zweigle, apparently she gave it to the Chief of
13 Police and the Chief of Police gave it to the FAA. But in any
14 event, according to this witness, this would be relied upon by
15 the FAA to show that Mr. David Zweigle was at least current and
16 qualified under the requirements for a biannual flight review.
17 So it becomes material for that purpose, whether it's in the
18 logbook or not. You know, I have more to say about that later.
19 This witness also testified about a telephone conversation that
20 he had with the Respondent concerning the events, particularly
21 with respect to whether or not a biannual flight review had, in
22 fact, been conducted. According to Mr. McMaster's testimony,
23 in that conversation, the Respondent stated that he, the
24 Respondent, thought that Mr. Chamberland, who was the pilot of
25 the aircraft that crashed and the individual who purportedly

1 gave a biannual flight review, gave a flight review to David
2 Zweigle on July 3, 2009, he thought. That is not the same as
3 saying, I know. And I simply observe here that there is no
4 direct evidence in front of me that anybody testified that they
5 observed Mr. Chamberland give a check ride to Mr. Zweigle.
6 There's no evidence that a ride ever took place between these
7 people for purposes of a BFR.

8 In any event, Mr. McMaster testified based upon his
9 investigation that one hour of ground school, one hour of
10 flight was never conducted, and therefore, no BFR, as required
11 under the provisions of Federal Aviation Regulation 6156, ever
12 occurred. There was other testimony as to the signatures on
13 the documents, but that is really not in dispute. It is
14 conceded that the Respondent, in fact, filled this out.
15 Testimony in front of me is that the Respondent filled it out
16 because he anticipated that on the Fourth he was going to give
17 a check ride BFR to Mr. Zweigle and that, therefore, in the
18 interest of economy of effort, he filled it all out, signed it,
19 and intended to give it to him after a BFR was conducted, but
20 because there was a request for a second flight, that flight
21 never took place.

22 With respect to Mr. David Zweigle's pilot logbook,
23 testimony as it stands was that the FAA, Mr. McMaster, never
24 received David Zweigle's current pilot logbook, found one in a
25 hangar. I guess Mrs. Zweigle also apparently had other

1 logbooks dating between 1990 and 2002. But we don't have
2 Mr. David Zweigle's current pilot logbook, assuming that he
3 kept a logbook.

4 Mr. Gilliss testified on his own behalf. He has been
5 flying for about 40 years and he has his career, as I
6 understood it, with the U.S. Air Force. He holds an airline
7 transport pilot certificate and is a CFII. He conceded that he
8 prepared the endorsement and that it was preprinted, you know,
9 and that his plan was to fly with Mr. Zweigle on the date in
10 question and that's why he had this done in advance. He
11 testified that what he usually does after he conducts a BFR
12 with an individual, that he fills out the endorsement, puts it
13 in the individual pilot logbook or writes it in, I think takes
14 a photograph with the individual for posterity, and that was
15 what he had intended to do here. However, on his testimony,
16 the plans changed. And it's significant to me he indicated
17 that on July 3rd they arrived after dark. That's significant
18 to me because if they arrived after dark, and if I understood,
19 that was with Mr. Chamberland, as the testimony, arrived, it
20 was dark on July 3. When was this BFR conducted? In the dark?
21 Now, he arrived with Mr. Chamberland.

22 As to the flight itself, he indicates that
23 Chamberland flew with the Respondent and did a BFR. But how
24 does he know that? His testimony is that he knows that because
25 Mr. Chamberland told him. Again, we don't know who saw this.

1 There is no testimony anybody actually observed a flight taking
2 place. As to the placement of the documents themselves,
3 Respondent indicated he brought a folder with all the
4 documents, including Exhibit A-15, the endorsement, into the
5 briefing or OP's office for the briefing and it was placed on
6 the table. The BFR endorsement was in this folder. It was
7 left on the table.

8 And the testimony is that after the second flight,
9 when the events that took place, that the endorsement was
10 missing. However, the testimony is that he never provided the
11 endorsement sticker to Mr. David Zweigle and concededly he
12 didn't do that because he didn't fly with him. However, again,
13 there's no explanation to me that is viable as to how this
14 endorsement got into Mr. David Zweigle's truck in the console.
15 That's the only item associated between David Zweigle and the
16 Respondent that was found by the other two Zweigle brothers
17 when they inventoried the truck.

18 And I also draw up what I think is a reasonable
19 inference. This was a big event in Tehachapi. There were
20 people at the airport, Central Park, the park at the airport.
21 They had a beer and alcohol thing set up at the airport itself.
22 Mr. Zweigle arrived in his truck. I think it would be
23 reasonable to say that he probably locked his vehicle. So we
24 have a vehicle unattended and open with a city badge inside all
25 day long. I don't think one would risk his official

1 credentials that way or have the truck stolen. So the question
2 arises, how did the endorsement get in Zweigle's truck?
3 It's reasonable that after the first flight sometime during the
4 day, and this is a conclusion I reach, that Mr. Zweigle
5 obtained this endorsement. It was a break between the first
6 flights and the second flights, the one that Mr. Zweigle was
7 on. The hamburgers were eaten. He went out and put this in
8 his truck. There's no explanation of who else would have done
9 it. Why would anybody else do it? It's not logical.
10 Mr. Stambovsky testified on behalf of the Respondent. He
11 testified that he arrived about 8 p.m. on the 3rd of July. And
12 he testified that in the picnic area he met Mr. David Zweigle,
13 the Respondent, and Mr. Chamberland, and they talked about the
14 plans for the next day. And then he said Chamberland told him
15 that he had given a BFR flight check to David Zweigle. But
16 again, all we have is hearsay supposedly given by a deceased
17 individual. Hearsay is admissible, but it has to be some
18 patina of credibility. And all I have is an acquaintance of
19 the Respondent of some long standing giving this testimony.
20 And again, all he knew, even if you accept it at face value,
21 all he knows is what somebody told him. That is not direct
22 evidence.

23 Mr. Wayne Clark testified that he had received a
24 biannual flight review with the Respondent and that the
25 Respondent placed a sticker in Mr. Clark's pilot logbook. This

1 would be consistent with the testimony that the Respondent
2 testified that that's what his normal procedure is. But again,
3 I observed here that we have no evidence as to whether
4 Mr. David Zweigle had a current pilot logbook or that he had it
5 with him. He wasn't going to be the pilot in command on these
6 flights and no requirement that he have his logbook with him in
7 the aircraft.

8 With respect to the endorsement itself, it is not the
9 flight instructor's obligation to put the endorsement in the
10 individual's logbook. The onus is on the pilot. If the pilot
11 wants to act as a pilot in command, that individual must have
12 the endorsement in his logbook. So, obviously, it would be a
13 burden on him to, after doing the biannual flight review and
14 passing it, to say, endorse my logbook because if he doesn't
15 endorse it, then that individual doesn't have an endorsement to
16 allow him to act as PIC. But there's no obligation on the
17 flight instructor.

18 And as Mr. McMaster testified, it is the current
19 endorsement that's extant that controls. Whether one was given
20 the day before or a week before is not significant. It is the
21 one that's the latest endorsement. That is the one that the
22 FAA is going to rely upon. And in this instance, they were
23 relying upon it to determine whether or not an individual, who
24 was deceased in an aircraft accident, was current or qualified.
25 If Mr. Zweigle did not have his pilot logbook with him and it

1 wasn't in the truck, there's no evidence that it was at the
2 airport. To me it's the reasonable inference that the
3 endorsement was filled out and torn off whatever slip it was
4 and given to Mr. Zweigle and said, here it is. It's up to you
5 to put it in your logbook when you get it, it's at home or in
6 the hangar or wherever it is. If you don't want to put it in
7 your logbook, thank you very much for your fee.

8 But in my view the preponderance of the evidence
9 here, the reliable and probative evidence in the absence of any
10 definitive evidence showing that any biannual flight review was
11 conducted by Mr. Chamberland on the prior date and that this
12 flight endorsement does show one on July 4th, which would be
13 the operative one, is the second one, the more current date, in
14 my view the evidence does support that the Respondent, in fact,
15 wrote out a biannual flight review endorsement probably, and I
16 accept that he did it on the expectation that he was going to
17 fly. And then the plans changed.

18 But in any event, for whatever reason, he was
19 importuned by Mr. Zweigle or whatever or maybe he gave it to
20 him prior to the incident on the expectation that it would be
21 flown. In my view, that does show that the endorsement was, in
22 fact, tendered to Mr. David Zweigle in the absence of the
23 conduct of a biannual flight review.

24 And again, there is, to me the big thing, there's no
25 explanation of why if Mr. Zweigle had obtained a BFR for

1 Mr. Chamberland on the previous day, why would he have this?
2 It's superfluous, no explanation of how it disappears out of
3 the OP room. Who took the folders? Assuming they were taken.
4 And if somebody took the folders, how did the endorsement get
5 into Mr. Zweigle's console in his truck? And what happened to
6 all the other papers that were in the folder since there's
7 nothing else there except receipts? The endorsement is
8 material on the evidence in front of me. It can be used to
9 satisfy the FAA. It was questions as to the currency and
10 qualifications of this individual who was involved in a fatal
11 accident.

12 And, of course, if he had lived and put it in his
13 logbook, it would have qualified him to act as PIC. So it was
14 material. It was in his possession where it had to be.
15 Whether or not he put it in his logbook was up to him. On its
16 face, it is false. The evidence is that Respondent never flew
17 a BFR with this individual on July 4th. Respondent had to know
18 whether or not he did it, that is, conduct a BFR. So knowledge
19 is, in my view under the circumstances, chargeable to the
20 Respondent.

21 In summary, therefore, upon the reliable and
22 probative evidence and the reasonable inferences that I have
23 drawn therefrom, an evaluation of the testimony and the
24 witnesses that render that testimony, I do find that the
25 Respondent did, in fact, operate in regulatory violation of the

1 provisions of Section 61.59(a)(2) of the Federal Aviation
2 Regulations in that he falsified intentionally a material
3 document that was required to be kept, made, or could be used
4 to show compliance with other requirements of the FARs. And it
5 is sufficient for materiality if it is shown that a particular
6 document is capable of influencing a determination by the FAA.
7 And, obviously, this could influence them either in the
8 accident investigation or subsequently as to whether or not the
9 individual was qualified to operate as a pilot in command.

10 Turning to the question of sanction, with a finding
11 of intentional falsification, an operative NASA report is not
12 available as a defense to the Respondent by reasons of the
13 statements and the advisory circular. Board precedent is that
14 for intentional falsification, even one instance thereof is
15 grounds for revocation of all airmen certificates held by that
16 particular individual. Herein, the complaint was amended to
17 strike all references to ground instructor, and, therefore, the
18 only certificate in front of me as charged in Count I would be
19 the airline transport pilot certificate.

20 But then, counsel, you also want to say, and all
21 other airmen certificates. If you're striking out ground
22 instructor, what other certificates are you talking about,
23 flight instructor?

24 MR. RUNKEL: Yes, Your Honor. Flight instructor
25 certificate.

1 ADMINISTRATIVE LAW JUDGE GERAGHTY: Is that what
2 you're looking around even better? Okay.

3 ORDER

4 Well, airline transport pilot certificate and any
5 other airmen certificate other than the ground instructor
6 certificate held by the Respondent hereby is revoked. And that
7 is done under Board precedent and the deference to be shown to
8 the Administrator's choice of sanction as required by statute.
9 So ordered.

10 Entered this 21st day of October 2009, at Gardena,
11 California.

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PATRICK G. GERAGHTY

Administrative Law Judge