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NTSB Order No. EA-4922

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 30th day of October, 2001

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. ROBERT DOUGLAS CHRIST, Respondent.	Docket SE-15646

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on November 16, 1999, following an evidentiary hearing.[1] The law judge affirmed an order of the Administrator suspending respondent's airman certificate, on finding that respondent had violated sections 105.15(a) and (b), 91.119(b), 91.307(b) and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R.

[1] An excerpt from the hearing transcript containing the initial decision is attached.

Parts 105 and 91) in connection with a hot air balloon flight on February 7, 1999.[2] The law judge reduced the suspension period from the 30 days proposed by the Administrator to 20 days, a reduction the Administrator does not appeal. The law judge refused to waive the sanction although respondent filed a NASA Aviation Safety Reporting System (ASRS) report. The respondent appeals that action, as well as the law judge's findings of fact and conclusions of law. We deny the appeal.

Respondent was the pilot of a hot air balloon flight in the area of Williamstown, New Jersey, on February 7, 1999. It was a for-hire flight, for the purpose of parachute jumping. This was respondent's first balloon flight in the area, although he had flown fixed-wing aircraft here. He had three jumpers aboard. It is not entirely clear from the record where each jumper departed the balloon. However, while on routine patrol, Officer Branda of the Monroe Township police saw one of the jumpers leave the balloon. Officer Branda testified that, at the time, the balloon was above Radix School. There is no dispute that this area is

[2] Sections 105.15(a) and (b), as pertinent, prohibit the pilot of an aircraft from allowing a parachute jump over or into a congested area unless a certificate of authorization has been issued. Section 91.119(b) prohibits operations below 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft when in congested areas. Section 91.307(b) requires that, except in emergencies, parachute jumps be made in accordance with Part 105. Lastly, section 91.13(a) prohibits careless or reckless operations that endanger the life or property of another. Section 91.13(a) is a residual violation in this case, and need not be independently proven. The carelessness is assumed from the operational violation. Administrator v. Pritchett, NTSB Order No. EA-3271 (1991) at fn. 17, and cases cited there.

congested, and that no certificate of authorization was obtained.[3] Mr. Branda continued on his automobile patrol and, a few minutes later, saw the balloon again. Whereas he could not estimate the altitude of the balloon when it was over Radix School, at this later location he estimated its altitude, measured against a nearby church and trees, as 150 feet. The balloon landed nearby, on King James Road. By the time it landed, it had a seeming parade of on-lookers and police cars following. Again, there is no real dispute that this was a congested, residential area.[4]

Respondent offers a number of defenses to his actions: (1) that the law judge improperly relied on imprecise and unreliable testimony; (2) that he landed in a less-than-perfect location because he thought the police were trying to "pull him over," and it would be better to land anywhere than to continue until he found some more suitable location; (3) that this qualified as an emergency/police "order"; (4) that he was on approach to landing and, therefore, the 1,000-foot rule did not apply; and (5) that because his low flight was not deliberate or intentional, he should obtain the benefit of his NASA ASRS report.

Respondent's first three arguments were rejected by the law judge and implicit in his conclusions are credibility judgments

[3] Respondent instead argued that he was in a far different, sparsely populated location.

[4] In his testimony (Tr. at 193), respondent disagreed, but he offered no basis for his disagreement. Respondent noted advice received from the Balloon Federation of America that landing on

(continued…)

we have no basis to overturn. Administrator v. Smith, 5 NTSB 1560, 1563 (1987), and cases cited there (resolution of credibility issues, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge). Officer Branda's testimony as to the balloon's location when he saw the jumper could reasonably be relied upon. He had been a policeman in this town for many years and was familiar with the area and its landmarks. It was not unreasonable for the law judge to believe his testimony to be accurate and unbiased rather than rely on respondent's self-serving statements. This testimony established the section 105.15(a) and (b) violations -- that at least one jumper jumped "over" a congested location. Respondent's conversations with police when he exited the balloon also do not support his version of events. One would expect, given the tenor of his testimony, that he would have asked police whether there was a problem, or what he could do, if he truly thought he was the object of a police chase and was landing quickly to comply with a perceived order to "pull over." Instead, all he told the police was that he was landing to pick up his jumpers, and that he could land anywhere to do that. Tr. at 33.[5]

Respondent's fourth argument cannot withstand scrutiny, and

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streets was "off limit[s]." Tr. at 184.

[5] Officer Branda testified, "When I asked him what he was doing if anything was wrong, he said, no, I'm just picking up some parachuters….And I wasn't sure if he was supposed to do that, and
(continued…)

is inconsistent with Board precedent. In Administrator v. Prior, NTSB Order No. EA-4416 (1996) at 8, the Board stated:

> If the landing site is inappropriate under the circumstances, then the low flight cannot be excused under the regulation as necessary for landing.

In Prior, the Board cited Administrator v. Cobb and O'Connor, 3 NTSB 98,100, aff'd 572 F.2d 202 (9th Cir. 1977) ("[R]espondents' interpretation of the above regulation would in effect excuse low flight where necessary for 'any takeoff or any landing from any area anywhere at any time.' Such an interpretation is patently fallacious in that it would excuse low flight regardless of the appropriateness of the landing site.") Such an interpretation would also allow pilots to choose any takeoff or landing site or pathway, and call any resulting low flight "necessary," regardless of the danger. Accordingly, the Administrator established that respondent violated § 91.119(b) and no legitimate affirmative defense was offered.

The Administrator did not reply to respondent's last argument. Nevertheless, Board precedent makes clear that a respondent may not reap the benefit intended by the ASRS program in this instance. Conduct that is excluded from protection is that which "approaches deliberate or intentional conduct in the sense of reflecting a wanton disregard for the safety of others." Ferguson v. National Transp. Safety Bd., 678 F.2d 821, 828 (9th Cir. 1982).

(continued…)
then he said I can land anywhere I want to."

Two other landing locations that were far more suitable -- larger, less crowded, and therefore less dangerous -- were adjacent to the King James Road site. By respondent's own testimony, he chose to land on a residential street, amid houses, cars, light poles and pedestrians. Even were we to accept for purposes of argument that he was doing so to comply with his belief that the police were after him and it would be better to land sooner rather than later, we would conclude he exercised extremely poor judgment, and exhibited a gross disregard for safety, in landing where he did, when other much safer locations were close by. There was no emergency, and it is irrelevant that, this time, respondent's landing was uneventful.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The 20-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.[6]

CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. BLAKEY, Chairman, did not participate.

[6] For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).