

SERVED: February 13, 2012

NTSB Order No. EA-5616

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 13th day of February, 2012

_____)	
MICHAEL P. HUERTA,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-19081
)	
BRUNO L. JACQUET,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued on June 30, 2011.¹ By that decision, the law judge affirmed the Administrator’s order based on respondent’s alleged violation of 14 C.F.R. § 91.141, prohibiting a pilot from “operat[ing] an aircraft over or in the vicinity of any area to be visited or traveled by the

¹ A copy of the oral initial decision is attached.

President, the Vice President, or other public figures contrary to the restrictions established by the Administrator and published in a Notice to Airmen (NOTAM).” Although the Administrator originally sought a 30-day suspension of respondent’s commercial pilot certificate, both parties subsequently agreed respondent timely filed a report under the Aviation Safety Reporting Program (ASRP) and, thus, the Administrator agreed to waive the sanction.² We deny respondent’s appeal.

A. Facts

On August 5, 2010, respondent, an aerial photographer employed by Scenic Concepts, was scheduled to fly from La Crosse, Wisconsin, to Ashland, Ohio, taking aerial photographs. Prior to his flight, respondent checked general weather information on television. He obtained more detailed aviation-specific weather information and checked the FAA NOTAMs on Aviation DTN by Telvent, an aviation website.

Respondent also received an e-mail notice on August 3, 2010, from the Aircraft Owners and Pilots Association (AOPA) informing him the FAA had established a temporary flight restriction (TFR) area around Chicago, Illinois, from August 3-6 for a visit by the President of the United States. Respondent had prior experience with TFRs around the Chicago metropolitan area and knew the TFRs varied in size and location. The center of this particular TFR was fixed

² Under the ASRP, the Administrator may waive the imposition of a sanction, despite the finding of a regulatory violation, as long as certain requirements are satisfied. Aviation Safety Reporting Program, Advisory Circular 00-46D at ¶ 9c (February 26, 1997). The Program involves filing a report with the National Aeronautics and Space Administration (NASA), which may obviate the imposition of a sanction where: (1) the violation was inadvertent and not deliberate; (2) the violation did not involve a criminal offense, accident, or action found at 49 U.S.C. § 44709; (3) the person has not been found in any prior FAA enforcement action to have committed a regulatory violation for the past five years; and (4) the person completes and mails a written report of the incident to NASA within ten days of the violation.

17.4 nautical miles (nm) from the Chicago O'Hare Very High Frequency Omnidirectional Radio (VOR)³ ground station on the 127 degree radial. The radius of Area A of the TFR extended outward 30 nm from the center. Tr. at 22, see also NOTAM 0/6044 at 1 (August 3, 2010). The AOPA e-mail description of the parameters of the TFR was the same as that contained in the FAA NOTAM. Tr. at 128-31.

On August 5, respondent initially flew from La Crosse to Janesville, Wisconsin, in his company's Cessna 172RG (tail number N471KP) taking aerial photographs. The aircraft was equipped with two global positioning systems (GPSs)—one of which was a Cheetah system produced by True Flight. Respondent had used the Cheetah system for three years prior to this flight. On the day in question, respondent flew under visual flight rules (VFR) and did not file a flight plan with the FAA.⁴ Respondent claimed he flew using pilotage and dead reckoning techniques, secondarily enhanced by the GPS. On the day of his flight, he viewed the TFR by turning on his Cheetah GPS.⁵ After flying over Janesville, respondent landed to refuel in

³ VOR is a type of radio navigation system for aircraft. A VOR ground station broadcasts a very high frequency (VHF) radio composite signal including the station's identifier, voice (if equipped), and navigation signal. The navigation signal allows an aircraft's airborne receiving equipment to determine a magnetic bearing from the station to the aircraft. This line of position is called the radial from the VOR. The intersection of two radials from different VOR stations on a navigational chart provides the position of the aircraft for a pilot.

⁴ A flight plan is not required when flying VFR.

⁵ On direct examination, the following exchange occurred between respondent and his counsel:

Q. Prior to departing on Thursday, August 5, 2010, what, if anything, did you do to update the status of the TFR NOTAM?

A. Yes, I looked at it.

Q. And how did you look at it, sir?

A. By turning it on it is automatically -- the layer of the TFR rolled on the GPS and I can see it.

Burlington, Wisconsin. Upon departing Burlington, he attempted to circumnavigate the TFR along the eastern boundary on his way to Ohio.

FAA and Secret Service personnel performed TFR watch at the Chicago Terminal Radar Approach Control (TRACON) facility on August 5, 2010. The TFR watch consisted of two FAA air traffic controllers, a supervisor, a TRACON operations manager, and members of the Secret Service monitoring aircraft activity around the TFR via radar. Tr. at 21. At 19:36 Zulu time,⁶ William Tracey, the TRACON operations manager, observed an unknown aircraft penetrate the TFR from the north. Tr. at 25. Upon entering the TFR, the aircraft was flying a heading of approximately 160 degrees—a southeasterly heading. The TRACON broadcast over the emergency frequency for the aircraft to contact air traffic control (ATC), and the aircraft, identified as N471KP, contacted ATC shortly thereafter. ATC provided N471KP a heading to take the aircraft out of the TFR as quickly as possible. N471KP penetrated the TFR by 5nm. Tr. at 84, Exh. A-6 at 9-10.

Respondent landed at South Bend, Indiana, and called ATC. During the phone conversation, respondent informed the controller he was aware of the TFR but thought his aircraft was outside of the TFR because of the display on his GPS. Exh. A-7 at 4. After contacting True Flight, respondent learned the actual TFR on August 5 was larger than that indicated on the Cheetah GPS display.

(..continued)

Q. Well, so, am I correct that you turned on your Cheetah FL210 GPS?

A. Yes, correct.

Tr. at 141.

⁶ 4:26 p.m. local time.

C. Law Judge's Oral Initial Decision

The law judge found respondent violated § 91.141 after engaging in a detailed discussion of the testimonial and documentary evidence produced at the hearing. He noted respondent raised two affirmative defenses—1) a timely filed ASRP report and 2) reasonable reliance on the malfunctioning GPS. While the law judge acknowledged that the Administrator waived the sanction under the ASRP, he rejected respondent's reasonable reliance affirmative defense. He found respondent improperly used the GPS as his primary source of navigation and, as a result, flew into the TFR.

D. Respondent's Issues on Appeal

Respondent appealed the law judge's decision. As raised at the hearing, respondent asserts he proved his affirmative defense of reasonable reliance—that his incursion into the TFR is excusable because he reasonably relied on the malfunctioning Cheetah GPS. He also contends the law judge erred in concluding he primarily used his GPS rather than pilotage and dead reckoning techniques for navigation around the TFR.

2. Decision

A. Reasonable Reliance

Like the law judge, we find respondent failed to carry his burden of proving the affirmative defense of reasonable reliance. Our doctrine of reasonable reliance is one of narrow applicability.⁷ In the controlling case concerning reasonable reliance, Administrator v. Fay and Takacs, we held, “[i]f ... a particular task is the responsibility of another, if the [pilot-in-command] has no independent obligation ... *or* ability to ascertain the information, and if the

⁷ Administrator v. Angstadt, NTSB Order No. EA-5421 at 18-19 (2008), pet. for review denied, Angstadt v. FAA, No. 09-1005, 348 Fed.Appx. 589 (D.C. Cir. Sept. 24, 2009) (per curiam).

captain has no reason to question the other's performance, then and only then will no violation be found.”⁸ In determining whether reliance was reasonable, we consider the facts of each case and the entire circumstances surrounding the alleged violation.⁹ We have held the doctrine also may apply to cases “involving specialized, technical expertise where a flight crew member could not be expected to have the necessary knowledge.”¹⁰

In this case, respondent was the pilot-in-command and alone bore the independent responsibility to circumnavigate the TFR. As a commercial pilot, respondent possessed the knowledge he needed to stay outside the TFR. Nothing about this flight required any sort of specialized or technical expertise which respondent did not possess. Respondent did not receive misinformation from the FAA, a Flight Service Station (FSS), or another government entity.¹¹ As a matter of fact, respondent admits he never contacted the FSS for a pre-flight briefing or information about the NOTAM. Likewise, he never contacted ATC about the TFR.

Instead respondent claims he reasonably relied on his GPS system produced by True Flight, a non-governmental entity. We find this reliance unreasonable under the circumstances. The NOTAM issued by the FAA “recommend[ed] that all aircraft operators check notams frequently for possible changes to this TFR prior to operations within this region. ... For the latest information [on the TFR], call your local Flight Service Station at 1-800-WX-BRIEF.”

⁸ NTSB Order No. EA-3501 at 10 (1992) (emphasis in original).

⁹ Administrator v. Haddock, NTSB Order No. EA-5596 (2011).

¹⁰ NTSB Order No EA-3501 at 9.

¹¹ See generally Administrator v. Dress, NTSB Order No. EA-5115 (2004); Administrator v. Graves and Davis, NTSB Order No. EA-1690 (1981) (finding no violation when pilot's inadvertent entry into restricted area resulted from reliance on erroneous information provided to him by the United States Forest Service after FAA ATC told pilot to contact the Forest Service about circumnavigating a TFR).

Exh. A-3 at 3. As respondent acknowledged during his testimony, the FAA advises airmen operating under VFR, “[w]hile GPS has many benefits to the VFR pilot, care must be exercised to ensure that system capabilities are not exceeded.” AIM 1-1-26, para. 2.b. (Exh. A-9 at 1). Finally, a portion of the True Flight manual, introduced by respondent at the hearing, states “[t]he data link product is meant to augment **not replace** pilot voice communication with Flight Service Stations (FSS’s), other Air Traffic Control (ATC) facilities or Airlines Operations Control Centers (AOCC’s). ...Please verify all information including navigational and weather information from independent sources before considering it valid.” Exh. R-6 (emphasis in the original).¹²

As the pilot-in-command, respondent was responsible for keeping his aircraft out of the TFR. He knew of the NOTAM and had access to ATC and the FSS in order to prevent this incursion. However, respondent chose primarily to rely on a GPS product from a private company. Unlike in the cases where we found a pilot relied on incorrect information provided by the FAA or other appropriate government agency, we decline to extend this doctrine of reasonable reliance to a GPS system produced by a private company.

B. Pilotage and Dead Reckoning

Respondent also contends the law judge erred in finding respondent did not employ pilotage and dead reckoning as his primary sources of navigation. We disagree. The record before us clearly shows respondent primarily, if not entirely, relied on his Cheetah GPS to attempt to circumnavigate the TFR. When respondent called ATC from South Bend, Indiana, he made at least five references to the fact he was using his GPS to try to avoid the TFR but made

¹² Craig Decker, an FAA aviation safety inspector (ASI) also testified the FAA has not approved any GPS device as a primary navigation source for in-flight navigation in VFR flight.

no reference to pilotage or dead reckoning. See generally Exh. A-7.

Mr. Decker testified at the hearing that a reasonable, prudent airman would have plotted the TFR on navigational charts before flying, and then would have used FAA services to help avoid the TFR.¹³ While the True Flight manual for the Cheetah GPS clearly indicated an airman should verify the GPS data against other sources before a flight,¹⁴ respondent's testimony is devoid of evidence he ever looked at navigational charts or made an attempt to verify independently the TFR displayed on the GPS. If respondent had compared the TFR on his GPS display to a plot on a chart or had contacted the FSS or ATC, he would have realized his GPS was malfunctioning prior to or during the flight.¹⁵

¹³ On direct examination, the following exchanges occurred with Mr. Decker:

Q. How can a reasonable and prudent pilot who sees this NOTAM determine where the restricted area is?

A. The NOTAM contains information that describes the center point of the restricted area. The pilot then -- I'll speak for myself; I can't speak for every pilot. But me then, I will get the most appropriate chart. In this case I used the Chicago Terminal Area Control Chart. I plot out where the center point is and then plot out rings and start looking to see if that's going to affect my flight.

Tr. at 41.

Q. Okay. So once a pilot determines based on that NOTAM, NOTAM and hopefully using a map like this where the TFR is, what steps should a reasonable and prudent pilot take to avoid the TFR during his VFR flight?

A. There are any number of steps that a pilot can take. You can file an [V]FR flight plan and use air traffic control services to help you.

Tr. at 44.

¹⁴ Respondent testified he frequently referred to the manual. Tr. at 140.

¹⁵ Respondent's phone conversation with ATC after landing in South Bend, exemplifies this point. Respondent told ATC "and I have a GPS in the plane ... where it would have depicted the TFR and uh according [to] my GPS I was way out and uh I just reviewed uh after landing in South Bend[,] I just went to the graphical um TFR on the internet and [apparently] I was in." Exh. A-7 at 5.

In respondent's brief, he further asserts the law judge erred in finding respondent was not using pilotage and dead reckoning "at 11,500 feet on a clear day southbound along the western shore of Lake Michigan." Appeal Br. at 16. First, we find the record contains no evidence the weather was clear on the day in question. Respondent provided the only testimony about the weather. He indicated it was cloudy when he was taking photographs over Wisconsin.¹⁶ Additionally, respondent's testimony never references checking landmarks on the ground (pilotage) or using his instruments to get his heading or check his relation to a VOR (dead reckoning); instead he continually refers to the use of his GPS. As an experienced commercial pilot flying VFR, we find if respondent indeed was primarily using pilotage and dead reckoning techniques he would have had more than enough information to circumnavigate the TFR without the assistance of a GPS. Therefore, like the law judge, we conclude respondent primarily, if not entirely, relied on his GPS to attempt to circumnavigate the TFR.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's oral initial decision is affirmed.

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

¹⁶ Respondent stated, "[a]ctually, it took me a little bit longer because it was starting to be cloudy and it was taking me a longer time to shoot 30 pictures when it's cloudy because they don't want any shadow in the pictures." Tr. at 133.

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. * Docket No.: SE-19081

BRUNO JACQUET, * JUDGE MULLINS

Respondent. *

* * * * *

U. S. Bankruptcy
Dirksen Federal Building
219 South Dearborn Street
Courtroom 221
Chicago, Illinois 60604

Thursday,
June 30, 2011

The above-entitled matter came on for hearing, pursuant
to notice, at 8:53 a.m.

BEFORE: WILLIAM R. MULLINS
Administrative Law Judge

APPEARANCES:

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1 ORAL INITIAL DECISION AND ORDER

2 ADMINISTRATIVE LAW JUDGE MULLINS: This has been a
3 proceeding before the National Transportation Safety Board held
4 here in Chicago. The matter was here on the appeal of Bruno
5 Jacquet, Respondent, from an Order of Suspension that initially
6 sought to suspend his certificate for a period of 30 days for the
7 last regulatory violation of FAR 91.141, and then subsequent to
8 the issuance of the Order of Suspension, the Administrator amended
9 that Order of Suspension to show that there was timely filed a
10 report under the Aviation Safety Reporting Program, commonly
11 referred to as the NASA report. So, we are here today simply on
12 the issue of violation and we're not here on the issue of
13 sanction.

14 The Order of Suspension was filed on behalf of the
15 Administrator of the Federal Aviation Administration for the
16 Regional Counsel of the Great Lakes Region. The matter has been
17 heard before me, William R. Mullins, an Administrative Law Judge
18 for the National Transportation Safety Board. And as is provided
19 by the Board's Rules, I will issue a bench decision at this time.

20 The matter came on for a hearing pursuant to notice that
21 was given to the parties and the hearing was conducted here in
22 Chicago this 30th day of June of 2011. The Administrator was
23 present throughout these proceedings and was represented by
24 counsel, Ms. Adrienne Wojcik, Esquire, of the Regional Counsel's
25 Office, Great Lakes Region. The Respondent was present at all

1 times and represented by his counsel, Mr. Phillip Prossnitz -- did
2 I say that correctly?

3 MR. PROSSNITZ: Prossnitz. Close enough.

4 ADMINISTRATIVE LAW JUDGE MULLINS: Prossnitz, Esquire,
5 of Woodstock, Illinois, and Mr. Charles Barnett, Esquire, of
6 Crystal Lake, Illinois. I assume those are suburbs of Chicago.

7 The parties were afforded a full opportunity to offer
8 evidence, to call, examine and cross-examine witnesses. In
9 addition, the parties were afforded an opportunity to make
10 arguments in support of their respective positions.

11 DISCUSSION

12 I'll paraphrase, but the Order of Suspension in
13 paragraph 1 alleges that the Respondent holds a certain commercial
14 pilot certificate and that allegation was admitted in the answer.

15 Paragraph 2 alleges that on August 5th of 2010 the
16 Respondent acted as pilot-in-command of a Civil Aircraft N471KP, a
17 Cessna 172RG, on a flight in the vicinity of Lake Forest,
18 Illinois, and that was admitted.

19 Paragraph 3 states that on August 5th, 2010, a flight
20 data center Notice to Airmen (NOTAM) Temporary Flight Restriction,
21 Number 0/6044 was in effect, issued for the movement of a very
22 important person, that being the President of the United States,
23 and that the NOTAM cleared all flights in a certain area around
24 this Lake Forest and the Chicago area. And that was admitted by
25 the Respondent.

1 Paragraph 4 states that on August 4th of 2010 at
2 approximately 19:36 UTC, you operated your aircraft within the
3 area of the foregoing FDC NOTAM without authorization from air
4 traffic control. And that was neither admitted or denied which
5 led to this hearing today.

6 And as a result of those allegations, the Administrator
7 is seeking a regulatory violation of FAR 91.141, which prohibits
8 any person from operating an aircraft over or in the vicinity of
9 any area to be visited or traveled by the President, the Vice
10 President or other public figures, contrary to the restrictions
11 established by the Administrator and published in the Notice to
12 Airmen (NOTAM).

13 And the Respondent raised certain affirmative defenses:
14 One, that there was a timely report filed under the Aviation
15 Safety Reporting Program, and that was acknowledged by the
16 Administrator by the amended order that was subsequently issued
17 that acknowledged that there was timely filed that report. The
18 other two affirmative defenses, Respondent says that he reasonably
19 relied on information displayed in flight which depicted
20 Respondent's aircraft clear of that TFR and that the manufacturer
21 of the in-flight display acknowledged that the depiction of that
22 information was displayed incorrectly.

23 Okay. That's why we're here today and that's what we
24 have on the evidence. The Administrator had two witnesses,
25 Mr. Tracey, the ATC person, and Mr. Decker, the aviation safety

1 inspector who worked out this report. And then the Respondent had
2 one witness, himself, Mr. Jacquet.

3 The Administrator had the following exhibits: A-3 was
4 the NOTAM itself that was issued that day. A-4 is the pilot
5 deviation report, at least that portion or that report called
6 pilot deviation report that's issued by ATC. And those two were
7 identified by Mr. Tracey, the ATC individual. These were not
8 necessarily in order so I'll discuss them in the order I received
9 them.

10 A-6 was the radar track identified by Mr. Decker and I
11 think he referred to it as -- it's called a SarDump. I don't know
12 if that's an aviation, but in any event, it has the radar
13 tracking. And as a result of that, there was an area, terminal
14 area chart for Chicago that's up on the board here that had some
15 marks and stuff on it and I had it go ahead and be marked, and it
16 was marked as Exhibit A-15 and I'll come back and talk about that
17 in a minute.

18 A-7 was the transcript that included the CD of the
19 telephone conversation after Respondent landed somewhere in
20 Indiana, I think, and called back. A-8 was the pilot deviation
21 report that was prepared by the inspector, Mr. Decker. A-12 was a
22 page from the GPS that then used in the aircraft that was showing
23 this wrong information about depicting this TFR. A-9 was an
24 excerpt from the airman information manual. And then A-10 was an
25 excerpt from an Advisory Circular 8900-1.

1 The Respondent had, as I said, one witness, Mr. Jacquet.
2 And he identified and there were submitted -- first, let me back
3 up. A-11 was initially offered, there was some question about it,
4 I think it was withdrawn. But if it wasn't withdrawn, A-11 was
5 the photograph that's depicted in both R-7 and R-8, which were
6 admitted, so if there was any question about that I want to put
7 that in the record.

8 Anyway, Respondent's exhibits, first was the TFR that
9 Respondent took from the AOPA website, apparently, and he got this
10 on Monday. Respondent's Exhibits 2 through 6, which included 4A
11 and 4B, were pages from the manual involving this True Flight GPS;
12 I think it's called a Cheetah FL210. R-9 was a photograph of a,
13 or a photocopy of Worx, which was described briefly, as I
14 understood it, showing that the depiction of the TFR displayed in
15 the cockpit for Mr. Jacquet that day was inaccurate. And then
16 there was a letter -- apparently Mr. Jacquet notified the
17 president of the company that makes this GPS and this was a letter
18 back from them that basically said that you're supposed to verify
19 that information and they weren't liable for any problems that you
20 may have had in that regard.

21 Mr. Tracey was the ATC specialist and he said he was
22 working the flight that day and he identified the NOTAM and also
23 the pilot deviation report. He said he was sitting there with two
24 air traffic controllers and supervisor, himself -- he's the area
25 manager -- and then there was a Secret Service individual. And

1 they were watching the screen, because the President was in town,
2 this TFR was in place, and they saw this aircraft coming and his
3 testimony was that at approximately 19:36 Zulu time they saw this
4 aircraft at the TFR area. They started the procedure to notify
5 the intercept aircraft -- I assume that's the Air Force people --
6 and then they started announcing over, I think it was 121.5
7 frequency trying to get the aircraft's attention.

8 Almost immediately, within seconds or minutes, certainly
9 within a minute or two, the Respondent heard them. He didn't
10 think it was him initially but he did call. He got on the
11 frequency, called them and said, "Are you talking to me? And they
12 said, "Yes, we are", and gave him direction and he turned to --
13 apparently he was on a heading of 060 in an attempt to around
14 Chicago out of Lake Michigan and the folks told him to turn to
15 070, which took him -- I think Mr. Decker testified that it was
16 the fastest way out of that TFR. It took him out of that TFR.
17 And then I think later on he was told to continue on course and
18 call in later.

19 And in any event, Mr. Decker then was called to testify
20 and Mr. Decker identified the SarDump, this radar track thing, and
21 then because I didn't understand it, I asked him to pick it out on
22 the terminal area chart that was up there and he had already done
23 so. And now you could see where he has marked the TFR coming
24 across out over Lake Michigan and then the flight of the aircraft.
25 Interestingly, and no one seemed to be concerned about it except

1 maybe me, but the initial notification that the aircraft was in
2 the TFR under that depiction is shown by this SarDump that was put
3 on there shows that he -- they thought he was in the TFR several
4 miles before he was in the TFR and apparently were starting to
5 notify him at some point well before he got there. Maybe they
6 just was watching his track and he kept coming, maybe that's what
7 they were doing.

8 In any event, it was only in the latter portion before
9 he was identified and just -- I would assume if he wrote that down
10 on the SarDump it would be just a matter of seconds after you
11 enter the TFR before he called and identified himself and they had
12 directed him to get out. But that information is there and that's
13 all on Exhibit A-15, the map, which would indicate, but Mr. Decker
14 testified the point way up at the top on this point, which is
15 where they say he was first in the TFR when he wasn't in the TFR.
16 He was well out of it. So, in this SarDump thing, it's only maybe
17 just a few hits on a second -- or last page 10 on that SarDump
18 thing would show he was in the TFR. But he was in the TFR.

19 Mr. Decker, there were several questions asked of him on
20 cross-examination about the GPS and the information that was
21 provided in the GPS. And Mr. Decker, I think, opined that a
22 reasonable and prudent pilot should have had some other
23 information, that this was not a certified GPS.

24 Mr. Jacquet then was called to testify and he identified
25 all of Respondent's exhibits. He talked about he was aware of the

1 TFR. He left La Crosse, Wisconsin where he resides. He had to go
2 down to Janesville area, took some pictures, left there and was
3 headed somewhere in Ohio and was attempting to go around on the
4 north side of Chicago and out on Lake Michigan, apparently, and on
5 to Ohio, when he was noted that he was in this TFR area. And he
6 was so concerned about it that he, instead of proceeding on as
7 scheduled, he landed at -- and I've forgotten where it was in
8 Indiana, but he landed in Indiana and called air traffic control.
9 And I think that call resulted in a transcript which is A-7.

10 He said that his GPS was inaccurate, it was not -- that
11 he was relying on it, that he was in that area. And Exhibit 9,
12 that's the Worx sheet, apparently shows that malfunction, and
13 certainly the letter from that manager or president of True
14 Flight, and wrote it by a letter confirmed. So, that was the
15 evidence that I had today.

16 Let me, as I said at the outset and before we even went
17 back on the record, this is a troubling case for those of us VFR
18 pilots who rely all day on our GPSs and I'm sure all of our
19 portable GPSs to give us that information, and we rely on that
20 information. And I, having flown in and around President Bush's
21 TFR down at the ranch in Crawford, Texas, I'm well aware, and all
22 the cases that I heard resulting from that, I'm well aware that
23 this, when you have a TFR, it's a different situation than flying
24 across country and staying out of a military operation area or
25 something because usually that's a lot of territory and you can

1 avoid it. TFRs are small. They are typically right in a
2 congested area where you need to fly in and out. And it really
3 does require some particular care on the part of the pilot.

4 But I think more importantly, there were about four
5 exhibits that talked about this GPS. And I know counsel would
6 like for me to take this GPS as his sole guidance, but the
7 Administrator's Exhibit A-12, which is a page from this True
8 Flight document, talks about it is a "supplemental" backup. It's
9 not the primary. It's to back up something else. It supplements
10 the other information you should have. The Airmen Information
11 Manual, Exhibit A-9, refers to it as an enhanced situational
12 awareness tool. Well, that presumes that there is some
13 situational awareness and this just enhances it.

14 And then it also, the AIM, in another section of this
15 excerpt, talk about you should contact Flight Service Station or
16 air traffic control to verify the display of the NOTAM information
17 on that GPS that you're using. A-10, the Advisory Circular, the
18 Administrator's Advisory Circular described this as a supplemental
19 aid to VFR in conjunction with an approved means of navigation.
20 And that's under the portion about the portable GPS units, that
21 it's a supplemental aid to VFR in conjunction with an approved
22 means of navigation. And Exhibit R-6, which is another page from
23 that manual, says this product, it is for advisory use only and is
24 designed to supplement your other sources of flight data while en
25 route.

1 All of those indicators are there has to be some other
2 primary means of navigation. Now, counsel has argued that he was
3 relying on dead reckoning and pilotage and those are legitimate,
4 accepted means. But I don't know how you exercise that when
5 you're out on Lake Michigan, and particularly when you're trying
6 to measure a real narrow 30-mile thing versus a 400-mile thing or
7 an international boundary. It's going to take more than dead
8 reckoning and pilotage if you're out over open water to stay out
9 of a TFR. And I think these are all the things that are being
10 suggested by all of these documents that I've just relied upon.

11 Let me refer to just a couple of things. And I thought
12 it was interesting in reference to the case, the Frohmuth and
13 Dworak case, the subsequent case to that was the Merrell case,
14 which interestingly for me was one of those few cases where I have
15 held in favor of the Administrator's position and was reversed by
16 the Board and then the Circuit Court reversed the Board and they
17 came down with a lot more information than anybody ever wanted in
18 the Merrell case. But basically the Merrell case, if I can just
19 relate it a little bit, I think it was a Northwest Airline flight
20 that was coming out of Ontario or somewhere around the West Coast,
21 and their call sign was 479, and there was an American flight that
22 was over there and out there about the same time and its flight
23 number was 359. And ATC called and said for the American flight
24 359 to climb and maintain flight level 210 or something like that.
25 And the Northwest flight thought it was for them and the pilot

1 responded, said this is Northwest, roger, flight level 210.

2 But in the air traffic control tape, the American flight
3 was reading it back at the same time and stepped on, and you could
4 hear the buzzing in the background, but ATC never got this read
5 back from Captain Merrell. And so, they brought a 7-day
6 suspension against Captain Merrell, and it was heavily litigated
7 obviously. But I ruled and I still think that it's, you know,
8 there was a mistake made out there. It was like a tennis game and
9 at the end of that, the ball was still in Captain Merrell's court
10 because he didn't get it back to ATC when he called back. But the
11 Board, when they reversed me, said, well, it was kind of like no
12 harm, no foul, and the Circuit Court sort of took up the issue on
13 that because the system depends on, you know, people doing their
14 job and if the job doesn't get done they need to be aware that
15 they're not getting it done.

16 Here, Captain Jacquet, if I can call you captain, the
17 pilot-in-command, was in the TFR and he was depending on this
18 instrument that all of this documentation said he was only
19 supposed to use as a backup and he didn't have any other means of
20 navigation. At least he hasn't described any for me today except
21 as counsel has talked about the dead reckoning and pilotage, and I
22 don't know how you do that over open water, and that didn't work.

23 So, therefore, under the circumstances of this
24 particular case, I feel I need to affirm the order of the
25 Administrator.

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ORDER

IT IS, THEREFORE, ORDERED that safety in air commerce and safety in air transportation, and a preponderance of the reliable and probative evidence that has been presented here today establishes that the Respondent, on August 5 of 2010, was in regulatory violation of FAR 91.141 and it would be so ordered.

WILLIAM R. MULLINS
Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE MULLINS: Mr. Jacquet, you have the right to appeal this order today and you may do so by filing a notice of appeal within 10 days of this date. If you do file a notice of appeal -- well, if you don't file a notice of appeal, you need to -- wait, there is no sanction. So, if you don't file a notice of appeal within 10 days, this will be part of your record, this violation of FAR 91.141. If you do file a notice of appeal within 10 days of this date, then you need to file a brief in support of that appeal within 50 days of this date.

Now, your appeal goes to the NTSB Office of Administrative Law Judges, Room 4704, at 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594. And then the brief, which would be due 50 days from today goes to that same street address but to the

1 Office of General Counsel, Room 6401.

2 I think, counsel, if you do appeal this, it's important
3 for me to tell you, as you probably already know, that the Board
4 is fairly intolerant of any kind of delay, and any kind of delay
5 will result in your appeal being dismissed.

6 I would ask, if you would come up, counsel?

7 MR. PROSSNITZ: Yes, sir.

8 ADMINISTRATIVE LAW JUDGE MULLINS: I'll hand you a copy,
9 Mr. Prossnitz, of that written order and it's got those addresses
10 and so forth. And I'd like the record to reflect that I've handed
11 him a copy of it.

12 MR. PROSSNITZ: Thank you, Judge.

13 ADMINISTRATIVE LAW JUDGE MULLINS: And I have a copy for
14 the Administrator although I'm telling you folks keep a big file
15 of these things.

16 But in any event, are there any questions from the
17 Respondent?

18 MR. PROSSNITZ: No, Your Honor, and thank you very much
19 for your time and attention to hear this hearing.

20 ADMINISTRATIVE LAW JUDGE MULLINS: Thank you.

21 And any questions from counsel for the Administrator?

22 MS. WOJCIK: No, Your Honor.

23 ADMINISTRATIVE LAW JUDGE MULLINS: Okay. Well, thank
24 you folks. This will terminate these proceedings.

25 Good luck to you, Mr. Jacquet.

1 MR. JACQUET: Thank you, Judge.

2 (Whereupon, at 3:18 p.m., the hearing in the above-
3 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Bruno Jacquet
DOCKET NUMBER: SE-19081
PLACE: Chicago, Illinois
DATE: June 30, 2011

was held according to the record, and that this is the
original, complete, true and accurate transcript which has been
compared to the recording accomplished at the hearing.

Stuart Karoubas
Official Reporter