

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v.

Case No: 8:10-CR-xxxxxx-T-27-AEP

xxxxxx

_____ /

DEFENDANT'S RESPONSE TO THE PROBATION PRESENTENCE REPORT
DETAILING THE DEFENDANT'S OBJECTIONS AND ADDITIONS

COMES NOW, the Defendant, xxxx, by and through his undersigned counsel, and provides this addition to the Presentence Report in the above-styled matter and asks that this detailing of objections and additions of said report be attached to the report and considered part of the record in the case, and would show cause as follows:

I. The Defendant's role in the offense.

The Presentence Report gives no adjustment to the Defendant for his role in the offense. (See, PSI, page 14, par. 68). The Defendant should be given a minor

role adjustment for the following reasons.

The Defendant's knowledge of the conspiracy and his actions in furtherance of the conspiracy were limited to what he was instructed to do. He had a very limited role in the actual criminal enterprise, not knowing the scope and sophistication nor the range and depths of the conspiracy. The Defendant was merely told what to do and when to do it.

As a mere functionary in the conspiracy, the Defendant's knowledge of the conspiracy as well as his actions in furtherance of the conspiracy were minor and therefore his role should be adjusted downward.

II. Specific Offense Characteristics: Amount of Loss

The Presentence Report gives an upward adjustment of 10 levels to the base offense level for the amount of loss in the offense, making a finding that the loss had a retail value of \$122,984, placing the amount of estimated loss at the very bottom of the threshold of \$120,000 and \$200,000. (see PSI, page 14, par. 65)

Making an exact loss amount for the combined losses for multiple vehicles is not possible due to the elasticity inherent in estimating vehicular losses, therefore the court need only make a reasonable estimate of the loss. Here a mere rounding down of \$3,000 of the total loss attributable to the Defendant changes the upward adjustment by two levels. Therefore, it's reasonable under the circumstances to adjust the estimate of loss giving the Defendant an upward adjustment of 8 levels rather than 10.

However, even that reduced figure trumps the fair estimate based on the

facts as agreed to by the parties in the Plea Agreement (see Plea Agreement, page 9, par. 2) in which the amount of loss attributable to the Defendant in Count One of the Indictment is \$65,000 which would place the amount of estimated loss between \$30,000 and \$70,000 for an upward adjustment of 6 levels.

Respectfully Submitted,

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By: _____
ROBERT L. HAMBRICK
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic-mail delivery to the United State's Attorneys office and to the United States Probation Office in Tampa Florida, this 15th day of October, 2010.

By: _____
ROBERT L. HAMBRICK