

**United States District Court**  
**CRIMINAL MINUTES - CHANGE OF PLEA HEARING**

Time Commenced: 11:00 a.m.

Case no: 3:09cr11-001/RV

Time Concluded: 11:45 a.m.

Date: June 5, 2009

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DOCKET ENTRY: Change of Plea Hearing as to defendant **MARCUS SCHRENKER**. Defendant sworn. No plea agreement filed. Defendant pleads guilty to Counts 1 and 2 of the Indictment. Sentencing scheduled for Wednesday, August 19, 2009, at 10:00 a.m.

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PRESENT: HONORABLE ROGER VINSON, SENIOR JUDGE

Jerry Marbut  
Courtroom Deputy Clerk

Mike Constantakos  
USPO

Trish Stephens, Wierzbicki & Stephenson  
Court Reporter

Tiffany H. Eggers  
Assistant U.S. Attorney

**U.S.A. vs. MARCUS SCHRENKER** XX present XX Custody  
Thomas S. Keith, Esquire XX (AFPD/Appointed) XX present Attorney for Defendant

PROCEEDINGS:

- XX Defendant Is RE-ARRAIGNED and specifically advised of his rights.  
XX Defendant states true name is **MARCUS SCHRENKER**  
XX Court questions defendant regarding his physical and mental condition, and advises defendant of the nature and possible consequences of said plea.  
XX Defendant moves to CHANGE PLEA.  
XX Defendant PLEADS XX Guilty Count(s) **1 and 2 of the Indictment.**  
XX Adjudication withheld pending sentencing.  
XX Plea accepted.  
XX REFERRED to U.S. Probation Office. Sentencing scheduled for Wednesday, August 19, 2009, at 10:00 a.m.

FILED IN OPEN COURT

6/05/2009

INITIALS OF DEPUTY CLERK s/JRM

GUILTY PLEA CHECKLIST: Marcus Schrenker 3:09cr11-01/RV

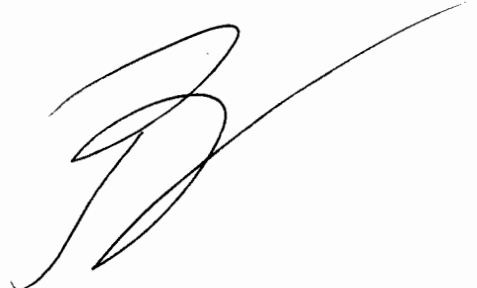
(Defendant)

(Case Number)

- ☒ 1. Swear the defendant: Name, age, date of birth, education, ssn?
- ☒ 2. Questioning:
  - (a) Let me know if you don't understand.
  - (b) Right to consult with attorney.
  - (c) Answers under oath - perjury, etc.
- ☒ 3. Residence, employment, marital status?
- ☒ 4. Treated for any mental illness?
- ☒ 5. Drugs, narcotics, alcoholic beverage within 24 hours? Prescription medication?
- ☒ 6. Understand constitutional rights:
  - (a) Trial by jury, with counsel, with jury determination of drug quantities affecting your maximum sentence?
  - (b) To present evidence and testify (truthfully)?
  - (c) Absolute right to remain silent?
  - (d) Confront and cross-examine witnesses?
  - (e) Subpoena witnesses to compel to testify?
  - (f) Persist/Plea "Not Guilty"? Presumed innocent-burden on government? Waived if plead guilty?
- ☒ 7. Difference between "Guilty" and "Not Guilty"?
- ☒ 8. If plea accepted, realize no further trial?
- ☒ 9. Waive or give up any defense? And right to appeal?
- ☒ 10. Realize it's final - - can't withdraw later?
- ☒ 11. Discussed charge(s) fully with attorney and understand?
- ☒ 12. Listen carefully to facts Government is prepared to prove:
  - (a) Hear what was said? Disagree with anything?
  - (b) Are those facts true and correct?
  - (c) Did you do what you're charged with?
- ☒ 13. Maximum punishments? Restitution? Minimum mandatory? Forfeiture?
- ☒ 14. Sentencing guidelines? Supervised release? Departures? Appeal rights in 18 USC 3742? Parole abolished?
- ☒ 15. If sentence more severe than expected, no right to withdraw?
- ☒ 16. Plea agreement? Read and understand? Discussed with attorney? Realize consequences, as well as any benefits? Sentence is for Judge alone to decide? (Appeal waiver?)
- ☒ 17. Any other promises made to you?
- ☒ 18. Threats, force, pressure or intimidation?
- ☒ 19. Discussed fully with attorney? Satisfied? Any complaint?
- ☒ 20. Findings:
  - (a) Alert, intelligent, and understand nature of charges and Consequences if guilty plea.
  - (b) Facts Government prepared to prove and you've admitted under oath are true - sufficient to support plea
  - (c) Fully aware of effect of guidelines and possible sentence or punishment.
  - (d) Decision made freely, voluntarily and knowingly, with advise of attorney with whom fully satisfied.
- ☒ 21. How plead? Accept and defer adjudication. Set sentencing date.

I. 20 / 250 / 3 / 100  
Restit

II. 6 / 250 / 3 / 100  
Restit  
5,000

SENTENCING DATE: Wednesday, August 19, 2009 at 10:00 a.m.


**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No.: 3:09cr11/RV**

**MARCUS SCHRENKER**

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**GOVERNMENT'S SENTENCING MEMORANDUM**

COMES NOW, the United States of America, by and through the undersigned Assistant United States Attorney, and files this Sentencing Memorandum in response to the defendant's Sentencing Letter dated August 14, 2009.

**COURSE OF PROCEEDINGS**

1. The defendant is scheduled to be sentenced by this Honorable Court on Wednesday, August 19, 2009 at 10:00 am.
2. On July 20, 2009, a pre-sentence report was disclosed to the defendant and the United States. In said pre-sentence report, the defendant's base offense level was calculated at 24 pursuant to United States Sentencing Guideline (U.S.S.G.) §2K1.4(a)(1). (¶ 32). Two (2) points were then deducted pursuant to U.S.S.G. §3E1.1(a) for acceptance of responsibility, resulting in a total offense level of 22 and an advisory guideline range of 41 to 51 months imprisonment. (¶¶ 38, 41 and 89).
3. On August 4, 2009, the defendant filed objections to the pre-sentence

report with the United States Probation Office. In his letter to probation, the defendant raised two (2) substantive objections. The defendant's first objection concerned the use of U.S.S.G. §2K1.4(a)(1) to calculate the defendant's base offense level at 24. The defendant's second objection concerned the restitution amount identified for the defendant's aircraft as provided by Harley Davidson Credit Corporation (HDCC) in paragraphs 25 and 103 of the pre-sentence report.

4. On August 12, 2009, the government filed a response to the defendant's objections with probation.

5. On that same day, the United States Probation Office prepared a revised pre-sentence report. As stated in the revised pre-sentence report, the objections raised by the defendant remain unresolved and will require findings by this Court.

6. On Monday, August 17, 2009, the undersigned received a letter defense counsel sent to the Court on Friday, August 14, 2009. It is in response to the defendant's objections/positions/views concerning the pre-sentence report in his letter that the government files this sentencing memorandum. At the time of sentencing or by separate pleading, if time permits, the government will respond to the defendant's suggestion that a downward departure or variance be entered by the Court.

#### **MODIFICATION TO PRE-SENTENCE REPORT**

1. While reviewing the defendant's Sentencing Letter to the Court and preparing the government's response, the undersigned noticed an applicable guideline enhancement warranting an upward adjustment that was inadvertently overlooked by

both the undersigned and probation, that is, U.S.S.G. § 3B1.3, Abuse of Position of Trust or *Use of Special Skill*. (*emphasis added.*). Immediately upon noticing this oversight, the undersigned notified probation and defense counsel.

2. Section 3B1.3 of the U.S.S.G. in relevant part provides,

If the defendant abused a position of public, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels. This adjustment may not be employed if an abuse of trust or skill is included in the base offense level or specific offense characteristic . . .

“Special skill” is defined in Application Note 4 which provides that a, ““Special skill” refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing. Examples would include *pilots*, lawyers, doctors, accountants, chemists, and demolition experts.” (*emphasis added.*)

3. In light of the aforementioned, the government submits that U.S.S.G. §3B1.3 clearly applies to the defendant’s case and the pre-sentence report should be modified to so reflect.

**RESPONSE TO DEFENDANT’S OBJECTION TO USE OF U.S.S.G. §2K1.4  
IN THE PRE-SENTENCE REPORT**

1. In the defendant’s August 14<sup>th</sup> letter to the Court, he first claims that U.S.S.G. §2B1.1 should be used to calculate the defendant’s base offense level instead of U.S.S.G. §2K1.4. In support of his position, the defendant cites *United States v. Davis*, 202 F.3d 212 (4<sup>th</sup> Cir. 2000). Although the Fourth Circuit Court of Appeals does not cite any authority or provide any reasoning for its conclusion, the court clearly states that

U.S.S.G. §2K1.4 “is only appropriate for application . . . if a ‘use of explosives’ was involved . . .” *Id.* at 218.

2. Therefore and in light of *Davis*, the government defers to the Court to decide whether to use U.S.S.G. §2B1.1 or §2K1.4(a)(1) to calculate the defendant’s base offense level.

3. A summary of the guideline calculation is provided below depending upon which guideline this Honorable Court chooses to use and in light of the application of U.S.S.G. §3B1.3.

	<b>U.S.S.G. §2K1.4(a)(1)</b>	<b>U.S.S.G. §2B1.1</b>
¶ 32 - Base offense level	24	7
¶ 34- Specific offense characteristics		
(b)(1)(H) - More than \$400,000	--	+14
(b)(13)(A) - Conscious or reckless risk of death or serious bodily injury	--	+2
¶ 35 - Adjustment for role in offense		
§3B1.3 - Use of special skill	+2	+2
¶ 37 - Adjusted offense level (subtotal)	26	25
¶ 38 - Adjustment for acceptance	-2	-2
¶ 39 - Total offense level	24	23

Therefore, if the Court uses U.S.S.G. §2K1.4(a)(1), the defendant’s advisory guideline range will be 51 to 63 months and if the Court uses U.S.S.G. §2B1.1, the defendant’s

advisory guideline range will be 46 to 57 months.

**RESPONSE TO DEFENDANT'S OBJECTION TO GUIDELINE'S LOSS  
AMOUNT AND RESTITUTION LOSS AMOUNT**

1. After reading the defendant's letter and the attachment thereto, that is, an email to Ms. Penny Francisco, it appears as though all parties are now in agreement that the total loss amount for the aircraft itself should be the total amount owed on the loan as of January 11, 2009, \$956,387.85. When ordering restitution for the loss of the aircraft itself, this figure should be reduced by \$85,000 which represents the salvage value for the aircraft according to Patrick Montgomery, Senior Litigation Supervisor, handling the insurance claim for the aircraft.

2. As previously explained, since the defendant's destruction of the aircraft, HDCC filed a claim with U.S. Specialty Insurance Company Insurance (U.S. Specialty) for the amount the aircraft was insured for by U.S. Specialty, that is, \$850,000. Currently, HDCC and U.S. Specialty are engaged in litigation over whether the claim will be paid by U.S. Specialty because the loss was due to an intentional criminal act by the defendant. *See U.S. Specialty Insurance Company, a Texas Corporation vs. Heritage Wealth Management, Inc., an Indiana Corporation and Harley Davidson Credit Corporation, d/b/a Eaglemark, a Nevada Corporation*, 1:09-cv-00475-WTL-TAB, United States District Court for the Southern District of Indiana, Indianapolis Division.

3. Therefore, and in light of the apparent agreement between the parties, unless the defendant raises some other objection at the time of sentencing, the

government submits that the defendant should be ordered to pay \$871,387.85 in restitution for the aircraft. The government further submits that restitution should be ordered in the following manner: in the event U.S. Specialty prevails in the above identified litigation - \$871,387.85 to HDCC; and in the event HDCC prevails in the above identified litigation - \$756,500 to U.S. Specialty and \$114,887.85 to HDCC.

WHEREFORE, the United States respectfully files this Sentencing Memorandum in response to the defendant's Sentencing Letter dated August 14, 2009.

Respectfully submitted,

THOMAS F. KIRWIN  
Acting United States Attorney

/s/ Tiffany H. Eggers  
TIFFANY H. EGGERS  
Assistant United States Attorney  
Florida Bar No. 193968  
21 East Garden Street, Suite 300  
Pensacola, Florida 32502-5675  
(850) 444-4000



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the forgoing motion and memorandum has been furnished via CM/ECF to Thomas Keith, counsel for defendant, this 18<sup>th</sup> day of August, 2009.

/s/ Tiffany H. Eggers  
TIFFANY H. EGGERS  
Assistant U.S. Attorney

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No.: 3:09cr11/RV**

**MARCUS SCHRENKER**

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**GOVERNMENT'S SECOND SENTENCING MEMORANDUM**

COMES NOW, the United States of America, by and through the undersigned Assistant United States Attorney, and files this Second Sentencing Memorandum in response to the defendant's Sentencing Letter dated August 14, 2009.

**COURSE OF PROCEEDINGS**

1. The defendant is scheduled to be sentenced by this Honorable Court on today's date at 10:00 am.
2. On Monday, August 17, 2009, the undersigned received a letter defense counsel sent to the Court on Friday, August 14, 2009.
3. On Tuesday, August 18, 2009, the government filed a Sentencing Memorandum in response to the defendant's objections/positions/views concerning the pre-sentence report contained in his letter to the Court. Due to other matters being handled by the undersigned and the associated time constraints, the government's Sentencing Memorandum did not contain a response to the defendant's suggestion in his

letter to the Court that a downward departure or variance was appropriate. It is to this suggestion by defense counsel that the government files this Second Sentencing Memorandum.

**RESPONSE TO DEFENDANT'S REQUEST  
FOR A DOWNWARD DEPARTURE**

1. In defense counsel's letter to the Court, the defendant recognizes the advisory nature of the United States Sentencing Guidelines (U.S.S.G.) and the Court's ability to impose a variance or a departure. The defendant continues by suggesting that either a variance or a downward departure are appropriate in this case. The government vehemently disagrees and humbly suggests that a sentence within the guideline ranges is appropriate in this case and will adequately take into consideration the factors identified in Title 18, United States Code, Section 3553(a).

2. In support of his suggestion that a downward departure should be entered by the Court, the defendant cites U.S.S.G. §5K2.13 - Diminished Capacity and U.S.S.G. §5K2.20 - Aberrant Behavior. A review of these two (2) policy statements shows that neither are applicable to the defendant's case and even if they were there are at least that many, if not more, policy statements contained in Chapter 5, Part K of the U.S.S.G., that is, §5K2.7 - Disruption of Governmental Function, §5K2.9 - Criminal Purpose and §5K2.14 - Public Welfare, which justify an upward departure by the Court.

3. Nonetheless, turning first to U.S.S.G. §5K2.13 - Diminished Capacity which provides,

A downward departure may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense. Similarly, if a departure is warranted under this policy statement, the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

However, the court may not depart below the applicable guideline range if (1) the significantly reduced mental capacity was caused by the voluntary use of drugs or other intoxicants; (2) the facts and circumstances of the defendant's offense indicate a need to protect the public because the offense involved actual violence or a serious threat of the violence; (3) the defendant's criminal history indicates a need to incarcerate the defendant to protect the public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117, of Title 18, United States Code.

Throughout the defendant's August 14, 2009, letter to the Court defense counsel includes his personal opinions as to the defendant's mental health and stability. The undersigned does not consider either herself or defense counsel an expert on these matters and would respectfully submit that neither counsels' opinions as to mental health should be considered. Defense counsel has supplied the United States Probation Office with copies of medical records from a therapist in Fishers, Indiana to support his contention that the defendant suffered from diminished capacity. However, notably the records supplied by defense counsel contain little to no description as to the basis of the findings therein, outside of statements by defendant and his wife following the defendant's indictment. In response, the government asks the Court to consider the detailed and clinical findings of Rodolfo A. Buigas, Ph.D. Forensic Exam Coordinator of the Federal Bureau of Prisons at the Miami, Florida Federal Detention Center. A review of the Federal Bureau of Prisons'

diagnostic impression shows that the defendant did not commit the offense “while suffering from a *significant reduced mental capacity*” as required under U.S.S.G. §5K2.13.

4. The second U.S.S.G. section cited by the defendant in defense counsel’s August 14, 2009, letter is U.S.S.G. §5K2.20 which provides in relevant part,

(a) IN GENERAL - Except where a defendant is convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of Title 18, United States Code, a downward departure may be warranted in an exceptional case if (1) the defendant’s criminal conduct meets the requirements of subsection (b); and (2) the departure is not prohibited under subsection (c).

(b) REQUIREMENT - The court may depart downward under this policy statement only if the defendant committed a single criminal occurrence or a single criminal transaction that (1) *was committed without significant planning*; (2) *was of limited duration*; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life. (*emphasis added.*)

As identified in the factual basis read at the time of the defendant’s guilty plea, and agreed upon by the defendant, the defendant’s conduct and planning of this crime is the definition of *significant planning* and was not of a *limited duration*.

5. To suggest that the defendant’s conduct was aberrant behavior wholly overlooks the history and characteristics of this defendant. Although the defendant has not been convicted of any crimes in Indiana the allegation concerns him holding himself out as an authorized securities advisor and him misappropriating for his own use the moneys invested by innocent victims. Stated another way, if true, the

defendant conned people out of their money. Obviously, and as pointed out by defense counsel, the defendant is presently presumed innocent of those charges. Therefore, it is insightful to look at other conduct committed by the defendant that the government possesses evidence, proving beyond all reasonable doubt, that the defendant's conduct in this Indictment was just the another step in the defendant's life of cons and lies.

6. The government has evidence and is prepared to present the following as just a sampling of the defendant's prior and subsequent untruthful acts/statements:

- A. In a June 6, 2008, deposition in *Kenneth G. Horton, et al* versus Marcus J. Schrenker and Heritage Wealth Management, 07-1-11053-35, Superior Court of Cobb county Georgia, the defendant stated under oath that he suffers from "multiple sclerosis." The evidence will show that between September 1992 and January 2007, the defendant underwent eight (8) airman's medical examinations and never once disclosed this alleged diagnosis. Had the defendant received such a diagnosis after his last physical, he would have been duty bound and required to notify the FAA. Further, it does not appear as though this alleged diagnosis was disclosed by the defendant at the Bureau of Prisons.
- B. In the defendant's personal letter to the Court dated July 26, 2009, he tells the Court that he was "officially diagnosed" with "Bi-Polar Axis II and depression" in 1991 while attending Perdue University. Notably this diagnosis was never disclosed by the defendant in any of the eight (8)

airman's medical examinations between September 1992 and January 2007. Specifically, in each examination the defendant completed an FAA Form 8500-8 and marked no when asked if he had ever in his life been diagnosed with "mental disorders or any sort of depression anxiety." It is the undersigned's understanding that had such a diagnosis been disclosed it is highly probable that his FAA license would have been denied/revoked.

- C. In correspondence dated October 2008 with AOPA Insurance, the insurance carrier for Piper N428DC, the defendant told the insurance representative that he was "currently receiving training at NASA for the T38 program." The government obtained a letter from Steve Nagel, Deputy Division Chief of Aircraft Operations Division of NASA, Johnson Space Center, Houston, Texas stated that the defendant has never received such training at NASA.
- D. In the items seized from the defendant at the time of his arrest at the KOA Campground, deputies found a purported FAA Form 8500-9 Medical Certificate 3<sup>rd</sup> Class for Jason Galoozis purportedly signed by Patrick Rankin, M.D. dated January 10, 2007. With the exception of the defendant's brother's name, date of birth and address, this document is a mirror image of the defendant's Medical Certificate issued by Dr. Rankin on January 10, 2007. According to Dr. Rankin, the certificate purportedly

issued to Jason Galoozis is fictitious.

- E. On January 20, 2009, in a telephone call, the defendant falsely told his step-mother that he lost part of his arm when he jumped from his aircraft.
  - F. On March 26, 2009, which is after the defendant returned from the Miami Federal Detention Center for his competency evaluation, in a telephone call, the defendant told his father that he was hypnotized while at the facility. The defendant also made this false claim to medical personal at FCI-Tallahassee. *See* Report of Rodolfo M. Buigas at page 5. The defendant was not hypnotized.
  - F. During a telephonic interview with Good Morning America played on or about April 21, 2009, the defendant told commentators that he suffered from hypoxia. However, the defendant was flying at approximately 3,500 feet for fifteen minutes before he jumped from his aircraft. According to experts hypoxia does not occur below 10,000 feet.
7. These are just a sampling of examples in which the defendant has been untruthful. The government presents this to show that for a man like this it is not that unbelievable to think he would try to get away by faking his death. Therefore even if the defendant had not committed this conduct with “significant planning” it could not be described as aberrant in light of his nature and characteristics. As an aside, in the defendant’s handwritten letter to the Court he notably repeatedly uses the adjective “aberrant” in describing his conduct to the Court and seeking leniency from the Court.



The government characterizes the defendant's statement as yet another example of a self serving statement/claim by the defendant.

8. In defense counsel's August 14, 2009, he states that "the offense conduct in this case has to be the most unique and bizarre that [he has] seen in the over 30 years [he] has been representing criminal defendants." Defense counsel uses this opinion to support his proposition that it is unlikely to be committed again by others. While the undersigned has only been practicing law as a prosecutor for nine and a half years, only four of which have been before this Court, oddly enough this is the second time the undersigned is tasked with prosecuting a man for a violation of Title 14, United States Code, Section 88. *United States v. Haun*, 5:06cr18RS, 494 F.3d 1006 (11<sup>th</sup> Cir. 2007). Ironically, that case involved yet another Indiana man faking his death in order to avoid prosecution for unrelated criminal charges. Therefore, the undersigned is not as shocked by the defendant's conduct and fully expects to see it during the course of the undersigned's career again.

9. In additional support for his request for a variance, defense counsel suggests that a three (3) year sentence will suffice due to the "guilt, embarrassment, and shame caused by his conduct." Individuals with characteristics like the defendant do not typically feel guilt, embarrassment and shame. Nonetheless, if the defendant's conduct and prosecution for this crime really effected the defendant in that manner, then one must question why he repeatedly put himself in the media spotlight in this case. It is the defendant that repeatedly contacted various local and national media outlets for

interviews, i.e. Good Morning America, Bloomberg News, the Pensacola News Journal, etc., all the while he was incarcerated pending trial and sentencing. To now suggest that the attention of this case and some alleged guilt, embarrassment and shame he feels for the conduct and the prosecution should support/justify a lesser than guidelines' sentence, seems to be at odds with the fact that it is the defendant that has previously sought this attention.

10. Although the government is not requesting an upward departure or variance in this case, as stated above, there are just as many, if not more, U.S.S.G. policy statements to support such an increased sentence, than the two (2) cited by the defendant, that is, §5K2.7 - Disruption of Governmental Function, §5K2.9 - Criminal Purpose and §5K2.14 - Public Welfare.

11. The facts of this case support application of U.S.S.G. §5K2.7 which provides,

If the defendant's conduct resulted in a significant disruption of a governmental function, the court may increase the sentence above the authorized guideline range to reflect the nature and extent of the disruption and the importance of the governmental function affected. Departure from the guidelines ordinarily would not be justified when the offense of conviction is an offense such as bribery or obstruction of justice; in such cases interference with a governmental function is inherent in the offense, and unless the circumstances are unusual the guidelines will reflect the appropriate punishment for such interference.

The evidence in this case proves that the defendant's conduct not only caused a "significant disruption" to the United States Coast Guard, but also to the United States Air Force, the Atlanta Air Route Traffic Control Center, the Birmingham Airport Traffic

Control Tower, the Pensacola Terminal Radar Approach Control Facility, the Santa Rosa County Sheriff's Office, the Escambia County Sheriff's Office Air Unit and the National Transportation and Safety Board.

12. The facts further support application of U.S.S.G. §5K2.9 which provides,

If the defendant committed the offense in order to facilitate or conceal the commission of another offense, the court may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct.

Obviously, the defendant committed this conduct to avoid the acts and impending charges in the state of Indiana.

13. And finally, the facts support application of U.S.S.G. §5K2.14 which provides, "If national security, public health, or safety was significantly endangered, the court may depart upward to reflect the nature and circumstances of the offense."

14. Each of the aforementioned justify and support an upward adjustment to the same extent, if not more so, than the basis cited by the defendant.

15. Therefore, the government humbly asks that this Court impose a guidelines sentence in this case because to do so is supported by the evidence, and the egregiousness of the defendant's crimes and the factors identified in Title 18, United States Code, Section 3553(a).

WHEREFORE, the United States respectfully files this Second Sentencing Memorandum in response to the defendant's Sentencing Letter dated August 14, 2009.

Respectfully submitted,

THOMAS F. KIRWIN  
Acting United States Attorney

/s/ Tiffany H. Eggers  
TIFFANY H. EGGERS  
Assistant United States Attorney  
Florida Bar No. 193968  
21 East Garden Street, Suite 300  
Pensacola, Florida 32502-5675  
(850) 444-4000

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the forgoing motion and memorandum has been furnished via CM/ECF to Thomas Keith, counsel for defendant, this 19th day of August, 2009.

/s/ Tiffany H. Eggers  
TIFFANY H. EGGERS  
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

UNITED STATES OF AMERICA

v.

Case No.: 3:09cr11/RV

MARCUS SCHRENKER

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GOVERNMENT'S WITNESS LIST FOR SENTENCING

1. Special Agent Glenda White, U.S. DOT-OIG - *sworn 8-19-09*
2. Special Agent John Allen, CGIS - *sworn 8-19-09*
3. Patrick Montgomery, GAB Robins Aviation

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Defendant's Witness List

1. Skip Beyer - *sworn 8-19-09*

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No.: 3:09cr11/RV**

**MARCUS SCHRENKER**

**GOVERNMENT'S SENTENCING EXHIBIT LIST**

NO.	EXHIBIT	WITNESSES	ID	ADMITTED
1	Certified copy of Marcus Schrenker's Airman Medical Record (Sealed)	Self Authenticating/ White		
1A	FAA Form 8500-8 Medical Certificate 1 <sup>st</sup> Class for Marcus for Marcus Schrenker for the following years: 9/29/92; 9/21/94; 5/10/97; 4/21/99; *5/31/00; *6/20/02; *11/12/04; *1/10/07 (these certificates are copies of those found in Government Exhibit 1)(Sealed)	Self Authenticating/ White	✓	8-19-09
2A1, ✓ 2A2 & 2A3	Three DVD-R containing the transcript of Marcus Schrenker in <i>Kenneth G. Horton, et al v. Marcus Schrenker and Heritage Wealth Management</i> , Superior Court of Cobb County, Georgia, 7-1-11053-35	White	2A1 ✓ 2A2 ✓	8-19-09 8-19-09

2B	Transcript of 2A	White	✓	8-19-09
3	Records from AOPA Agency and business record affidavit for the aircraft insurance policy for N428DC	Self Authenticating/ White	✓	8-19-09
4A	FAA Form 8500-9 Medical Certificate 3 <sup>rd</sup> Class for Marcus Schrenker signed by Patrick Rankin, M.D. dated 1/10/07 seized from defendant at the KOA Campground (Sealed)	White	✓	8-19-09
4B	Purported FAA Form 8500-9 Medical Certificate 3 <sup>rd</sup> Class for Jason Galoozis purportedly signed by Patrick Rankin, M.D. dated 1/10/07 and identification cards for Jason Galoozis seized from defendant at the KOA Campground (Sealed)	White	✓	8-19-09
5	Letter from Steve Nagel, Deputy Division Chief of Aircraft Operations Division of NASA, Johnson Space Center, Houston, Texas	White	✓	8-19-09
6	Dick's Sporting Goods, Murriville, IN receipt dated 1/8/09 and Business Records Affidavit	Allen	✓	8-19-09
7A & 7B	Two (2) photographs of the crash site	Allen	✓	8-19-09
8	Loan and purchase documents for N428DC dated 12/4/04 signed by Michelle Schrenker including - Unconditional and Continuing Guaranty and Aircraft Promissory Note for 1,067,870.24	Stipulation/ HDCC		
9	Aircraft Bluebook Price Digest for Summer 2009	Montgomery		
10	Aircraft Bluebook Price Digest for Spring 2009	Montgomery		
11A	Page from the Aircraft Log Book for N428DC dated 9/24/08 listing the hours on the aircraft's airframe as 1184.0	White/Montgomery		

11B	Page from the Aircraft Log Book for N428DC dated 9/24/08 listing the hours on the aircraft's engine as 1184.0	White/Montgomery		
12	Photo of N428DC's Hobbs meter taken at the Atlanta Air Salvage facility listing the aircraft's hours as 1246	Montgomery		
13	Aircraft valuation chart listing the Average Retail Value in Winter 2009 as \$1,022,697 and the Average Wholesale as \$884,500	Montgomery		
14	Letter from defendant to AOPA Insurance Agency dated June 9, 2009 stating that "There are two companies bidding for the auction rights to the aircraft which its estimated intrinsic value is nearly \$3 million dollars."	Montgomery		
15	Chart listing the cost to the United States Coast Guard as \$34,649.07	Stipulation/Allen		
16	Commandant Instruction 7310.1L dated 4/8/08	Stipulation/Allen		
17	1 DVD-R Containing Good Morning America telephonic interview of Marcus Schrenker on or about 4/21/09	White	✓	8-19-09
18A	1 DVD+R of N428DC Track Analysis	White	✓	8-19-09
18B	Two (2) graphs comparing altitude versus time and ground speed versus time with reference points A through K	White	✓	8-19-09
18C	Index of reference points A through K	White	✓	8-19-09
19	1 CD containing a jail telephone on 1/20/09 to 850-267-1552 (2:50 to 3:00)	White/Allen	✓	8-19-09
20	1 CD containing a jail telephone call on 3/26/09 to 850-267-1552 (3:00 - 4:00 and 5:10 to 5:40)	White/Allen	✓	8-19-09



[illegible]

**United States District Court**  
**CRIMINAL MINUTES - SENTENCING AND JUDGMENT**

Time Commenced: 10:08 am  
 Time Concluded: 1:54 pm

Case No. 3:09cr11/RV  
 Date August 19, 2009

**PROCEEDINGS: Sentencing Hearing**

Sentence imposed as to Counts 1 & 2 : Custody of BOP for 51 months; supervised release for 3 years; fine waived, restitution \$34,649.07 to USCG & \$871,387.85 to HDDC and SMA of \$200 (due immediately). Deft remanded to custody of U.S. Marshal. SEE FORMAL JUDGMENT. Govt Exhibits Admitted (envelope) placed in clerk's secured storage. Govt Exhibit List and Witness List attached.

PRESENT: HONORABLE **Roger Vinson**, Senior Judge

Mike Constantakos  
 Probation Officer

Susan Simms  
 Deputy Clerk

Donna Boland  
 Court Reporter

Tiffany Eggers  
 Asst. U.S. Attorney

U.S.A v. (DEFENDANT LISTED BELOW)

ATTORNEYS FOR DEFENDANT

(1) **Marcus Schrenker**  
☒ present ☒ custody ☐ bond ☐ O/R

(1) Thomas Keith  
☒ present ☒ apptd. ☐ retained

☒ DFT has read the presentence investigation (PSR) report and has discussed it with his/her attorney.

☒ Objections were made to the PSR.

☐ Notice of Enhancement filed ☐ Court Question defendant about prior conviction

☒ DEFENDANT ADJUDICATED GUILTY OF COUNT(S): 1 & 2; SENTENCE IMPOSED:

☒ DFT remanded to custody of Bureau of Prisons  
 on count(s) 1 imprisonment for a term of 51 months  
2 imprisonment for a term of 51 months

with said sentences to run ☒ concurrently or ☐ consecutively

☒ Additional recommendation:  
☒ Substance Abuse Treatment Counseling  
☒ Mental Health Treatment while in the custody of BOP  
☐ Intensive Confinement Center (ICC)

☒ FINE PAYMENT: ☒ Fine waived; ☐ Fine of \$       ; ☒ SMA OF \$ 200.00 due immediately

☒ Dft is liable for restitution of: (interest waived)  
 \$ 34,649.07 made payable to U.S. Coast Guard  
 \$ 871,387.85 made payable to Harley Davidson Credit Corp.  
 \$        made payable to       

☐ DFT is jointly and severally liable for restitution with       

☒ S/R or PROBATION. Dft is under:  
☒ Supervised Release upon completion of term of imprisonment for a period of 3 years.  
☐ Probation for a period of        years.  
☐ Home Detention of        months

With the following special conditions or modifications:

- ☐ DFT to be deported upon release from BOP
- ☐ DFT shall cooperate with the US Probation Officer and the Dept. of Homeland Security regarding Immigration status.  
If removed dft shall not re-enter the United States without permission of the Dept. of Homeland Security.
- ☐ DFT shall not own or possess a firearm, dangerous weapon or destructive device.
- ☒ DFT shall submit to: ☒ testing for the use of drugs or alcohol to excess;  
☒ DFT shall participate in a program of substance abuse treatment;  
☒ DFT shall participate in a program of mental health treatment.
- ☒ DFT shall provide requested financial information to the U.S. Probation Officer.
- ☐ DFT shall make any unpaid fine on a payment schedule to be determine by the US Probation Officer.
- ☒ DFT shall make any unpaid restitution on a payment schedule to be determine by the US Probation Officer.
- ☐ Upon release dft to: ☐ maintain employment or enroll as full-time student; ☐ complete High School Education.
- ☒ DFT shall cooperate with the US Probation Officer and/or the appropriate state agency in the establishment and enforcement of child support payments
- ☒ ADDITIONAL TERMS: Dft shall not incur any new credit charges; Dft shall pilot or command any aircraft.

☒ CUSTODY STATUS

- ☒ DFT committed to the custody of the U.S. Department of Justice.
- ☐ DFT to surrender to USMS at \_\_\_\_\_ or \_\_\_\_\_ designated institution at his/her own expense no later than \_\_\_\_\_ on \_\_\_\_\_.
- ☐ DFT remains on bond with \_\_\_\_\_ the same terms and conditions or \_\_\_\_\_ modified terms as follows:

☐ Remaining count(s) \_\_\_\_\_ is/are dismissed on government motion.

- ☒ Court informs Dft of right to appeal.  
\_\_\_\_\_ Dft request that the Clerk of Court file a notice of Appeal on his/her behalf.

☒ Court recommends place of incarceration at / near Indiana.

☒ DFT addresses the Court.

☒ NO FORFEITURE \_\_\_\_\_ FINAL ORDER OF FORFEITURE entered.

10:08 am Court in session  
Counsel present objections to PSR; Court rules on objections  
10:38 Govt witness **GLEND A WHITE** sworn - Direct; No Cross  
Govt Exhibits #2A1, 2A2, 2B,1A, 21, 3,5, 4A,17,18,18B, 18C - admitted  
11:50 Court in recess  
12:00 Court in session  
12:02 Govt witness **JOHN ALLEN** sworn - Direct; No Cross  
Govt Exhibits #6,7A&B,19,20 admitted  
12:22 Deft witness **SKIP BEYER** sworn - Direct; 12:35 Cross; 12:45 Redirect  
12:48 Counsel argue downward departure/sentencing guidelines  
1:12 Deft addresses the Court

Filed in Open Court

8-19-2009  
Initials of Deputy Clerk sps

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

UNITED STATES OF AMERICA

-vs-

Case # 3:09cr11-001/RV

MARCUS SCHRENKER

USM # 12295-017

Defendant's Attorney:  
Thomas Keith (AFPD)  
3 West Garden Street, Suite 200  
Pensacola, Florida 32502

## JUDGMENT IN A CRIMINAL CASE

The defendant pled guilty to Counts One and Two of the Indictment on June 5, 2009. Accordingly, **IT IS ORDERED** that the defendant is adjudged guilty of such count(s) which involve(s) the following offense(s):

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>DATE OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. § 32(a)(1)	Willful Damage, Destruction, or Wreckage of an Aircraft, or Civilian Aircraft, in the Special Aircraft Jurisdiction of the United States	January 11, 2009	One
14 U.S.C. § 88(c)	Knowingly and Willfully Communicating a False Distress Message to the United States Coast Guard	January 11, 2009	Two

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, including amendments effective subsequent to 1984, and the Sentencing Guidelines promulgated by the U.S. Sentencing Commission.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

OFFICE OF CLERK  
U.S. DISTRICT CT.  
NORTHERN DIST. FLA.  
PENSACOLA, FLA.

09 AUG 25 PM 12:55

Date of Imposition of Sentence:  
August 19, 2009
  
 ROGER VINSON  
 SENIOR UNITED STATES DISTRICT JUDGE
Date Signed: August 25, 2009

RECEIVED

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **51 months as to Counts One and Two, each count to run concurrently, one with the other.**

The Court recommends to the Bureau of Prisons that the defendant participate in the Residential Substance Abuse Treatment program or other such program offered through the Bureau of Prisons for the treatment of drug and alcohol addiction.

While incarcerated it is the recommendation of the Court that the defendant participate in a program of mental health counseling and/or treatment.

The Court also recommends that the defendant be designated to a Bureau of Prisons facility for confinement in the State of Indiana for service of sentence.

The defendant is remanded to the custody of the United States Marshal.

### RETURN

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years as to Counts One and Two, to run concurrently one with the other.**

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime and shall not possess a firearm, destructive device, or any other dangerous weapon.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

### **STANDARD CONDITIONS OF SUPERVISION**

The defendant shall comply with the following standard conditions that have been adopted by this court.

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within **72 hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14. If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

#### **ADDITIONAL CONDITIONS OF SUPERVISED RELEASE**

The defendant shall also comply with the following additional conditions of supervised release:

1. The defendant is to make monthly restitution payments of not less than \$300.00 per month, to begin within 3 months of his date of release.
2. The defendant shall provide the probation officer with access to any requested financial information and report the source and amount of personal and/or business income and financial assets to the supervising probation officer as directed.
3. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant has satisfied his restitution obligation.
4. The defendant shall participate in, or continue to participate in, a program of mental health counseling and/or treatment.
5. The defendant shall be evaluated for substance abuse and referred to treatment as determined necessary through an evaluation process. The defendant may be tested for the presence of illegal controlled substances or alcohol at any time during the term of supervision.
6. The defendant shall cooperate with the Probation Department and/or any state agency responsible for the establishment and enforcement of child support payments. Additionally, he shall make all required child support payments.
7. The defendant shall not pilot, or command, any aircraft regulated by the Federal Aviation Administration within the territories of the United States.



FLND Form 245B (rev 12/2003) Judgment in a Criminal Case  
3:09cr11-001/RV - MARCUS SCHRENKER

Page 5 of 8

Upon a finding of a violation of probation or supervised release, I understand the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
U.S. Probation Officer/Designated Witness

\_\_\_\_\_  
Date



**CRIMINAL MONETARY PENALTIES**

All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk, U.S. District Court, unless otherwise directed by the Court. Payments shall be made payable to the Clerk, U.S. District Court, and mailed to 111 N. Adams St., Suite 322, Tallahassee, FL 32301-7717. Payments can be made in the form of cash if paid in person.

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments. The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

**SUMMARY****Special  
Monetary Assessment****\$200.00****Fine****Waived****Restitution****\$906,036.92****SPECIAL MONETARY ASSESSMENT**

A special monetary assessment of **\$200.00** is imposed.

No fine imposed.

**RESTITUTION**

Restitution in the amount of **\$906,036.92** is imposed.

The defendant shall make restitution to the following victims in the amounts listed below.

<u>Name of Payee</u>	<u>Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
U.S. Coast Guard U.S.C.G. ART/OTHERS P.O. Box 403391 Atlanta, Georgia 30384-3391	\$34,649.07	\$34,649.07
Harley Davidson Credit Corporation [HDCC] c/o Richard A. Blaiklock 501 Indiana Avenue, Suite 200 Indianapolis, Indiana 46202-6150	\$871,387.85	\$871,387.85

The restitution figure of \$871,387.85 includes the estimated \$85,000 salvage value for the airplane. Should the victim not recover that amount as the salvage value, the restitution amount will be adjusted upward or downward by an amount equal to the difference. The defendant shall execute any documentation necessary to transfer title of the aircraft in order to facilitate recovery of the salvage value.

Should U.S. Specialty Insurance Company pay any amount toward the claim made by HDCC, the restitution amount owed to HDCC will be offset by the amount paid by U.S. Specialty Insurance Company, 16415 Addison Road, Suite 900, Addison, Texas 75001, and the defendant will owe restitution to U.S. Specialty Insurance Company for the amount paid toward the claim.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise. If nominal payments are made by the defendant the court authorizes those payments to be made to the victims on a rotating basis.

The amount of loss and the amount of restitution ordered will be the same unless, pursuant to 18 U.S.C. § 3664(f)(3)(B), the court orders nominal payments and this is reflected in the Statement of Reasons page.

The Court has determined that the defendant does not have the ability to pay interest. It is **ORDERED** that: In the interest of justice, interest on restitution is hereby waived.

### **SCHEDULE OF PAYMENTS**

Payments shall be applied in the following order: (1) special monetary assessment; (2) non-federal victim restitution; (3) federal victim restitution; (4) fine principal; (5) costs; (6) interest; and (7) penalties in full immediately.

**Breakdown of fine and other criminal penalties is as follows:**

**Fine: Waived SMA: \$200.00 Restitution: \$906,036.92 Cost of Prosecution: None**

**The \$200.00 monetary assessment shall be paid immediately.** Any payments of the monetary assessment and the fine made while the defendant is incarcerated shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. The remaining balance shall be paid as follows: In monthly installments of not less than \$300.00 over a period of supervised release to commence 3 months after release from imprisonment.

The defendant must notify the court of any material changes in the defendant's economic circumstances, in accordance with 18 U.S.C. §§ 3572(d), 3664(k) and 3664(n). Upon notice of a change in the defendant's economic condition, the Court may adjust the installment payment schedule as the interests of justice require.

Special instructions regarding the payment of criminal monetary penalties pursuant to 18 U.S.C. § 3664(f)(3)(A):

Unless the court has expressly ordered otherwise above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. In the event the entire amount of monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due. The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.