**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA : CRIMINAL NO. 17-CR-0001**

**V. : DATE FILED:**

**JUSTIN WAGNER : VIOLATIONS:**

 **2I U.S.C. $ 8at(a)(1)(possession**

 **: with intent to distribute a**

**controlled substance - 1 count)**

 **: l8 U.S.C. $ 92a(c) (possession of a**

**firearm in furtherance of a drug**

 **: trafficking crime - 1 count)**

**18 U.S.C. $ 922(g)(l) (possession of**

 **: a firearm by a felon - 1 count)**

**Notices of forfeiture**

**INDICTMENT**

**COUNT ONE**

**THE GRAND JURY CHARGES THAT:**

On or about October 29, 2019, in Philadelphia, in the Eastern District of

Pennsylvania, defendant

**JUSTIN WAGNER**

knowingly and intentionally possessed with intent to distribute 28 grams or more that is approximately 106.37 grams of a mixture and substance containing a detectable amount of

cocaine base ("crack"), a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(l), (b)(1)(B).

**COUNT TWO**

**THE GRAND JURY FURTHER CHARGES THAT:**

On or about October 29, 2019, in Philadelphia, in the Eastern District of

Pennsylvania, defendant

**JUSTIN WAGNER**

knowingly possessed a firearm (a Taurus, model TH9c, 9mm pistol, bearing serial

number TLR9592I) loaded with l7 live rounds of ammunition- in furtherance of a drug

trafficking crime. He may be prosecuted in a court of the United States for this

possession with the intent to distribute a controlled substance in violation of Title 21, United

States Code, Section 841(a)(1), as charged in Count One of this Indictment.

In violation of Title 18, United States Code, Section 92(c)(1).

**COUNT THREE**

**THE GRAND JURY FURTHER CHARGES THAT:**

On or about October 29,2019, in Philadelphia in the Eastern District of Pennsylvania

defendant

**JUSTIN WAGNER**

knowing he had previously been convicted in a court of the Commonwealth of Pennsylvania of a

crime punishable by imprisonment for a term exceeding one year, knowingly possessed a

firearm (a Taurus, model TH9c, 9mm pistol, bearing serial number TLR9592I) loaded

with 17 live rounds of ammunition, and the firearm was in and affecting interstate and foreign

commerce.

In violation of Title 18, United States Code, Section 922(g)(1).

**NOTICE OF FORFEITURE 1**

**THE GRAND JURY FURTHER CHARGES THAT:**

As a result of the violations of Title 18, United States Code, Sections 922(gXl)

and 924(c) set forth in this indictment, defendant

**JUSTIN WAGNER**

shall forfeit to the United States of America all firearms and ammunition involved in the

commission of such violations. including, but not limited to Taurus, model TH9c, 9mm pistol,

bearing serial number TLR95921, and l7 live rounds of ammunition.

Under Title 28, United States Code, Section 2461(c) and Title 18, United

States Code, Section 924(d).

**NOTICE OF FORFEITURE 2**

**THE GRAND JURY CHARGES THAT:**

1. As a result of the violations of Title 21, United States Code, Section 841(a)(1), set forth

in this indictment, defendant

**JUSTIN WAGNER**

shall forfeit to the United States of America:

(a) any property used or intended to be used, in any manner or part, to

commit, or to facilitate the commission of, such violations;

(b) any property constituting. or derived from. proceeds obtained,

directly or indirectly, from the commission of such violations.

1. lf any of the property subject to forfeiture, as a result of any act or

omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided

without difficulty;

it is the intent of the United States under Title 21, United States Code, Section 853(p), to

seek forfeiture of any other property of the defendant up to the value of the property subject to

forfeiture.

Under Title 21, United States Code Section 853.

**A TRUE BILL:**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **FOREPERSON**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**United States Attorney**

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM to be used by counsel to indicate the category of the case for the

purpose of assignment to appropriate calendar.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Plaintiff: 710 Walnut Street, Suite 1308, Philadelphia, PA 19106-4476

Post Office: Philadelphia County: Philadelphia

City and State of Defendant: Philadelphia, PA

County: Philadelphia Register number: 977632

Place of accident, incident, or transaction: Eastern District of Pennsylvania

Post Office: Philadelphia County: Philadelphia

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RELATED CASE, IF ANY:

Criminal cases are deemed related when the answer to the following question is "yes".

Does this case involve a defendant or defendants alleged to have participated in the same action or transaction, or in the same series of acts or transactions, constituting an offense or offenses?

YES/NO: NO

Case Number: N/A Judge: N/A

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CRIMINAL: (Criminal Category - FOR USE BY U.S. ATTORNEY ONLY)

1. Antitrust
2. Income Tax and other Tax Prosecutions
3. Commercial Mail Fraud
4. Controlled Substances
5. Violations of 18 U.S.C. Chapters 95 and 96 (Sections 1951-55 and 1961-68)

and Mail Fraud other than commercial

1. General Criminal

(U.S. ATTORNEY WILL PLEASE DESIGNATE PARTICULAR CRIME AND

STATUTE CHARGED TO BE VIOLATED AND STATE ANY PREVIOUS

CRIMINAL NUMBER FOR SPEEDY TRIAL ACT TRACKING PURPOSES)

**21 U.S.C. § 841(a)(l)(possession with intent to distribute a controlled substance**

**1 count); 18 U.S.C. § 924(c) (possession of a firearm in furtherance of a drug**

**trafficking crime - 1 count); 18 U.S.C. § 922(g)(l) (possession of a firearm by a felon - 1**

**count); Notices of forfeiture**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

DATE: 10/10/21 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Special United States Attorney

Under Title 21, United States Code, Section 853

 **A TRUE BILL:**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **FOREPERSON**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**United States Attorney**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA )**

**)**

**)**

**vs. ) PRESENTENCE INVESTIGATION REPORT**

**)**

**) Docket No.: 22-CR-0001**

**Justin Wagner )**

**Prepared for:** The Honorable Mark A. Kearney

 U.S. District Court Judge

**Sentence Date:** October 20, 2022, 2:30 PM

**Offenses: Count 1:**

 Possession with intent to distribute a mixture and substance containing a

detectable amount of cocaine base (“crack”)

21 U.S.C. § 841(a)(1) and (b)(1)(C)

Not more than 20 years’ imprisonment/$1,000,000 fine

(Class C Felony)

**Count 2:**

Possession of a firearm in furtherance of a drug trafficking crime

18 U.S.C. § 924(c)(1)

Consecutive 5 years to life imprisonment/$250,000 fine

(Class A Felony)

**Date Report Prepared:** May 26, 2022

**Date Report Revised:** May 27, 2022

**Count 3:**

Possession of a firearm by a felon

18 U.S.C. § 922(g)(1)

Not more than 10 years’ imprisonment/$250,000 fine

(Class C Felony)

**Release Status:** The defendant was detained in Philadelphia County custody from October

29, 2019 to January 14, 2020, then transferred to federal custody, where he has remained through the present time.

**PART A. THE OFFENSE**

**Charge(s) and Conviction(s)**

1. On January 9, 2020, a grand jury in the Eastern District of Pennsylvania returned a three-count Indictment charging Justin Wagner with one count each of possession with intent to distribute 28 grams or more of a mixture and substance containing a detectable amount of cocaine base (“crack”), in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) [Count 1]; possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1) [Count 2]; and possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1) [Count 3]. Two Notices of Forfeiture accompanied the Indictment.
2. On June 23, 2021, the defendant appeared before the Honorable Mark A. Kearney and pled guilty to Counts 1 through 3 of the Indictment.

**Plea Agreement**

1. The defendant agreed to plead guilty to a lesser included offense of Count 1 of the

Indictment charging him with possession with intent to distribute a mixture and substance

containing a detectable amount of cocaine base (“crack”), in violation of 21 U.S.C.

§ 841(a)(1) and (b)(1)(C).

1. The parties agreed the plea agreement is made under Federal Rule Criminal

Procedure 11(c)(1)(C) and the following specific sentence is the appropriate disposition of this case: 96 months' imprisonment, a 3-year period of supervised release; a fine, if any, to be determined by the Court; and a $300 special assessment. If the Court does not accept this plea agreement, then either the defendant or the government will have the right to withdraw from the plea agreement and insist the case proceed to trial.

1. The defendant agreed to pay the special victims/witness assessment in the amount of $300 at such time as directed by the Court.
2. Under USSG §6B1.4, the parties entered into the following stipulations under the Sentencing Guidelines Manual with the understanding and agreement that: (1) the parties are free to argue (except as stated below) the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments, and departures; (2) these stipulations are not binding upon either the Probation Office or the Court; and (3) the Court may make factual and legal determinations which differ from these stipulations and may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

a. The cocaine base involved in this case is “crack” as defined in USSG §2D1.1,

Note D.

b. Amounts of 20 grams of cocaine base and 86 grams of cocaine were possessed by

the defendant in connection with the offense charged in Count 1; this amount was

reasonably foreseeable to the defendant; and the defendant’s guideline range should be calculated based on this amount under USSG §1B1.3.C.

c. As of the date of the agreement, the defendant has demonstrated acceptance of

responsibility for his offense, making the defendant eligible for a 2-level downward adjustment, under USSG § 3E1.1(a).

d. As of the date of the agreement, the defendant has assisted authorities in the

investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, resulting in a 1-level downward adjustment, under USSG § 3E1.1(b).

1. The defendant agreed to waive all rights conferred by 18 U.S.C. § 3742.
2. The defendant agreed to not contest forfeiture and forfeit all rights, title and interest in all

assets, which are subject to forfeiture, as outlined in the written plea agreement.

**Effective Guideline Manual**

1. The instant offenses occurred on October 29, 2019; therefore, the Sentencing Reform Act of 1984 is applicable. The U.S. Sentencing Commission *Guidelines Manual* used to calculate the guideline in the report incorporates amendments effective November 1, 2021, as there are no *ex post facto* issues.

**Offense Level Computation**

1. The 2021 Guidelines Manual, incorporating all guideline amendments, determined the defendant's offense level. USSG §1B1.11.
2. Count 3 groups with Count 1 for guideline calculation purposes because it embodies conduct treated as a specific offense characteristic in, or other adjustment to, the conduct charged in Count 1. USSG §3D1.2(c).
3. Under USSG §3D1.3(a), in the case of counts grouped together under §3D1.2(a)-(c), the offense level applicable to a group is the offense level, determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three, for the most serious of the counts comprising the group, i.e., the highest offense level of the counts in the group. In this case, USSG §2D1.1 (the guideline for Count 1 - possession with intent to distribute a controlled substance) and USSG §2K2.1 (the guideline for Count 3 – possession of a firearm by a felon) produces the same offense level. The probation used USSG §2D1.1, which appears first in the Guidelines Manual, to establish the offense level.
4. Count 2 is excluded from grouping and calculation of the offense level since statute (18 U.S.C. § 924(c)) mandates a consecutive sentence. USSG §§ 3D1.1(b)(1) and 5G1.2(a)
5. Since the offenses involved more than one drug, a converted drug weight must be calculated to determine the base offense level, under USSG §2D1.1, Application Note 8:[[1]](#footnote-1)

**Drug Name Drug Quantity Converted Drug Weight**

Cocaine 86.163 grams 17.232 kilograms

Cocaine Base (“Crack”) 20.207 grams 72.159 kilograms

**TOTAL:** 89.391 kilograms

1. **Base Offense Level:** The guideline for a violation of 21 U.S.C. § 841(a)(1) is USSG §2D1.1. The base offense level is 22 because the instant offense involved at least 80 kilograms but less than 100 kilograms, specifically 89.391 kilograms, of converted drug weight. USSG §2D1.1(a)(5) and (c)(9).  **22**
2. **Specific Offense Characteristics:** None.[[2]](#footnote-2)  **0**
3. **Victim Related Adjustment:** None. **0**
4. **32. Adjustment for Role in the Offense:** None. **0**
5. **33. Adjustment for Obstruction of Justice:** None. **0**
6. **Adjusted Offense Level (Subtotal): 22**
7. **Chapter Four Enhancement:** None. **0**
8. **Acceptance of Responsibility:** The defendant has clearly demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. USSG §3E1.1(a). **-2**
9. **Acceptance of Responsibility:** The defendant has assisted authorities in the

investigation or prosecution of the defendant's own misconduct by timely notifying

authorities of the intention to enter a plea of guilty. Accordingly, the offense level is decreased by one additional level. USSG §3E1.1(b).  **-1**

1. **Total Offense Level: 19**

**PART B. OFFENDER CHARACTERISTICS**

1. The probation officer obtained information regarding the defendant's personal and family history during a personal interview with the defendant at the FDC-Philadelphia on July 6, 2021; defense counsel was present. A second interview to obtain updated information occurred at FDC-Philadelphia on May 18, 2022.

 **Personal and Family Data**

1. Justin Carson Wagner was born on July 12, 1989, in Philadelphia to the non-marital union of George Williams (deceased) Christina Brooks (sixty years old). The defendant’s parents ended their relationship in approximately 1994. His father, a retired employee of the Philadelphia Streets Department, died in February 2022 at the age of sixty-nine. He lived by himself in Philadelphia. He had no known history of substance abuse or mental health problems and did not have a criminal history. The defendant indicated he had a close relationship with his father for his entire life. The defendant worked with his father at the Philadelphia Streets Department for the few years leading up to his father’s passing. According to the defendant, his mother suffers from bipolar disorder for which she takes medication; she has received disability benefits for over twenty years. During a November 16, 2021, telephone interview, Mrs. Brooks advised the probation officer she also suffers from diabetes, rheumatoid arthritis, atrial fibrillation, chronic obstructive pulmonary disorder, and asthma. The defendant stated his mother has an earlier Philadelphia conviction for assault and served an eight-month period of incarceration while he attended the fifth grade. She is not currently under supervision. The defendant stated he is close with his mother and speaks to her approximately five times a week. She also visits the defendant at FDC-Philadelphia.
2. Approximately twenty-five years ago, the defendant’s mother married Tristan Brooks (fifty-two years old). Mr. Brooks works in housekeeping at Jefferson Abington Hospital, Abington, Pennsylvania. The defendant stated he is close with his stepfather. He visits the defendant at FDC-Philadelphia.
3. The defendant has two brothers. Jerome Williams (twenty-seven years old) lives in Philadelphia with their mother. He has a criminal history for robbery, aggravated assault, and firearms offenses and is currently on state parole. The defendant’s mother advised that Jerome suffered nearly fatal gunshot wounds on June 7, 2021. He remained hospitalized with a tracheostomy tube and feeding tube for months following the incident and underwent multiple surgeries to treat fluid on his brain. He is currently living at home and is receiving physical therapy; he has limited mobility of his left arm and neck. The defendant stated Jerome visited him at FDC-Philadelphia in February 2022 and is planning on visiting him again on April 28, 2022. The defendant’s other brother, Jackson Williams (twenty-four years old), is currently incarcerated at the Curran-Fromhold Correctional Facility in Philadelphia pending homicide charges. Before his arrest, Jackson also lived with their mother. The defendant did not indicate that his brothers suffer from mental health or substance abuse issues. The defendant’s mother confirmed he is close with both of his brothers, and he speaks with Jerome monthly.
4. According to the defendant, he has one paternal half-sister. Melinda Harrison (thirty-four years old) lives in Philadelphia and is unemployed. She reportedly has an earlier conviction for retail theft for which she is on probation. The defendant stated he is close with his half-sister; they speak on a weekly basis. He did not indicate that his half-sister suffers from mental health or substance abuse issues. The defendant’s mother confirmed the defendant is close with his half-sister.
5. Until the age of sixteen years old, the defendant’s mother and stepfather primarily raised him in the Harrison Plaza projects in lower North Philadelphia. Overall, the defendant described his upbringing as being “good.” He saw his father on weekends and “never went without anything he needed.” The defendant stated his mother and stepfather had a “fine” relationship. He did not disclose a history of any sexual, physical, or mental abuse, and he denied any Philadelphia Department of Human Services involvement with his household.
6. To escape the violence in their neighborhood, when the defendant was sixteen years old, his mother and stepfather moved to the Olney neighborhood of upper North Philadelphia. He remained with his mother and stepfather until he became incarcerated in 2014 at the age of twenty-four. According to the defendant’s mother, he received parole to her home in August 2017 and stayed with her for another year until securing his own apartment where he lived at the time of the instant offense. At the time of his arrest for the instant offense, the defendant had been living by himself for approximately one year at 2122 South Cecil Street in the Kingsessing neighborhood of Southwest Philadelphia.
7. The defendant reportedly has never been married. For the approximate last three years, he

has been in a relationship with Marquisha Adams (thirty years old). Ms. Adams is currently unemployed, but she previously worked in housekeeping at Wells Fargo Center before the COVID-19 pandemic. According to the defendant, she does not suffer

from any substance abuse or mental health issues, and she does not have a criminal history. The defendant stated that upon his release from imprisonment he plans to reside with Ms. Adams at 1519 West Somerset Street in the Port Richmond area of Philadelphia.

1. The defendant has fathered three children during two earlier relationships. Sean Meister (eleven years old) is the result of a relationship with Jillian Meister. Sean is in the fifth grade and lives with his mother in Philadelphia where he “is safe and in good hands” The defendant stated he speaks to his son on the phone three times a week; he is doing “fine.” The defendant’s daughter, Grayson Ford (three years old), is the product of a relationship with Courtney Ford. Grayson lives in Tallahassee, Florida with her mother. She was only six months old when the defendant became incarcerated on the present charges. The defendant's other daughter, Sabrina Ford (seven years old), is also the result of his relationship with Courtney Ford. The defendant has not seen Grayson or Sabrina since the summer of 2021, but they all speak on the phone on a weekly basis. The defendant stated all his children are healthy and do not suffer from any developmental concerns.
2. During the November 16, 2021, telephone interview, the defendant’s mother expressed her love and support for her son. She blames his criminal history on the bad neighborhood they were living in. In terms of his character, Mrs. Brooks said her son “isn’t disrespectful” and “doesn’t do drugs.” The defendant’s mother said his arrest has “broke the whole family down.” She said she is in poor health and the defendant took care of all her medical and personal needs every day before his detention.
3. The defendant’s current primary sources of support are his girlfriend, mother, brother, and half-sister. When able, they visit him at FDC-Philadelphia. As to how his arrest impacted his family, his mother says the family “needs him home to support them.” The defendant stated he had “no need for getting in trouble.” He claims to have been “raised good” and was “being rebellious.” The defendant knows his “mom worries” about him. In terms of social habits, the defendant stated he spent most of his time before his arrest for the instant offense working “a bunch of different little jobs.”

 **Potential Re-entry Needs**

1. The defendant may have several potential reentry needs. Suitable housing may need to be

secured depending on the status of his relationship with Marquisha Adams at the time of his release from custody. However, as noted, he currently intends to live with her upon his release. His Pennsylvania driver's license (367584501) is suspended. His state identification, social security card, and birth certificate are all reportedly in his mother’s care. A search conducted with the Selective Service System confirmed the defendant registered on December 5, 2008 (56-1357412-5). According to the Pennsylvania Department of State, the defendant is registered to vote in Pennsylvania County. Additional potential re-entry needs may include obtaining health insurance and employment upon his release from custody.

 **Physical Condition**

1. The defendant stands six feet, four inches tall, and weighs approximately 280 pounds. He

has green eyes and black hair. At the time of the presentence investigation interview, the defendant had a mustache the same color of his hair. He reported having the following tattoos: “Marquisha” (girlfriend) on his right arm; “100%” on the fingers of his right hand; “TNT”[[3]](#footnote-3) on his left arm; and “FACTS” on the fingers of his left hand.

1. The defendant reported he suffers from Type 1 Diabetes (unmedicated), but he is otherwise healthy. He denied any additional serious or chronic illnesses or medical

conditions. He did not report any allergies to foods or medications. When not incarcerated, if he required medical attention, the defendant reportedly received care at free medical clinics. He does not have a primary care physician and reported no earlier hospitalizations or emergency treatment.

1. The defendant's current physical and medical conditions do not appear to present an issue

for sentencing, institutional classification, or community supervision (if applicable).

**Mental and Emotional Health**

1. The defendant disclosed that he suffers from clinical anxiety and has struggled with depression “on and off from a young age.” He reportedly has taken medication for his anxiety in the past, but never for his depression. He has neither been hospitalized for emotional disorders of any kind nor experienced suicidal ideations or hallucinations. Juvenile probation notes from September 5, 2006, revealed the defendant’s probation officer ordered him to participate in anger management therapy as part of his interim probation. During the presentence investigation interview, the defendant appeared alert and focused. He appeared to comprehend questions, provided pertinent answers, and maintained fair recall of dates and events in his life. The defendant has no history of gambling.

**Substance Abuse**

1. The defendant reported a history of substance abuse beginning in 2005 when he started

smoking marijuana at the age of sixteen. He reportedly smoked marijuana several times daily until 2009 when he reduced his intake of marijuana.[[4]](#footnote-4) In 2011, the defendant began using Percocet. His use of Percocet was reportedly limited to the weekends when he would take one or two 30-milligram tablets a day. This pattern continued up until his arrest for the instant offense.

1. According to the defendant, his use of alcohol has always been “here and there.” He

described his alcohol consumption to be “social” and non-problematic in nature.

1. The defendant does not feel his use of drugs or alcohol has impacted any of his

relationships, and he does not see a correlation between his drug use and the commission

of the instant offense. The defendant did not disclose any history of substance abuse

treatment, although he is interested in participating in treatment in the future. The defendant reported no history of overdose.

 **Educational, Vocational, and Special Skills**

1. A Student Data Form received from the Community College of Philadelphia verified the defendant enrolled in the AA Business Program from the 2008 spring semester to the

2009 fall semester. He did not earn any credits, had a 0.00 grade point average (GPA), and was placed on academic probation in his second term.

1. A transcript received from the School District of Philadelphia confirmed the defendant graduated from CEP Miller High School on June 10, 2008, with a GPA of 2.05. He attended CEP Miller High School during the 2006-2007 and 2007-2008 school years, and previously attended William Penn High School (now closed) during the 2004-2005 school year.
2. The defendant did not report any martial arts, firearms, or weapons training. He has not

served in the military. His special skills reportedly include heating, ventilation, and air

conditioning (HVAC), electrical, and plumbing.

 **Employment Record**

1. According to the defendant, from April 2019 until his arrest for the instant offense on

October 29, 2019, he worked for the Philadelphia Streets Department (sanitation) as a laborer earning an hourly wage of $16.50 an hour.[[5]](#footnote-5)

1. From February 2018 to February 2019, the defendant reportedly worked for Sweet Home Healthcare in Philadelphia providing home health care for his mother. This company no longer appears to be operational.
2. The defendant was unemployed from May 2014 to October 2017 due to his incarceration.
3. According to the defendant, from March 2012 to February 2013, he worked as an assistant mail handler for the U.S. Postal Service branch located at 7300 Lindbergh Boulevard in Philadelphia. This position was evidently arranged through a temporary agency (name not recalled) and ended due to layoffs.
4. The defendant stated he worked as an assistant merchandiser for Coca-Cola Bottling,

725 East Erie Avenue in Philadelphia, from June 2007 to July 2008. His employment was

reportedly terminated for failure to show up for work.

1. The defendant could not recall any jobs from July 2008 to March 2012. In his words, he

had some “little jobs here and there,” including landscaping for neighbors and doing “a whole bunch of nothing.” He also admitted to supporting himself via drug sales and his mother’s financial assistance.

 **Financial Condition: Ability to Pay**

1. The defendant completed and signed a certified financial disclosure document on August 17, 2021, in which he did not report any assets. Although the defendant reported he has approximately $5,000 in student loan debt, a credit report check did not reveal any credit history. Public database searches also did not reveal any assets or liabilities. The defendant has no income or expenses due to his current detention.
2. In this case, the defendant has appointed counsel. Under USSG §5E1.2, comment

(n.3), the Court may consider the fact that the defendant is represented by (or was

determined to be eligible for) assigned counsel as a significant indicator of present financial inability to pay a fine.

1. Under USSG §5E1.2(a), the court shall impose a fine in all cases, except where the

defendant establishes he is unable to pay and is not likely to become able to pay any

fine. Due to the defendant’s current detention, his inability to obtain gainful employment

outside of the prison setting, and his lack of assets, the defendant does not currently have

an ability to pay a fine within the guideline range.

1. If the defendant is incarcerated, payment on a fine or restitution can commence through the Bureau of Prisons Inmate Financial Responsibility Program. An inmate participating in this program will be able to contribute half of monthly prison work earnings, for every

month of imprisonment served, toward any immediately due fine or restitution.

**PART C. SENTENCING OPTIONS**

 **Custody**

1. **Statutory Provisions:** Count 1: The maximum term of imprisonment is 20 years. 21

U.S.C. § 841(b)(1)(C). Count 2: The minimum term of imprisonment is five years and the maximum term is life. 18 U.S.C. § 924(c)(1)(A)(1). Count 3: The maximum term of

imprisonment is 10 years. 18 U.S.C. §924(a)(2).

1. The term of imprisonment on Count 2 must be imposed consecutively to any other counts.
2. **Guideline Provisions:** Based upon a total offense level of 19 and a criminal history

category of IV, the guideline imprisonment range is 46 to 57 months. Count 2 requires a

60-month term of imprisonment, which shall be imposed consecutively to any other term

of imprisonment, under 18 U.S.C. § 924(c)(1)(D)(ii); therefore, **the effective**

**guideline range is 106 to 117 months**. USSG §5G1.2(a).

**Impact of Plea Agreement**

1. The parties agree the plea agreement is made under Federal Rule Criminal

Procedure 11(c)(1)(C) and the following specific sentence is the appropriate

disposition of this case: 96 months' imprisonment, a 3-year period of supervised release, a

fine, if any, to be determined by the Court, and a $300 special assessment. If the Court does not accept this plea agreement, then either the defendant or the government will have the right to withdraw from the plea agreement and insist the case proceed to trial. The agreed-upon term is less than the calculated guideline range.

**Supervised Release**

1. **Statutory Provisions:** Count 1: The Court must impose a term of supervised release of at least three years. 21 U.S.C. § 841(b)(1)(C). Count 2: The Court may impose a term of

supervised release of not more than five years. 18 U.S.C. § 3583(b)(1). Count 3: The Court may impose a term of supervised release of not more than three years. 18 U.S.C.

§ 3583(b)(2).

1. Multiple terms of supervised release shall run concurrently. 18 U.S.C. § 3624(e).
2. **Guideline Provisions:** Count 1: The guideline term of supervised release is three years to

life. USSG §5D1.2(c). Count 2: Since the offense is a Class A Felony, the guideline range

for a term of supervised release is 2 years to 5 years. USSG §5D1.2(a)(1). Count 3: Since

the offense is a Class C Felony, the guideline range for a term of supervised release is 1

year to 3 years. USSG §5D1.2(a)(2).

**Probation**

1. **Statutory Provisions:** Counts 1 and 3: The defendant is ineligible for probation because

the defendant will be sentenced at the same time to a term of imprisonment for the same or a different offense. 18 U.S.C. § 3561(a)(3). Count 2: The defendant is ineligible for

probation because it is expressly precluded by statute. 18 U.S.C. §§ 924(c)(1)(D)(i) 3561(a)(2).

1. **Guideline Provisions**: Counts 1 and 3: The defendant is ineligible for probation because

the defendant will be sentenced at the same time to a term of imprisonment for the same or a different offense. USSG §5B1.1(b)(3). Count 2: The defendant is ineligible for probation because probation has been expressly precluded by statute. USSG §5B1.1(b)(2).

**Fines**

1. **Statutory Provisions:** Count 1: The maximum fine is $1,000,000. 21 U.S.C.

§ 841(b)(1)(C). Counts 2 and 3: The maximum fine is $250,000 per count. 18 U.S.C. § 3571(b)(3).

1. Counts 1-3: A special assessment of $100 is mandatory per count. 18 U.S.C. § 3013.
2. **Guideline Provisions:** The fine range for this offense is $15,000[[6]](#footnote-6) to $1,000,000. If the defendant is convicted under a statute authorizing (A) a maximum fine greater than$500,000, or (B) a fine for each day of violation, the Court may impose a fine up to the maximum authorized by the statute. USSG §§5E1.2(c)(3) and (c)(4).
3. Costs of prosecution shall be imposed on the defendant as required by statute. USSG §5E1.5.
4. In determining whether to impose a fine and the amount of such fine, the Court shall

consider, among other factors, the expected costs to the government of any term of

probation, or term of imprisonment and term of supervised release imposed. USSG

§5E1.2(d)(7) and 18 U.S.C. § 3572(a)(6). These costs may include drug and alcohol

treatment, electronic monitoring, and/or contract confinement costs. The most recent advisory from the Administrative Office of the United States Courts, dated August 27,

2021, provides the following monthly cost data:

 **Bureau of Community Supervision by**

 **Prisons Facilities Correction Centers Probation Officer**

 Daily $121.00 $98.00 $12.00

 Monthly $3,688.00 $2,980.00 $371.00

 Annually $44,258.00 $35,761.00 $4,454.00

 **Restitution**

1. **Statutory Provisions:** Restitution is not applicable in this case. 18 U.S.C. § 3663.
2. **Guideline Provisions:** Restitution is not applicable in this case.

Respectfully Submitted,

 Samantha G. Popper

 Senior U.S. Probation Officer

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA )**

**)**

**)**

**vs. )**

**) Docket No.: 22-CR-0001**

**Justin Wagner )**

1. **FACTUAL BACKGROUND**

On or about October 29, 2019, Defendant Justin Wagner knowingly and intentionally possessed with intent to distribute 28 grams or more, approximately 106.37 grams of a mixture and substance containing a detectable amount of cocaine base ("crack"), a Schedule II controlled substance.

1. **PRESENTENCE REPORT GUIDELINE SENTENCING RANGE AND OBJECTIONS**

The final *Presentence Investigation Report* provides the guideline range is 106 to 117 months of imprisonment based on a criminal history category IV and total offense level of 19.

1. **MR WAGNER MOVES FOR A DOWNWARD DEPARTURE**

*Defendant’s criminal history category I.*

The final *Presentence Investigation Report* provides Mr. Wagner has 15 criminal history points and produces a Criminal History Category IV.

*Nature and circumstances of the offense.*

Mr. Wagner’s offenses have no reported victim impact.

1. **APPLICATION OF THE STATUTORY FACTORS TO DEFENDANT JUSTIN WAGNER**

Justin Wagner respectfully asks this Court to consider all 3553(a) factors and specifically those outlined below in fashioning a sentence that is sufficient but not greater than necessary.

Mr. Wagner is thirty-three years old. His parents were never married, but they separated when he was only five years old. Mr. Wagner’s father died earlier this year. Mr. Wagner had a close relationship with his father for his whole life and worked with his father at the Philadelphia Streets Department before his father’s death. Mr. Wagner’s mother suffers from bipolar disorder, diabetes, rheumatoid arthritis, atrial fibrillation, chronic obstructive pulmonary disorder, and asthma. Mr. Wagner is very close with his mother and visits her home weekly to check in on her and her health. Mr. Wagner’s mother is currently married to Tristan Brooks. Mr. Brooks has a close relationship with Mr. Wagner and visits him at the Federal Detention Center often. Mr. Wagner has two brothers and one half-sister. One of his brother’s was almost fatally shot last year and is still recovering. Mr. Wagner’s other brother is presently incarcerated at Curran-Fromhold Correctional Facility in Philadelphia.

Mr. Wagner lived in the Harrison Plaza projects in lower North Philadelphia throughout his childhood. He experienced a lot of violence in his neighborhood. He moved with his mother and stepfather to a different area of North Philadelphia to escape the violence when he was sixteen years old.

Mr. Wagner has three young children from two previous relationships. His children live with their mothers, but he speaks with his children on the phone multiple times a week. Mr. Wagner is presently in a relationship with Marquisha Adamas. His girlfriend, mother, brother, and half-sister are struggling without his presence and support in their life. His mother especially needs her son home because he cares for all her medical and personal needs.

Mr. Wagner suffers from clinical anxiety and has struggled with depression since he was a child. He has taken medication for his anxiety before but has never been on any medication for his depression. Mr. Wagner is not receiving any mental health treatment in the FDC. Mr. Wagner has suffered substance abuse issues since the age of sixteen. He abused marijuana and Percocet up until the time of the instant offense. Mr. Wagner’s criminal activity occurred during his addiction period.

Mr. Wagner graduated from CEP Miller High School in 2008. He enrolled in the Community College of Philadelphia in 2009 but has not yet completed his credits. Mr. Wagner worked for the Philadelphia Streets Department in sanitation before his arrest. Before working at the Philadelphia Streets Department, he worked at Sweet Home Healthcare, the U.S. Postal Service, and Coca-Cola Bottling.

Mr. Wagner stands before this Court remorseful and embarrassed for his actions. He assures the Court he wants to get his life together for himself and his family. Mr. Wagner is committed to addressing his substance addiction problems and bettering himself to return to his family.

1. **RECOMMENDED SENTENCE**

For all the foregoing reasons, including Mr. Wagner’s substance abuse, his untreated mental health issues, his father’s recent death, and his brother’s nearly fatal gunshot injury, Defendant Justin Wagner submits that a sentence below the guideline range is sufficient but not greater than necessary.

Respectfully submitted,

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December 28, 2022 Attorney for Defendant Denise Widener

The Honorable Mark A. Kearney

United States District Court

Eastern District of Pennsylvania

Dear Judge Kearney,

My name is Christina Brooks, and I am Justin Wagner’s mother. I want you to know that Justin is a good man. He works hard and cares for his family. His father died earlier this year and the loss has been very hard on him. He and his father were very close. Justin has had a hard time dealing with his grief but has still made sure to check up on me and his siblings. I suffer from bipolar disorder, diabetes, rheumatoid arthritis, atrial fibrillation, chronic obstructive pulmonary disorder, and asthma. I have a lot of medications I must take for my conditions. Justin calls me almost every day on the phone and visits me once a week to make sure I am staying healthy.

 Justin has three children from two past relationships. He speaks to his children on the phone weekly, but he was put in prison when they were so young. He has not been given the chance to be the great father he can be. Justin needs to go home so he can be a father and continue to care for all his family. We want him home. We need him home. I beg you to please show kindness and understanding in your decision.

Thank you.

Sincerely,

Christina Brooks

3647 Market Street

Philadelphia, PA 19124

Cellphone 215-647-3645

1. The conversion rates for cocaine and cocaine base (“crack”) are as follows: (1) 1 gram of cocaine equals 200 grams of converted drug weight; and (2) 1 gram of cocaine base equals 3,571 grams of converted drug weight. [↑](#footnote-ref-1)
2. Under USSG §2D1.1(b)(1), if a dangerous weapon (including a firearm) was possessed, the offense shall be

increased by two levels. In this case, the defendant was convicted of possession of a firearm in furtherance of a drug

trafficking crime, in violation of 18 U.S.C. § 924(c) (Count 2); therefore, this enhancement cannot be applied. See

USSG §2K2.4, Application Note 4. [↑](#footnote-ref-2)
3. TNT, standing for the Tenth and Thompson Gang, is a violent North Philadelphia gang based at 10th and Thompson Streets. An article published in the Philadelphia Inquirer on April 14, 2016, identified the defendant as being charged with attempted murder and aggravated assault in relation to a 15-month-long spree of violence inflicted on North Philadelphia neighborhoods by TNT members during which nine people were shot, with one being killed. See https://www.inquirer.com/philly/news/20160415\_D\_A\_\_\_15\_members\_of\_N\_\_Phila\_\_gang\_arrested\_for\_2014\_vi

olence.html. [↑](#footnote-ref-3)
4. Juvenile probation notes revealed the defendant submitted a urinalysis sample on August 29, 2007, returning with results positive for marijuana. [↑](#footnote-ref-4)
5. As to future plans, the defendant expressed intent to “acclimate back into the community,” secure

identification/paperwork, perhaps spend some time in a halfway house, and get a sanitation or factory job. [↑](#footnote-ref-5)
6. Under USSG §2K2.4(d)(1), “Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.” Application Note 7 of USSG §2K2.4 explains that “a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. § 844(h), § 924(c) or § 929(a). This is required because the offense level for the underlying offense may be reduced when there is also a conviction under 18 U.S.C. § 844(h), § 924(c) or § 929(a) in that any specific offense characteristic for possession, brandishing, use, or discharge of a firearm is not applied.” [↑](#footnote-ref-6)