

NO: _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

RICHIE WHEELER,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

PETITIONER'S APPENDIX

**ROY B. GREENMAN, ESQ. #010631974
BUDIN, GREENMAN & GREENMAN
Attorneys for Defendant
1379 Morris Avenue
Union, New Jersey 07083
(908) 688-6444
Rbg648@aol.com**

**Roy B. Greenman, Esq.
Of Counsel and on the Brief
CJA Counsel for Petitioner–Richie Wheeler**

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**U.S. District Court
District of New Jersey [LIVE] (Newark)
CRIMINAL DOCKET FOR CASE #: 2:18-cr-00485-SDW All Defendants**

Case title: USA v. WHEELER et al
Magistrate judge case number: 2:18-mj-06532-JAD

Date Filed: 08/15/2018

Assigned to: Judge Susan D. Wigenton
Appeals court case number: 20-1262
Third Circuit

Defendant (1)

RICHIE WHEELER
TERMINATED: 02/03/2020

represented by **ROY B. GREENMAN**
BUDIN, GREENMAN &
GREENMAN, ESQS.
1379 MORRIS AVENUE
UNION, NJ 07083
(908) 688-6444
Fax: (908)688-4334
Email: rbg648@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

18:111(a)(1) and (b) ASSAULTING,
RESISTING, OR IMPEDING
CERTAIN OFFICERS OR
EMPLOYEES (dof 3/8/2018)
(1-3)

21:841(a)(1) and (b)(1)(C)
POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE (dof

Disposition

Sentenced to 120 months imprisonment
on Counts One, Two and Three to be
served concurrently; 3 years supervised
w/special conditions on Counts One,
Two and Three to run concurrently;
Fine: Waived; Special assessment:
\$300.00 - due immediately.

3/8/2018)
(4)

Highest Offense Level (Terminated)

Felony

Complaints

18:111.F Assaulting/Resisting/Impeding
Officers/Employees; 21:841 Possession
with intent to distribute a controlled
substance

Disposition

Assigned to: Judge Susan D. Wigenton

Defendant (2)

VINCENT CARLISLE

represented by **KEVIN F. CARLUCCI**
OFFICE OF THE FEDERAL PUBLIC
DEFENDER
1002 BROAD STREET
NEWARK, NJ 07102
(973) 645-6347
Email: kevin_carlucci@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or
Community Defender Appointment*

Pending Counts

21:841(a)(1) and (b)(1)(C)
POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE (dof
3/8/2018)
(4)

Disposition

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

18:111.F Assaulting/Resisting/Impeding
Officers/Employees; 21:841 Possession
with intent to distribute a controlled
substance

Disposition**Plaintiff**

USA

represented by **JAMES MICHAEL DONNELLY**
OFFICE OF THE U.S. ATTORNEY
DISTRICT OF NEW JERSEY
970 BROAD STREET
NEWARK, NJ 07102
973-297-2089
Fax: 973-645-4546
Email: jdonnelly2@usa.doj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

KELLY GRAVES
OFFICE OF THE U.S. ATTORNEY
DISTRICT OF NEW JERSEY
970 BROAD STREET
NEWARK, NJ 07102
973-645-2746
Email: kelly.graves4@usdoj.gov
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
03/12/2018	<u>1</u>	COMPLAINT as to RICHIE WHEELER (1), VINCENT CARLISLE (2). (nm,) [2:18-mj-06532-JAD] (Entered: 03/13/2018)
03/16/2018		Arrest of VINCENT CARLISLE (nm,) [2:18-mj-06532-JAD] (Entered: 03/19/2018)
03/16/2018	<u>4</u>	Minute Entry for proceedings held before Magistrate Judge Joseph A. Dickson:Attorney Appointment Hearing as to VINCENT CARLISLE held on 3/16/2018, Bond Hearing as to VINCENT CARLISLE held on 3/16/2018, Initial Appearance as to VINCENT CARLISLE held on 3/16/2018 (CD #ECR.) (nm,) [2:18-mj-06532-JAD] (Entered: 03/19/2018)
03/16/2018	<u>6</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to VINCENT CARLISLE KEVIN F. CARLUCCI for VINCENT CARLISLE appointed.. Signed by Magistrate Judge Joseph A. Dickson on 3/16/18. (nm,) [2:18-mj-06532-JAD] (Entered: 03/19/2018)

03/16/2018	<u>7</u>	ORDER Setting Conditions of Release as to VINCENT CARLISLE (2) \$50,000 unsecured (Finance notified). Signed by Magistrate Judge Joseph A. Dickson on 3/16/18. (nm,) [2:18-mj-06532-JAD] (Entered: 03/19/2018)
03/16/2018	<u>8</u>	appearance Bond Entered as to VINCENT CARLISLE in amount of \$ 50,000, (nm,) [2:18-mj-06532-JAD] (Entered: 03/19/2018)
03/16/2018		WAIVER of Preliminary Examination or Hearing by VINCENT CARLISLE placed on the record. (nm,) [2:18-mj-06532-JAD] (Entered: 03/19/2018)
03/20/2018		Arrest of RICHIE WHEELER (tjg,) [2:18-mj-06532-JAD] (Entered: 03/20/2018)
03/20/2018	<u>9</u>	Minute Entry for proceedings held before Magistrate Judge Cathy L. Waldor:Initial Appearance as to RICHIE WHEELER held on 3/20/2018 (Court Reporter/Recorder ECR.) (tjg,) [2:18-mj-06532-JAD] (Entered: 03/20/2018)
03/20/2018	<u>11</u>	CJA 20 as to RICHIE WHEELER: Appointment of Attorney ROY B. GREENMAN for RICHIE WHEELER.. Signed by Magistrate Judge Cathy L. Waldor on 3/20/18. (tjg,) [2:18-mj-06532-JAD] (Entered: 03/20/2018)
03/20/2018	<u>12</u>	WAIVER of Preliminary Examination or Hearing by RICHIE WHEELER (tjg,) [2:18-mj-06532-JAD] (Entered: 03/20/2018)
03/20/2018	<u>13</u>	ORDER OF DETENTION as to RICHIE WHEELER. Signed by Magistrate Judge Cathy L. Waldor on 3/20/18. (tjg,) [2:18-mj-06532-JAD] (Entered: 03/20/2018)
03/22/2018	<u>14</u>	ORDER TO CONTINUE - Ends of Justice as to RICHIE WHEELER Time excluded from 3/20/18 until 5/19/18.. Signed by Magistrate Judge Joseph A. Dickson on 3/22/18. (nm,) [2:18-mj-06532-JAD] (Entered: 03/22/2018)
04/11/2018	<u>15</u>	ORDER TO CONTINUE - Ends of Justice as to VINCENT CARLISLE Time excluded from 3/19/18 until 5/19/18.. Signed by Magistrate Judge Joseph A. Dickson on 4/11/18. (nm,) [2:18-mj-06532-JAD] (Entered: 04/11/2018)
05/23/2018	<u>16</u>	ORDER TO CONTINUE - Ends of Justice as to VINCENT CARLISLE Time excluded from 5/22/18 until 7/22/18.. Signed by Magistrate Judge Joseph A. Dickson on 5/23/18. (nm,) [2:18-mj-06532-JAD] (Entered: 05/23/2018)
05/23/2018	<u>17</u>	ORDER TO CONTINUE - Ends of Justice as to RICHIE WHEELER Time excluded from 5/22/18 until 7/22/18.. Signed by Magistrate Judge Joseph A. Dickson on 5/23/18. (nm,) [2:18-mj-06532-JAD] (Entered: 05/23/2018)
08/15/2018	<u>18</u>	INDICTMENT as to RICHIE WHEELER (1) counts 1-3, 4, VINCENT CARLISLE (2) count 4. (msd) (Entered: 08/17/2018)
08/15/2018		Notice of Allocation and Assignment as to RICHIE WHEELER, VINCENT CARLISLE [Newark - Judge Susan D. Wigenton] (msd) (Entered: 08/17/2018)
08/17/2018		Notice of Allocation and Assignment setting Arraignment as to RICHIE WHEELER, VINCENT CARLISLE Arraignment set for 9/4/2018 12:00 PM before Judge Susan D. Wigenton. (msd) (Entered: 08/17/2018)
09/05/2018	<u>19</u>	

		Application and Order for Writ of Habeas Corpus as to RICHIE WHEELER. (Writ issued to USMS) Signed by Judge Susan D. Wigenton on 9/5/18. (cds) (Entered: 09/05/2018)
09/06/2018	<u>20</u>	Minute Entry for proceedings held before Judge Susan D. Wigenton:Arraignment as to RICHIE WHEELER (1) Count 1-3,4 and VINCENT CARLISLE (2) Count 4 held on 9/6/2018 (Court Reporter/Recorder Joanne Sekella.) (cds) (Entered: 09/06/2018)
10/11/2018	<u>21</u>	ORDER TO CONTINUE - Ends of Justice as to RICHIE WHEELER, VINCENT CARLISLE Time excluded from 10/11/2018 until 12/1/2018.. Signed by Judge Susan D. Wigenton on 10/11/2018. (mrd,) (Entered: 10/12/2018)
11/27/2018	<u>22</u>	NOTICE OF ATTORNEY APPEARANCE KELLY GRAVES appearing for USA. (GRAVES, KELLY) (Entered: 11/27/2018)
12/14/2018	<u>23</u>	Minute Entry for proceedings held before Judge Susan D. Wigenton:Status Conference as to RICHIE WHEELER, VINCENT CARLISLE held on 12/14/2018 (Court Reporter/Recorder Joanne Sekella.) (cds) (Entered: 12/14/2018)
12/27/2018	<u>24</u>	ORDER TO CONTINUE - Ends of Justice as to VINCENT CARLISLE Time excluded from 12/27/2018 until 3/31/2019. Signed by Judge Susan D. Wigenton on 12/27/2018. (msd) (Entered: 12/27/2018)
12/27/2018	<u>25</u>	ORDER TO CONTINUE - Ends of Justice as to RICHIE WHEELER Time excluded from 12/27/2018 until 3/31/2019. Signed by Judge Susan D. Wigenton on 12/27/2018. (msd) (Entered: 12/27/2018)
03/29/2019	<u>26</u>	ORDER TO CONTINUE - Ends of Justice as to VINCENT CARLISLE Time excluded from 3/29/2019 until 5/29/2019. Signed by Judge Susan D. Wigenton on 3/29/2019. (msd) (Entered: 04/01/2019)
03/29/2019	<u>27</u>	ORDER TO CONTINUE - Ends of Justice as to RICHIE WHEELER Time excluded from 3/29/2019 until 5/29/2019. Signed by Judge Susan D. Wigenton on 3/29/2019. (msd) (Entered: 04/01/2019)
05/31/2019	<u>28</u>	ORDER TO CONTINUE - Ends of Justice as to RICHIE WHEELER Time excluded from 5/31/2019 until 7/29/2019. Signed by Judge Susan D. Wigenton on 5/31/2019. (msd) (Entered: 06/03/2019)
07/24/2019	<u>29</u>	Minute Entry for proceedings held before Judge Susan D. Wigenton:Change of Plea Hearing as to RICHIE WHEELER held on 7/24/2019, Plea entered by RICHIE WHEELER (1) Guilty Count 1-3. (Sentencing set for 11/7/2019 at 11:00 AM in Newark - Courtroom 5C before Judge Susan D. Wigenton.) Any submissions to be reviewed by the Judge for sentencing must be submitted five (5) business days before date of sentencing. Courtesy copies of any submissions exceeding 10 pages should be mailed directly to Chambers. Counsel should be advised that any submission received after the deadline will not be considered. Further, counsel will be precluded from orally arguing the issues set forth in any untimely submissions. (Court Reporter/Recorder Joanne Sekella.) (cds) (Entered: 07/24/2019)

07/24/2019	<u>30</u>	APPLICATION for permission to enter Plea of guilty as to RICHIE WHEELER. (cds) (Entered: 07/24/2019)
07/24/2019	<u>31</u>	PLEA AGREEMENT as to RICHIE WHEELER (cds) (Entered: 07/24/2019)
10/18/2019		Set/Reset Hearings as to RICHIE WHEELER: Sentencing set for 1/7/2020 at 11:00 AM in Newark - Courtroom 5C before Judge Susan D. Wigenton. Any submissions to be reviewed by the Judge for sentencing must be submitted directly to Chambers five (5) business days before date of sentencing. Counsel should be advised that any submission received after the deadline will not be considered. Further, counsel will be precluded from orally arguing the issues set forth in any untimely submissions. (cds) (Entered: 10/18/2019)
01/02/2020		Set/Reset Hearings as to RICHIE WHEELER: Sentencing set for 2/3/2020 at 03:00 PM in Newark - Courtroom 5C before Judge Susan D. Wigenton. Any submissions to be reviewed by the Judge for sentencing must be submitted directly to Chambers five (5) business days before date of sentencing. Counsel should be advised that any submission received after the deadline will not be considered. Further, counsel will be precluded from orally arguing the issues set forth in any untimely submissions. (cds) (Entered: 01/02/2020)
01/24/2020	<u>32</u>	OBJECTION TO PRESENTENCE INVESTIGATION REPORT by RICHIE WHEELER as to RICHIE WHEELER, VINCENT CARLISLE (GREENMAN, ROY) (Entered: 01/24/2020)
01/29/2020	<u>33</u>	Submission Notice - Sentencing Materials have been submitted to the Court by USA as to RICHIE WHEELER. (DONNELLY, JAMES) (Entered: 01/29/2020)
02/03/2020	<u>34</u>	Minute Entry for proceedings held before Judge Susan D. Wigenton: Sentencing held as to RICHIE WHEELER for RICHIE WHEELER (1), Count(s) 1-3, Sentenced to 120 months imprisonment on Counts One, Two and Three to be served concurrently; 3 years supervised w/special conditions on Counts One, Two and Three to run concurrently; Fine: Waived; Special assessment: \$300.00 - due immediately. (Court Reporter/Recorder Joanne Sekella.) (cds) (Entered: 02/04/2020)
02/03/2020	<u>36</u>	JUDGMENT as to RICHIE WHEELER (1), Count(s) 1-3, Sentenced to 120 months imprisonment on Counts One, Two and Three to be served concurrently; Supervised Released for a term of 3 years, w/special conditions, Drug testing and treatment, Life skill/education, Motor vehicle compliance, Supporting dependents, on Counts One, Two and Three to run concurrently; Fine: Waived; Special assessment: \$300.00 - due immediately. (Finance notified). Signed by Judge Susan D. Wigenton on 2/3/2020. (JB,) (Entered: 02/05/2020)
02/05/2020	<u>35</u>	NOTICE OF APPEAL by RICHIE WHEELER The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Finance notified) (GREENMAN, ROY) (Entered: 02/05/2020)
02/05/2020	<u>37</u>	ORDER FOR DISMISSAL as to RICHIE WHEELER. Signed by Judge Susan D. Wigenton on 2/5/2020. (msd) (Entered: 02/05/2020)
02/19/2020	<u>39</u>	

		Transcript of Plea as to RICHIE WHEELER held on July 24, 2019, before Judge Susan D. Wigenton. Court Reporter: Joanne Sekella (908-310-1177). Transcript may be viewed at the court public terminal or purchased through the Court Reporter only. (wh) (Entered: 02/20/2020)
02/19/2020	<u>40</u>	Transcript of Sentence as to RICHIE WHEELER held on February 3, 2020, before Judge Susan D. Wigenton. Court Reporter: Joanne Sekella (908-310-1177). Transcript may be viewed at the court public terminal or purchased through the Court Reporter only. (wh) (Entered: 02/20/2020)

PACER Service Center			
Transaction Receipt			
03/06/2020 09:56:30			
PACER Login:	rbgreenman	Client Code:	
Description:	Docket Report	Search Criteria:	2:18-cr-00485-SDW Start date: 1/1/1971 End date: 3/6/2020
Billable Pages:	5	Cost:	0.50

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DOCKET NUMBER: 18-485

Honorable Susan D. Wigenton, U.S.D.J.

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHIE WHEELER,

Defendant.

CRIMINAL ACTION

NOTICE is hereby given that RICHIE WHEELER appeals to the United States Court of Appeals for the Third Circuit from the judgment of conviction entered in this action on February 3, 2020.

This appeal concerns: Conviction only ☒ Sentence only ☐ Conviction & Sentence ☐ Other ☐

Defendant found guilty by plea ☒ trial ☐ N/A ☐

Offense occurred after November 1, 1987? Yes ☒ No ☐ N/A ☐

Date of sentence: February 3, 2020

Bail/Jail Disposition: Committed ☒ Not committed ☐ N/A ☐

Appellant is represented by counsel? Yes ☒ No ☐ If yes, provide the following information:

Defendant's Counsel: Roy B. Greenman, Esq., Budin, Greenman & Greenman

Counsel's Address: 1379 Morris Avenue, Union, New Jersey 07083

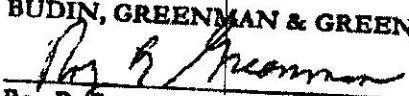
Counsel's Phone: 908-688-6444

Assistant U.S. Attorney: James Donnelly, A.U.S.A

AUSA's Address: 970 Broad Street, Newark, New Jersey 07102

AUSA's Phone: 973-645-2700

BUDIN, GREENMAN & GREENMAN


Roy B. Greenman, Esq.

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

CASE NUMBER 2:18-CR-00485-SDW-1

RICHIE WHEELER

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, RICHIE WHEELER, was represented by ROY B. GREENMAN, ESQ. (CJA Appointed).

The defendant pleaded guilty to count(s) 1-3 of the INDICTMENT on 7/24/2019. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

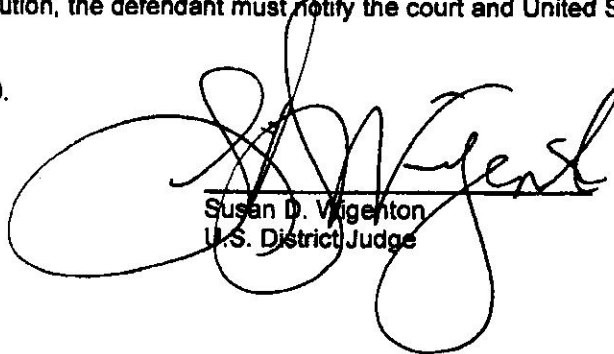
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18:111(A)(1) AND (B)	ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES	3/8/2018	1-3

As pronounced on February 03, 2020, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of \$300.00 for count(s) 1-3, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant must 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in economic circumstances.

Signed this 3rd day of February, 2020.


 Susan D. Vigen
 U.S. District Judge

Defendant: RICHIE WHEELER
Case Number: 2:18-CR-00485-SDW-1

Judgment - Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months on each of Counts One, Two, and Three, all to be served concurrently.

The defendant will remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ To _____
At _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: RICHIE WHEELER
Case Number: 2:18-CR-00485-SDW-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 years. This term consists of terms of 3 years on Counts One, Two, and Three, all such terms to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

You must submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

DRUG TESTING AND TREATMENT

You must refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and must submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you must submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You must abide by the rules of any program and must remain in treatment until satisfactorily discharged by the Court. You must alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The U.S. Probation Office will supervise your compliance with this condition.

LIFE SKILLS/EDUCATION

As directed by the U.S. Probation Office, you must participate in and complete any educational, vocational, cognitive or any other enrichment programs offered by the U.S. Probation Office or any outside agency or establishment while under supervision.

MOTOR VEHICLE COMPLIANCE

You must not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You must comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office.

SUPPORTING DEPENDENTS

If you are Court-ordered to make child support payments or to make payments to support a person caring for a child, you must make the payments and comply with the other terms of the order.

Defendant: RICHIE WHEELER
Case Number: 2:18-CR-00485-SDW-1

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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

Defendant: RICHIE WHEELER
Case Number: 2:18-CR-00485-SDW-1

Judgment - Page 5 of 5

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

For Official Use Only - - - U.S. Probation Office

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

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

U.S. Probation Officer/Designated Witness Date

RECEIVED

AUG 15 2018

AT 8:30 M **UNITED STATES DISTRICT COURT**
WILLIAM T. WALSH, CLERK **DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Hon. Susan D. Wigenton
	:	
	:	Crim. No. 18- 485
v.	:	
	:	18 U.S.C. § 111 (a)(1) and (b)
	:	21 U.S.C. §§ 841(a)(1) and (b)(1)(C)
RICHIE WHEELER	:	
and	:	
VINCENT CARLISLE	:	

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark,
charges:

COUNT ONE

(Assaulting, Resisting, or Impeding Certain Officers or Employees)

On or about March 8, 2018, in Essex County, the District of New Jersey
and elsewhere, the defendant,

RICHIE WHEELER

did forcibly assault, resist, oppose, impede, intimidate, and interfere with
persons designated in Title 18, United States Code, Section 1114, namely a Task
Force Officer ("Victim-1") employed by the United States Marshal's Service, while
Victim-1 was engaged in and on account of the performance of Victim-1's official
duties, using a deadly or dangerous weapon, that is, a black Dodge Charger
motor vehicle bearing, Missouri Registration Number AK8EOD.

In violation of Title 18, United States Code, Sections 111(a)(1) and (b).

COUNT TWO

(Assaulting, Resisting, or Impeding Certain Officers or Employees)

On or about March 8, 2018, in Essex County, the District of New Jersey and elsewhere, the defendant,

RICHEL WHEELER

did forcibly assault, resist, oppose, impede, intimidate, and interfere with persons designated in Title 18, United States Code, Section 1114, namely a Task Force Officer ("Victim-2") employed by the United States Marshal's Service, while Victim-2 was engaged in and on account of the performance of Victim-2's official duties, using a deadly or dangerous weapon, that is, a black Dodge Charger motor vehicle bearing, Missouri Registration Number AK8EOD.

In violation of Title 18, United States Code, Sections 111(a)(1) and (b).

COUNT THREE

(Assaulting, Resisting, or Impeding Certain Officers or Employees)

On or about March 8, 2018, in Essex County, the District of New Jersey and elsewhere, the defendant,

RICHIE WHEELER

did forcibly assault, resist, oppose, impede, intimidate, and interfere with persons designated in Title 18, United States Code, Section 1114, namely a Task Force Officer ("Victim-3") employed by the United States Marshal's Service, while Victim-3 was engaged in and on account of the performance of Victim-3's official duties, using a deadly or dangerous weapon, that is, a black Dodge Charger motor vehicle bearing, Missouri Registration Number AK8EOD.

In violation of Title 18, United States Code, Sections 111(a)(1) and (b).

COUNT FOUR

(Possession with Intent to Distribute Cocaine)

On or about March 8, 2018, in Essex County, in the District of New Jersey and elsewhere, the defendants,

**RICHIE WHEELER
and
VINCENT CARLISLE**

knowingly and intentionally did possess with the intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C).

A TRUE BILL

FO

Craig Carpenito
CRAIG CARPENITO
United States Attorney

CASE NUMBER: 18- 485 (SDW)

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

**RICHIE WHEELER
and
VINCENT CARLISLE**

INDICTMENT FOR

**18 U.S.C. § 111 (a)(1) and (b)
21 U.S.C. §§ 841 (a)(1) and (b)(1)(C)**

A True Bill,

Foreperson

CRAIG CARPENTO

**UNITED STATES ATTORNEY
FOR THE DISTRICT OF NEW JERSEY**

**JAMES DONNELLY
ASSISTANT U.S. ATTORNEY
NEWARK, NEW JERSEY
(973) 297-2089**

U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED

2018 AUG 15 P 6:15



U.S. Department of Justice

United States Attorney
District of New Jersey

970 Broad Street, 7th floor
Newark, New Jersey 07102

973-645-2700

May 29, 2019

Roy Greenman, Esq.
Budin, Greenman & Greenman
1379 Morris Avenue
Union, NJ 07083

Re: Plea Agreement with Richie Wheeler

Dear Mr. Greenman:

This letter sets forth the plea agreement between your client, Richie Wheeler ("WHEELER"), and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from WHEELER to Counts One through Three of Indictment 18-485 (SDW), each of which charges that WHEELER did forcibly assault, resist, oppose, impede, intimidate, and interfere with persons designated in Title 18, United States Code, Section 1114, namely Task Force Officers ("Victim-1" "Victim-2 and "Victim-3") employed by the United States Marshal's Service, while Victims-1 through 3 were engaged in and on account of the performance of their official duties, using a deadly or dangerous weapon, that is, a black Dodge Charger motor vehicle bearing, Missouri Registration Number AK8EOD, in violation of 18 U.S.C. §§ 111(a)(1) and (b). If WHEELER enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against WHEELER for, on or about March 8, 2018, the assault upon federal officers or possessing with intent to distribute a quantity of cocaine. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, WHEELER agrees that any dismissed charge and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by WHEELER may be commenced against him,

notwithstanding the expiration of the limitations period after WHEELER signs the agreement.

Sentencing

The violations of 18 U.S.C. §§ 111(a)(1) and (b) to which WHEELER agrees to plead guilty in Counts One through Three of the Indictment carries a statutory maximum prison sentence of 20 years and a statutory maximum fine equal to the greatest of: (1) \$250,000, or (2) twice the gross profits or other proceeds to WHEELER. A fine imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon WHEELER is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence WHEELER ultimately will receive.

Further, in addition to imposing any other penalty on WHEELER, the sentencing judge: (1) will order WHEELER to pay an assessment of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order WHEELER to pay restitution pursuant to 18 U.S.C. § 3663 et seq.; and (3) with respect to all Counts, must order forfeiture pursuant to 21 U.S.C. § 853 of: (a) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and (b) any property used, or intended to be used, in any matter or part, to commit, or to facilitate the commission of, such violation.

Additionally, pursuant to 18 U.S.C. § 3583, the sentencing judge may require WHEELER to serve a term of supervised release of five years, which will begin at the expiration of any term of imprisonment imposed. Should WHEELER be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, WHEELER may be sentenced to not more than three years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on WHEELER by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of WHEELER's activities and relevant conduct with respect to this case.

Stipulations

This Office and WHEELER agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or WHEELER from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and WHEELER waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

As part of his acceptance of responsibility, WHEELER agrees to forfeit to the United States: (i) 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any

interest in the black Dodge Charger motor vehicle bearing Missouri Registration Number AK8EOD ("Forfeitable Property").

WHEELER agrees to waive all interest in the Forfeitable Property in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. WHEELER agrees to consent to the entry of orders of forfeiture for the Forfeitable Property and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. WHEELER understands that the forfeiture of the Forfeitable Property is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding. Furthermore, WHEELER waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

WHEELER consents and agrees to forfeit and abandon to federal, state, and/or local law enforcement all right, title, and interest in the Forfeitable Property and waives: (1) all challenges of any kind to the forfeiture and abandonment of the Forfeitable Property by federal, state, and/or local law enforcement; and (2) any additional notice requirement in connection with the forfeiture and abandonment of this property. WHEELER also consents to the destruction of the Forfeitable Property at the discretion of federal, state, and/or local law enforcement.

Immigration Consequences

WHEELER understands that, if he is not a citizen of the United States, his guilty plea to the charged offense will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. WHEELER understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. WHEELER wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. WHEELER understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, WHEELER waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against WHEELER. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service and Immigration and Customs Enforcement) or any third party from initiating or prosecuting any civil or administrative proceeding against WHEELER.

No provision of this agreement shall preclude WHEELER from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that WHEELER received constitutionally ineffective assistance of counsel.

No Other Promises

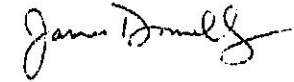
This agreement constitutes the plea agreement between WHEELER and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

CRAIG CARPENITO
United States Attorney

By: s/ KELLY GRAVES
KELLY GRAVES
Assistant U.S. Attorney

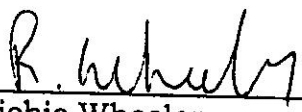
APPROVED:



JAMES DONNELLY
Chief, Violent Crimes Unit

I have received this letter from my attorney, Roy Greenman, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

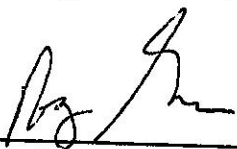
AGREED AND ACCEPTED:



Richie Wheeler

Date: 7/5/19

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.



Roy Greenman, Esq.

Date: 7/5/19

Plea Agreement With Richie Wheeler

Schedule A

1. This Office and WHEELER agree to stipulate to the following facts:
 - a. On or about March 8, 2018, WHEELER was the driver of a black Dodge Charger motor vehicle bearing Missouri Registration Number AK8EOD ("the "Dodge Charger").
 - b. While WHEELER was the driver of the Dodge Charger, he became aware that law enforcement officers were attempting to arrest him by blocking in the Dodge Charger.
 - c. After becoming aware that law enforcement officers were attempting to arrest him, WHEELER drove the Dodge Charger in the direction of vehicles being used by the law enforcement officers, and struck a vehicle occupied by three federal law enforcement officers attempting to make the arrest.
2. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence.
3. If the sentencing court accepts the factual stipulations set forth above, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. Otherwise, both parties reserve the right to file, oppose, or take any position in any appeal, collateral attack, or proceeding involving post-sentencing motions or writs.

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3 UNITED STATES OF AMERICA,

CRIMINAL NUMBER:

4 v.

2:18-cr-00485-SDW-1

5 RICHIE WHEELER,

PLEA

6 Defendant.

Pages 1 - 15

7
8 Martin Luther King Building & U.S. Courthouse
9 50 Walnut Street
10 Newark, New Jersey 07101
11 Wednesday, July 24, 2019
12 Commencing at 11:50 a.m.

13 B E F O R E:

THE HONORABLE SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 OFFICE OF THE UNITED STATES ATTORNEY
16 BY: JAMES MICHAEL DONNELLY, ASST. UNITED STATES ATTORNEY
17 970 Broad Street
18 Newark, New Jersey 07102
19 For the Government

20 BUDIN, GREENMAN & GREENMAN, ESQS.
21 BY: ROY B. GREENMAN, ESQUIRE
22 1379 Morris Avenue
23 Union, New Jersey 07083
24 For the Defendant

25 A L S O P R E S E N T:

RICHIE WHEELER, Defendant

Joanne L. Sekella
Official Court Reporter
sekella@gmail.com
(908) 310-1177

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RICHIE WHEELER, DEFENDANT, DULY SWORN	4
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1 (PROCEEDINGS held in open court before The Honorable
2 SUSAN D. WIGENTON, United States District Judge, at
3 11:50 a.m.)

4 THE COURT: All right, everyone. You can have a seat
5 in the back.

6 All right. This is the matter of *United States vs.*
7 *Richie Wheeler* and this is under Docket Number 18-485.

8 Counsel, you may enter your appearances, please.

9 MR. DONNELLY: Good morning, Judge. James Donnelly
10 on behalf of the Government.

11 THE COURT: All right. Good morning, Mr. Donnelly.

12 MR. GREENMAN: Good morning, Your Honor.

13 THE COURT: Mr. Greenman.

14 MR. GREENMAN: Roy Greenman for Richie Wheeler.

15 THE COURT: All right, very well. Good morning to
16 both of you.

17 All right. So it's my understanding that Mr. Wheeler
18 is here and he is present and prepared to enter a plea of
19 guilty at this time to Counts 1 through 3 of the indictment.

20 Is that accurate, Mr. Donnelly?

21 MR. DONNELLY: Yes, it is, Judge.

22 THE COURT: All right.

23 So with that being stated, Mr. Wheeler, we will have
24 you sworn, if you will be kind enough to stand.

25

1 RICHIE WHEELER, DEFENDANT, DULY SWORN.

2 QUESTIONING BY THE COURT

3 THE COURT: All right. Mr. Wheeler, stay standing,
4 please. Remain standing.

5 Can you state your full name for the record for me?

6 THE DEFENDANT: Richie Wheeler.

7 THE COURT: All right. And how old are you?

8 THE DEFENDANT: 34.

9 THE COURT: And what's your date of birth?

10 THE DEFENDANT: November 14, 1984.

11 THE COURT: What is the highest level of education
12 you've received?

13 THE DEFENDANT: Eleventh grade.

14 THE COURT: All right.

15 So is it fair to say you read, write and understand
16 the English language?

17 THE DEFENDANT: Yes.

18 THE COURT: All right.

19 And are you currently under the influence of any
20 medication or any other substance which would affect your
21 ability to understand and appreciate the significance of
22 entering a plea of guilty?

23 THE DEFENDANT: No.

24 THE COURT: All right.

25 Have you had a complete opportunity to speak with Mr.

1 Greenman regarding your rights in this matter?

2 THE DEFENDANT: Yes.

3 THE COURT: All right.

4 So you do understand that you do have a right to
5 proceed to trial in this matter where the burden would rest
6 with the Government to prove you guilty beyond a reasonable
7 doubt?

8 THE DEFENDANT: Yes.

9 THE COURT: By virtue of the fact that you are
10 pleading guilty, there will be no trial in this matter.

11 Do you realize that?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. So we will never know what a
14 jury would or would not do with the facts and evidence in this
15 case.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, is anyone promising you anything or
19 threatening you in exchange for you pleading guilty?

20 THE DEFENDANT: No.

21 THE COURT: All right.

22 You do understand that once you enter the plea, you
23 cannot take it back or retract it because you don't like or
24 agree with the sentence that I am going to impose.

25 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: All right.

3 Now, and at this time, I also have in front of me an
4 application for permission to enter a plea of guilty, which we
5 refer to as a Rule 11 form, and it is a document that is
6 primarily typewritten. There are some handwritten areas,
7 Mr. Wheeler. I just want to confirm that you went over this
8 document in detail with Mr. Greenman.

9 THE DEFENDANT: Yes.

10 THE COURT: All right.

11 And if you had any questions that pertained to this
12 document, were those questions answered to your satisfaction
13 by Mr. Greenman?

14 THE DEFENDANT: Yes.

15 THE COURT: All right.

16 And on Page 7, is that your signature reflected?

17 THE DEFENDANT: Yes.

18 THE COURT: All right.

19 So the record should note that you have signed the
20 document on Page 7 on today's date.

21 Likewise, Mr. Greenman has signed the certification
22 of counsel area on Page 8 in this matter.

23 Now, in addition to that, did you have the
24 opportunity, Mr. Wheeler, to speak to Mr. Greenman regarding
25 the role of the sentencing guidelines?

1 THE DEFENDANT: Yes.

2 THE COURT: So you understand that I will refer to
3 them and I will use them in an advisory capacity. I am not
4 bound by them and I have the discretion to impose the sentence
5 that I feel is appropriate.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: All right.

9 Now, you also understand that regardless of any
10 promises you believe that have been made to you or any
11 agreements that have been reached between you and your
12 attorney or your attorney and the Government or you believe
13 between you and the Government, none of those agreements bind
14 me, the Court. All right.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay.

18 At the end of the day, I do have the discretion to
19 impose a sentence that I feel is appropriate.

20 Do you realize that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right.

23 Now, knowing those things, Mr. Wheeler, do you still
24 wish to proceed and enter a plea of guilty?

25 THE DEFENDANT: Yes.

1 THE COURT: All right.

2 So I want to ask you some questions about your plea
3 agreement. The document that I have is dated May the 29th,
4 2019.

5 And if you have that for me, Mr. Greenman, if you
6 could show Mr. Wheeler Page 7. I want to confirm that that is
7 in fact your signature, Mr. Wheeler.

8 THE DEFENDANT: Yes.

9 THE COURT: All right.

10 Now, did you go over this document in detail with
11 Mr. Greenman?

12 THE DEFENDANT: Yes.

13 THE COURT: And once again, if you had any questions
14 about this document, were those questions answered to your
15 satisfaction by your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 Now, drawing your attention to Page 3 of the
19 document, at the bottom of that page there is a section
20 entitled "Waiver of Appeal and Post Sentencing Rights." All
21 right.

22 Do you see that section?

23 THE DEFENDANT: Yes.

24 THE COURT: It cross-references Schedule A. Schedule
25 A is also a part of your plea agreement. It starts on Page 8.

1 And I want to draw your attention to Schedule A, if I can.

2 Now, on Page 8, which is Schedule A, you will see
3 basically three paragraphs or three specific sections with
4 some subparagraphs in those sections.

5 And I want to confirm in Paragraph 3, Mr. Wheeler, it
6 says that if the Court accepts the factual stipulations that
7 are set forth above, then both parties -- meaning you and the
8 Government -- waive your right to appeal, collaterally attack,
9 or otherwise challenge the Court's sentence.

10 You understand that, correct?

11 THE DEFENDANT: Yes.

12 THE COURT: So you are not stipulating to any
13 particular guidelines offense level or anything like that, you
14 are not stipulating to a certain time of imprisonment. What
15 you're stipulating to is that if I agree with the facts, if I
16 accept these facts that you have agreed to that are outlined
17 in this document, that you can't come back later and say the
18 Court should not have accepted that as a fact.

19 Do you realize that?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Now, let's just go over the
22 facts a little bit.

23 What's in Section 1, under 1A, it says that you were
24 in fact the driver of a black Dodge Charger motor vehicle on
25 March 8, 2018.

1 Is that accurate?

2 THE DEFENDANT: Yes.

3 THE COURT: And Section B says, While you were the
4 driver you became aware that law enforcement officers were
5 attempting to arrest you by blocking the Dodge Charger.

6 Is that correct?

7 THE DEFENDANT: Yes.

8 THE COURT: And you further state that after becoming
9 aware that law enforcement officers were attempting to arrest
10 you, you drove the Dodge Charger in the direction of the
11 vehicles being used by law enforcement officers and struck a
12 vehicle occupied by three federal law enforcement officers
13 that were attempting to make the arrest.

14 Is that accurate?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay.

17 So those are the factual stipulations. And
18 obviously, any other arguments that you wish to make at the
19 time of sentencing you can make outside of those stipulations.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. All right.

23 So I am going to just go back real quick as well, as
24 it relates to Page 4, and I will ask you, Mr. Greenman, if
25 there are any issues regarding Mr. Wheeler's status as a

1 citizen in this country?

2 MR. GREENMAN: No, he is a citizen, Your Honor.

3 THE COURT: All right. Very well.

4 And, Mr. Donnelly, any issues regarding forfeiture,
5 which is outlined on Page 3?

6 MR. DONNELLY: No, Your Honor.

7 FACTUAL BASIS

8 THE COURT: Okay. All right.

9 So I am going to ask you some questions, Mr. Wheeler,
10 that relate to the factual basis. And once again, your verbal
11 responses are required. I will not have the maximum penalties
12 repeated for you unless you believe that's necessary.

13 Do you need those repeated?

14 THE DEFENDANT: No.

15 THE COURT: Okay. All right.

16 So as it relates to the factual basis, on or about
17 the evening of March 8th, 2017, were you in the driver's seat
18 of -- is it 2017 or 2018?

19 MR. DONNELLY: I'm sorry, Judge. That is a
20 typographical error. It should be, I believe, 2018.

21 THE COURT: '18, right.

22 All right. So on or about the evening of March 8th,
23 2018, were you in the driver's seat of a black Dodge Charger
24 motor vehicle bearing Missouri registration number AK8-EOD,
25 known as the Dodge Charger, in the area of Osborne Terrace and

1 Lehigh Avenue in Newark?

2 THE DEFENDANT: Yes.

3 THE COURT: And while you were in the Dodge Charger,
4 was there another individual named Vincent Carlisle seated in
5 the passenger seat of that car?

6 THE DEFENDANT: Yes.

7 THE COURT: At that time was there an active warrant
8 for your arrest that had been issued by the New Jersey
9 Superior Court in Essex County for another matter that had
10 occurred weeks earlier?

11 THE DEFENDANT: Yes.

12 THE COURT: At approximately 9:30 p.m., did you
13 become aware that law enforcement officers, Victims 1
14 through 3, were attempting to arrest you by blocking in the
15 Dodge Charger?

16 THE DEFENDANT: Yes.

17 THE COURT: After becoming aware that law enforcement
18 officers, including Victims 1 through 3, were attempting to
19 arrest you, did you drive the Dodge Charger in the direction
20 of vehicles being used by the law enforcement officers?

21 THE DEFENDANT: Yes.

22 THE COURT: And did you strike one of those vehicles,
23 which was occupied by the Victims 1 through 3, as they were
24 attempting to make the arrest?

25 THE DEFENDANT: Yes.

1 THE COURT: And are you pleading guilty, Mr. Wheeler,
2 because you are in fact guilty of the counts in the
3 indictment?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay.

6 And at this time, Mr. Donnelly, are there any
7 representations that the Government would like to place on the
8 record?

9 MR. DONNELLY: Yes, Your Honor. Very briefly.

10 The United States would represent to the Court that
11 the law enforcement officers that were addressed as Victims 1
12 through 3 in the factual basis questions are in fact sworn
13 members of the United States Marshal's Fugitive Task Force and
14 thus were protected officers within the meaning of the statute
15 which has been pled to here, which is 18 United States Code
16 Section 111.

17 Second, that those Victims 1 through 3 were acting as
18 federal officers at the time of the incident. And that
19 Victims 1 through 3 suffered physical pain as a result of the
20 collision.

21 And that the United States would be prepared to prove
22 each of those facts to a jury.

23 When taken in combination with Mr. Wheeler's
24 affirmative answers to the questions posed by Your Honor, the
25 Government is satisfied that a factual basis for the crime has

1 been set forth before Your Honor.

2 FINDINGS BY THE COURT

3 THE COURT: Likewise, I am satisfied as well,
4 Mr. Wheeler, that with the advice of counsel you have entered
5 your plea of guilty here today and your responses to my
6 questions do establish a factual basis.

7 I am satisfied that you have knowingly and
8 voluntarily entered this plea of guilty, in addition to
9 knowingly and voluntarily waiving your right to proceed to
10 trial in this case.

11 So at this point you will be determined guilty. It
12 will be necessary for you to meet with probation. Probation
13 will prepare a presentence report. You will go over that with
14 Mr. Greenman. And the Court and the Government will receive
15 copies of that same document.

16 Sentencing is going to be scheduled for November
17 the 7th, 2019, at 11:00 a.m. And at that time we will discuss
18 the contents of that presentence report, in addition to
19 imposing sentence.

20 Is there anything further, Mr. Greenman, on behalf of
21 Mr. Wheeler?

22 MR. GREENMAN: No, Your Honor.

23 THE COURT: All right.

24 And anything further, Mr. Donnelly, on behalf of the
25 Government?

1 MR. DONNELLY: Nothing from the Government, Judge.

2 THE COURT: All right. Very well.

3 Thank you, all. Have a great day.

4 MR. DONNELLY: Thank you, Your Honor.

5 THE DEPUTY CLERK: All rise.

6 (The proceeding is adjourned at 12:00 p.m.)

7
8 FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

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11
12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled matter.

14
15 /S/ Joanne Sekella, CCR, CRCR, RMR

February 19, 2020

16 Official Court Reporter

Date

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

CRIMINAL NUMBER:

v.

2:18-cr-00485-SDW-1

RICHIE WHEELER,

SENTENCE

Defendant.

Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101
Monday, February 3, 2020
Commencing at 3:12 p.m.

B E F O R E:

THE HONORABLE SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

OFFICE OF THE UNITED STATES ATTORNEY
BY: JAMEL SEMPER, ASST. UNITED STATES ATTORNEY
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For the Government

BUDIN, GREENMAN & GREENMAN, ESQS.
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For the Defendant

A L S O P R E S E N T:

RICHIE WHEELER, Defendant
JOANNE YOUNG, U.S. Probation Office

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1 (PROCEEDINGS held in open court before The Honorable
2 SUSAN D. WIGENTON, United States District Judge, at 3:12 p.m.)

3 THE COURT: All right, everybody. You can have a
4 seat in the back.

5 All right. This is the matter of *United States vs.*
6 *Richie Wheeler*. It's under Docket Number 18-485.

7 Counsel, you may enter your appearances, please.

8 MR. SEMPER: Good afternoon, Your Honor. Jamel
9 Semper on behalf of the Government.

10 THE COURT: Good afternoon, Mr. Semper.

11 MR. GREENMAN: Good afternoon, Your Honor. Roy
12 Greenman for Richie Wheeler.

13 THE COURT: Very well. Good afternoon to you as
14 well, Mr. Greenman.

15 All right. So as I understand it, we are here today
16 for purposes of sentencing. Mr. Wheeler did appear before me
17 in this matter and entered a plea of guilty. Today is the
18 date that has been sent down for sentencing. His plea was
19 accepted by this Court on July the 24th, 2019.

20 So I will ask you first, Mr. Greenman, if you have
21 have had an opportunity to review the presentence report with
22 your client; if so, whether you take any exception to the
23 content or scope of the report? And I would note for the
24 record that I have received and read your submission dated
25 January the 8th, 2020, which did include a number of letters.

1 And I read each of those letters.

2 And in addition to that, you provided the Court with
3 a second submission as it related to the arguments for
4 sentencing. And that document is dated January the 24th,
5 2020.

6 Other than that, any exceptions that you take to the
7 content or scope of the presentence report?

8 MR. GREENMAN: No, Judge.

9 THE COURT: All right. Very well.

10 Same question to you, Mr. Semper, on behalf of the
11 Government. Does the Government take any exception to the
12 content or scope of the report? And I would note for the
13 record that I have received and read the Government's
14 submission dated January the 20th, 2020. And there is
15 actually another document also dated January 22nd, which was
16 addressed to probation. They basically say the same thing, so
17 I did have the opportunity to read both of those.

18 Other than that, does the Government take any
19 exception to the content or scope of the report?

20 MR. SEMPER: No, Your Honor.

21 THE COURT: All right. Very well.

22 So with that being stated, I will hear from you,
23 Mr. Greenman, as it relates to sentencing.

24 MR. GREENMAN: Judge --

25 THE COURT: I have no preference. Wherever you are

1 comfortable.

2 ARGUMENT BY THE DEFENSE ON THE CALCULATION

3 MR. GREENMAN: I will speak from here then.

4 Your Honor, as I have indicated in my submission to
5 the Court, there were several issues of interpretation of the
6 sentencing guidelines that I disagree with, with the
7 Government's interpretation as well as pretrial. And I think
8 that that's where I would like to start.

9 THE COURT: Okay.

10 MR. GREENMAN: These disagreements have existed since
11 the beginning of my representation of Mr. Wheeler. Primarily,
12 the first question that comes up is which sentencing guideline
13 comes up for this conduct by Mr. Wheeler; is it 2A2.2, as the
14 Government argues, or is it 2A2.4, as I argue?

15 And as I read them, both refer to the statutory
16 violation that Mr. Wheeler pled guilty to, that being 18
17 U.S.C. 111. They both are referred to, either one.

18 The difference, as I look at it, and I submitted, was
19 whether or not there was an aggravated assault. And
20 aggravated assault is actually defined in the guidelines as a
21 specific intent to cause bodily injury, as opposed to reckless
22 conduct.

23 And it's a tremendous difference, under the two
24 sentencing guidelines, whether or not it was intentional,
25 whether Mr. Wheeler's conduct was intended to cause bodily

1 injury to the police officers, or whether or not the injuries
2 were caused as a result of his reckless conduct in attempting
3 to elude them on that day.

4 So that's essentially the argument, Your Honor. When
5 we worked out this plea, my client admitted to the facts, but
6 he did not say that he intentionally tried to injure anybody.
7 As a matter of fact, he denies that he did that. That was not
8 part of the stipulations. That was not part of the plea that
9 he entered in the factual basis. And it is not required, to
10 be found guilty of a violation of 18 U.S.C. 111. Reckless
11 conduct is sufficient.

12 And I submit, if you look at the facts in this
13 particular case it is pretty obvious that that is what
14 happened. He was attempting to avoid arrest, to elude
15 apprehension by the police, who basically were trying to box
16 him in to where he was parked.

17 As I understand it, his attempt to flee took no more
18 than 50 to 100 feet before there was a collision of the two
19 vehicles. It was not a head-on collision. As a matter of
20 fact, it was more of a side collision. As the police vehicle
21 attempted to box him in and Mr. Wheeler was attempting to
22 elude, there was a collision.

23 That, to me, is what happened. And I don't think
24 there is any way in which the Court can make a finding under
25 these facts that Mr. -- and should not make a finding, because

1 he did not admit to that, and there has been no finding of
2 fact that he intended to hurt or cause bodily injury. And
3 that is why I think 2A2.4 applies.

4 The difference is dramatic, Your Honor. Under 2A2.4,
5 it's a base offense of 10. The fact that there was a car
6 involved, which was a dangerous vehicle in the sense, does add
7 three points, to get up to a Level 13.

8 Under 2.2, if there was a finding that he intended to
9 injure someone, or cause bodily injury, it is significantly
10 higher under the guidelines. It's a base level of 14, plus
11 four, because it was a dangerous weapon, the vehicle. Plus
12 two, because there was a finding that there was an aggravated
13 assault. And also the fact that there would be plus six
14 because it was a police officer -- police officers involved in
15 his attempted arrest. It's a tremendous diversion.

16 And I think it's a tremendous diversion because of
17 the requirement that there be an intent to cause an aggravated
18 assault, an intent to cause bodily injury.

19 And I would note in this particular case, Your Honor,
20 fortunately, nobody was hurt at all. And that is in the
21 police reports that were filed in this particular case.

22 So that's the main argument that I submit that the
23 Court has to make a finding under the guideline, because you
24 are talking about, essentially, just on that basis, a Level 26
25 versus a Level 13, which is a tremendous difference under the

1 guidelines. So that's the main argument.

2 In addition to that, there are several other
3 arguments. I think I have already alluded to one, and that is
4 whether or not you add six points because there were police
5 officers who were involved as victims in this particular case.

6 Under 2.4, it specifically says under the guidelines
7 you don't -- you don't use the additional six points under
8 3A1.2 if it -- because that in itself is talking about
9 resisting arrest or trying to avoid apprehension.

10 Under 2.2, you would add the six, which further makes
11 the disparity that much greater between which guideline Your
12 Honor chooses.

13 Similarly, I would also argue that in this particular
14 case, in his attempt to elude, the vehicle that was struck
15 contained three police officers. The Government chose to
16 charge three separate counts in an indictment.

17 Should that cause an increase under the sentencing
18 guidelines? I submit it should not. For the very same reason
19 that I have argued, there was no intent to injure anybody, so
20 therefore his actions were reckless, not intentional. And to
21 add three points under the fact scenario in this case, I
22 think, would be inappropriate.

23 So my argument under the guidelines is that 2A2.4
24 would apply with a base offense of 10, plus three points
25 because it was a dangerous weapon; a vehicle was actually the

1 weapon in this particular case that caused the collision.

2 That's a Level 13.

3 And again, I don't think three points, an additional
4 three points because there were three people in the car should
5 apply. And I don't think six more points should apply because
6 they were law enforcement, because 2.4 takes into account that
7 the victims are law enforcement.

8 So that's essentially the argument, Your Honor. A
9 Level 26, under the facts of this case when there was not a
10 high-speed chase, nobody was injured. It does look clear as
11 if what Mr. Wheeler was attempting to do was to elude or avoid
12 apprehension, as opposed to deliberately trying to hurt
13 somebody. I think that, under the guidelines, that's the
14 appropriate sentence.

15 THE COURT: So why don't we do this, Mr. Greenman.

16 I will hear from you, Mr. Semper, as it relates to
17 the arguments challenging the calculations under the
18 guidelines, and then we will come back to you. So you guys
19 can have a seat for a second.

20 ARGUMENT BY THE GOVERNMENT ON THE CALCULATION

21 MR. SEMPER: Thank you, Your Honor.

22 As the Government put forth in its papers, the
23 appropriate sentencing -- the appropriate finding here would
24 be 2A2.2 for aggravated assault. I believe the facts outlined
25 in the PSR clearly demonstrate that the defendant

1 intentionally rammed his vehicle into law enforcement. As it
2 is broken down in the PSR, law enforcement observed this
3 defendant. They threw on their lights and sirens causing the
4 defendant to then drive away from law enforcement and he hit a
5 parked vehicle on the side of the street. Then law
6 enforcement encountered him again.

7 And so he had a second opportunity to react. And
8 what he did, Your Honor, is drive directly into the vehicle
9 containing law enforcement. I submit, Your Honor, the facts
10 are clear that this was an intentional act. The defendant
11 didn't have an ability not to see the officers. He clearly
12 saw them. He accelerated into them to get away.

13 I appreciate counsel's argument that the defendant
14 was trying to escape, but as we outlined in our papers, Your
15 Honor, the Government doesn't believe this is an either/or
16 proposition. The defendant clearly wanted to escape. And in
17 order to do that, he was willing to drive his vehicle into law
18 enforcement.

19 And so that is why the Government believes that the
20 finding of 2A2.2 is appropriate here, as the defendant's acts
21 were clearly intentional in executing this assault.

22 With respect to the other factors, the victims and
23 the grouping, Your Honor, it is clear there were three counts
24 here, there were three victims. So the finding that was made
25 in the PSR was also appropriate as well with respect to

1 grouping.

2 And lastly, Your Honor, as the sentence report also
3 makes clear with respect to the enhancement, the six point
4 enhancement under 3A1.2(c)(1), that is appropriate when you
5 are applying 2A2.2, Your Honor.

6 So for those reasons, the Government would ask that
7 the findings that were made by probation hold, and we object
8 to the defendant's position.

9 MR. GREENMAN: Judge, can I just respond to that?

10 THE COURT: Sure.

11 MR. GREENMAN: A legal point that I did not raise, if
12 Your Honor doesn't mind.

13 THE COURT: Go ahead.

14 REPLY BY DEFENSE

15 MR. GREENMAN: There's a separate issue, Judge, as to
16 whether or not this Court can make a factual determination on
17 an element of the crime that has not been found by a jury or
18 admitted by the defendant. That's a *Blakely/Booker* argument.

19 And as I said, there is nothing in the factual basis
20 in which my client admitted that he intentionally rammed this
21 police car. And as far as the indictment is concerned, the
22 indictment does not require a finding that there was an
23 intentional aggravated assault.

24 So I wanted to preserve -- I don't know what Your
25 Honor is going to do, but I did want to preserve for the

1 record that I don't believe Your Honor should be deciding a
2 key element of the crime that's not been decided by a jury or
3 my client's admission.

4 I would just point out this was not a head-on
5 collision. I know that's in the probation report. This was
6 not a head-on collision, as I understand it. It was basically
7 almost a side collision where the headlights of each car on
8 the left-hand side were damaged.

9 That's all I have. Thank you, Your Honor.

10 THE COURT: All right.

11 Do you want to be heard, Mr. Greenman, as it relates
12 to sentencing? And I will just address all of it at the end.

13 ARGUMENT BY THE DEFENSE ON SENTENCING

14 MR. GREENMAN: Yes, yes, Your Honor.

15 From the beginning, my client has expressed extreme
16 remorse for his actions. And he recognizes the reckless
17 behavior that he engaged in put people at risk.

18 He just said to me again today, you know, at the time
19 that he was actually arrested he appreciated the fact that the
20 officer said, listen, something serious could have happened
21 here. And he recognizes that now, and appreciates and accepts
22 responsibility for what he did.

23 He has been in jail for almost two years now. He has
24 been fine as a prisoner with no problems, as I understand it.
25 He has a family that's here, that supports him, that misses

1 him.

2 He was an integral part of that family, making money
3 for them in a business that they share, being a father and
4 whose children looked up to him. So they miss him. He has
5 been gone for two years. And he knows that he faces some
6 additional time. The question is how much time for this
7 particular incident.

8 I think the prosecutor's -- the prosecutor's argument
9 essentially puts everything in its worse possible light, which
10 I don't think was the case here. I think this was a case
11 where he panicked, where he drove, and in a few seconds he
12 made poor decisions and recklessly collided with a police
13 vehicle.

14 I don't think it's even close to the normal situation
15 where you have a lengthy, high-speed chase going a hundred
16 miles an hour where the entire community is at risk, or that
17 -- a case where a person deliberately swerves their car into
18 the police vehicle to make sure he can get away. That's not
19 what happened here.

20 And the cases that were cited by the Government in
21 support of its opinion are factually way different than the
22 facts here, in addition to the fact that they were decided
23 pre-Booker and pre-Blakely.

24 So I think, Your Honor, there are many reasons why
25 the Court should accept the fact that while he is going to be

1 sentenced to some more time in jail, it should not be a
2 situation where he is facing something in the range of eight
3 to 10 years, or something in that range is what the
4 prosecutor, I assume, is asking, because that would be the
5 high end of the guidelines.

6 I think that Mr. Wheeler is more than willing and
7 wants to address the Court on his behalf in mitigation of
8 punishment, if the Court desires.

9 THE COURT: Absolutely.

10 Mr. Wheeler, anything you want to say?

11 STATEMENT BY THE DEFENDANT

12 THE DEFENDANT: How you doing? I want to apologize
13 to the Court, my family, as I done before to the officers
14 involved. It was a stupid, stupid mistake, but it could have
15 been worse if somebody got hurt or killed. As I was being
16 detained, the officer was, like, it could have been worse than
17 what it was where they would have started shooting.

18 So I was taking life for granted. Like, I wasn't
19 taking it seriously. But that right there was like, like for
20 me as far as I could have lost my life and not been here no
21 more, to be here for my kids and raise them. And it just was,
22 like -- it never said, like, I wouldn't go out there and do
23 something else again until that right there.

24 And me being incarcerated, which has been as long as
25 I have been incarcerated, and I had time to reflect and think

1 about, for what? For no reason; that I am still coming to
2 jail and missing time, memories with my family.

3 Just I accept full responsibility for my actions,
4 which were pretty dumb. And that's it.

5 I just wanted to apologize to my family again for
6 leaving them and not being the man, the father I am supposed
7 to be.

8 THE COURT: Thank you, Mr. Wheeler.

9 Mr. Semper, anything you want to say on behalf of the
10 Government?

11 ARGUMENT BY THE GOVERNMENT ON SENTENCING

12 MR. SEMPER: Yes, Your Honor, briefly.

13 As the Court is aware, the defendant has a 17-year
14 relationship with the criminal justice system, many of his
15 offenses involved eluding law enforcement. He has taken them
16 on high-speed chases in some instances. He has given false
17 names in other instances.

18 He has been involved with numerous municipalities,
19 eludings in Union County, Hudson County, and I believe Essex
20 County.

21 I think what this instant offense represents is an
22 escalation. Not only was the defendant attempting to get away
23 from law enforcement, he was willing to injure law enforcement
24 to do so. It is clear that a custodial term is appropriate
25 and the Government would ask that the Court consider

1 sentencing the defendant within the range outlined in the PSR,
2 the guidelines range, Your Honor.

3 Thank you.

4 COURT'S REVIEW OF CALCULATIONS AND GUIDELINES

5 THE COURT: Very well. Thank you, Mr. Semper.

6 As I indicated at the outset, I have had the
7 opportunity to read the presentence report in this matter as
8 well as the submissions that have been provided to the Court
9 by counsel.

10 And I would just first like to address the guideline
11 objections that have been raised on Mr. Wheeler's behalf by
12 Mr. Greenman. And at the outset, I will just indicate that I
13 do believe that the presentence report does accurately reflect
14 not only the total offense level, but also the criminal
15 history category of Mr. Wheeler.

16 In addition to that, the argument specifically as to
17 the application of sentencing guidelines Section 2A2.4 versus
18 2A2.2, I find that 2A2.2 does apply. I don't think that this
19 was an instance of merely obstructing or impeding law
20 enforcement, which is what 2A2.4 describes. But this clearly
21 involved a situation far more egregious than simply
22 obstructing or impeding.

23 And I appreciate Mr. Greenman's argument that
24 Mr. Wheeler was just attempting to avoid arrest, but there are
25 different manners of avoiding arrest which don't involve the

1 use of a vehicle and driving a vehicle directly at law
2 enforcement. So that can't be lost in the midst of what we
3 are discussing here today.

4 As it relates to the argument that it does -- 2.2A2.2
5 does not apply, as it is outlined in the sentencing
6 guidelines, and understanding as I said at the time you pled
7 guilty, Mr. Wheeler, I am not bound by the guidelines. I do
8 certainly refer to them for advisory purposes and I have done
9 that in this instance.

10 And there are certainly -- the Court is aware that I
11 have the discretion to impose a sentence that I feel is
12 appropriate, and that's my intention to do that.

13 But it's important to note that under the guidelines
14 Section 2A2.2, it describes this incident. While the case law
15 that's been cited by the Government may have some different
16 factual components, in large part it does talk about the use
17 of a weapon; in this case the vehicle, and whether there was
18 serious bodily injury or not, the intent to cause that.

19 I appreciate the argument that the Court can't make a
20 decision as to intent in the post *Booker* days, but based on
21 all the facts and the circumstances surrounding what happened
22 here, it is clear that it can be concluded that this was more
23 than I'm just trying to get away when you are driving a
24 vehicle straight at law enforcement. So it was -- and as I
25 said, it could have been worse.

1 The fact that it wasn't worse does not lessen or
2 decrease the importance of what happened. It does not
3 eliminate the seriousness of what occurred. And it does not
4 therefore absolve you of the responsibility of what you were
5 engaged in.

6 So I do find that Section 2A2.2 does apply under the
7 guidelines.

8 Now, the argument that has been raised as to the
9 grouping, and it's important to note that it's not grouped.
10 And 2A specifically is excluded from the grouping provisions
11 of 3D1.2. So that's -- it's an argument that was raised in
12 the papers. I know that Mr. Greenman hasn't argued it
13 significantly here today, but I just want to make sure that
14 the record reflects that that objection, to the extent it
15 still exists, has been addressed by the Court.

16 The final aspect, which also the argument that has
17 been raised by the defendant is the improper counting or what
18 is believed to be an improper counting of an additional six
19 points for the victim-related adjustment. And once again, I
20 do find that obviously this is -- it's not double counting, it
21 is appropriate. And once again, the guidelines specifically
22 provide for the fact that consideration should be given as to
23 the officers that were involved. And in this particular
24 instance there were three officers that were involved.

25 So I do note the guideline objections that have been

1 raised, but I don't find a basis upon which to adjust those
2 guidelines. And I do believe that the presentence report as
3 it is written does appropriately and correctly calculate
4 Mr. Wheeler at a total offense level of 26, with a criminal
5 history category of six.

6 So then I turn to the 3553(a) factors, try to
7 determine what sentence is sufficient but not greater than
8 necessary to reflect the seriousness of what occurred, promote
9 respect for the law, and at the same time provide just
10 punishment.

11 I understand there is a need to deter not only you,
12 Mr. Wheeler, but obviously to deter others. You come before
13 this Court as a 35-year-old gentleman and with a pretty
14 extreme or significant criminal history. And, obviously, you
15 know that. I mean, when you come back -- and this is the
16 whole thing about prior records. When you come back to court,
17 it doesn't go away. It gets compounded, quite frankly, and it
18 does come back to you. And unfortunately, the penalties that
19 are imposed are so significant, so serious.

20 And so I appreciate the zealous arguments that
21 Mr. Greenman has argued on your behalf, and I think he has
22 done a very noble job in making those arguments. But it's
23 extremely important to note what happened here.

24 Looking at the nature and circumstances of this
25 particular offense, looking at your history and

1 characteristics as you come before the Court, and also being
2 mindful of the need to avoid any unwarranted sentencing
3 disparities that the Court must be cognizant of, I believe the
4 sentence that has to be imposed is one that takes all those
5 factors into consideration.

6 It is, without question, a very harsh situation that
7 you find yourself in. And so I don't say that lightly, and I
8 don't minimize it, because I understand it is extremely
9 serious. And I appreciate the fact that, you know, nobody was
10 hurt. And that's the good news, quite frankly.

11 But for an individual such as yourself, with your
12 level of intelligence, to think that that was acceptable
13 behavior, the Court has a responsibility, obviously, to deter
14 you specifically, and to deter others generally, from engaging
15 in conduct of this nature.

16 And as I said, I do believe as is calculated,
17 although it is extremely harsh, it is appropriate under these
18 circumstances. And I do believe that the presentence report
19 does correctly and appropriately calculate you at these higher
20 levels.

21 And it's unfortunate because I think there are many
22 positive attributes that you have. I hope that you don't, you
23 know, stop obviously communicating with your family and you
24 can still be a role model to some degree. There are some real
25 hard lessons here that you have to not only embrace for

1 yourself but you have to embrace and share with others so that
2 they don't find themselves in a situation such as this for
3 being involved in sort of mindless and meaningless things;
4 that every time you get involved in the criminal justice
5 system, it just compounds it. And every time you come before
6 the Court it becomes that much more serious when you are
7 standing before the Court asking the Court to take into
8 consideration your history and your characteristics.

9 But with that being stated, I believe, as I said
10 already, I believe the sentence will take into consideration
11 all of the goals of sentencing, in addition to promoting
12 respect for the law and at the same time reflecting the
13 seriousness of what occurred here.

14 And it cannot be lost on anyone just how serious it
15 was in terms of what occurred here. And I appreciate that you
16 said you've had an opportunity to reflect. And I understand
17 there is even more time to reflect. But hopefully, the
18 decisions you make going forward will be more positive. And
19 that regardless of when you move on with your life, that you
20 will do so in a positive manner.

21 You will still be a young man. I understand it's a
22 significant amount of time, but you will still be a young man
23 to the extent that you can have a positive contribution on
24 society, so I hope that you will do that.
25

1 SENTENCE BY THE COURT

2 THE COURT: But if you will be kind enough to stand,
3 I will impose sentence.

4 And as I already stated, for the reasons I have
5 placed on the record, it will be the sentence of this Court
6 pursuant to the Sentencing Reform Act of 1984, and it will be
7 the judgment of the Court that the defendant will be committed
8 to the custody of the Bureau of Prisons to be in prison for a
9 term of 120 months. And that will be on each of Counts 1, 2
10 and 3, but all those terms will be served concurrently.

11 Once you are released from imprisonment, you will be
12 placed on supervised release and that will be for a term of
13 three years. And that term will consist of three years on
14 each of Counts 1, 2 and 3. And once again, those also will
15 run concurrently.

16 Within 72 hours of your release from custody, you
17 will be required to report in person to the probation office
18 in the district in which you are released.

19 And while you are on supervised release you are not
20 to commit any other federal, state or local crimes. You are
21 not to possess any firearms or other dangerous devices. You
22 are not to possess any illegal controlled substances. And you
23 must comply with all the mandatory and standard conditions
24 adopted by the Court.

25 You will be required to undergo one drug test within

1 15 days of the commencement of your supervised release, and at
2 least two tests thereafter, as your probation officer will
3 advise you.

4 The following special conditions will also be a part
5 of your supervised release: You will be subject to drug
6 testing and/or treatment, as well as life skills and
7 educational programming.

8 And in addition to that, you will have a requirement
9 to comply with all motor vehicle restrictions and to support
10 any and all dependents.

11 I will not impose a fine as I am satisfied that you
12 do not have the ability to pay a fine, certainly not a fine
13 within the guideline range.

14 The special assessment, however, is mandatory. That
15 is due, and that will be in the amount of \$300. That will be
16 \$100 per count on this three-count charge. And that amount
17 will be due immediately.

18 You will be remanded to the custody of the United
19 States Marshal Service. And this Court defers to the Bureau
20 of Prisons as to where any sentence would be served. Any
21 requests in that regard should be made through counsel
22 directly to the Bureau of Prisons because the Court doesn't
23 take any position in that regard.

24 You do have 14 days from today within which to take
25 an appeal of the Court's sentence. Any appeal that you take

1 is subject to any limitations or restrictions that were placed
2 on the record at the time your plea of guilty was accepted.

3 To the extent that you still wish to file an appeal
4 but you are not able to afford the filing of an appeal, you
5 may request that the Clerk of the Court file the notice of
6 appeal on your behalf and that notice of appeal will be filed
7 accordingly.

8 That will be the sentence of the Court.

9 Mr. Greenman, is there anything further on behalf of
10 Mr. Wheeler?

11 MR. GREENMAN: No, Judge.

12 THE COURT: And, Mr. Semper, is there anything
13 further on behalf of the Government?

14 MR. SEMPER: Nothing, Your Honor. Thank you.

15 THE COURT: Very well. Thank you, counsel.

16 Good luck to you, Mr. Wheeler.

17 THE DEPUTY CLERK: All rise.

18 (The proceeding is adjourned at 3:43 p.m.)
19

20 FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

21 I certify that the foregoing is a correct transcript
22 from the record of proceedings in the above-entitled matter.

23
24 /S/ Joanne Sekella, CCR, CRCR, RMR

25 Official Court Reporter

February 19, 2020

Date

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1262

UNITED STATES OF AMERICA

v.

RICHIE WHEELER,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2:18-cr-00485-001)
District Judge: Honorable Susan D. Wigenton

Submitted Under Third Circuit L.A.R. 34.1(a)
on September 14, 2020

Before: KRAUSE, RESTREPO, and BIBAS, *Circuit Judges*

(Filed: October 8, 2020)

OPINION*

BIBAS, *Circuit Judge*.

While trying to evade arrest, Richie Wheeler rammed his car into an SUV. Three officers were inside. The sentencing court reasonably found that this ramming was intentional, that two law-enforcement enhancements applied, that Wheeler's three counts of

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

assault should not be grouped, and that a bottom-of-the-range sentence was fitting. We will affirm.

I. BACKGROUND

Wheeler had an outstanding arrest warrant for gun possession stemming from a shooting. In 2018, a federal task force was seeking to arrest him on the warrant. Task-force officers spotted him in his car. The officers, driving unmarked vehicles, turned on their emergency lights. As they surrounded his car, Wheeler tried to evade them but crashed into a parked car. Now surrounded, he rammed his car into one of the unmarked vehicles, an SUV with three officers inside. That damaged Wheeler's car so he could no longer drive it. Wheeler pleaded guilty to three counts of assaulting the officers with a dangerous weapon, 18 U.S.C. § 111(a)(1). The District Court sentenced him to three concurrent terms of ten years each. We review the District Court's factual findings for clear error and its reading of the Sentencing Guidelines *de novo*. *United States v. Fountain*, 792 F.3d 310, 318 (3d Cir. 2015).

II. THE DISTRICT COURT CALCULATED WHEELER'S SENTENCE PROPERLY

A. The court reasonably found that Wheeler intentionally crashed into the officers' SUV

Though Wheeler pleaded guilty to simple assault, the District Court enhanced his sentence after finding that the assault was aggravated. An aggravated assault includes "a felonious assault that involved a dangerous weapon with intent to cause bodily injury ... with that weapon." U.S.S.G. § 2A2.2 cmt. n.1(A). Though Wheeler disagrees, the court properly found that he rammed the officers' SUV intentionally.

Wheeler first challenges the District Court's power to find facts that raised his sentence from simple to aggravated assault. But sentencing courts may make factual findings by a preponderance of the evidence and use them to raise sentences to a level below the statutory maximum. *United States v. Grier*, 475 F.3d 556, 561–63 (3d Cir. 2007). That is what happened here.

Wheeler next argues that he was trying only to evade the officers, not to ram them. So he claims that his conduct could not meet the definition of aggravated assault. The District Court was unpersuaded. As the officers closed in on him with their emergency lights flashing, he tried to flee but crashed into a parked car. Wheeler stipulated: "After becoming aware that law enforcement officers were attempting to arrest him, WHEELER drove [his car] in the direction of vehicles being used by the law enforcement officers, and struck a vehicle occupied by three federal law enforcement officers attempting to make the arrest." App. 30. As the court explained, one can try to flee from officers without driving straight at them. So it did not clearly err in finding that he intended to ram them.

A car counts as a dangerous weapon; it can easily injure or kill. And the district court did not clearly err in finding Wheeler had an intent to ram. So the court reasonably found that the assault was aggravated. It properly applied the aggravated-assault guideline instead of the one for obstructing or impeding officers. *See* U.S.S.G. § 2A2.4(c)(1).

B. There was no impermissible double-counting

The District Court applied two guidelines enhancements because the victims were law-enforcement officers. Under the aggravated-assault guideline, it added two points for his specific offense: assaulting a federal officer. U.S.S.G. § 2A2.2(b)(7). It also gave him a separate six-point enhancement for victimizing law-enforcement officers. § 3A1.2(c)(1). That was proper. Sentencing courts may apply multiple overlapping guidelines unless the guidelines expressly forbid double-counting. *United States v. Seibert*, 971 F.3d 396, 400 (3d Cir. 2020). Here, the guidelines forbade the victim enhancement only if the court applied the guideline for obstructing or impeding officers. § 3A1.2(c)(1) & cmt. n.2. Because it did not, the court properly applied the victim enhancement. § 2A2.2(b)(7) & cmt. n.4.

Wheeler also argued that he did not create “a substantial risk of serious bodily injury” to the officers, as needed for the victim enhancement. § 3A1.2(c)(1). But he rammed their SUV hard enough to disable his own car. The facts supported the enhancement.

C. The District Court was not required to group the three counts in calculating the combined offense level

When calculating the combined offense level, the District Court treated each count to which Wheeler pleaded guilty as its own group. Because he pleaded guilty to three counts, the court added three points to his offense level. U.S.S.G. § 3D1.4. Wheeler suggests that the counts should have been grouped together and run concurrently. But the grouping rules exclude offenses against the person, including assault, from grouping. § 3D1.2(d) (excluding almost all offenses in Chapter Two, Part A).

Next, Wheeler argues that he did not know that the SUV contained three separate officers. But he pleaded guilty to three separate charges of aggravated assault, stipulated that he was aware that officers (plural) were trying to arrest him, and stipulated that he drove toward those officers.

Wheeler also claims that the only direct victim was the driver. The other two, he says, should have been excluded as indirect or secondary victims. And none was injured. But all the officers in the car were “directly” affected and “identifiable” victims. § 3D1.2 cmt. n.2. And assault with a dangerous weapon is punishable even if the victim suffers no injury. The District Court properly sentenced him based on all three officers.

III. WHEELER’S SENTENCE WAS REASONABLE

Lastly, Wheeler argues that the District Court weighed the sentencing factors improperly and imposed a sentence that was substantively unreasonable. We review for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 46 (2007). We will affirm a sentence as substantively reasonable “unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided.” *United States v. Tomko*, 562 F.3d 558, 568 (3d Cir. 2009) (en banc).

The parties dispute whether Wheeler preserved a procedural objection. Even if he did, the sentence was both procedurally and substantively reasonable. The District Court considered the factors in 18 U.S.C. § 3553(a). It discussed the seriousness of his crime and criminal history, but also weighed his “many positive attributes.” App. 65. It then sentenced him to ten years total, the bottom of the guidelines range and well below the sixty-year statutory maximum. That judgment was reasonable, and we will not disturb it.⁶

* * * * *

The District Court reasonably found facts and weighed the sentencing factors. After considering Wheeler's extensive criminal history and the severity of his aggravated assaults on officers, it reasonably sentenced him to the bottom of the guidelines range. We will affirm.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1262

UNITED STATES OF AMERICA

v.

RICHIE WHEELER,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2:18-cr-00485-001)
District Judge: Honorable Susan D. Wigenton

Submitted Under Third Circuit L.A.R. 34.1(a)
on September 14, 2020

Before: KRAUSE, RESTREPO, and BIBAS, *Circuit Judges*

(Filed: November 20, 2020)

OPINION*

BIBAS, *Circuit Judge*.

While trying to evade arrest, Richie Wheeler rammed his car into an SUV. Three officers were inside. The sentencing court reasonably found that this ramming was

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

intentional, that two law-enforcement enhancements applied, that Wheeler's three counts of assault should not be grouped, and that a bottom-of-the-range sentence was fitting. We will affirm.

I. BACKGROUND

Wheeler had an outstanding arrest warrant for gun possession stemming from a shooting. In 2018, a federal task force was seeking to arrest him on the warrant. Task-force officers spotted him in his car. The officers, driving unmarked vehicles, turned on their emergency lights. As they surrounded his car, Wheeler tried to evade them but crashed into a parked car. Now surrounded, he rammed his car into one of the unmarked vehicles, an SUV with three officers inside. That damaged Wheeler's car so he could no longer drive it. Wheeler pleaded guilty to three counts of assaulting the officers with a dangerous weapon, 18 U.S.C. § 111(a)(1), (b). The District Court sentenced him to three concurrent terms of ten years each. We review the District Court's factual findings for clear error and its reading of the Sentencing Guidelines de novo. *United States v. Fountain*, 792 F.3d 310, 318 (3d Cir. 2015).

II. THE DISTRICT COURT CALCULATED WHEELER'S SENTENCE PROPERLY

A. The court properly applied the statutory enhancement and the aggravated-assault guideline

First, Wheeler claims that the District Court improperly raised his sentence above the statutory maximum based on facts that it found. Not so. Wheeler pleaded guilty to three counts of assaulting a federal officer under 18 U.S.C. § 111(a)(1) and (b). Subsection (b) requires that the defendant "use[] a deadly or dangerous weapon" in the assault. Wheeler

did: a car counts as a dangerous weapon because it can easily injure or kill. Wheeler now argues that he did not intend to use the car as a dangerous weapon or to injure the officers. But § 111 is a general-intent statute. Wheeler did not have to “specifically intend to use a car as a deadly weapon to violate § 111(b).” *United States v. Gumbs*, 964 F.3d 1340, 1350 (11th Cir. 2020). Instead, he had to intend to use the car and do so “in such a manner that it [wa]s ‘capable of causing serious bodily injury or death to another person.’” *Id.* (quoting *United States v. Arrington*, 309 F.3d 40, 45 (D.C. Cir. 2002)). He admitted that he did. So he faced a maximum sentence of twenty years’ imprisonment on each count. § 111(b). The District Court sentenced him to ten years’ imprisonment on each count, well below that maximum.

Second, the District Court properly found facts in applying the aggravated-assault guideline. Under the guideline, an aggravated assault includes “a felonious assault that involved a dangerous weapon with intent to cause bodily injury ... with that weapon.” U.S.S.G. § 2A2.2 cmt. n.1(A). In his plea, Wheeler did not concede that he intended to cause bodily injury. So, he claims, the District Court could not find that he intended to injure the officers with his car. But in applying guidelines, sentencing courts may find facts by a preponderance of the evidence and use them to raise sentences to a level below the statutory maximum. *United States v. Grier*, 475 F.3d 556, 561–63 (3d Cir. 2007). That is what happened here.

Third, the District Court reasonably found that Wheeler had intentionally crashed into the officers’ SUV. He claims that he was trying only to evade the officers and did not mean to injure them. So, he argues, his conduct could not meet the guideline’s definition of

aggravated assault. The District Court was unpersuaded, as we are. As the officers closed in on him with their emergency lights flashing, he tried to flee but crashed into a parked car. Wheeler stipulated: “After becoming aware that law enforcement officers were attempting to arrest him, WHEELER drove [his car] in the direction of vehicles being used by the law enforcement officers, and struck a vehicle occupied by three federal law enforcement officers attempting to make the arrest.” App. 30. One can try to flee from officers without driving in their direction. So the District Court did not clearly err in finding that he intended to drive “straight at law enforcement” and ram them with his car. App. 62.

Because the court reasonably found that the assault was aggravated, it properly applied the aggravated-assault guideline instead of the one for obstructing or impeding officers. *See* U.S.S.G. § 2A2.4(c)(1).

B. There was no impermissible double-counting

The District Court applied two guidelines enhancements because the victims were law-enforcement officers. Under the aggravated-assault guideline, it added two points for his specific offense: assaulting a federal officer. U.S.S.G. § 2A2.2(b)(7). It also gave him a separate six-point enhancement for victimizing law-enforcement officers. § 3A1.2(c)(1). That was proper. Sentencing courts may apply multiple overlapping guidelines unless the guidelines expressly forbid double-counting. *United States v. Seibert*, 971 F.3d 396, 400 (3d Cir. 2020). Here, the guidelines forbade the victim enhancement only if the court applied the guideline for obstructing or impeding officers. § 3A1.2(c)(1) & cmt. n.2. Because it did not, the court properly applied the victim enhancement. § 2A2.2(b)(7) & cmt. n.4.

Wheeler also argued that he did not create “a substantial risk of serious bodily injury” to the officers, as needed for the victim enhancement. § 3A1.2(c)(1). But he rammed their SUV hard enough to disable his own car. The facts supported the enhancement.

C. The District Court was not required to group the three counts in calculating the combined offense level

When calculating the combined offense level, the District Court treated each count to which Wheeler pleaded guilty as its own group. Because he pleaded guilty to three counts, the court added three points to his offense level. U.S.S.G. § 3D1.4. Wheeler suggests that the counts should have been grouped together and run concurrently. But the grouping rules exclude offenses against the person, including assault, from grouping. § 3D1.2(d) (excluding almost all offenses in Chapter Two, Part A).

Next, Wheeler argues that he did not know that the SUV contained three separate officers. But he pleaded guilty to three separate charges of assault, stipulated that he was aware that officers (plural) were trying to arrest him, and stipulated that he drove toward those officers.

Wheeler also claims that the only direct victim was the driver. The other two, he says, should have been excluded as indirect or secondary victims. And none was injured. But all the officers in the car were “directly” affected and “identifiable” victims. § 3D1.2 cmt. n.2. And assault with a dangerous weapon is punishable even if the victim suffers no injury. The District Court properly sentenced him based on all three officers.

III. WHEELER'S SENTENCE WAS REASONABLE

Lastly, Wheeler argues that the District Court weighed the sentencing factors improperly and imposed a sentence that was substantively unreasonable. We review for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 46 (2007). We will affirm a sentence as substantively reasonable “unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided.” *United States v. Tomko*, 562 F.3d 558, 568 (3d Cir. 2009) (en banc).

The parties dispute whether Wheeler preserved a procedural objection. Even if he did, the sentence was both procedurally and substantively reasonable. The District Court considered the factors in 18 U.S.C. §3553(a). It discussed the seriousness of his crime and criminal history, but also weighed his “many positive attributes.” App. 65. It then sentenced him to ten years total, the bottom of the guidelines range and well below the sixty-year statutory maximum. That judgment was reasonable, and we will not disturb it.

* * * * *

The District Court reasonably found facts and weighed the sentencing factors. After considering Wheeler's extensive criminal history and the severity of his aggravated assaults on officers, it reasonably sentenced him to the bottom of the guidelines range. We will affirm.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1262

UNITED STATES OF AMERICA
v.

RICHIE WHEELER,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2:18-cr-00485-001)
District Judge: Honorable Susan D. Wigenton

Submitted Under Third Circuit L.A.R. 34.1(a)
on September 14, 2020

Before: KRAUSE, RESTREPO, and BIBAS, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted under L.A.R. 34.1(a) on September 14, 2020.

On consideration whereof, it is now **ORDERED** and **ADJUDGED** that the District Court's judgment entered on February 5, 2020, is hereby **AFFIRMED**. Each party to bear its own costs. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: October 8, 2020

PATRICIA S. DODSZUWEIT

CLERK



OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov
October 8, 2020

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RE: USA v. Richie Wheeler
Case Number: 20-1262
District Court Case Number: 2-18-cr-00485-001

ENTRY OF JUDGMENT

Today, **October 08, 2020** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very Truly Yours,

s/ Patricia S. Dodszuweit

Clerk

By: s/ Desiree,
Case Manager
267-299-4252

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1262

UNITED STATES OF AMERICA

v.

RICHIE WHEELER,
Appellant

(D.N.J. No. 2-18-cr-00485-001)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, and McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO,
BIBAS, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision, it is hereby **ORDERED** that the petition for rehearing by the panel is **GRANTED**. The opinion and judgment filed October 8, 2020, are hereby **VACATED**. A subsequent opinion and judgment are herewith issued.

The panel has made changes to the language that appeared at pages 2–5 of the original opinion.

A majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the Court en banc is **DENIED**.

By the Court,

s/ Stephanos Bibas
Circuit Judge

Dated: November 20, 2020
DWB/arr/cc: MEC; MSL; RBG