

UNITED STATES DISTRICT COURT

for the

___Western District of Pennsylvania___

United States of America

v.

BRIAN SIZER

Defendant

Case No. 2:22-mj-1467

Charging District's Case No. 1:22-mj-232

**WAIVER OF RULE 5 & 5.1 HEARINGS
(Complaint or Indictment)**I understand that I have been charged in another district, the *(name of other court)* District of Columbia

I have been informed of the charges and of my rights to:

- (1) retain counsel or request the assignment of counsel if I am unable to retain counsel;
- (2) an identity hearing to determine whether I am the person named in the charges;
- (3) production of the warrant, a certified copy of the warrant, or a reliable electronic copy of either;
- (4) a preliminary hearing to determine whether there is probable cause to believe that an offense has been committed, to be held within 14 days of my first appearance if I am in custody and 21 days otherwise, unless I have been indicted beforehand.
- (5) a hearing on any motion by the government for detention;
- (6) request a transfer of the proceedings to this district under Fed. R. Crim. P. 20, to plead guilty.

I agree to waive my right(s) to:

- ☒ an identity hearing and production of the warrant.
- ☒ a preliminary hearing.
- ☐ a detention hearing.
- ☐ an identity hearing, production of the judgment, warrant, and warrant application, and any preliminary or detention hearing to which I may be entitled in this district. I request that my ☐ preliminary hearing and/or ☐ detention hearing be held in the prosecuting district, at a time set by that court.

I consent to the issuance of an order requiring my appearance in the prosecuting district where the charges are pending against me.

Date: 11/3/2022s/Brian Sizer (by the Court)*Defendant's signature*s/Joseph Otte (by the Court)*Signature of defendant's attorney*Joseph Otte*Printed name of defendant's attorney*

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

United States of America)

v.)

BRIAN SIZER)

Case No. PAWD 2:22-mj-1467

DC 1:22-mj-232

Defendant)**APPEARANCE BOND****Defendant's Agreement**

I, Brian Sizer (*defendant*), agree to follow every order of this court, or any court that considers this case, and I further agree that this bond may be forfeited if I fail:

- (☒) to appear for court proceedings;
 (☒) if convicted, to surrender to serve a sentence that the court may impose; or
 (☒) to comply with all conditions set forth in the Order Setting Conditions of Release.

Type of Bond

- (☐) (1) This is a personal recognizance bond.
- (☒) (2) This is an unsecured bond of \$ 10,000.00.
- (☐) (3) This is a secured bond of \$ _____, secured by:
- (☐) (a) \$ _____, in cash deposited with the court.
- (☐) (b) the agreement of the defendant and each surety to forfeit the following cash or other property
(describe the cash or other property, including claims on it – such as a lien, mortgage, or loan – and attach proof of ownership and value):

If this bond is secured by real property, documents to protect the secured interest may be filed of record.

- (☐) (c) a bail bond with a solvent surety *(attach a copy of the bail bond, or describe it and identify the surety):*

Forfeiture or Release of the Bond

Forfeiture of the Bond. This appearance bond may be forfeited if the defendant does not comply with the above agreement. The court may immediately order the amount of the bond surrendered to the United States, including the security for the bond, if the defendant does not comply with the agreement. At the request of the United States, the court may order a judgment of forfeiture against the defendant and each surety for the entire amount of the bond, including interest and costs.

AO 98 (Rev. 12/11) Appearance Bond

Release of the Bond. The court may order this appearance bond ended at any time. This bond will be satisfied and the security will be released when either: (1) the defendant is found not guilty on all charges, or (2) the defendant reports to serve a sentence.

Declarations

Ownership of the Property. I, the defendant – and each surety – declare under penalty of perjury that:

- (1) all owners of the property securing this appearance bond are included on the bond;
- (2) the property is not subject to claims, except as described above; and
- (3) I will not sell the property, allow further claims to be made against it, or do anything to reduce its value while this appearance bond is in effect.

Acceptance. I, the defendant – and each surety – have read this appearance bond and have either read all the conditions of release set by the court or had them explained to me. I agree to this Appearance Bond.

I, the defendant – and each surety – declare under penalty of perjury that this information is true. (See 28 U.S.C. § 1746.)

Date: 11/03/2022

s/Brian Sizer (by the Court)

Defendant's signature

Surety/property owner – printed name

Surety/property owner – signature and date

Surety/property owner – printed name

Surety/property owner – signature and date

Surety/property owner – printed name

Surety/property owner – signature and date

CLERK OF COURT

Date: 11/03/2022

s/Catherine Grimm

Signature of Clerk or Deputy Clerk

Approved.

Date: 11/03/2022

s/Cynthia Reed Eddy

Judge's signature

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RECORD OF INITIAL APPEARANCE BEFORE MAGISTRATE JUDGE

UNITED STATES OF AMERICA

MAGISTRATE JUDGE'S DOCKET NO.

2:22-mj-1467 (PAWD)

vs

DATE OF COMPLAINT

BRIAN SIZER

CRIMINAL DOCKET NO.

DATE OF INDICTMENT

ORIGINATING DISTRICT (if applicable)

DC – 1:22-mj-232

DATE ARRESTED: 11/3/2022

INITIAL APPEARANCE

Presiding

☐

LENIHAN

☒

EDDY

Date:

11/3/2022

CD #

Magistrate

☐

DODGE

☐

LANZILLO

Time:

10:55 am – 11:05 am

Court Reporter:

Judge

☐

KELLY

☐

PESTO

U. S. ATTORNEY: JESSICA SMOLAR

INTERPRETER:

1. RIGHTS EXPLAINED

☒

Defendant orally consents to proceeding by video conference or teleconferencing because video conferencing is not reasonably available

2. COMPLAINT/INDICTMENT/INFORMATION:

☒

Read

☐

Summarized

☐

Reading waived

☐

Defendant provided with a copy of the charges

☒

Defendant to be provided with a copy of the charges as soon as possible

3. ACT & PENALTIES

☒

Read

☐

Summarized

☐

Reading waived

4. COUNSEL

☐

Defendant requested appointment

☒

Defendant waived appointment

☒

Defendant represented by: JOSEPH OTTE, retained counsel

☐

Defendant expects to retain:

☐

Affidavit executed.

☐

Not Qualified

☐

Qualified

☐

With possible requirement for partial or full payment

☐

Federal Public Defender appointed

☐

CJA Panel Attorney

appointed

5. BAIL

Recommended Bond:

\$10,000 Unsecured

Bond Set at:

As Recommended

☒

By Consent

☒

Additional Conditions Imposed:

See Conditions of Release Order

☐

By Magistrate Judge

☐

Bond Posted

☐

Temporary Commitment issued

☐

Final Commitment issued

Bond Review Hearing Set For:

Detention Hearing Set For:

6. PRELIMINARY EXAMINATION/RULE 40 HEARING/ARRAIGNMENT

Rule 5/40 set for: WAIVED before Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|--------------------------|---|------------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | CRIM. NO. 2:22-mj-1467-CRE-1 |
| |) | |
| BRIAN SIZER |) | |
| |) | |

ORDER REGARDING USE OF VIDEO CONFERENCING/TELECONFERENCING

In accordance with Administrative Order 20-mc-466, this Court finds:

 X That the Defendant (or the Juvenile) has consented to the use of video
teleconferencing/teleconferencing to conduct the proceeding(s) held today, after
consultation with counsel; and

The proceeding(s) held on this date may be conducted by:

 X Video Teleconferencing

 Teleconferencing, because video teleconferencing is not reasonably available for the
following reason:

 The Defendant (or the Juvenile) is detained at a facility lacking video
teleconferencing capability.

 Other:

Date: 11/3/22

s/Cynthia Reed Eddy

United States Magistrate Judge

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

United States of America

v.

Brian Sizer

Defendant)
)
)
)
)

Case No. 2:22-mj-01467-1

DC 1:22-mj-232

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate federal, state, or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if it is authorized by 34 U.S.C. § 40702.
- (3) The defendant must advise the court or the pretrial services office or supervising officer in writing before making any change of residence or telephone number.
- (4) The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.

The defendant must appear at: _____

Place

on _____

Date and Time

If blank, defendant will be notified of next appearance.

- (5) The defendant must sign an Appearance Bond, if ordered.

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ADDITIONAL CONDITIONS OF RELEASE

Pursuant to 18 U.S.C. § 3142(c)(1)(B), the court may impose the following least restrictive condition(s) only as necessary to reasonably assure the appearance of the person as required and the safety of any other person and the community.

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

☐ (6) The defendant is placed in the custody of:

Person or organization _____

Address (only if above is an organization) _____

City and state _____

Tel. No. _____

who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed: _____

Custodian

Date

☒ (7) The defendant must:

☒ (a) submit to supervision by and report for supervision to the U.S. Pretrial Services,
telephone number (412) 395-6907, no later than _____.

☐ (b) continue or actively seek employment.

☐ (c) continue or start an education program.

☐ (d) surrender any passport to: _____

☐ (e) not obtain a passport or other international travel document.

☐ (f) abide by the following restrictions on personal association, residence, or travel: _____

☒ (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including: The defendant may have contact with his wife.

☐ (h) get medical or psychiatric treatment: _____

☐ (i) return to custody each _____ at _____ o'clock after being released at _____ o'clock for employment, schooling, or the following purposes: _____

☐ (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.

☐ (k) not possess a firearm, destructive device, or other weapon.

☐ (l) not use alcohol (☐) at all (☐) excessively.

☒ (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

☐ (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.

☐ (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.

☐ (p) participate in one of the following location restriction programs and comply with its requirements as directed.

☐ (i) **Curfew.** You are restricted to your residence every day (☐) from _____ to _____, or (☐) as directed by the pretrial services office or supervising officer; or

☐ (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or

☐ (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down at your residence except for medical necessities and court appearances or other activities specifically approved by the court; or

☐ (iv) **Stand Alone Monitoring.** You have no residential curfew, home detention, or home incarceration restrictions. However, you must comply with the location or travel restrictions as imposed by the court.

Note: Stand Alone Monitoring should be used in conjunction with global positioning system (GPS) technology.

ADDITIONAL CONDITIONS OF RELEASE

- (☐) (q) submit to the following location monitoring technology and comply with its requirements as directed:
- (☐) (i) Location monitoring technology as directed by the pretrial services or supervising officer; or
 - (☐) (ii) Voice Recognition; or
 - (☐) (iii) Radio Frequency; or
 - (☐) (iv) GPS.
- (☐) (r) pay all or part of the cost of location monitoring based upon your ability to pay as determined by the pretrial services or supervising officer.
- (☒) (s) report as soon as possible, to the pretrial services or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.
- (☒) (t) See the additional conditions below:
-

- Stay away from DC unless for Court, Pretrial or consultation with attorney
- Call Pretrial Services once per week
- Advise Pretrial Services of any travel within the US outside of home jurisdiction
- No travel outside of the continental US without Court approval
- **Not possess any firearms, destructive devices, or dangerous weapons (in home or on person)**
- **Not commit local/state/federal crimes**
- Participate in all future proceedings as directed.

ADVICE OF PENALTIES AND SANCTIONS

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (*i.e.*, in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of the Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.

s/Brian Sizer (by the Court)

*Defendant's Signature**City and State***Directions to the United States Marshal**

- (☒) The defendant is ORDERED released after processing.
- (☐) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date: 11/3/2022

s/Cynthia Reed Eddy

*Judicial Officer's Signature*Cynthia Reed Eddy, Magistrate Judge Cynthia Reed Eddy*Printed name and title*

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL

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UNITED STATES DISTRICT COURT

for the

United States of America

v.

BRIAN SIZER

Defendant

)

)

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Case No. 2:22-mj-1467

Charging District: District of Columbia

Charging District's Case No. 1:22-mj-232

ORDER REQUIRING A DEFENDANT TO APPEAR IN THE DISTRICT WHERE CHARGES ARE PENDING AND TRANSFERRING BAIL

After a hearing in this court, the defendant is released from custody and ordered to appear in the district court where the charges are pending to answer those charges. If the time to appear in that court has not yet been set, the defendant must appear when notified to do so. Otherwise, the time and place to appear in that court are:

Place: US District Court for the District of Columbia
333 Constitution Avenue NW
Washington D.C. 20001

Courtroom No.: by video

Date and Time: 11/10/2022 1:00 pm

The clerk is ordered to transfer any bail deposited in the registry of this court to the clerk of the court where the charges are pending.

Date: 11/03/2022

s/Cynthia Reed Eddy

Judge's signature

Cynthia Reed Eddy, United States Magistrate Judge

Printed name and title

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

Plaintiff,

VS.

BRIAN SIZER

Defendant.

Case No. 2:22-mj-1467-CRE-1

ORDER

The United States is obligated, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and subsequent cases, to timely disclose information favorable to the defense as to criminal liability on the charged offense(s) or mitigation of any punishment that may be imposed. Such favorable information includes information that may cast doubt on the credibility of government witnesses. Possible consequences for violating this order include exclusion of evidence, dismissal of charges, contempt proceedings, disciplinary referral, and any other relief authorized by law.

Dated: 11/3/22

BY THE COURT:

s/Cynthia Reed Eddy

United States Magistrate Judge

BOND

**U.S. District Court
Western District of Pennsylvania (Pittsburgh)
CRIMINAL DOCKET FOR CASE #: 2:22-mj-01467-CRE-1
Internal Use Only**

Case title: USA v. SIZER

Date Filed: 11/03/2022

Assigned to: Magistrate Judge Cynthia
Reed Eddy

Defendant (1)**BRIAN SIZER**

represented by **Joseph S. Otte**
Otte Law, PC
429 Fourth Ave.
Suite 1002
Pittsburgh, PA 15219
412-529-0583
Email: ottepgh@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

None

Disposition**Highest Offense Level (Opening)**

None

Terminated Counts

None

Disposition**Highest Offense Level (Terminated)**

None

Complaints

None

Disposition**Plaintiff**

USA

represented by **Jessica Lieber Smolar**

United States Attorney's Office

700 Grant Street

Suite 4000

Pittsburgh, PA 15219

(412) 894-7419

Email: jessica.smolar@usdoj.gov

LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Designation: US Govt Atty*

| Date Filed | # | Docket Text |
|-------------------|--------------------------|---|
| 11/03/2022 | <u>1</u> | NOTICE <i>OF OUT OF DISTRICT ARREST</i> by USA as to BRIAN SIZER (Attachments: # <u>1</u> Affidavit, # <u>2</u> Arrest Warrant)(Smolar, Jessica) (Entered: 11/03/2022) |
| 11/03/2022 | | Duty Magistrate Judge assigned to case. If a sealed mj case was opened, sealed access rights have been granted. (ctb) (Entered: 11/03/2022) |
| 11/03/2022 | 2 | ORDER as to BRIAN SIZER : Initial Appearance - Rule 40 set for 11/3/2022 at 11:00 AM by Video Conference before Magistrate Judge Cynthia Reed Eddy. Signed by Magistrate Judge Cynthia Reed Eddy on 11/3/2022. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (cmc) (Entered: 11/03/2022) |
| 11/03/2022 | <u>3</u> | Order Regarding Use of Video Conferencing/Teleconferencing as to BRIAN SIZER. In accordance with Administrative Order 2:20-mc-466, Defendant consents to proceeding by video conferencing/teleconferencing as more fully stated in said Order. Signed by Magistrate Judge Cynthia Reed Eddy on 11/3/2022. (cmc) (Entered: 11/03/2022) |
| 11/03/2022 | <u>4</u> | Order Pursuant to the Due Process Protections Act, Pub. L. No. 116-182, 134 Stat. 894 (Oct. 21, 2020) (amending Fed. R. Crim. Pro. 5) as to BRIAN SIZER. Signed by Magistrate Judge Cynthia Reed Eddy on 11/3/2022. (cmc) (Entered: 11/03/2022) |
| 11/03/2022 | <u>5</u> | Minute Entry for proceedings held before Magistrate Judge Cynthia Reed Eddy: Initial Appearance in Rule 5(c)(3) Proceedings as to BRIAN SIZER held on 11/3/2022. Appearance entered by Joseph S. Otte for BRIAN SIZER on behalf of defendant. (Court Reporter: none) (cmc) (Entered: 11/03/2022) |
| 11/03/2022 | <u>6</u> | Unsecured Bond Entered as to BRIAN SIZER in amount of \$10,000.00. (cmc) (Entered: 11/03/2022) |
| 11/03/2022 | <u>7</u> | ORDER Setting Conditions of Release as to BRIAN SIZER. Signed by Magistrate Judge Cynthia Reed Eddy on 11/3/2022. (cmc) (Entered: 11/03/2022) |
| 11/03/2022 | <u>8</u> | WAIVER of Rule 5(c)(3) Hearing by BRIAN SIZER. (cmc) (Entered: 11/03/2022) |
| 11/03/2022 | <u>9</u> | ORDER REQUIRING A DEFENDANT TO APPEAR IN THE DISTRICT WHERE CHARGES ARE PENDING AND TRANSFERRING BAIL as to BRIAN SIZER. Signed by Magistrate Judge Cynthia Reed Eddy on 11/3/2022. (cmc) (Entered: 11/03/2022) |