

Court



U.S. Department of Justice

Ronald C. Machen Jr.  
United States Attorney

*District of Columbia*

*Judiciary Center  
555 Fourth St., N.W.  
Washington, D.C. 20530*

February 6, 2014

**Delivered via Email**

David Maxted, Esq.  
Public Defender Service  
633 Indiana Avenue, NW  
Washington, D.C. 20004

**Re: Plea Offer in United States v. Ercell Overton, 2013CF1009501**

This letter is to confirm the current pre-indictment plea offer for your client, Ercell Overton. **This plea offer will remain open until February 12, 2014.** However, the Government reserves the right to revoke this plea offer at any time before your client enters a guilty plea in this case. If your client accepts the terms and conditions set forth below, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the plea agreement between your client and the Office of the United States Attorney for the District of Columbia. The terms of the offer are as follows:

1. Your client, Ercell Overton, pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), agrees to admit guilt and enter a plea of guilty to the following offenses:

(A) **Second Degree Murder While Armed**, in violation of D.C. Code Sections 22-2103, 4502 (2011 ed.)

(B) **Assaulting, Resisting or Interfering with a Police Officer (Felony) While Armed (two counts)**, in violation of 22 D.C. Code, Sections 405(c), 4502 (2001 ed.)

Your client understands that the offense of Second Degree Murder While Armed carries a potential maximum penalty of 40 years imprisonment, a mandatory minimum penalty of 5 years imprisonment and a maximum of 5 years of supervised release. Your client further understands that the offense of Assaulting, Resisting or Interfering with a Police Officer (Felony) While Armed carries a potential maximum penalty of 30 years imprisonment and/or a fine of not more than \$10,000, a mandatory minimum penalty of 5 years, and a maximum of 5 years

Case: 2013 CF1 009501  
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supervised release.

2. Your client understands that the Government will reserve stepback pending sentencing, will waive any sentencing enhancement papers, and will reserve allocution at sentencing, subject to the terms set forth in paragraph 6 of this agreement.

3. Your client understands that the Government will not seek to indict him for any greater or remaining charges arising from the events of June 4, 2013, at approximately 3:00 a.m., in the 2300 block of Ontario Road, NW, Washington, D.C.; including, but not limited to: First Degree Murder While Armed, Assault With Intent to Kill While Armed, Assault With a Dangerous Weapon, First Degree Burglary While Armed, Possession of a Firearm During Commission of a Crime of Violence or Dangerous Offense, and Unlawful Carrying a Pistol.

4. The parties further agree that your client, after taking an oath to tell the truth, shall agree to the attached factual proffer in open court on the date of the plea. Furthermore, the parties agree that this plea will be an "Alford Plea," i.e., a plea taken consistent with the holding in North Carolina v. Alford, 400 U.S. 25 (1970). Consistent with the Court's holding in that case, the parties agree that there is a factual basis to believe that your client used and was under the influence of PCP during the early morning hours of June 4, 2013, prior to the shooting of Solomon Okoroh and the assault of two police officers in connection with this case. Among other things, your client tested positive for PCP after he was arrested on June 4, 2013. Your client contends that he was under the influence of narcotics at the time of the offenses and that those narcotics affected his ability to remember what occurred. However, he acknowledges that should this case go to trial, the government's evidence would be sufficient to prove beyond a reasonable doubt that he is guilty of second degree murder while armed and two counts of assault on a police officer while armed.

5. Your client understands that subject to the terms and conditions set forth in paragraph 6 below, the Court may utilize the District of Columbia Sentencing Commission's Voluntary Sentencing Guidelines in imposing the sentence in this case.

6. Your client and the Government agree that an aggregate range of 300 months to 336 months of incarceration is the appropriate sentence in this case. Your client and the Government agree, pursuant to Rule 11(e)(1)(C) of the Superior Court Rules of Criminal Procedure, to present this plea agreement to the Court for its approval. If the Court accepts the plea agreement and the specific sentence agreed upon by the parties, then the Court will embody in the judgment and sentence the disposition provided for in this plea agreement, pursuant to Rule 11(e)(1)(C) of the Superior Court Rules of Criminal Procedure. The parties understand, however, that in light of other factors the Court may not agree that such a sentence is an appropriate one and may reject the plea agreement pursuant to Rule 11(e)(1)(c) of the Superior Court Rules of Criminal Procedure. Upon such a rejection, pursuant to Rule 11(e)(4), neither party would then be bound by this agreement. Your client understands that if this happens, the Court, in accordance with the requirements of Rule 11(e)(4), will inform the parties of its rejection of the plea agreement, and will afford your client an opportunity to withdraw the plea,

or if your client persists in the guilty plea will inform your client that a final disposition may be less favorable to your client than that contemplated by this agreement.

7. Your client agrees that this letter is binding on the Government but not binding on the Court, and that he cannot withdraw this plea at a later date because of the harshness of any sentence imposed by the Court.

8. Your client acknowledges and has been made aware that pursuant to the Innocence Protection Act, that there may be physical evidence which was seized from the victim, crime scene or from your client or from some other source that can be tied to your client that could contain probative biological material. Your client understands and agrees that in order to plead guilty in this case, your client must waive and give up his right to DNA testing in this case and must execute the attached written waiver of DNA testing. Your client further understands that should he waive and give up his right to have DNA testing now, it is unlikely that he will have another opportunity to have the DNA tested in this case.

9. Your client also agrees that if any illegal firearm or illegal contraband were seized by any law enforcement agency from the possession of or the direct or indirect control of your client, then your client consents to the administrative forfeiture, official use and/or destruction of said firearm or contraband by any law enforcement agency involved in the seizure of these items.

10. In entering this plea of guilty, your client understands and agrees to waive certain rights afforded to your client by the Constitution of the United States and/or by statute. In particular, your client knowingly and voluntarily waives or gives up his right against self-incrimination with respect to the offenses to which your client is pleading guilty before the Court which accepts your client's plea. Your client also understands that by pleading guilty your client is waiving or giving up your client's right to be tried by a jury or by a judge sitting without jury, the right to be assisted by an attorney at trial and the right to confront and cross-examine witnesses.

11. This letter sets forth the entire understanding between the parties and constitutes the complete plea agreement between your client and the United States Attorney's Office for the District of Columbia. This agreement supersedes all prior understandings, promises, agreements, or conditions, if any between this Office and your client.

Respectfully,

RONALD C. MACHEN JR.  
UNITED STATES ATTORNEY

By: 


GEORGE A. PACE, JR.  
ASSISTANT U.S. ATTORNEY

**DEFENDANT'S ACCEPTANCE**

I have read this plea agreement and factual proffer and have discussed it with my attorney, David Maxted, Esq. I fully understand this agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this agreement fully. I am pleading guilty because I am in fact guilty of the offenses set forth herein.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this plea agreement. I am satisfied with the legal services provided by my attorney in connection with this plea agreement and matters related to it.

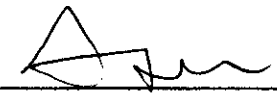
Date: 2-7-14

  
Ercell Overton  
Defendant

**ATTORNEY'S ACKNOWLEDGMENT**

I have read each of the pages constituting this plea agreement, reviewed them with my client, Ercell Overton, and discussed the provisions of the agreement with my client, fully. These pages accurately and completely sets forth the entire plea agreement.

Date: 2-7-14

  
David Maxted, Esq.  
Attorney for Ercell Overton