

U.S. Department of Justice

Ronald C Machen Jr.  
United States Attorney

*District of Columbia*

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

May 10, 2011

Thomas Dybdahl, Esq.  
Jennifer Soble, Esq.  
633 Indiana Avenue, N.W.  
Washington D.C. 20004

**Re:** United States v. Damon Sams, 2010-CF1-18038

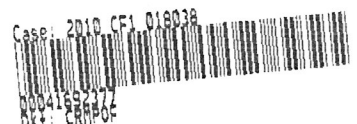
Dear Mr. Dybdahl and Ms. Soble:

This letter is to confirm the plea offer for your client, Damon Sams. This plea offer will remain open until May 17, 2011. However, the Government reserves the right to revoke this plea offer at anytime 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 Damon Sams agrees to admit guilt and enter a plea of guilty to the following offenses: Involuntary Manslaughter, in violation of 22 D.C.Code § 2105(2001 ed.), a lesser included offense of Count 1 of the Indictment in this case, and Possession of a Firearm During Crime of Violence or Dangerous Offense, in violation of 22 D.C.Code § 4504(b)(2001 ed.), Count 2 of the Indictment. Your client understands that the offense of Involuntary Manslaughter carries a potential maximum penalty of 30 years imprisonment, and a term of supervised release – after the prison term – of 5 years, and the offense of Possession of a Firearm During Crime of Violence or Dangerous Offense carries a potential maximum penalty of 15 years imprisonment, a mandatory-minimum term of not less than 5 years of imprisonment, and a term of supervised release – after the prison term – of three years.

2. Your client understands that the Government will reserve stepback pending sentencing, and will reserve allocation at sentencing, subject to the terms set forth in paragraph 5 of this agreement.

3. Your client understands that at the time of sentencing the Government will move to dismiss the remaining counts of the Indictment in this case (the greater charge in Count 1, as well



dismiss the remaining counts of the Indictment in this case (the greater charge in Count 1, as well as Counts Three through Seven), and will also dismiss case 2010-CMD-012497, the misdemeanor threats case pending before Judge Demeo.

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.

5. Your client understands that the Court may utilize the District of Columbia Sentencing Commission's Voluntary Sentencing Guidelines in imposing the sentence in this case. The Government and your client agree that neither party will seek an upward or downward departure outside of your client's applicable guideline range. Your client further agrees not to request that imposition or execution of all or part of the Guidelines sentence be suspended.

6. 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. The Government understands that your client is not bound by the Government's allocution, and may request a lesser sentence, subject to the terms set forth in paragraph 5, above.

7. 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 a jury, the right to be assisted by an attorney at trial and the right to confront and cross-examine witnesses.

8. 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

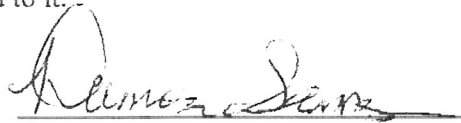
By: Daniel Friedman  
Daniel Friedman  
Assistant U.S. Attorney

### DEFENDANT'S ACCEPTANCE

I have read this plea agreement and factual proffer and have discussed it with my attorneys, Thomas Dybdahl, Esquire, and Jennifer Soble, Esquire. 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.

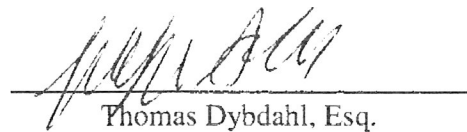
Date: 5/11/11

  
Damon Sams

### ATTORNEY'S ACKNOWLEDGMENT

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

Date: 5/11/11

  
Thomas Dybdahl, Esq.  
Jennifer Soble, Esq.  
Attorneys for Damon Sams

### PROFFER OF FACTS

Had this case gone to trial, the Government's evidence would have shown beyond a reasonable doubt:


1. On September 18, 2010, at approximately 3:30 a.m., DAMON SAMS shot the victim, Ashley McRae, with a firearm, that is a pistol, once in the forehead while she was seated in the back seat of a car parked behind 2756 Bruce Place S.E.
2. At the time of the shooting, DAMON SAMS, while causing the death of Ashley McRae, engaged in conduct which was a gross deviation from a reasonable standard of care, in that
  - a) he stood in the space created by the open rear passenger door of the car, with a pistol in his hand;
  - b) he was attempting, by his account, to engage the safety on the pistol, before getting into the car;
  - c) to test whether he had engaged the safety, he touched the trigger, to see whether it was "hard" (safety on) or "soft" (safety off), while holding the pistol pointed into the car, where Ashley McRae was sitting;
  - d) he discharged a round, striking Ashley McRae in the head.
3. At the time of the shooting, DAMON SAMS should have been aware of the extreme risk of death or serious bodily injury from his conduct, in that
  - a) he had possessed the pistol that he fired when killing Ashley McRae since approximately June 2010;
  - b) he had already fired that pistol that night, just moments before killing Ashley McRae; and
  - c) no reasonable person could have thought it would be safe to touch the trigger with a pistol pointed in the direction of another person.



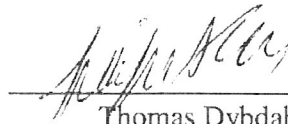
DEFENDANT'S ACKNOWLEDGMENT

I have read and discussed the Government's Proffer of Facts with my attorneys, Thomas Dybdahl, Esquire, and Jennifer Soble, Esquire. I agree, and acknowledge by my signature that this Proffer of Facts is true and correct.

Date: 5/11/11

  
Damon Sams

Date: 5/11/11

  
Thomas Dybdahl, Esq.  
Jennifer Soble, Esq.  
Attorneys for Damon Sams

ORIGINAL

SUPREME COURT OF  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH

2011 JUL -7 P 3:26  
UNITED STATES OF AMERICA

Criminal Case No. 2010 CF1 18038

FILED

Judge Gerald I. Fisher

DAMON SAMS

Sentencing: July 8, 2011

GOVERNMENT MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in aid of sentencing. On May 17, 2011, defendant Sams pleaded guilty to one count of Involuntary Manslaughter and one count of Possession of a Firearm During a Crime of Violence (PFCV). For all of the reasons detailed below, we urge the Court to sentence defendant to substantial incarceration, at the top end of his Guidelines range of five to 14 years.

**I. FACTUAL BACKGROUND**

1. As the Court will recall from the plea proffer in this proceeding, on September 18, 2010, at approximately 3:30 a.m., the decedent, Ashley McRae, was seated in the back seat of a car parked behind 2756 Bruce Place S.E., when the defendant Damon Sams, approached the car and stood in the space created by the open rear passenger door. As defendant, by his account, was attempting to engage the safety on his pistol, he touched the trigger to see whether the safety was on or off, while holding the pistol pointed into the car, where Ashley McRae was sitting. In doing so, defendant Sams discharged a round, striking Ashley McRae in the head, and killing her. The plea proffer further indicated that defendant Sams had possessed this pistol since June 2010, and had already fired it that night, and that no reasonable person could have thought it would be safe to touch the trigger with a pistol pointed in the direction of another person.

2. A number of additional facts considerably darken the events of that night. First, defendant never should have been there. At the time of the shooting, he was present at Bruce Place in violation of a court order, issued in case 2010-CMD-12497, to stay away from the area.

3. Second, the defendant should never have been in possession of a pistol that night. Of course, no person other than law enforcement could have had a pistol outside of a dwelling or place of business (or en route), unregistered, and with no license.

More importantly, defendant Sams was not just any person: he was on release in a pending criminal case, and was therefore in possession of the pistol in violation of a court order, issued in case 2010-CMD-12497, not to commit any other crimes while on release.

And much more importantly than that, defendant Sams had previously been convicted of a gun offense (attempted Carrying a Pistol without a License, 2007-CF2-17477), in February 2008. He had been given probation in that case, but had then had his probation for that gun offense revoked, and been sentenced to jail, in June 2008.<sup>1</sup>

4. Third, despite his conviction, revocation, and jail sentence for gun possession, defendant Sams had nevertheless gotten himself another gun – the gun that killed Ashley McRae – at least as of approximately June 2010, as shown on a video of himself posted on Youtube.

5. Fourth, defendant Sams was angry and agitated, at the time he possessed the pistol and fired the shot that killed Ashley McRae. Thus, as shown in the investigation of this case, defendant Sams had been shot at less than an hour earlier, by an unknown male, while crossing the street in front of the unknown male's vehicle, outside a nightclub in Maryland. As a result,

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<sup>1</sup> And for that matter, as noted by the presentence report writer, defendant Sams had also had another case, before the gun case, for Possession of a BB Gun, for which he had received Diversion and had the case Nolloed, in 2007. (Presentence Report, hereafter psr, at 9.)

defendant Sams had talked and complained loudly, about having been shot at, during the ride home from the nightclub to Bruce Place, and he was still angry about having been shot at, while on the parking lot at Bruce Place, before firing the shot that killed Ashley McRae.

6. Fifth, shortly before firing the shot that killed Ashley McRae, defendant Sams fired a shot in anger into the air, because he was still angry at having been shot at outside the nightclub in Maryland.

## **II. THE VICTIM IN THIS CASE: ASHLEY McRAE**

7. The victim in this case, Ashley McRae, age 21 at her death, was a young, beautiful, innocent life, snuffed out in her prime and before she had had the chance to even begin to live fully. The many Victim Impact Statements (VISs) submitted to the Court can only be described as heart-breaking, and the Court will hear more in person on Friday. To note only a few of the numerous wonderful and poignant comments:

– “This crime has affected my ability to enjoy ...”; “[i]t also reminds me of how Ashley made everyone laugh and joke, and it makes me not want to go outside...”; VIS of sister (psr at 6).

– “Ashley ... was a loving, caring person”; VIS of neighbor (psr at 6)

– “Each day I wake, I don’t see her beautiful smile and cherry hello”; VIS of friend (psr at 6).

– “I have been in complete an[d] utter devastation [since learning]”; “She was lively, outgoing, loyal, funny and compassionate. Her effervescent spirit beamed up a room and had the ability to turn anyone’s frown into a smile”; “my pain runs so deep”; “we suffer daily because of our loss”; VIS of friend (psr at 6-7).

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-- "Mama [Ashley] was a big sister, little sister, aunt, daughter, niece, grandchild ... but most of all, she was the greatest person you'll ever meet"; "Mama was the person you can spill your heart out to"; "I just can't believe someone took [someone] so precious from our family"; "Every day grows harder, not easier"; VIS of person identified by first name (psr at 7).

-- "Never seeing her face. Never hearing her voice. Never us walking to the store or anything. My big sister, best friend, my favorite is gone!!"; "the one I could tell anything to, the one who holds all my secrets, the one who had STYLE, the one I think about 24/7 and the list goes on. Knowing she's gone, it will never be the same"; "Never in my life could I ever have seen that I would lose the other half of my team." VIS of a sibling (psr at 7-8).

-- "I miss her big bright smile and she had a laugh that you could never forget"; "Life hasn't been the same without Mama"; "I dread the holidays"; "[he] took the best person in the world from us." VIS of cousin (psr at 8).

-- "I always see her beautiful smile"; "there are not enough words to describe the positive impact she had on everyone ... Ashley was truly genuine and definitely going somewhere with her accomplishments." VIS of person identified by first name (psr at 8-9).

8. The pre-sentence report writer was exactly right in his observation that the family and friends of Ashley McRae are suffering and will continue to suffer deeply, and that the loss they are experiencing is "great and very real." As the report writer so pointedly put it, in discussing defendant Sams' remorse:

Unfortunately, no amount of remorse will ever undo what Mr. Sams has done, nor does it appear that it will ever bring peace to the family and friends of Ms.

McRae, who loved and miss her very much, as they all noted in their Victim Impact Statements. The loss they are experiencing is great and very real.

Psr at 18.

### **III. PLEA AGREEMENT**

9. On May 17, 2011, defendant pleaded guilty before this Court to one count of Involuntary Manslaughter and one count of PFCV, pursuant to a plea letter agreement under which both parties agreed not to seek an upward or downward departure outside of the defendant's applicable guideline range within the Superior Court Voluntary Sentencing Guidelines, and the defendant agreed not to request that imposition or execution of all or part of the guidelines sentence be suspended.

### **IV. SENTENCING CALCULATION**

#### **10. Statutory Minimums and Maximums**

The charge of Involuntary Manslaughter carries a maximum sentence of 30 years imprisonment and five years of supervised release. The charge of PFCV carries a maximum sentence of 15 years imprisonment, a mandatory-minimum term of not less than five years of imprisonment, and three years of supervised release.

#### **11. Consecutive vs. Concurrent Sentencing**

Pursuant to Chapter Six of the Superior Court Voluntary Sentencing Guidelines, the Court has discretion to impose the sentences either consecutively or concurrently. Section 6.3.

#### **12. Sentencing Guidelines Calculation**

The Guidelines calculation utilized in the Presentence Report ("PSR") calculates the defendant's criminal score to be column "A." His guideline range for Involuntary Manslaughter

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The Guidelines calculation utilized in the Presentence Report ("PSR") calculates the defendant's criminal score to be column "A." His guideline range for Involuntary Manslaughter

is therefore 36 to 84 months (prison only), and his guideline range for PFCV is 60 (mandatory minimum) to 84 months (prison only).

Accordingly, the Guidelines range for the two offenses combined can be stated to be 60 to 168 months, or five to 14 years, imprisonment, with a mandatory minimum of 60 months.

**V. SENTENCING RECOMMENDATION**

13. The government asks the Court to sentence defendant to substantial incarceration, at the top end of his Guidelines range of five to 14 years. In support of this recommendation, the government makes several further points.

14. First, the fact that the death in this case resulted from Criminal Negligence Manslaughter, i.e., an accident, provides no basis for **further** leniency in the Court's sentencing analysis and decision. The accidental/manslaughter nature of the killing has already been factored into the case. Defendant was allowed to plead guilty to Involuntary Manslaughter, to resolve the indicted charge of Second Degree Murder. As a result, defendant's Guidelines range is already sharply reduced from what it would have been had he been convicted of Second Degree Murder, i.e., 12 to 24 years imprisonment.

15. Second, unlike in some criminal negligence manslaughter cases, where the circumstances may seem somewhat benign, at least two of the circumstances in this case are very negative and troubling. For one thing, defendant seems to have had a persistent desire to have a gun in his hand, from the BB gun to his prior gun conviction (for which he was revoked and incarcerated), to his obtaining the gun used in the offense. A gun is a lethal weapon, and it is inescapable and undeniable that this defendant should never had a gun on his person on that night. Indeed, in response to defendant Sams' assertion that he was "progressing well" under his



most recent probation, the report writer stated:

[T]his Officer would have to disagree....[I]f the defendant was progressing well under this period of community supervision, he never would have been in possession of the weapon that was used in the death of the (sic) Ms. McRae. In fact, Mr. Sams was well aware that he was not supposed to be in possession of that weapon because he has a prior misdemeanor conviction for a firearms related offense and because he was on probation at the time the instant offense occurred. It appears to this Officer that the defendant's failure to abide by the laws of the District of Columbia and his probation conditions led to the death of Ms. McRae...

Psr at 18.

16. Third, the other troubling circumstance, making this Involuntary Manslaughter more aggravated than many others, is the fact that the defendant was angry and agitated at the time of the shooting, and had indeed purposely fired off a round in the air shortly before the killing. Once again, the presentence report provides facts from which the Court can and should conclude that the defendant's anger is a troubling factor in this case. Specifically, the report writer states that the defendant was expelled from high school for fighting, during the 11<sup>th</sup> grade, and additionally that he was thereafter "kicked out" of the Job Corps for fighting. (Psr at 15). Defendant's anger is an issue in his life and, when combined with his possession of a lethal instrumentality on the night of this killing, is a negative, aggravating factor in this case.

17. Fourth, whatever remorse the defendant may express is overwhelmed in this case by the grievous loss suffered by the family and friends of Ashley McRae. Genuine remorse is a step in the right direction, but all the remorse in the world by the defendant cannot and will not overcome the devastation done to those who loved Ashley, and therefore the Court should accord only limited weight to any such remorse in crafting its sentence. Unfortunately, the defendant was not thinking about remorse when he decided to get another gun after his incarceration for a

prior gun offense, or when he was walking around Bruce Place with a loaded pistol in his hand the night he killed Ashley McRae.

18. Finally, the defendant has been unsuccessful in two prior probations. As the presentence report writer noted, the "defendant has been afforded two prior periods of community supervision, both of which were revoked to incarceration." (Psr at 18).

#### VI. CONCLUSION

19. Defendant Sams took the life of the young, innocent, beautiful, and beloved Ashley McRae, in a Criminally Negligent Manslaughter involving troubling and negative circumstances, and for that act he owes a very substantial debt to society. A just, fair, and appropriate sentence in this case is that the defendant be sentenced to a substantial period of incarceration, at the top end of his Guidelines range.

Respectfully submitted,

RONALD C MACHEN JR.  
UNITED STATES ATTORNEY

By: Daniel Friedman  
DANIEL FRIEDMAN  
ASSISTANT U.S. ATTORNEY  
555 4th Street, N.W., Room 9409  
Washington, D.C. 20001  
(202) 252-7884

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Government Memorandum in Aid of Sentencing has been served by email upon counsel for defendant, Thomas Dybdahl, Esq., and Jennifer Soble, Esq., this 7<sup>th</sup> day of July, 2011.

Daniel Friedman  
DANIEL FRIEDMAN  
Assistant United States Attorney