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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. TAWNYA BEARCOMESOUT, Defendant.	CR 16-13-BLG-SPW OFFER OF PROOF
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The United States, represented by Assistant U.S. Attorney John D. Sullivan, files the following offer of proof in anticipation of the change of plea hearing set in this case on August 12, 2016.

THE CHARGES

The defendant, Tawnya Bearcomesout, has been charged by indictment with one count of voluntary manslaughter and one count of involuntary manslaughter,

both in violation of 18 U.S.C. §§ 1153(a) and 1112(a).

PLEA AGREEMENT

There is a plea agreement in this case. Bearcomesout will plead guilty to count II of the indictment, which charges her with involuntary manslaughter. The United States presented all formal plea offers to Bearcomesout in writing. The plea agreement entered into by the parties and filed with the Court represents, in the government's view, the most favorable offer extended to the defendant. *See Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012).

ELEMENTS OF THE CHARGE

In order for the defendant to be found guilty of the charge of involuntary manslaughter, in violation of 18 U.S.C. §§ 1153(a) and 1112(a), as charged in count II of the indictment, the United States must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed an act that might produce death;

Second, the defendant acted with gross negligence, defined as wanton or reckless disregard for human life;

Third, the defendant's act was the proximate cause of the death of B.B. A proximate cause is one that played a substantial part in bringing about the death, so that the death was the direct result or a reasonably probable consequence of the defendant's act;

Fourth, the killing was unlawful. A killing is unlawful within the meaning of this instruction if it was neither justifiable nor excusable;

Fifth, the defendant either knew that such conduct was a threat to the lives of others or knew of circumstances that would reasonably cause the defendant to foresee that such conduct might be a threat to the lives of others;

Sixth, the killing occurred within the exterior boundaries of the Northern Cheyenne Indian Reservation; and

Seventh, the defendant is an Indian person.

PENALTY

The charge of involuntary manslaughter carries a maximum punishment of eight years imprisonment, a \$250,000 fine, three years supervised release, and a \$100 special assessment.

ANTICIPATED EVIDENCE

If this case were tried in United States District Court, the United States would prove the following:

On the evening of November 22, 2014, Tawnya Bearcomesout fatally stabbed her common-law husband, B.B., in the chest at their residence outside of Lame Deer. He was pronounced dead at 7:51 p.m. after efforts to revive him at the IHS clinic were unsuccessful.

Earlier in the day, Bearcomesout, B.B., and several others—including B.B.'s brother Eugene and his wife, Darcy Bishop—were consuming alcohol together. For at least part of the day, they were drinking at the Jimtown Bar just off the Northern Cheyenne Indian Reservation. In the afternoon, Bearcomesout and B.B.

returned to their residence. Around 7:30 p.m., Eugene and Bishop went to B.B.'s and Bearcomesout's residence to borrow movies. The pair entered the residence and saw Bearcomesout as she was exiting a bedroom and walking down the hallway toward them. She was crying and described as looking "bloody" and "dazed." While Bishop helped Bearcomesout get cleaned up, Bearcomesout stated several times that she thought she had stabbed B.B. Eugene then went looking for B.B., finding him at the base of the stairs behind the residence. B.B.'s body was still warm but he was not breathing. He was eventually taken to the IHS clinic in Lame Deer where he was declared dead.

During this time, BIA law enforcement officers responded to Bearcomesout's residence. One officer found Bearcomesout bleeding from the head and passed out. She only responded nominally when he attempted to rouse her. Bearcomesout was then taken to IHS as well where she was treated and photographed. She had a black eye and several cuts on her face and head.

Officers received a tribal search warrant for the residence on the same evening. A group of officers and agents from BIA and FBI conducted the search shortly after midnight on the morning of November 23, 2014. They discovered a short green and white knife with blood on it under a television stand in one of the bedrooms. Photographs of the interior suggest that a struggle took place in the kitchen area. Spatters of blood were left inside the residence leading out to the

back porch and down the stairs ending where B.B. was discovered.

An autopsy was performed on November 24, 2014. The cause of death was identified as a stab wound through the ascending aorta causing a massive right hemothorax and insanguination. The report noted that the internal injuries suggest that the knife was inserted, partially removed, and then reinserted. Also of significance were multiple scratches to B.B.'s face, right forearm, and hands and fresh bruises to his upper left arm.

Bearcomesout was arrested after she was treated for her injuries at IHS. She did not provide a statement at that time, but did speak with her mother about the stabbing when she called her from the jail the day after the incident. Bearcomesout stated that she and B.B. got into an altercation on the night of his death and that he hit her head against the sink. She explained that she stabbed B.B. because he was beating on her and nobody was helping her.

The incident occurred within the exterior boundaries of the Northern Cheyenne Reservation and Bearcomesout is an enrolled member of the tribe.

DATED this 8th day of August, 2016.

MICHAEL W. COTTER
United States Attorney

/s/ John D. Sullivan
JOHN D. SULLIVAN
Assistant U.S. Attorney