

BLOWN DEADLINE

July 5, 2017

The Honorable Jesse M. Furman
United States District Judge
40 Foley Square
New York, NY 10007

Your Honor:

I write to you as the employer of Marc Henry Johnson, who is to be sentenced in your court for his involvement in the tragic overdose death of a young woman. I should say first that nothing that follows in this letter, or in my thoughts, can mitigate the loss that Ms. Cerveny's family and friends must endure regardless of what happens in your courtroom or anywhere else. The tragedy stays a tragedy and the great loss of a wife, mother and doctor remains.

With that fundamental truth always in mind, I must nonetheless write to you both in my capacity as Mr. Johnson's employer and creative collaborator, and also as a journalist and author who spent 15 years in Baltimore covering the drug war specifically. It is in both capacities that I urge you to consider leniency with regard to the defendant.

First, let me explain my professional relationship with Mr. Johnson. I met him seven years ago when he served as an assistant locations manager for the pilot episode of HBO drama "Treme," which filmed in New Orleans. Marc performed his duties responsibly and well, and at the conclusion of the pilot, he came to me with almost a decade of research he had undertaken on the rise and fall of twin brothers who had been at the center of the rise of the sex industry and other illegal activities in Times Square. Marc insisted that the material was not gratuitous, but deeply human and even political in its reflections on misogyny and unencumbered capitalism. He urged my fellow producer George Pelecanos and myself to meet with the surviving brother and examine his narrative. We did so, and now find ourselves working with Marc and the material he first developed on an HBO production titled "The Deuce."

Throughout the filming of the pilot, story meetings, and production of the first season, Marc has been an effective producer, collaborator and employee. Only last week, he was in Baltimore with other writers and producers beginning the long-term planning for a possible second season of the drama. But if my concern about Marc's future was limited to his role on this project, then I could scarcely justify this letter. Many people are assets in their professional lives but find themselves accountable for personal actions regardless.

And it was with this simple truth in mind that when news of Ms. Cerveny's death reached me, I immediately went to work to discern what role Marc had played in the tragedy. I tell you frankly that there were things initially reported in the New York tabloids that, if true, would have obliged me to divorce Mr. Johnson from the project for they would have indeed been indefensible.

Most notably, I was concerned at the allegation that Marc had abandoned the stricken woman and fled. To my standard, no amount of fear or impaired judgment could justify such a course of action. So, for the first time in a while, I put on my old newspaperman's hat and began to report the story directly, calling on sources in the New York Police Department.

What I learned was that while Mr. Johnson did make grievous errors of judgment – which he openly acknowledged – it was also true that it was his phone call that brought the paramedics and it was he, alone, who waited for their arrival.

Yes, he was engaged in the use of illegal drugs. Yes, he was oblivious to how impaired Ms. Cerveny was becoming. And yes, he did first help to move the victim from his co-defendant's apartment when the man demanded this be done. Yes, in his fear at admitting the use of illegal drugs, he did not provide paramedics with the best information by which to undertake medical protocols. But the core accusation that he had abandoned Ms. Cerveny – this, even as acknowledged to me by the agency investigating the case – was untrue.

Marc's remorse for the errors in judgment that he did, in fact, make, and for the moral lapses as well, has been acute. I know that he has embarked on a campaign of sobriety, and I know further that he has, in his conversations with me, expressed responsibility for his role in full. He has continued to perform his professional duties with diligence and care.

Which brings me back to my years covering the drug war in Baltimore. In that sojourn, I spent a year inside the Baltimore Police Department's homicide unit to write one book, and on a West Baltimore corner, in an open-air drug market, to write a second. I am acutely aware of how problematic it is to wage a policy of drug prohibition while at the same time retaining the cooperation of any community being so heavily policed.

When I was following detectives in the Baltimore homicide unit, I was called to the scene of perhaps 60 or 70 overdose deaths. More often than not, these tragedies took place in the presence of others who were firing heroin or cocaine or both, and while there were a few cases in which detectives came upon the bodies of victims who were abandoned or unceremoniously dumped by their cohort, in the vast majority of cases – even those involving communal shooting galleries – there was invariably someone who called 911 and sought medical intervention. Why?

For one fundamental reason: The Baltimore department made a point of never charging anyone who made such a call – to do so would be to set a precedent that would discourage all future attempts to engage paramedics. By proffering such criminal charges, authorities would be declaring that anyone using their own phone, or remaining with a victim, could themselves be held responsible. And if that was the case, then many more overdose victims would die in Baltimore.

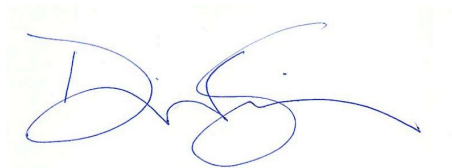
In that sense, I am genuinely concerned – entirely apart from my personal support for Mr. Johnson – about what the U.S. Attorney's Office is hoping to accomplish not just by punishing the man who ordered the victim removed from his domicile, didn't call paramedics, then fled the scene, but by extending that punishment to the man who reluctantly complied with that order, called for help and remained until help arrived. If the precedent is to punish both the former and the latter, then knowing what I do about the drug culture, I have to tell you that more people will die on that precedent.

Having spent a year on a drug corner watching and chronicling the policing of that world, I will tell you honestly that I am no fan of the drug war. I think it senseless and destructive and ineffectual. But neither am I a supporter of drug use.

One thing, however, was quickly revealed as a fundamental truth: All of us are singularly responsible for what substances we use or abuse, and for how we live our lives. Marc is responsible – as was Ms. Cerveny, for whom the use of alcohol and drugs was voluntary. And further, Marc – intimidated though he was by an angry, insistent codefendant who was demanding Marc remove his stricken friend from his residence – is responsible as well for the decisions he made while impaired. He should have resisted that demand, and certainly, he should have called 911 immediately. He should have told the paramedics explicitly what he knew of the medical situation. I can understand that the government might wish to highlight these errors of judgment and the cost that resulted from them. But as his employer and collaborator – and, moreso, as someone who covered these issues in detail for many years – I can also understand the importance of acknowledging what Marc did, in fact, endeavor to do. As I said, had he not called for help and had he not remained with the victim, I could not now write this letter nor remain professionally associated with Mr. Johnson. As the facts will bear, I am comfortable writing to urge leniency and to allow Mr. Johnson to continue to remain the contributing member of society that he is.

I urge you to reflect on the totality of this case, on the difference in action and demeanor between Mr. Johnson and his codefendant, and on the simple fact that the precedent set in this case, once publicized, may well guide the behavior of many others who find themselves regrettably confronting the same dilemma.

With the greatest respect,



David Simon
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