

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO: 19-001871CF10A
JUDGE: SIEGEL

STATE OF FLORIDA

v.

HENRY MALIK CORTLEN
_____ /

NOTICE OF APPEARANCE

VICTIM'S OBJECTION TO DEFENDANT'S RELEASE AMID COVID-19 CONCERNS

VICTIM'S ELECTION OF CONSTITUTIONAL RIGHTS UNDER MARSY'S LAW

COMES NOW, and appears the undersigned attorney on behalf of the victims in this matter, the family of CHRISTOPHER THOMAS, JR., and files this Notice of Appearance in the criminal case in which CHRISTOPHER THOMAS, JR. was the victim of a crime and which his family are also victims. The victims and their counsel also hereby invoke Marsy's Law, encoded in Article 1, Section 16 of the Florida Constitution. In support thereof, the family of victim Thomas states:

1. We represent the family of victim Christopher Thomas, Jr.
2. According to the Florida Constitution, "The term 'victim' includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim."
3. According to the Florida Constitution, "The victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right."
4. The family of Christopher Thomas, Jr. has been uncertain about the criminal investigation and prosecutorial proceedings and thus has retained the services of the undersigned to appear and protect their rights.

Marsy's Law

5. Marsy's Law is an amendment to the Florida Constitution, which was passed on November 26, 2018. Modeled after a similar measure in California, Marsy's Law broadens the rights of crime victims and codifies them into the Florida Constitution.
6. Marsy's law consists of two parts: (1) automatically granted constitutional rights and, (2) constitutional rights a victim must elect to receive.
7. Under Article I, Section 16(b), Marsy's law is designed to, "preserve and protect the rights of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents."
8. Those words provide intentionally strong rights to victims- "meaningful role throughout... for crime victims" and guarantees, "no less vigorous than the protections afforded to criminal defendants."
9. The amendment to the Florida Constitution also made one notable excision. It removed this sentence. "~~Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.~~" (excision noted for emphasis). This sentence was the only sentence removed from the prior Constitution.
10. This language, along with the excision, vests certain fundamental rights with the victim in this case. The "automatic" rights of victims added were:
 - a. The right to due process and to be treated with fairness and respect (Section 16(b)(1));
 - b. The right to be free from intimidation, harassment, and abuse (Section 16(b)(2));
 - c. The right to be reasonably protected from the accused and any person acting on behalf of the accused (see Section 16(b)(3));
 - d. The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family(see Section 16(b)(4));
 - e. The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or

which could disclose confidential or privileged information of the victim (see Section 16(b)(5));

- f. Rights under Section 16(b)(6) if elected (see below);
 - g. The right to the prompt return of the victim's property when no longer needed as evidence (see Section 16(b)(8));
 - h. The right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly (see Section 16(b)(9));
 - i. The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings (see Section 16(b)(10)); and
 - j. The right to be informed that victims can seek the advice of an attorney with the respect to these rights. (see Section 16(b)(11));
11. As indicated, Section 16(b)(6) enumerates rights the victim must elect. Specifically, the Constitution mandates, "A victim shall have the following specific rights upon request." These rights are:
- a. The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.
 - b. The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
 - c. The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.
 - d. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.
 - e. The right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.

- f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
 - g. The right to be informed of all post-conviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.
 - h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.
12. Section 16(b)(6)(b) is possibly the most unique, and revolutionary, amendment to Florida's criminal justice system in quite some time. It is one many prosecutors, defense lawyers and judges have not yet dealt with, as some rights must be specifically elected and victim's rights under the amendment have, frankly, not been exercised under Florida jurisprudence.
13. The Florida Supreme Court pointed out the true intent of the amendment- "(T)he amendment would create victims' rights, would require the judiciary to facilitate these rights, and that the victims would be authorized to enforce their rights." *Department of State v. Hollander*, 256 So.3d 1300 (Fla. 2018). Justice Pariente, in dissent, acknowledged this could result in litigation to "resolve conflicts between victims' and defendants' enumerated constitutional rights." However, the undersigned simply seek to participate to enable the victim to make truly informed decisions, which have otherwise been absent in cases of this nature.
14. The victim's rights are unquestionably implicated at every stage of a criminal case, as defenses are raised, facts and discovery are revealed and records and witnesses reveal information about who, where, how and when the subject incident occurred, the details of falsehoods about the victimization of the victim, as well as issues which would hinder full restitution and thus victims need to be actively involved to understand and make sure the victim's rights are fully protected.

15. Given the nature of this case, Mr. Christopher Thomas, Jr.'s family hereby exercises all of the rights granted them, and guaranteed to them, under the Florida Constitution.

Election of Additional Rights Under Marsy's Law

16. This notice is provided herein, as required by the Florida Constitution.

17. Marsy's law states, "The victim, **the retained attorney of the victim**, a lawful representative of the victim, or the office of the state attorney upon request of the victim, **may assert and seek enforcement of the rights enumerated in this section** and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, **as a matter of right**. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record."

18. My clients, by and through our office, hereby elect the following rights:

- a. **The right to be heard in any public proceeding involving pretrial or other release** from any form of legal constraint, plea, sentencing, adjudication, or parole involving this Defendant.
- b. **The right to be heard in any proceeding during which a right of the victim is implicated.**
- c. The included right to attend any and all depositions.
- d. The included right to be heard at depositions and hearings, if appropriate, on issues pertaining to the criminal case where the victim's rights are implicated.
- e. The right to reasonable, accurate, and timely **notice and receipt of all discovery and discovery responses.**
- f. The right to reasonable, accurate, and timely **notice of all public proceedings** involving the criminal case.
- g. The included right to have counsel served with all filings.
- h. The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.
- i. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.

- j. The right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.
- k. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- l. The right to be informed of all post-conviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.
- m. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.

19. If there is any objection to this, we request it to be filed and heard, so a record can be preserved for the Florida appellate courts. However, there is no other motion due to be filed by a victim, as the Constitution only requires they make an election. **This is that election.**

20. My clients have retained our office to ensure they have a "**meaningful role throughout**" the criminal case, to ensure they know all of the facts and evidence and same has been thoroughly examined, to ensure that their rights and interests are respected and protected by law in a **manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents,** and that they have, "**The right to be heard in any proceeding during which a right of the victim is implicated.**"

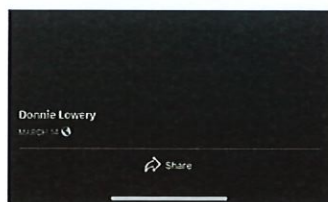
Objection to Release

21. On or about April 14, 2020, the family of Christopher Thomas, Jr., became aware of a Notice of Residence filed by counsel for Cortlen Henry, Fred Haddad, Esq.

22. Although perhaps counsel for Mr. Henry should not have publicly filed the name, address, phone number, and email address of the person with whom Mr. Henry desires to reside, it nevertheless reveals that Donald Lowery agrees to provide Mr. Henry with "a place to live."

23. The filing reveals several severe defects to which the victim strenuously objects:

- a. Mr. Lowery professes to be first and foremost a "fan." A mere fan does not supply the requisite background, lack of bias, trustworthiness or other essential criteria to enforce justice.
- b. Mr. Lowery professes to be an "aspiring executive protection officer." Once again, despite his aspirations, this does not supply the requisite background, lack of bias, trustworthiness or other essential criteria to enforce justice.
- c. Furthermore, by releasing Mr. Lowery's phone number and address, Mr. Haddad has jeopardized Mr. Henry's safety and security. Mr. Henry faces serious charges, but is also a fundamental witness in the charges facing co-defendant Mr. Demons. A photo of Mr. Lowery's house is even located on his Facebook page <https://www.facebook.com/donnieNarjeta>. It is the definition of an insecure situation.
- d. It appears from his social media posting that Mr. Lowery has a school aged daughter and other things which should simply disqualify him from housing someone charged with murder.
- e. Mr. Lowery has posted several photos advocating to "Free Melly":



f. Mr. Lowery has also posted regarding shooting and killing people.



g. This recommendation in no way provides adequate release under any circumstances.

24. The Notice cites Defendant has been determined eligible for bond for several months and requests a hearing date "so that Defendant can be released." Victims request to be heard at any hearings through counsel.

25. In every instance, the premise of any "release" causes extreme distress to the victims and their family.

26. On October 26, 2018, Cortlen Henry was indicted by a Florida Grand Jury on (2) two counts of Murder in the First Degree and (2) two counts of Accessory after the fact for the murder of Mr. Thomas and another individual.

27. He was arrested on February 12, 2019 and is held without the possibility of bond. While bond rests with the discretion of this court, it should be sufficient and in no way should Mr. Henry be subjected to a "COVID release."

28. According to the arrest affidavit, Cortlen Henry caused or contributed to the murder of Anthony Williams and Christopher Thomas, Jr., at or near the intersection of US 27 and SW 208th Street in Miramar, Florida at approximately 4:00 AM on October 26, 2018.
29. Police have publicly indicated Demons and/or Henry shot and killed Williams and Thomas and then concocted a plan to say Thomas and Williams were victims of a drive-by shooting, and Henry later dropped the dead bodies off at the hospital.
30. Investigators have also said ballistics tests apparently show the drive-by was staged, as they reveal that many of the shots came from inside the vehicle, therefore disproving the defense's story.
31. The family of Mr. Thomas consider Mr. Henry to be a threat to them and other witnesses, as well as a witness who may need protective custody.
32. Under Marsy's law, as encoded in Article I, Section 16 of the Florida Constitution, the victims hereby file this objection to any release of the Defendant.
33. Victims have the right to be reasonably protected from the accused and any person acting on behalf of the accused.
34. Victims have the right to have their safety and welfare, as well as that of the victim's family, considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
35. While the victims sympathize with the concerns over incarceration during the COVID-19 pandemic. Mr. Henry's release presents a threat to their rights, to justice, and to society.
36. Certainly, Broward County is able to provide him with hospitalization and medical treatment outside of jail should he fall ill, but a "release" is recommended to a random "fan" is too great a threat.
37. Meanwhile, the Defendant has failed to explain how his incarceration and medical limitations thus far have in any way prejudiced potential medical care, other than speculation and contrast to irrelevant comparisons.

WHEREFORE, the victim's family hereby invokes their constitutional rights and requests the Court take judicial notice of same, that the undersigned be served with all pleadings, including retroactively and that the undersigned be coordinated in all attempts at depositions, proceedings and otherwise that all parties hereto respect the victim's election to have a meaningful role in the remainder of this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Office of the State Attorney, and Fred Haddad, attorney for Defendant Henry via electronic delivery on this 16 day of April, 2020.



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