



National Press Photographers Association, Inc.

The Society of Visual Journalists

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VIA EMAIL & FACSIMILE

November 7, 2012

Chief Thomas D. Pyle II
Athens City Police Department
11 N. College St.
Athens, OH 45701

Re: Arrest & Prosecution of Nicolas Tanner

Dear Chief Pyle,

As general counsel for the National Press Photographers Association (NPPA) I write to you on behalf of the organizations listed below to express our grave concern regarding the unwarranted arrest of one of our members, Nicolas Tanner, a graduate student at the Ohio University School of Visual Journalism. We respectfully request that the charges be immediately dismissed in the interest of justice and that you fully investigate this incident.

According to the summons (attached) Mr. Tanner was arrested by your officers on 10/28/12 at 11 Franklin Avenue. He is accused of interfering with “squad personnel” and that “he refused to let squad place patient in squad and by getting in way taking photos.” The arrest report states “defendant keep getting in way of squad personel [sic] . . . subject was attempting to take photos of person was attempting place in squad and refuse to get out of there [sic] way.” Another page of the report states “defendant was attempting to photo patient emergency personel [sic] was attempting to care for, they called for assistance after he refused to move out of their way. Then he resisted after officer moved him to side walk and struggled and attempted to flee but fell down.”

It is our understanding that Mr. Tanner, while out with his camera photographing Halloween events around the university noticed an ambulance in front of a house and someone who looked like a student being cared for. He was standing on a public sidewalk photographing a matter of public interest from a reasonable distance away from the subjects. One of the ambulance crew approached him and incorrectly told him he could not take photos of the scene. When Mr. Tanner articulated his right to do so they then called the police and two (2) mounted officers arrived. They too incorrectly ordered Mr. Tanner to stop taking pictures and then proceeded to block his access with their horses while physically using them to push him away. When Mr. Tanner continued to stand on the sidewalk one of the officers dismounted and arrested him for “obstruction & delay of public official/emergency person and resisting arrest.”

In pertinent part the Athens, Ohio Code of Ordinances Section 13.04.03. – Misconduct at an emergency, states: “(A) No person shall knowingly: (1) Hamper the lawful operations of any law enforcement officer, fireman, rescuer, medical person, or other authorized person, engaged in his duties at the scene of a fire, accident, disaster, riot, or emergency of any kind. (2) Fail to obey the lawful order of any law enforcement officer engaged in his duties at the scene of or in connection with a fire, accident, disaster, riot or emergency of any kind.” The Ohio Revised Code, Section 2917.13 – Misconduct at emergency, sets forth a similar provision except that it also contains a paragraph (B) that states: “Nothing in this section shall be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative’s duties” (emphasis added).

It is our contention that Mr. Tanner was doing nothing more than exercising his First Amendment rights to gather and disseminate news and therefore was not acting in violation of any law. As the U.S. Court of Appeals for the First Circuit noted, “A police officer is not a law unto himself; he cannot give an order that has no colorable legal basis and then arrest a person who defies it.” (*Iacobucci v. Boulter*, 193 F.3d 14. (1st Cir. 1999)). As in this case, because Mr. Tanner’s activities were peaceful, not performed in derogation of any law, and done in the exercise of his First Amendment rights, we assert your officers lacked the authority to stop them.

If, according to your website, the Athens Police Department exists “to safeguard the public trust,” that being the tradeoff between an individual’s “inalienable rights” and the need of the government to protect society as a whole, then we assert your officers have failed in their responsibility to understand and respect the First Amendment rights of citizens and the press to photograph and record in public. In this case your officers did not “uphold the public trust in a fair and equitable manner,” nor did they provide “equal access to all.”

Our organizations have repeatedly pointed out to numerous groups and law enforcement agencies that actions by officers to interfere with and detain those engaged in lawful activity under color of law is reprehensible. The arrest and twelve (12) hour detention of a graduate photojournalism student is a tangible example of what is meant by the “chilling effect” such interference creates as it relates to First Amendment liberties.

Given the longstanding visual journalism program at the university and the proliferation of cameras in the community it is hard to comprehend why your officers do not have a better understanding of these First Amendment rights. To that end we offer to work with your department in order to help develop reasonable and workable policies, practices and training in order to avoid similar situations from occurring in the future. Given the circumstances and laws set forth above we again implore you to immediately dismiss the charges against Mr. Tanner in the interest of justice and fully investigate this incident.

Thank you for your attention in this matter. We look forward to your anticipated cooperation.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

On behalf of:

Associated Press (AP)
American Society of News Editors (ASNE)
Student Press Law Center (SPLC)
Society of Professional Journalists (SPJ)
Reporters Committee for Freedom of the Press (RCFP)
American Society of Media Photographers (ASMP)

Enc.

cc: Hon. Paul Wiehl (via email w/enc.)
Sean D. Elliot, NPPA President (via email w/enc.)