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Courts and Justice

Pair who protested TownHall restaurant hit with felony assault charge after worker said she lost hearing from megaphones

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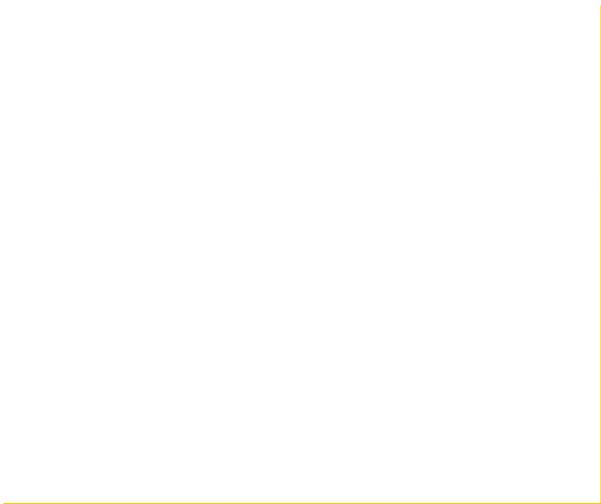
Townhall in Cleveland's Ohio City neighborhood is a top vegetarian restaurant according to Yelp Marc Bona, cleveland.com

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By Cory Shaffer, cleveland.com

CLEVELAND, Ohio -- Two people who protested outside the well-known Ohio City restaurant TownHall last summer are now charged with felonious assault because an employee of the restaurant said she suffered hearing damage from their megaphones.

A grand jury indicted Josiah Douglas, 25, of Cleveland, and Sydney Yahner, 21, of Willoughby, on the second-degree felony charge that carries a maximum sentence of eight years in prison for their role in the July 12 protest. The two never actually set foot on TownHall property.



Attorney Peter Pattakos, who also represented Douglas and Yahner after the TownHall employee sought a restraining order against them and the activist group that organized the demonstration in civil court days after the incident, called the charge an “outrageous attack” on the First Amendment’s guarantee to peacefully protest.

“Being subject to a baseless felony prosecution is one of the worst things that can happen to a person at the hands of their government,” Pattakos said. “Even if the defendants are acquitted, substantial damage is done. And here the damage is exponential due to the chilling message sent to anyone intending to exercise fundamental protest rights in the area.”

Attorneys Rachel Hazelet and Christopher Thomarios are also representing the pair in Cuyahoga County Common Pleas Court. The case was assigned to Judge Nancy McDonnell.

Cleveland Scene first reported on the indictment on Thursday.

Cuyahoga County Prosecutor Michael O’Malley told cleveland.com that his office presented the case to the grand jury after receiving an investigative report from a Cleveland police officer that included medical reports showing the woman, Jacqueline Boyd, suffered hearing damage as a result of the bullhorns.

“It is sound, but you can do damage with sound,” O’Malley said. “Nobody wants to be in a situation where our First Amendment rights are being violated. But if we have individuals who say they have fallen victim to those individuals, we can’t just ignore it. We do our best to evaluate it, and in this case, there are medical records to indicate this person suffered hearing loss.”

The charge stems from a Sunday afternoon protest that Douglas, Yahner and other members of the group With Peace We Protest held at the entrance to the West 25th Street establishment's back patio, in the parking lot adjacent to the West Side Market.

Facebook Live videos of the protest the group recorded and posted to its Facebook page shows about a dozen people gathered on the Sunday afternoon. Jacqueline Boyd, who court records identify as the director of operations for the restaurant's parent company and is the first cousin of its owner Bobby George, sat in a hostess chair at the entrance during the protest.

The group had protested outside of George's restaurants, including The Barley House on West 6th Street, after a TownHall manager responded to a former employee's criticisms of the establishment's COVID-19 protocols by telling him, "If you hate this country so much, go back to the one you came from."

George and the manager who made the comment, Ryan Hartzell, sued Scene and its editor over its coverage of the comment. Pattakos defended the magazine in that case, which settled this week on undisclosed terms.

The Facebook Live video shows Cleveland police officers watching from cruisers as about 10 protesters shouted from public property into a bullhorn, but it does not depict the incident described as the basis for the charge, Pattakos told cleveland.com. The small protest had an outsized police presence that included six uniformed police officers in three cruisers.

An undercover detective filed a police report in which he described Douglas and Yahner as repeatedly "blasting" the bullhorns in Boyd's face, and she complained to police that she couldn't hear out of her ear. The officer referred to the group as "ANTIFA/BLM" throughout the report when the organization that carried out the protest has no affiliation with either group, Pattakos said.

Pattakos provided cleveland.com with copies of emails he sent to O'Malley and several of his office's supervisors on Friday, two days after the indictment was handed up, in which said he was "shocked" to learn of the charges.

Pattakos attached to the email a court brief he filed in the protection order case that summarized sworn testimony from several people, including Boyd. The brief said that Boyd provided no medical evidence, other than her statement to her doctor that she had trouble hearing out of one ear, and testified that she did not wear a hearing aid or take any medication to treat her hearing loss. The filing also noted that no other protesters standing near Douglas and Yahner suffered any hearing damage.

“While we have had our differences, I believe you are a reasonable man and I have every reason to believe that your office has been badly misled as to the basis for this indictment,” Pattakos wrote. “I accordingly expect that if I am missing something here, your office will advise me immediately. Otherwise, we will commence our public outreach campaign next week and will expect press and civil-rights advocates nationwide to flock to Cleveland in support of these kids and the most fundamental constitutional rights.”

O’Malley told cleveland.com on Thursday that he took Pattakos’ email as “a threat or an attempt to extort” him into dismissing the indictment.

“If Mr. Pattakos feels an indictment is improper, he needs to learn how to professionally represent his client in a manner that is consistent with the ethical principles required to practice law in the State of Ohio,” O’Malley said.

O’Malley said his office is currently evaluating Pattakos’ comments “to determine if it has violated the rules of conduct for attorneys in the state of Ohio.”

Pattakos responded that O’Malley’s prosecution of his clients is “an outrageous attack on the First Amendment that sets an extremely dangerous precedent” and said it is “simply a fact” that he will have to answer for that to the public.

“The fact that he considers my saying so to be some kind of an unlawful ‘threat’ speaks additional volumes of his apparent disrespect for free speech,” Pattakos said. “Again I urge him to read the law, review the facts, and reconsider this disastrous waste of public resources his office has embarked on.”

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