New Jersey prosecutors drop charges over tweeting a cop’s photo [Updated]

Kevin Alfaro / Aurich Lawson / Getty Images

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A New Jersey man is facing felony charges for a tweet seeking to identify a police officer. Four others are facing felony charges for retweeting the tweet, the Washington Post reports.

Kevin Alfaro was attending a Black Lives Matter protest in the New York suburb of Nutley, New Jersey in June. He snapped a photo of a masked police officer and tweeted, “If anyone knows who this bitch is throw his info under this tweet.”

In a GoFundMe campaign to cover his legal fees, Alfaro explained that he had been “physically threatened” by counter-protesters during the Black Lives Matter demonstration. He was trying to identify an officer who seemed to be friends with one of the counter-protestors, who Alvarao considered a “blatant racist.”

Initially, Alfaro’s tweet got little attention. It was retweeted only a handful of times and was eventually deleted. But it caught the attention of the Nutley Police Department. In Mid-July, Alfaro and others were charged with cyber-harassment. That’s a fourth-degree felony that carries penalties of up to 18 months in prison.

“I simply retweeted because I feel that just as with anyone we should hold our officers accountable,” wrote Georgana Sziszak, one of the defendants, in a GoFundMe campaign to cover her legal fees. “I never heard of retweeting a tweet being a crime let alone a felony.”

The complaint against Sziszak claims that the tweet caused the officer to “fear that harm will come to himself, family, and property.”

“As a 20 year old that simply retweeted a tweet to help my friend, I am now at risk of giving up my career, serving time, and having a record,” Sziszak wrote.

Strong defenses available

Sziszak’s retweet is “clearly protected by the First Amendment,” said Alan Peyrouton, Sziszak’s attorney, in an interview with Ars. “I’ve never had a case like this.”

Peyrouton points out that there’s caselaw in the Third Circuit—the federal judicial circuit that encompasses New Jersey—protecting the right to photograph public officials. He also points out that there are legitimate, non-harassing reasons to seek identifying information about a police officer. For example, Alfaro could have been interested in filing a formal complaint about the officer’s conduct.

And Eric Goldman, an Internet law scholar at Santa Clara University, tells Ars that people who merely retweeted the original tweet are likely to have another legal defense available: Section 230 of the Communications Decency Act.

Section 230 is most often invoked by online service providers like Twitter to shield them against liability for user content. But Section 230 says that “no provider *or user*” of an online service can be held responsible for another person’s content. If Sziszak merely retweeted Alfaro’s post, she should

enjoy the same immunity Twitter does.

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