

THE BUFFALO NEWS

THURSDAY, MAY 15, 2008

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A Life Turned Upside Down

Steve Kurtz's art gained wide audience as FBI came knocking

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Updated: 04/26/08 8:58 AM

STEVEN KURTZ: "That's what this whole thing has been about. It hasn't been about protecting people from terrorism. It's been about protecting people from weird."

For 20 years, Steven J. Kurtz has been making art designed to illuminate issues that concern him, like his belief that the U.S. government has deliberately scared Americans with the specter of bioterrorism to make them more controllable.

By 2004, Kurtz's work had earned him standing in international art circles, and a professorship at the University at Buffalo. But few outside the art world knew his name, much less his art.

Starting on May 11, 2004, that changed. That was the day his wife, Hope, died. After Kurtz called for help, a police detective noticed petri dishes and windows blacked out with aluminum foil. The next day, moon-suited members of an FBI bioterrorism unit searched the Kurtz's College Street house.

Against his will, Kurtz was about to star in a piece of accidental performance art. As it unfolded, it would illustrate his concerns about unchecked government power to a worldwide audience a million times bigger than any gallery installation could draw.

Indicted six weeks after his wife's death, Kurtz faced federal criminal charges for almost four years before the case was dismissed Monday.



Sharon Cantillon/Buffalo News

"The whole case is a bit iconic now," said Nicola Triscott, who heads the Arts Catalyst, the British arts group that commissioned the work.

Did the U.S. government elevate Kurtz's profile as an anti-authority artist by trying to put him in prison?

"Totally," Triscott said. In 2007, the Kurtz case was the subject of a movie called "Strange Culture," with Oscar-winning actress Tilda Swinton playing Hope Kurtz.

No one in their right mind would wish the federal government to come after them, Kurtz said in December. But it has certainly been good for business, he acknowledged.

“Between January and the end of March, I have 10 visiting artists’ jobs, in addition to our exhibitions,” Kurtz said. “For all those, for doing a lecture, I get paid pretty well.”

The international arts community also has rallied to raise money for Kurtz’s legal defense. He said he is grateful for this because his legal bills have topped \$200,000 so far.

Regardless of whether the government succeeds in his case, Kurtz said in December, it already succeeded in chilling artistic endeavor in American universities.

“This is why people say artists are the canaries — we are,” Kurtz said. “Because what we deal in is doing things that are not the usual, not the routinized, not the habitual.”

He has foil on his windows because he likes to sleep late and his bedroom windows face east, Kurtz said. He had petri dishes of bacteria — routinely used by high school students in science fairs — because that’s part of his art.

He had a manuscript in progress on germ warfare because he’s criticizing it as an artist, an activity ostensibly protected by the First Amendment.

But that’s quite a dissertation to deliver to people asking questions the day you become a widower, in a time when first-aid responders and police officers are supposed to also be looking for clues to terrorist activity.

“They tell them, ‘If there’s anything weird, report it,’ ” said Kurtz. “Because probably if it’s weird, that means it’s suspicious. And if

it’s suspicious, it’s terrorism. They’ve really managed to ingrain that into people.

“That’s what this whole thing has been about. It hasn’t been about protecting people from terrorism. It’s been about protecting people from weird.”



File photo

Immersed in art

Kurtz, 49, was born in San Francisco and grew up in Australia, where his father worked for DuPont.

He met Hope at college in Texas, and they married in 1984.

Two years later, as a graduate student in Florida, he founded Critical Art Ensemble with other students appalled by the Reagan Revolution.

Carrying around signs and chanting was boring. They decided to focus on “a political agenda, not pursued by traditional activist means but through cultural means,” said Kurtz. Instead of lecturing, the idea was to immerse people “in theater, art and film that would pressure that kind of discussion to happen.”

Kurtz became an art professor at Carnegie Mellon University in Pittsburgh in 1995, and joined UB in 2002.

In 2003, the Critical Art Ensemble started planning an exhibit on germ warfare. It had been used, in the artists' opinions, to cow civilians and justify spending on military technology.

Kurtz was interested in echoing a 1950s experiment in San Francisco, where military scientists showered an unsuspecting city with bacteria to evaluate how well it spread.

To quell potential safety concerns, the artists decided to have a scientist join them. Kurtz thought of one they already had been working with for five years, a geneticist at the University of Pittsburgh named Robert Ferrell.

Facing fraud charges

In May 2004, when agents searched Kurtz's house, the FBI found no evidence of bioterrorism. After Hope Kurtz's body was examined at FBI headquarters in Quantico, Va., her death was ruled natural.

But federal authorities said they would prosecute Kurtz because such behavior could not be tolerated after the Sept. 11 terrorist attacks.

On June 29, 2004, Kurtz and Ferrell were charged with mail fraud and wire fraud.

"This case has nothing to do with artistic expression and everything to do with public safety," U. S. Attorney Michael Battle said at the time. "Regardless of the plans these two men had for these materials, we can't allow people to buy and distribute bacterial agents like this under false pretenses. It's not a case of terrorism, but it's a case of mail fraud."

Prosecutors said that when Ferrell ordered bacteria from his university's supplier, he didn't say they were for Kurtz. Transferring the bacteria violated the supplier's rules.

The supplier does not sell to individuals like Kurtz. So when Ferrell agreed to get Kurtz the bacteria, prosecutors said, that was a crime.

Each of the fraud counts against Kurtz and Ferrell could have brought them up to 20 years in federal prison and \$100,000 in fines. Since the alleged fraud was for less than \$300, the men likely faced lesser punishment.

But that was little comfort to Ferrell, a career scientist who already was fighting lymphoma. When agents started asking about the bacteria and Kurtz and his political beliefs, Ferrell told them everything.

After having a stem cell transplant, though, Ferrell wanted an end.

"I was facing serious medical problems that put a strain on me and my family," Ferrell said. "I just didn't have time for it."

After spending \$50,000 on attorneys, Ferrell agreed to plead guilty to a misdemeanor.

His colleagues "can't believe that the government has continued to pursue this," Ferrell said in January. He agreed.

"Somebody is pissed at something Steve or the CAE has written or said," Ferrell said. "And they are out to burn his [butt] over it."

Case dismissed

On Monday, Chief Judge Richard J. Arcara threw out the case against Kurtz. The ruling came on a defense motion to dismiss, which by law requires the judge to accept as true every fact the government alleges.

Despite that, Arcara wrote, "the indictment is insufficient on its face."

In plain English: What the government said happened was not a crime.

Prosecutors declined to discuss the case but are reviewing the decision and deciding whether to appeal, said Peggy McFarland, spokeswoman for the U. S. Attorney's Office.

Seeing the government's case dismissed outright in federal court is extremely rare. That happened in fewer than 1 percent of federal criminal cases nationwide in the last five years, said David Burnham, co-director of Syracuse University's Transactional Records Access Clearinghouse.

"In the five years after 9/11, the Justice Department rounded up an awful lot of people who in the end were either not charged with anything or charged with minor things," said Burnham, at TRAC's Washington office.

That's a better known story today than it was in 2004, in small part because of the Kurtz case.

"If this can happen to a professor of art, at a major university with an international artists' profile," said Triscott of Arts Catalyst, "God knows what's happening to the little guy."

For his part, Kurtz will "stay in fight mode" until the appeal deadline passes.

In the meantime, Critical Art Ensemble won the Andy Warhol Foundation's Freedom of Expression award, worth \$100,000, "so we're very well-funded," Kurtz said.

If this comes to an end, "The future is very, very bright for Steve."

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