

Observer

DART Cop Arrests Barking Dog Avi Adelman for Taking Photos at Rosa Parks Plaza

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Four decades ago, when he was 16, Philadelphia police wrote Avi Adelman a ticket for violating curfew. In all the time he's spent chasing cop cars and ambulances with his camera, in his quarter century as the Barking Dog of Lower Greenville, in the 59.85 years he's spent being Avi Adelman, that was the closest he'd ever been to the inside of a jail cell — until Tuesday night.

The evening started out innocently enough. Adelman's wife was at a meeting at their daughter's school, which left Adelman to take care of dinner. The plan was that she'd text him when she was preparing to leave, at which point he'd buy tacos from Fuel City on Riverfront Boulevard. That way, the food would still be hot when they rendezvoused back at their home in East Dallas.

Adelman arrived downtown with about an hour to kill, so he put in his earpiece and turned on a police scanner. Adelman is a semi-professional crime buff. Since 2008 he's run Daily Crime Report, which sorts Dallas police crime reports by neighborhood. He's been an enthusiastic photographer of crime scenes for even longer, snapping pictures of problem drunks and public urinators on Lower Greenville Avenue for BarkingDogs.org. He has since intensified his efforts, routinely listening in on the police scanner and chasing down train wrecks, K2 overdoses and weed busts. Adelman's repeated encounters with camera-shy first responders have led to his unlikely emergence as a quasi-respectable First Amendment activist.

In 2014 he pressured DART into removing their constitutionally questionable no-photography signs from train stations. A few months later he teamed with the National Press Photographers Association and Dallas Police Department to organize a training session instructing officers on citizens' right to photograph law enforcement. At the end of January he sat beside Houston Police Chief Charles McLelland as part of a Houston Bar Association panel on citizen photography. In between, he's spent a good deal of energy shaming, or perhaps trolling, any law enforcement officer he perceives as interfering with his picture-taking.

On Tuesday night his police scanner led him first to the Crowne Plaza Hotel, where police and paramedics were tending to a man standing in the driveway wearing a hospital robe, with an IV pole. Adelman stood what he estimates to be 35 feet away and began taking pictures — “No flash, high speed, about 1200 ASA, wide open lens.” The first responders ignored him.

Next came a call from DART's Rosa Parks Plaza for a “guy who was obviously in a catatonic state,” Adelman says, presumably the latest K2 victim. Again, Adelman stood back and began taking rapid-fire pictures.

“Some time in there, the lady — a uniformed DART police officer — comes up and says, ‘You need to leave, you can’t take pictures.’ She says ‘This is a private issue, you can’t be here.’”

Adelman disagreed. The synthetic cannabinoid user was in a public place and therefore had no reasonable expectation of privacy. And federal privacy law protecting the confidentiality of medical records doesn’t prevent bystanders from taking pictures of a medical emergency.

Adelman said the officer did not like being disagreed with and told him to leave.

“Which,” he says, “is the worst thing you can say because you’re saying the photographer has to leave but no one else does.” Generally, courts have held that a photographer has the same right to be in a public space as someone without a camera, and there were plenty of others milling about.

Adelman says the officer then demanded his ID; Adelman said he’d show it to her only if she told him if and why he was being detained. They went back and forth like this for a couple of minutes “I go, ‘Am I being detained?’ She says, ‘Yes.’ That’s when she puts me in handcuffs.”

Adelman, in what he frames as a friendly suggestion rather than a “do-you-know-who-I-am?” ego trip, suggested they call DART’s police chief. “You might want to tell him who I am before you do this,” he told them. They ignored him.

Adelman was charged with criminal trespassing. His wife, who had finally given up on Fuel City and fixed herself dinner, got his call from the jail at about 9:30 Tuesday night. She posted bond the next morning, and Adelman saw the sunlight again at about 4:30 the following afternoon.

DART spokesman Morgan Lyons said in an email that the agency has “reviewed the exchange and believes the officers acted properly.”

“Dallas Fire-Rescue asked him to move. He refused,” Lyons wrote. “Paramedics asked us to ask him to move several times. He failed to comply and that’s why he was arrested. Photography is allowed in our public spaces but we expect people to comply with the instructions of a police officer. This is especially true when paramedics tell us the actions of a photographer affect their ability to provide care.”

Adelman says that’s not true. “At no point did the firemen come to me, say anything to me, motion to me to stop taking pictures.” Dallas-Fire-Rescue spokesman Jason Evans has not responded to a message seeking clarification.

The paramedics' wishes, whatever they were, may not even matter from a legal standpoint. "There is a First Amendment right to photograph police and other government officials doing their work in public places," says Bob Corn-Revere, a Washington-based First Amendment lawyer and adjunct scholar at the Cato Institute, a libertarian think tank. "That’s sort of a baseline right."

That right ends as soon as the photography begins to interfere with official duties. The line separating a government official's annoyance with a photographer and criminal interference with public duties is a blurry one that courts evaluate on a case-by-case basis, but, Corn-Revere said, "I assume if that [interference] were the issue, that’s what [Adelman] would have been

arrested for." He added, "Quite often the charge in a case like this is one of those BS catch-and-release kind of things."

According to Corn-Revere, Adelman's arrest is reminiscent of the case of Simon Glik. In 2007 Glik was passing through Boston Common when he witnessed a trio of police officers making an arrest. He pulled out his cell phone and began recording from about 10 feet away. When officers noticed that he was filming them, they charged him with wiretapping, disturbing the peace and aiding the escape of a prisoner. Glik sued and, in 2011, the 1st U.S. Court of Appeals ruled unanimously that he had a constitutional right to record police.

The Glik ruling doesn't have any direct bearing on how local courts would treat a legal challenge to Adelman's arrest. The U.S. Supreme Court has never ruled explicitly that there's a constitutional right to film police, nor has the 5th Circuit, which sets precedent for federal courts in Texas and neighboring states. But the notions that photography is constitutionally protected speech and that speech can't be arbitrarily limited in public spaces including public transit hubs seem as though they should apply doubly to plazas named for pioneers of the civil rights movement.

The First Amendment implications of Adelman's arrest will be hashed out at a future date in a federal courtroom. For now, Adelman's looking for a good criminal defense attorney.