

Memphis Police accused of violating rights by preventing cellphone recording of their activities

Jody Callahan October 30, 2013

Twice in five days, Memphis Police officers have been accused of interfering with citizens who were using their cellphones to record police activities.

The First Amendment guarantees people the right to film public activities, civil liberties experts said Tuesday. Last November, the U.S. Supreme Court strengthened such protections when it refused to hear an appeal concerning an Illinois law that would have made it illegal to record police.

In both Memphis cases — one at a Midtown homeless shelter, the other a hip-hop gathering on South Main — those arrested were charged with disorderly conduct or obstructing a highway or passageway. Handcuffs effectively ended those recording attempts.

Civil liberties experts worry that police are using general laws to arrest people who disobey orders to put their cameras away.

“The people who are recording are winning in court. But the problem is that, out on the streets, police officers can informally order people to put their phones away or threaten them with arrest if they don’t,” said Tim Lynch, director of the criminal justice program of the Cato Institute, a Washington-based think tank.

“If they do an arrest, they come up with a charge (such as) disorderly conduct or interfering with an investigation. Those charges may be dropped over the next couple of days, but police officers have accomplished their goal of disrupting the recording.”

Hedy Weinberg, executive director of the Tennessee chapter of the American Civil Liberties Union, said, “It’s very clear that government cannot pass laws or rules prohibiting the videotaping of police officers conducting their public duties in public places.”

While Shelby County Dist. Atty. Gen. Amy Weirich generally agreed that such filming was legal, she also encouraged citizens to obey the commands of police.

“If it’s a police officer asking you not to do that, in my opinion, just do it. Just listen to them. They’re probably trying to protect the scene, control the scene,” Weirich said.

Memphis Police Department spokesman Karen Rudolph said she personally instructs officers not to attempt to deter recording. However, MPD Director Toney Armstrong confirmed that there is no policy in place, although he added that they are looking to see if one is needed.

“We have to review case law to see if there’s precedence out there,” Armstrong said.

One incident occurred Oct. 21 at Manna House, a Midtown homeless shelter. According to volunteer Ashley Moore, police came there looking for a suspect. Moore told officers they weren’t allowed in without a warrant, and began filming them. Shortly afterward, a police officer said that Moore must have a permit to film, Moore said. Moore was then arrested for obstructing a passageway or highway.

“He said the reason I was being arrested was that I was standing on the sidewalk blocking it. I was on the sidewalk, but I was not blocking it. There was plenty of room,” Moore said.

Arriving during the fracas, Paul Garner also began filming police, then asked officers for their names and badge numbers.

“I said, ‘I’m going to go over here and film your squad car number,’ and read it aloud. He told me I had to have a permit to film. I said, ‘I don’t believe so, I’m within my rights to document this,’” Garner said. “Next thing I know, he was grabbing me and telling me to put my hands on the car.”

Garner was also charged with obstructing a passageway as well as disorderly conduct. Both had their phones taken, but got them back about two days later. They said their recordings were still there. All charges were later dismissed, after both sat in jail for several hours. They have filed a complaint with MPD’s internal affairs bureau.

“I for sure had other things I wanted to do on Monday night other than sit in 201 Poplar,” Garner said.

Both Weinberg and Lynch said the officers were wrong in stating that citizens needed a permit to film.

“We don’t know if he was really mistaking what the law says on that, or whether he was just feigning some regulation to confuse a citizen,” said Lynch, who maintains a blog detailing incidents of alleged police misconduct around the country.

The second incident happened on South Main Friday night. Several witnesses said police demanded that people stop recording their attempts to disperse a hip-hop gathering following a noise complaint. Jeffrey Lichtenstein was arrested, and he has said he believes it was because he would not stop filming.

He was charged with disorderly conduct, and as of Tuesday morning, police still had his phone.

Lynch said his group and others are working to inform both citizens and police that such filming is legal.

“In our lectures and public speaking around the country, we try to tell police that this is what the law is. You have to get with it and adopt more sensible policies,” Lynch said. “The real test is whether a police officer is going to be disciplined for violating these rules, these constitutional rights. That’s the test as to whether the police department is taking seriously these rights.”