UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

AVI S. ADELMAN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO.
	§	
DALLAS AREA RAPID TRANSIT and	§	
STEPHANIE BRANCH, individually and in her	§	
official capacity as a Dallas Area Rapid Transit	§	
Police Officer,	§	
	§	
Defendants.	§	

PLAINTIFF'S COMPLAINT AND APPLICATION FOR PERMANENT INJUNCTION

Plaintiff Avi S. Adelman files this Complaint and Application for Permanent Injunction against Dallas Area Rapid Transit (DART) and Stephanie Branch, individually and in her official capacity as a DART Police Officer, and respectfully shows the Court as follows:

SUMMARY OF THE CASE

1. This case is about the constitutional rights to freedom of speech, freedom of the press, and freedom from unlawful arrest. On February 9, 2016, DART and Officer Branch violated these fundamental constitutional rights when Officer Branch arrested Avi Adelman without probable cause and jailed him overnight, all because Adelman was exercising his First Amendment right to take photographs in public.

2. Officer Branch—with the blessing of her supervisor, DART Police Sergeant T. Hutchins—used a trumped-up charge of criminal trespass to justify her unlawful arrest of Adelman. Officer Branch also justified the arrest by falsely stating that Adelman was interfering with Dallas Fire/Rescue (DFR) paramedics and that those paramedics had asked Officer Branch to move Adelman from the scene.

3. DART supported Officer Branch's false account, with its spokesman, Morgan Lyons, stating less than 24 hours after the arrest that DART had "reviewed the exchange and believes the officers acted appropriately." According to Lyons, "Dallas Fire-Rescue asked [Adelman] to move. He refused. Paramedics asked us to ask him to move several times. He failed to comply and that's why he was arrested." The evidence paints a starkly different picture from the one painted by Lyons and DART. In fact, just a few days after Lyons issued his statement, DFR spokesman Jason Evans disputed DART's account: "At no point were any requests made to ask Mr. Adelman to leave the scene and/or stop taking pictures. In addition, there were no requests made to [DART] officers to ask him to leave the scene and/or stop taking pictures."

4. Faced with these inconsistencies—and the overwhelming evidence demonstrating that the arrest and imprisonment were clear constitutional violations—DART dropped the criminal trespass charge against Adelman on February 16, 2016. Shortly after that, DART initiated an Internal Affairs investigation into Adelman's arrest. The investigation revealed that Officer Branch committed numerous violations of law and disregarded Adelman's constitutional rights. Specifically, DART concluded that Officer Branch "did not establish Probable Cause to effect the arrest" and improperly arrested Adelman while he was "simply taking photographs of a person in a public place" where he had a legal right to be present.

5. DART also concluded that Officer Branch made numerous false statements in her incident report, including her statement that DFR instructed her to keep Adelman back because he was too close to the scene. According to DART, "[t]his statement has been denied by DFR personnel and by Officers Craig and Cannon. This statement is not heard or viewed on any

video or audio recordings taken from the scene." All told, DART concluded that Officer Branch's incident report contained 23 statements that were not accurate.

6. Despite finding that one of its officers violated Adelman's constitutional rights and made 23 false statements, it is not clear that the officer has faced any consequences. Nor has DART offered to compensate or even apologize to Adelman after violating his constitutional rights, berating and humiliating him, and forcing him to spend nearly 24 hours in jail for nothing more than taking photographs in a public space. Additionally, DART has not made any policy changes and continues to enforce policies that are likely to result in future constitutional violations. In fact, while Adelman has spent the last several months attempting to resolve this matter without litigation, DART declined Adelman's request for an apology and a change in its policies and has refused even to discuss a resolution of this matter. Adelman therefore files this lawsuit.

PARTIES

7. Plaintiff Avi S. Adelman is a Texas resident. He currently resides at 5620 East Side Avenue, Dallas, Texas 75214.

8. Defendant Dallas Area Rapid Transit is a regional transportation authority created under Chapter 452 of the Texas Transportation Code and an instrumentality of the State of Texas, with its principal place of business in Dallas, Texas. DART may be served with process through its registered agent, Gary Thomas, 1401 Pacific Avenue, Suite 1700, Dallas, Texas 75202.

9. Defendant Stephanie Branch is a Texas resident and a police officer employed by DART. Because Branch is named as a defendant in her official capacity as a DART police

officer, she may be served with process through DART, 1401 Pacific Avenue, Suite 1700, Dallas, Texas 75202.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over Defendants because Officer Branch is a Texas resident and DART is a Texas transportation authority with its principal place of business in Texas.

11. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.§ 1331 because Adelman asserts claims arising under the laws of the United States.

12. Venue is proper in this district under 28 U.S.C. § 1391 because (a) Defendants reside or have a principal place of business in this district, and (b) all or a substantial part of the events giving rise to Adelman's claims occurred in this district.

FACTS

A. Avi Adelman's Background

13. Adelman is a community activist and freelance journalist. He has worked in journalism for many years, including publishing a neighborhood blog (BarkingDogs.org) and providing photographs to media outlets. He has been a professional photographer for nearly 30 years, during which time he has held a Secret Service clearance, a Dallas Police Department press credential, and a Department of Defense clearance.

14. Adelman is a member of the National Press Photographers Association (NPPA), which is an advocacy group dedicated to the advancement of visual journalism in all news media. In October 2014, he worked with NPPA to organize the first "Right to Photograph and Record in Public" program in Texas. Nearly 200 North Texas law enforcement officers attended this free program. DART declined an invitation to attend. Adelman also provided support for a similar program held in September 2015 in Pasadena, Texas, where more than 200 South Texas

law enforcement officers attended. Adelman manages the Right to Photograph in Public website, which provides information about this NPPA program on a nationwide basis.

15. Adelman was invited in January 2016 to participate in a Houston Bar Association panel on Photography in Public, sitting alongside the former Houston Police Chief and several prominent attorneys and media professionals. Additionally, Adelman currently manages the Daily Crime Report website, which publishes information from Dallas Police Department (DPD) offense reports sorted by DPD beats, and the Dallas Police Watch website, which tracks DPD Active Incidents in real time.

B. The Unconstitutional Arrest

16. On February 9, 2016, Adelman was in downtown Dallas, when he decided to listen in to his police scanner, as he often does to stay informed of police activity. Around 8:00 p.m., Adelman heard a call for DFR paramedics to respond to a K2 overdose victim at DART's Rosa Parks Plaza and decided to go to the scene. When he arrived, he noticed a man lying on the ground and being attended to by DFR paramedics. Believing that the incident might be of public interest, Adelman began to photograph the scene.

17. Shortly after Adelman began photographing, a uniformed DART police officer (whom he would later discover to be Officer Stephanie Branch) approached him and demanded that he stop taking photographs. When Adelman asserted his right to photograph, Officer Branch claimed that he was interfering with the DFR paramedics and that he was invading the privacy of the person being treated by DFR. Adelman, knowing that the Health Insurance Portability and Accountability Act (HIPPA) did not prohibit photography of medical treatment in a public place and that he was well within his constitutional rights.

18. In an effort to obstruct Adelman's exercise of his right to photograph, Officer Branch unlawfully demanded that Adelman leave the area. Adelman again informed Officer Branch of his right to remain and photograph the scene. Determined to make her point, Officer Branch escalated the situation and began demanding identification from Adelman and then used force to grab Adelman by the wrist and restrain him with double locked handcuffs.

19. While Officer Branch was harassing Adelman, her colleague, DART Officer Cannon, remained with DFR paramedics. As Officer Cannon and the DFR paramedics observed Officer Branch's confrontation with Adelman, a DART recording device captured the following conversation (memorialized in a transcript that DART turned over after the incident):

DFR 1 – He was just taking pictures right?

Officer Cannon – Yea[h] that's why I don't know why she's giving him a hard time[.]

DFR-1 – Why is she going crazy?

Officer Cannon – I don't know[,] that's going to be on her[.] [H]e can take all the pictures he wants[,] that's why I'm not getting involved in that....

DFR-1 – He knows he wasn't doing nothing wrong so. . . .

. . . .

Officer Cannon – I don't know why she \ldots .

Officer Cannon – There was no need for that[.]

DFR-2 – Yea[h] I don't know where that idea came from but this is . . . because there is freedom of the press[.]¹

20. Ultimately, Officer Branch-with consent from her supervisor, Sergeant T.

Hutchins-arrested Adelman for criminal trespass, took him into custody, and transported him to

Lew Sterrett Justice Center, where he was placed in the general jail population. Adelman posted

bond the following morning and was finally released after more than 20 hours in custody.

¹ Ex. C, DART Transcript, pp. 3-4 (alterations to correct spelling and punctuation).

C. The Aftermath and Investigation

21. In the immediate aftermath, several news outlets, including the Dallas Morning News and Dallas Observer, ran stories about the arrest. Less than 24 hours after the arrest, DART spokesman Morgan Lyons audaciously defended Officer Branch, stating that DART "reviewed the exchange and believes the officers acted appropriately."² According to Lyons, "Dallas Fire-Rescue asked [Adelman] to move. He refused. Paramedics asked us to ask him to move several times. He failed to comply and that's why he was arrested."³ DFR, however, disputed DART's version of the story: "At no point were any requests made to ask Mr. Adelman to leave the scene and/or stop taking pictures. In addition, there were no requests made to [DART] officers to ask him to leave the scene and/or stop taking pictures."⁴

22. On February 16, 2016, DART, apparently realizing that it could no longer defend the unconstitutional arrest of Adelman, dropped the criminal trespass charge.⁵ DART did not apologize or even acknowledge any wrongdoing in its letter explaining the decision to drop the charge, simply stating that Officer Branch's actions were "not in line with department directives" and that DART would undertake a formal review.⁶

23. After nearly six months, DART released the findings of its Internal Affairs investigation. DART's investigation concluded that Officer Branch violated Adelman's constitutional rights, finding that she "did not establish Probable Cause to effect the arrest" and

⁶ *Id*.

² Ex. L, Dallas Observer Article (Feb. 12, 2016), p. 3; *see also* Ex. K, Lyons Emails.

 $^{^{3}}$ Id.

⁴ Ex. M, Dallas Observer Article (Feb. 16, 2016), p. 2.

⁵ Ex. J, DART Letter.

improperly arrested Adelman while he was "simply taking photographs of a person in a public

place."⁷ The report also made the following findings and conclusions:

- "Adelman was not breaking any laws and would not lead a reasonable person to believe that he was committing a crime or had committed a crime or about to engage in a criminal crime. . . . [T]herefore the arrest of Adelman for criminal trespass was not based on probable cause."
- "Adelman is viewed simply taking photographs of a person in a public place on DART property who appeared to have passed out. Adelman is never viewed less than approximately 10 feet from the actual medical scene. Officers Cannon, Craig or DFR personnel did not witness Adelman ever interfere with medical treatment or medical personnel."
- "The evidence indicates that Officer Branch did violate the DART Administrative Employment Manual and did not refrain from activity which was illegal or could reflect negatively on DART when she made various inconsistent or mistaken statements on her DART Police [I]ncident Report . . . and made the arrest of Avi Adelman for criminal trespass."
- "The evidence indicates that Officer Branch did engage in conduct which was illegal or could reflect negatively on DART if brought to the attention of the public, could result in justified unfavorable criticism of that employee, DART or the Transit Police when she failed to gather enough articulable facts and did not establish Probable cause to effect the arrest of Adelman. Adelman was taking pictures of an emergency medical scene which was permissible according to DART's photography policy."⁸
- 24. DART also concluded that Officer Branch made numerous false statements in her

incident report, including her statement that Adelman was within a few feet of DFR paramedics and that DFR instructed her to keep Adelman back. According to DART, "[t]his statement has been denied by DFR personnel and by Officers Craig and Cannon. This statement is not heard or viewed on any video or audio recordings taken from the scene."⁹ In fact, DART concluded that Officer Branch's incident report contained 23 false statements.¹⁰

⁷ Ex. A, Report of DART Police Office of Professional Standards, pp. 4-5.

⁸ Id.

⁹ Ex. B, Inconsistencies in DART Police Report DTC1600489, p. 1.

¹⁰ *Id.* at 1-4.

D. DART's Policy Supporting the Unconstitutional Arrest

25. Although DART's after-the-fact investigation found that Officer Branch violated the law and DART policy, the unconstitutional use of criminal trespass warnings and charges is supported by DART policy. Specifically, DART policy permits its police officers to issue criminal trespass warnings if a "person is on DART's property for purposes other than to utilize public transportation services." From January to July 2016 alone, DART made 254 arrests for criminal trespass, and presumably issued numerous additional criminal trespass warnings pursuant to its policy. This policy is unconstitutional because it permits DART police officers to arrest individuals for exercising their First Amendment rights at DART transit centers. For example, the plain language of the policy would allow DART police officers to arrest a "person ... on DART's property for purposes of" taking photographs, demonstrating, or engaging in other protected speech because none of those activities are "utiliz[ing] public transportation services."

26. This is precisely how Officer Branch used DART's criminal trespass policy against Adelman. In fact, DART's Incident Report states that DART Police Sergeant H. Hutchins, who arrived on scene to assist Officer Branch, "informed Adelman again that Rosa Park Plaza was DART's Property and rights to remain or stay on the property can be issued and taken away for disruptive behavior."¹¹ Both Sergeant H. Hutchins and Sergeant T. Hutchins approved of Officer Branch's use of a trumped-up charge for criminal trespass as a means to prevent Adelman from exercising his First Amendment right to photograph.¹²

27. Apparently believing that the arrest of Adelman was consistent with DART policy, Morgan Lyons, DART's official spokesman, told the news media that DART had

¹¹ Ex. D, Incident Report, p. 10.

¹² Ex. G, H. Hutchins Statement; Ex. H, T. Hutchins Statement.

"reviewed the exchange and believes the officers acted properly."¹³ This official statement from DART came the same day DART Police Chief James Spiller instructed his Deputy Chief to "review the incident report ASAP and insure this arrest was in accordance with the guidance published for dealing with photographers."¹⁴

28. Additionally, DART has failed to train its officers regarding the First Amendment right to photograph and has failed to supervise and discipline its officers who violate that First Amendment right. At the time of the unlawful arrest of Adelman, DART apparently had no formal training for its police officers regarding photography and no mechanism for ensuring that its police officers received information about the right to photograph. In fact, Officer Branch stated that she "never received or saw the [photography] policy until 2-17-2016"—*after* she wrongfully arrested and imprisoned Adelman.¹⁵ One of the other DART officers who was at the scene also provided a statement to DART that his "knowledge of DART Policy concerning photography on DART property" comes from a "roll-call training on Monday 2/22/16"—again, *after* Adelman was wrongfully arrested and imprisoned.¹⁶

CAUSES OF ACTION

COUNT I Violation of Adelman's First and Fourteenth Amendment Rights, Pursuant to § 1983 (Against Defendant Branch)

29. Adelman incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

30. Observing and photographing emergency medical activity in public is a legitimate means of gathering information for public dissemination that is protected by the free speech and

¹³ Ex. L, Dallas Observer Article (Feb. 12, 2016), p. 3; *see also* Ex. K, Lyons Emails.

¹⁴ Ex. I, Spiller Email.

¹⁵ Ex. E, Branch Statement, p. 5.

¹⁶ Ex. F, Craig Statement, p. 2.

free press clauses of the First Amendment to the United States Constitution, as applied to the State of Texas and instrumentalities of the state such as DART under the Fourteenth Amendment.

31. On February 9, 2016, Officer Branch arrested Adelman for taking photographs in a public place. As DART's investigation confirmed, "Adelman is viewed simply taking photographs of a person in a public place."

32. Officer Branch's conduct violated Adelman's clearly established First Amendment rights, of which Officer Branch knew, or of which a reasonable police officer should have known, making her liable under 42 U.S.C. § 1983.

33. As a direct and proximate result of Officer Branch's actions, Adelman suffered damages, including mental anguish, professional injuries, and damage to his reputation.

34. Officer Branch acted with evil motive or intent and/or reckless and callous indifference to Adelman's First Amendment rights, entitling Adelman to punitive damages.

COUNT II

Violation of Adelman's Fourth and Fourteenth Amendment Rights, Pursuant to § 1983 (Against Defendant Branch)

35. Adelman incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

36. Under the Fourth Amendment to the United States Constitution, as applied to the State of Texas and instrumentalities of the state such as DART under the Fourteenth Amendment, Adelman has a right to be free from unreasonable searches and seizures, including arrest that is supported neither by a warrant nor probable cause.

37. On February 9, 2016, Officer Branch arrested Adelman without a warrant and without probable cause. As DART's investigation confirmed, Officer Branch "did not establish

Probable Cause to effect the arrest" of Adelman, and "therefore the arrest of Adelman for criminal trespass was not based on probable cause."

38. Officer Branch's conduct violated Adelman's clearly established Fourth Amendment rights, of which Officer Branch knew, or of which a reasonable police officer should have known, making her liable under 42 U.S.C. § 1983.

39. As a direct and proximate result of Officer Branch's actions, Adelman suffered damages, including mental anguish, professional injuries, and damage to his reputation.

40. Officer Branch acted with evil motive or intent and/or reckless and callous indifference to Adelman's Fourth Amendment rights, entitling Adelman to punitive damages.

COUNT III

Violation of Adelman's First, Fourth, and Fourteenth Amendment Rights, Pursuant to § 1983 and Monell v. Dept. of Soc. Servs. of the City of New York, 436 U.S. 658 (1978) (Against Defendant DART)

41. Adelman incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

42. In arresting and jailing Adelman without probable cause for taking photographs in a public place on February 9, 2016, Officer Branch violated Adelman's clearly established First, Fourth, and Fourteenth Amendment rights.

43. At all times relevant to this Complaint, Officer Branch was acting under color of state law.

44. At all times relevant to this Complaint, DART had a policy of permitting warnings and arrest for criminal trespass if a "person is on DART's property for purposes other than to utilize public transportation services." This policy was the moving force behind Officer Branch's violation of Adelman's constitutional rights, as shown by, among other things, the

invocation of the criminal trespass policy by Officer Branch's supervisor and the statement by DART's official spokesman that DART "believes the officers acted properly."

45. At the time of Adelman's arrest, DART also had failed to adequately train, supervise, or discipline its officers about the First Amendment right to photograph in public, including at DART transit locations. This failure to train, supervise, or discipline was the moving force behind Officer Branch's violation of Adelman's constitutional rights, as shown by, among other things, the statement by Officer Branch that she never saw DART's photography policy prior to her unlawful arrest of Adelman.

46. Because DART's policies and practices were the moving force behind Officer Branch's violation of Adelman's constitutional rights, DART is liable under 42 U.S.C. § 1983.

47. As a direct and proximate result of DART's unconstitutional policies and practices, Adelman suffered damages, including mental anguish, professional injuries, and damage to his reputation.

APPLICATION FOR PERMANENT INJUNCTION

48. Adelman incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

49. Adelman intends to continue acting as a freelance photographer and taking photographs of newsworthy activity in public areas at DART stations, but he fears further obstruction, harassment, and arrest by DART police officers. This makes it impossible for Adelman to engage in newsgathering and dissemination to the public of newsworthy material.

50. DART's unconstitutional policies also are likely to result in the obstruction, harassment, and arrest by DART police officers of other members of the public and the press who wish to exercise their First Amendment right to photograph at DART stations. Indeed,

DART made 254 arrests for criminal trespass from January to July 2016 pursuant to its unconstitutional policies. Moreover, DART's failure to train, supervise, and discipline its officers regarding the First Amendment right to photograph increases the likelihood of future obstruction, harassment, and arrest by DART police officers of members of the public and the press who are seeking to exercise their First Amendment right to photograph at DART stations.

51. DART's likely continued violation of the constitutional rights of Adelman and other members of the public and the press cannot be adequately compensated by monetary damages.

52. For these reasons, Adelman requests that the Court enter a permanent injunction (a) barring DART from arresting, detaining, warning, obstructing, or otherwise interfering with journalists and members of the public who are engaged in photographing or recording police or medical personnel at DART stations and transit centers; and (b) directing DART to develop and implement comprehensive and effective policies to protect the First Amendment rights of the public and the press to observe, photograph, and record police or medical personnel on DART property, including appropriate training for DART police officers and supervisors and appropriate discipline for those who violate the policy.

ATTORNEY'S FEES AND COSTS

53. Adelman has attempted to resolve this matter without litigation, but Defendants have refused. As a result, Adelman has been compelled to engage counsel and file this lawsuit. Pursuant to 42 U.S.C. § 1988, Adelman is entitled to recover from Defendants his reasonable and necessary attorney's fees and costs of court.

JURY DEMAND

54. Adelman demands a jury trial of all claims in the Complaint on which a jury trial is available.

PRAYER

Wherefore, Adelman respectfully prays that this Court grant the following relief:

- a. a monetary judgment awarding Adelman actual damages for his mental anguish, professional injuries, and damage to his reputation;
- b. an award of punitive damages against Branch;
- c. a permanent injunction against DART as described above;
- d. an award of costs and attorney's fees;
- e. pre- and post-judgment interest; and
- f. such other and further relief to which Adelman is justly entitled.

Respectfully submitted,

REESE GORDON MARKETOS LLP

By: /s/ Tyler J. Bexley

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