

LOCAL

Why most protesters arrested by Louisville police will never be convicted of a crime

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LOUISVILLE, Ky. — Sonja Wilde-de Vries was gliding on her bicycle at the front of a racial justice march when she looked behind her and saw the police.

The officers moved quickly as they approached the small group, tackling one protester before most others noticed, then grabbing another and cuffing his wrists behind his back, she said.

They stopped a vehicle that was part of the march and dragged a young woman from the passenger seat, according to video of the incident, before pulling Wilde-de Vries from her bike, her ankle getting caught in its bars.

It was May 26, nearly a year to the day since protests began over the police killing of Breonna Taylor, a 26-year-old Black woman shot by officers serving a search warrant at her apartment in March 2020.

Crowd sizes had drastically dwindled from the hundreds that previously flooded Louisville's streets, but police continued to arrest some demonstrators on charges such as blocking roadways and unlawful assembly.

Background: Black people most often charged with felonies amid Louisville protests

Between May 2020 and May 2021, law enforcement made more than 1,000 protest-related arrests with charges ranging from curfew violations to assault.

A Courier Journal review of the cases found nearly 600 have since been dismissed, including about 300 that have been expunged from defendants' records.

Defendants pleaded guilty or were found guilty in about 100 cases — or 9% of the total, with many sentenced to volunteer work.

Hundreds of cases are still making their way through the court system and may be dismissed later, while at least three have been scheduled for trials this fall.

Protesters and their lawyers say they're thankful the Jefferson County Attorney's Office dismissed most cases. But they ask why police made the arrests if the charges weren't worth prosecuting — and why they're still arresting activists months later.

"It makes no sense at all for them to have arrested as many people as they did just for simply saying we want justice for a Black woman who was unjustly killed in our community," said Johnetta Carr, who was arrested in August 2020 for obstructing a highway and disorderly conduct. Her case is scheduled for a hearing in August.

Spokespeople for the Louisville Metro Police Department and Mayor Greg Fischer declined interviews for this story.

In an emailed statement, Beth Ruoff of LMPD said the department is "always reviewing our processes and procedures for continuous improvement."

Jim Pasco, executive director of the National Fraternal Order of Police, said an officer's job is to make an arrest if a crime is committed in front of them.

"If you don't like the laws, repeal the laws," he said. "Police officers don't decide what's legal and illegal. The governing body does."

However, Timothy Zick, a professor at William & Mary Law School, said police have historically made arrests at social justice protests to clear the area, potentially violating demonstrators' constitutional rights in the process.

Several protesters, including Kentucky Rep. Attica Scott, have claimed such violations in lawsuits against individual officers and city officials.

But claims like those can take years to resolve — and they won't reverse the problems some protesters have already faced, including loss of jobs, housing or scholarships while they waited to learn the outcome of their cases.

Now, some are looking to a U.S. Department of Justice investigation to bring about reforms within the Louisville Metro Police Department, including regarding arrests.

LMPD has also proposed spending \$300,000 on an "after-action response assessment" of protest operations that could lead to policy revisions.

Justin Hansford, executive director of the Thurgood Marshall Civil Rights Center at Howard University, said there's hope in those processes. But history has shown police are rarely held accountable for their actions.

"If people were arrested, the charges were dropped, I guess that means they were innocent. So who got in trouble for arresting all these innocent people?"

Meanwhile, local police officers have voiced frustration over the number of cases dismissed.

"For there to be no repercussions and for cases to be outright dismissed sends the wrong message," said Dave Mutchler, a spokesperson for the River City Fraternal Order of Police, which represents Louisville officers.

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Arrests aren't 'no harm, no foul'

Every day for months, Lakela Duncan was at Jefferson Square Park, cooking for protesters and encouraging them to remain focused on their mission: getting justice for Taylor.

Then, around December, she heard there was a warrant out for her arrest. She went to court, where she learned she was being charged with felony rioting, stemming from an incident at the park in September.

"When I asked the judge, 'What did I do,' she said, 'You were there,'" Duncan said.

Judge Stephanie Burke placed the health care worker on home incarceration and gave her a no-contact order to stay away from the park, the center of Louisville's protest movement.

Duncan's attorney successfully petitioned to have her removed from home incarceration. But when she applied for a job, she said she was told to come back after the felony had been cleared.

"I'm just stuck out here," she said through tears. "I can't pay no bills; I can't do nothing because of a case they put on me because they wanted to."

It's a story attorneys say they've heard repeatedly as they've worked to represent protesters pro bono.

People have delayed moves, lost opportunities and worried about their futures as they've awaited court decisions, most of which have ended with volunteer service or dismissal.

Courtney Kellner, a family attorney who represents some protesters, said people involved in the court system can sometimes see dismissed charges as "no harm, no foul."

"But these arrests mean so much more to people," she said. "We've got to get into the mindset as a community and, really, as a society that any arrest is a major thing."

Black Lives Matter Louisville, a local grassroots organization, is now petitioning Commonwealth's Attorney Tom Wine to dismiss all charges that make it to circuit court.

"The harm inflicted upon our community comes from the hands of the police, not from the people protesting it," the petition states.

Rewind: Looking back at moments that have shaped the Breonna Taylor movement

Most arrests for non-violent charges

City officials have routinely said police began using force at the protests, including shooting pepper balls and throwing tear gas canisters into the crowds, to quell property damage and looting.

In federal court documents, an attorney representing the city wrote the protests had been "hijacked by those who care little for peace ... and are far more interested in their own self-interests: violently clashing with law enforcement, destroying property, injuring others, blocking roadways, setting streets ablaze, and turning what is meant to be the free exercise of speech instead into riots... And those with peaceful intent have been caught up in the middle of it all."

'They were screaming her name': How the first Louisville Breonna Taylor protest came to be

While the narrative paints a picture of destruction, few arrests were made for burglary and other violent charges, according to data from LMPD and the county attorney's office.

Of 1,030 court cases, just 24 included an assault charge, while 52 included burglary charges and another 66 had felony rioting charges.

Meanwhile, 446 cases had disorderly conduct charges, 354 had unlawful assembly charges, 254 had charges for obstructing a roadway and 248 had curfew violations.

Hansford, of Howard University, said the arrests can have a chilling effect on the protests, causing people to stay away or see the demonstrations as more violent than they are.

"I hate admitting this, but I think whatever they were trying to do worked because it slowed my participation down there," said Billy Renck, who was arrested on rioting and other charges in September. He pleaded guilty to a charge of fleeing police and was sentenced to jail time served.

Mutchler, however, said if arrests aren't made and charges prosecuted, people could be encouraged to continue engaging in criminal activity.

"It sends the wrong message that the worst that can happen is you will be arrested, but you won't be charged, it will be dismissed," he said. "Regardless of how low-level the offense may be, we have to make sure it doesn't turn into riots."

County attorney dismisses most cases

Protesters called on Jefferson County Attorney Mike O'Connell to dismiss all protest charges, but the elected official declined, choosing to review each case as his office would any other.

As protest cases piled up amid the coronavirus pandemic, O'Connell established a team of five prosecutors to lead the reviews, going through video and other evidence to determine if cases were worth pursuing.

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"As a prosecutor, I have an obligation to seek justice, not to win cases," O'Connell said in a statement. "... We have worked to review these cases in a thoughtful and consistent way, ultimately dismissing a large majority of them."

Prosecutors moved to dismiss charges for curfew violations and failure to disperse outright. But the office moved forward with some cases that involved violence, property damage or the blocking of roadways that "went beyond just a freedom of speech," said Ingrid Geiser, first assistant Jefferson County attorney.

"There were some individuals who were using this as a cover" for destructive behavior, said Josh Abner, a spokesman for the county attorney. "It's important for the community to see those individuals are held accountable and treated differently. There would have been no way to equitably and honestly do that if you had dismissed every case outright."

Hansford said the large number of dismissals shows many arrests should never have been made.

"You're supposed to be arrested for probable cause," he said. "If they're saying there's no case here, that means somebody's messed up."

But Pasco, of the National FOP, pointed the finger in the opposite direction.

"When civil disturbances in the magnitude of those that occurred in Louisville, with the ensuing economic losses and property losses, the prosecutor ought to have some better answer than not prosecuting," he said.

What happens next?

In recent months, several LMPD officers have faced punishment for actions during protests.

The U.S. Department of Justice has filed criminal charges against Officer Cory Evans for striking a protester "in the back of the head with a riot stick" while the person was kneeling in surrender.

Evans is expected to plead guilty this month and has already resigned his position.

The department is also investigating Officer Dusten Dean, who was captured on video firing pepper balls that struck TV reporter Kaitlin Rust and cameraman James Dobson.

Locally, LMPD has opened an internal investigation for an officer and a supervisor after video showed the officer repeatedly punching protester Denorver "Dee" Garrett in the head during an arrest at Jefferson Square Park.

LMPD has not named either person under investigation, but Garrett named officer Aaron Ambers in a lawsuit filed in April.

With the DOJ investigation continuing and more lawsuits outstanding, local attorneys say they expect more scrutiny to follow.

In addition to seeing officers punished, activists say they want policies that prevent police from making unnecessary arrests.

"The police have been using the judicial process to bury people for far too long," said Shameka Parrish-Wright, a prominent organizer who is running for Louisville mayor.

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Last month, Parrish-Wright filed a lawsuit against LMPD officers and officials with Rep. Scott and her daughter, Ashanti Scott, after the three were arrested on rioting charges in September.

Heather Gatnarek, a staff attorney with the American Civil Liberties Union of Kentucky, said state lawmakers should take steps to reign in criminal charges at protests.

But legislators in the last general assembly instead proposed criminalizing insults against police officers and allowing the Kentucky Attorney General to prosecute protest-related charges, including unlawful assembly.

Both measures failed.

Professor Zick said an after-action assessment, as LMPD has proposed, could point to policies and practices that need to be changed, including better training for crowd control.

Reports from other cities have shown law enforcement were unprepared for the level of protests that took place in 2020. And the events of the past year may finally serve as a "wake-up call," he said.

"Municipalities have spent a lot of money on protest settlements, and they continue to make these mistakes," Zick said. "... If we don't stop and ask these questions now, then six months from now when the next thing happens, we'll be replaying this over and over again."

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