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Sent: 6/6/2022 1:53:54 PM
To:
Cc: AshevilleNCCouncil@ashevillenc.gov
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Subject: YOUR FELONY PLAN MAY NOT FLY (ABSURD) - DROP THE CHARGES and BANS

Asheville mutual aid volunteers face 'absurd' felony littering charges, lawyer says

Sarah Honosky
Asheville Citizen Times
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ASHEVILLE â€” In the backyard of her West Asheville home in May, under a sprawling white oak tree, Sarah Norris watched her 5-year-old daughter swing while their two dogs, Callie and Omar, sat nearby.

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As the swing dipped, Norris, 42, gently warned her daughter to stay mindful of a rock embedded in the garden soil. An Asheville resident for six years, Norris is on the path to her second master's degree, studying social work at UNC Charlotte. She is a former career educator and coach to school principals and now works for a nonprofit.
Norris, who said she has never before been charged with a crime, is also now banned from all city parks and is facing a possible felony conviction for charges her lawyer, Joel Schechet, calls "absolutely absurd."

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Asheville resident Sarah Norris has been charged with felony littering following a protest in Aston Park last December.

She is one of 16 people who has been charged by the Asheville Police Department with felony littering â€” which legal experts say is rare in North Carolina â€” and other related felonies following December protests calling for sanctuary camping at Aston Park.

Number of homeless people in Asheville up 21% since 2021, unsheltered number doubles

The protests came in the wake of a string of homeless encampment clearings by APD.

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Norris is next scheduled to appear in Buncombe County District Court June 13, where Schechet expects her case will be continued, as it has been the last several months.

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Aiding those in a 'homeless crisis'

Most of the defendants, including Norris, are volunteers with a mutual aid organization, Asheville Survival Program, and part of its Streetside program, which distributes food and gear twice a week in Aston Park to anyone in need, including the city's unhoused population.

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Due to the ongoing criminal litigation, Norris and other defendants declined to comment on the protests, who was there or what material was brought.

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A photo posted on the Asheville Police Twitter page Jan. 14, 2022 with the caption: "APD Make Multiple Arrests in December Illegal Dumping Protests at Aston Park that Caused More than \$2K in Cleanup."

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The number of homeless people is up 21% since 2021 to 637 , with twice as many people who are unsheltered. This surge follows policy changes by APD in the way they remove, or clear, homeless encampments.

In February, the department officially reduced its seven-day notice ahead of encampment clearings to just 24 hours.

Frustrations from advocates and protesters increased since then, with homelessness quickly making its way to the top of City Council priorities.

It is an issue exacerbated by the pandemic, made more visible in light of a public health crisis, according to homeless advocates.

Homeless encampments have been found at various locations across the city, including the Aston Park area.

Homeless encampments have been found at various locations across the city, including the Aston Park area. Maya Carter/Asheville Citizen Times

Aston Park sits near downtown at the intersection of South French Broad and Hilliard avenues. Centrally located, it's long been home to food sharing and outreach efforts, and in 2021, was the site of several encampments and protests, all of which were eventually cleared by the city and APD.

“The arrests of the Aston Park defendants began in mid-January and have continued over several months, with another person charged with felony littering as recently as May 10, according to arrest warrants obtained by the Citizen Times.

“An encampment created by the unhoused at Aston Park in Asheville March 26, 2021.”

According to N.C. Court's felony case activity reports going back the last 10 years, there has only been one felony littering case filed in Buncombe County.

“Both the Asheville Police Department and the Buncombe County District Attorney's Office have declined repeated requests for comment on the felony littering arrests.

More: Decrease in shelter beds, increase in homelessness: Consultant named amid Asheville crisis

“It created a lot of fear for a lot of people for a long time. And that seems extremely purposeful,” Norris said. “It seems extremely targeted and designed to make us afraid.”

Though the majority of defendants, including Norris, have a felony littering charge, some are facing from one to three charges, including aiding and abetting felony littering or acting in concert to felony littering.

"We're not shy about this," said Norris. She said she talks about the arrests to her neighbors, other moms at her daughter's school, her friends and her family and is "heartened by the indignation" that she receives.

"It is such a window on what this supposedly progressive city is actually like," Norris said. It strips away the city's progressive veneer, she said, and lays bare the issues of homelessness, hunger and healthcare that mutual aid organizations are trying to meet.

“The very need for something like Streetside doesn’t allow the city to pretend to be this progressive paradise,” she said. "Like, 'come and drink beer here and everything is beautiful.' Actually, people are really suffering.”

“When asked why the city was pursuing these charges, spokesperson Kim Miller said the city "respects the right of our community to have their voices heard. However, destructive action in public parks, such as occurred in this case, will not be tolerated."

"Additionally, City staff is not aware of any other instance in the past ten years where known persons left that volume of trash on City property," Miller said.

“What is felony littering?

In North Carolina, littering is a Class I felony when it exceeds 500 pounds.

Punishment for conviction of a Class I felony can range from three to 12 months in prison.

It's a statute Schechet, the Asheville attorney representing four of the defendants, said was likely created for illegal commercial dumping, not to penalize individuals.

Based on his clients' lack of criminal history, he said if convicted, their penalty would likely be felony probation rather than jail time, as a Class I is the lowest level of felony on the books in North Carolina.

“There could also be fines associated with the conviction or various other conditions. In his 16 years of practicing law, Schechet said he's never seen a felony littering case.

This is echoed by other North Carolina attorneys, including Enrique Armijo, a professor of First Amendment and freedom of speech at Elon University School of Law and Phil Dixon, a professor with the UNC School of Government, both of whom said they had never heard of a felony littering case before those in Asheville.

“When you have laws that don’t get enforced in a while, and seem to be aimed at some other problem being used against protesters, then that always raises a concern,” Armijo said.

“Especially when, as I understand it, these cases just keep getting continued. So these folks don’t even have an opportunity to raise the kind of defenses that I’m talking about.”

Dixon questioned if this was the intended use of the statute “and if one volume of trash can be split between, say, 16 different people.

“I can’t say I’ve heard of any felony littering cases. I’m sure there’s some that have been brought in the state, and I can see it being brought against an individual where they are dumping a car in the woods, or a refrigerator, something like that “ that would strike me as an appropriate use of the statute and one contemplated by the drafters of the statute,” Dixon said.

“I’ve never heard of it being applied to protesters, no.”

“Absolutely absurd,” are the words Schechet used to describe the case of Norris and others.

“This is unique,” Schechet said. “I would contend that it is Asheville Police Department trying to silence political speech and advocacy, and that’s why these charges were ultimately brought.”

Court records for Norris, Pip Flickinger and Fern Watkins, two more of the defendants, contain little more than their arrest warrants, which state, though language varies slightly, that the defendant “(acted) in concert with others to bring more than 1,000 pounds of trash and other items to Aston Park and then leave items after departing.”

The demonstrations were held the week before Christmas, billed as “a community art build” by the protesters, and were calling for sanctuary camping for the city’s homeless population following a series of police sweeps of encampments that winter.

Aston Park protests:

Homeless advocate: ‘Urgent sort of desperation’ on Asheville streets as new camps arise

Asheville police to implement new homelessness policy following camp removals, arrests

An APD news release sent at 5 p.m. June 3 confirmed the department arrested a total of 16 people for felony littering at Aston Park, what APD said amounted to the dumping of 2,000 pounds of litter and refuse and required them to undergo a “nearly six-month-long investigation.”

A photo posted on the Asheville Police Twitter page January 14, 2022 with the caption: “APD Make Multiple Arrests in December Illegal Dumping Protests at Aston Park that Caused More than \$2K in Cleanup.”

When reached out to for comment directly, Asheville Police Chief David Zack referred to his comment in the release, which claimed the cleanup “cost taxpayers in the City of Asheville nearly \$2,700 with more than 100 man-hours, and required two dump trucks, half a dozen pickup trucks, and other heavy machinery.”

Photos posted in January on the Asheville Police twitter page show Aston Park following one of the protests “pallets leaned up on their sides bearing slogans, including “people over profit” and “community will keep us safe,” wooden chairs, an armchair and other miscellaneous items and signs.

#AVLNEWS: APD Make Multiple Arrests in December Illegal Dumping Protests at Aston Park that Caused More than \$2K in Cleanup

@WLOS_13 @foxcarolinanews @wyffnews4 @SpecNews1MTN @WSPA7 @newsradio570

9:28 PM · Jan 14, 2022

Read the full conversation on Twitter

Read 6 replies

“Six months of investigation for a \$2,600 clean up of what looks in pictures like art-based political speech seems like a pretty dramatic misuse of public resources for a department that claims to be terribly understaffed,” Norris said following the June 3 APD release.

“Not to mention the incredible costs to the city of prosecuting 16 mutual aid workers and of dealing with the ludicrous park ban appeals process.”

According to the release, of the 16 people charged, 14 face felony littering charges and 12 of those also face aid and abet charges. Two people have only been charged with felony littering, and two others only with aid and abet felony littering.

The June release follows months of requests for this information, including a public records request made by the Citizen Times March 28 for the list of everyone charged with littering associated with Aston Park for the last year, as well as arrest reports.

On May 2, the request was returned with filled with four case numbers, none of which returned results in the Asheville Police Department Police to Citizen portal.

When asked how many people the department had charged with felony littering, neither police spokesperson Samantha Booth nor Bill Davis were able to provide the information.

Buncombe County District Attorney Todd Williams declined to comment on the cases, and said he could not provide the number of individuals charged with felony littering in connection to the Aston Park protests.

"I do not comment on pending charges generally due to ethical considerations," Williams said. "In that this questions is about charges taken by APD, please contact APD for more information."

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Lost jobs, housing and access to parks

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Norris would often take her daughter with her to Streetside. They would bring a small, white plastic bookshelf, one she pulled into the backyard on the May afternoon, filled with upward of 50 books to share with those who stopped by the park for support and assistance.

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The books ranged from religion and philosophy to paperback novels. One of Norris' last memories of Streetside before her ban was someone asking for literature on Greek philosophy, and her joy at being able to pass over a copy of Plato's "Republic."
She and her daughter can't go to city parks anymore. Twelve of the defendants have been issued three-year park bans, according to Norris. Though 10 attempted to appeal those bans through a Parks and Recreation appeals process in April, according to Miller, all of the bans were upheld.

The individuals are banned from city parks under the 2017 Restricted Access to City Parks policy.

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The aim of this policy, said Miller, is to "is to provide a safe environment for City employees and the public while in a City park."

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More:Asheville proposes \$216.9M budget; includes increase to \$17/hr minimum wage for employees

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"Asheville Parks and Recreation works collaboratively with other City departments including the Asheville Police Department to make decisions that are in the best interest of all citizens," said Parks and Recreation Director D. Tyrell McGirt in an email.
None of the defendants have yet been convicted of the felonies for which they are charged.

When asked how many of these appeal hearings the city has had in previous years, Miller said Parks and Recreation does not keep a record of this.

Former Asheville Parks and Recreation Director Roderick Simmons led the department in 2017 when the policy and appeals process was created. Until then, he said there was no clear system in place for issuing park bans, and the guidelines were intended to create a standard.

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The process was set up in conjunction with APD, as the officers would likely be on the scene and able to give the parks and recreation director a recommendation, Simmons said.

In his almost 15 year tenure, no one was ever banned from city parks for littering, he said. He also said he had never heard of felony littering.

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Most park bans were because of "serious offenses," he added, like alcohol and drug violations in city parks, carrying a gun on city property or sex offenses.

He noted that the bans were often issued before someone had gone through the courts process, which always stood to be a problem.
"That's one of the key things. You can ban (someone) from a city facility. But if they go to court, and they're found not guilty, then you've got that dilemma of how do you tell the public, well, you didn't get convicted of it, but you still can't come on the property," Simmons said.

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A few of the defendants, like Norris, were also given a specific condition of their release: that they would not return to Aston Park property. If Norris were to enter most city parks, she would be subject to a misdemeanor trespass. If she were to enter Aston Park, where Streetside still continues to host its food and gear giveaways, she would be violating the terms of her bond and could go to jail.
There was no bond amount associated with her release.

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Flickinger described the Streetside set-up as "a bi-weekly picnic."

"We're talking glitter glue here," they said.
Since the felony charges, Flickinger said they were asked to resign from their job with Homeward Bound, a local nonprofit that works with the homeless population providing service and support, where they had worked since 2015 doing outreach, and managed the daytime shelter program AHOPE program for about two years.

Eleanor Ashton, spokesperson for Homeward Bound, said the nonprofit cannot discuss personnel issues per federal law.

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Flickinger's next court date is June 13.

For the defendants, it's more than a personal attack. Flickinger noted that it's intentionally targeting those who do food sharing, making it more difficult for mutual aid organizations to provide support to community members in need.

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“It feels like that’s the point,” Flickinger said. “To exhaust the movement so then if half the people in ASP can’t show up, it puts double stress on the other half of ASP.”

'Slapstick drama'

Norris has called the arrests a "harassment campaign," one exacerbated by the lengthy arrest window, now stretching five months, a convoluted Parks and Recreation hearing process and prolonged legal limbo.

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Though many of the defendants have had three or four court dates set, they have all been continued. What's more unusual, said Schechet, is that he and Martin Moore, an attorney representing several other defendants, have not yet been provided with discovery by the District Attorney's Office.

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Though they don't legally need to be provided discovery until after an indictment, he said it's "out of practice" with almost every case in the county.

On June 3, Schechet said he had been informed by the DA's office that discovery would be provided in the "near future."

Schechet was similarly frustrated with the Parks and Recreation appeals hearing, and said he felt "the decision was probably made before we entered the room ... the hearing itself was irrelevant."

The public was not permitted to attend the hearings, according to Schechet.

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He also noted that to this point, the DA's office has not offered a reduction of charges.

His clients would not necessarily accept a plea deal, Schechet said, but starting at that point "tells me that they are trying to discredit these individuals and ultimately saddle them with felonies for the rest of their lives."

After her parks and recreation appeals hearing, which lasted about 15 minutes, Norris said, **"my whole body was just shaky with the brutality of this city, and the extent to which it is just unfathomable to me that this is what the process is."**

“As a citizen of this place, it is so disturbing to me that on the say-so of any cop, like any person can just be banned."

Flickinger described some of the experience since they were charged as a "slapstick drama," an intentionally convoluted process. After receiving the park ban letter in an APD envelope, they said they were sent from the parks and recreation offices to the police department to the magistrate and back in attempts to initiate the appeal process. On first pass, most of the people they spoke with didn't seem to be familiar with the appeals process at all.

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Though Norris's arrest warrant is dated Feb. 15, she did not find out she had been charged with a felony until March 7 when she opened her mailbox and found the parks ban letter.

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The next day, she made arrangements for her daughter and self-surrendered.

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'Criminalizing mutual aid'

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Other community members have spoken out against the arrests, like Kim Hughes, who took her concerns before City Council May 24 during public comment

Hughes was also one of a group of people who worked to publicize APD's destruction of a medic zone set up for protesters in downtown Asheville during summer 2020. The destruction was captured on video “ officers stabbing water bottles and tipping over tables.

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Asheville police chief David Zack speaks with Citizen Times reporters on January 6, 2021. Maya Carter/Asheville Citizen Times
Related: Asheville Police Chief Zack apologizes for medic tent destruction, 'trauma' to volunteers.

“It’s the criminalization of people who are trying to help people,” Hughes told the Citizen Times in May. “They went after the street medics, now they’re going after the mutual aid volunteers? I mean, we’ve known for a long time that they don’t care about the homeless, but these are the people that are trying to help.”

She said news of the felony littering took APD's behavior "to a new level" in her eyes.

“It doesn’t feel like it should be Asheville or, really, any town,” Hughes said.

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Watkins, another of the defendants, said the felony charges have made everything more challenging, both in their personal life and the work they want to do for the community.

"That further diminishes our capacity to keep showing up for the larger community," Watkins said, "and that’s just sad.”

Watkins' next court date is also June 13.

In late May, Norris answered a question about how she is feeling with a shaky sigh and a long pause.

"I can say that I deeply, deeply miss being in the park with my daughter making art in the sunshine. That's a deep sadness," she said. "I am " I don't even know what word to use, I am also really sad and angry to live in a city that treats the people who live here in this way."

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Sarah Honosky is the city government reporter for the Asheville Citizen Times, part of the USA TODAY Network.Â