

Richmond Times-Dispatch

Commit any felonies lately?

By: Bart Hinkle – July 3, 2013

Elizabeth Daly went to jail over a case of bottled water.

According to the Charlottesville Daily Progress, shortly after 10 p.m. April 11, the University of Virginia student bought ice cream, cookie dough and a carton of LaCroix sparkling water from the Harris Teeter grocery store at the popular Barracks Road Shopping Center. In the parking lot, a half-dozen men and a woman approached her car, flashing some kind of badges. One jumped on the hood. Another drew a gun. Others started trying to break the windows.

Daly understandably panicked. With her roommate in the passenger seat yelling “Go, go, go!” Daly drove off, hoping to reach the nearest police station. The women dialed 911. Then a vehicle with lights and sirens pulled them over, and the situation clarified: The people who had swarmed Daly’s vehicle were plainclothes agents of the Virginia Department of Alcoholic Beverage Control. The agents had thought the sparkling water was a 12-pack of beer.

Did the ABC’s enforcers apologize? Not in the slightest. They charged Daly with three felonies: two for assaulting an officer (her vehicle had grazed two agents; neither was hurt) and one for eluding the police. Last week, the commonwealth’s attorney dropped the charges.

The agents’ excessive display of force is outrageously disproportionate to the offense they mistakenly thought they witnessed: an underage purchase of alcohol. But in a sense, Daly got off easy. A couple of weeks after her ordeal, a 61-year-old man in Tennessee was killed when the police executed a drug raid on the wrong house. A few weeks later, in another wrong-house raid, police officers killed a dog belonging to an Army veteran. These are not isolated incidents; for more information, visit the interactive map at www.cato.org/raidmap.

They are, however, part and parcel of two broader phenomena. One is the militarization of domestic law enforcement. In recent years, police departments have widely adopted military tactics, military equipment (armored personnel carriers, flash-bang grenades) — and, sometimes, the mindset of military conquerors rather than domestic peacekeepers. The other phenomenon is the increasing degree to which civilians are subject to criminal prosecution for noncriminal acts, including exercising the constitutionally protected right to free speech.

Last week, A.J. Marin was arrested in Harrisburg, Pa., for writing in chalk on the sidewalk. Marin was participating in a health care demonstration outside Gov. Tom Corbett’s residence when he wrote, “Governor Corbett has health insurance, we should too.” Authorities charged Marin with writing “a derogatory remark about the governor on the sidewalk.” The horror.

This follows the case of Jeff Olson, who chalked messages such as “Stop big banks” outside branches of Bank of America last year. Law professor Jonathan Turley reports that prosecutors brought 13 vandalism charges against him. Moreover, the judge in the case recently prohibited Olson’s attorney from “mentioning the First Amendment, free speech,” or anything like them during the trial.

In May, a Texas woman was arrested for asking to see a warrant for the arrest of her 11-year-old son. “She spent the night in jail while her son was left at home,” reports Fox34 News. The son never was arrested. Also in Texas, Justin Carter has spent months in jail — and faces eight years more — for making an admittedly atrocious joke about shooting up a school in an online chat. Though he was plainly kidding, authorities charged him with making a terrorist threat.

Federal prosecutors also recently used an anti-terrorism measure to seize almost \$70,000 from the owners of a Maryland dairy. Randy and Karen Sowers had made several bank deposits of just under \$10,000 to avoid the headache of filing federal reports required for sums over that amount. The feds charged them with unlawful “structuring.” Last week, they settled the case. Authorities kept half their money to teach them a lesson.

“I broke the law yesterday,” writes George Mason economics professor Alex Tabarrok, “and I probably will break the law tomorrow. Don’t mistake me, I have done nothing wrong. I don’t even know what laws I have broken. ... It’s hard for anyone to live today without breaking the law. Doubt me? Have you ever thrown out some junk mail that ... was addressed to someone else? That’s a violation of federal law punishable by up to five years in prison.” Tabarrok notes that lawyer Harvey Silverglate thinks the typical American commits “Three Felonies a Day” — the title of Silverglate’s book on the subject.

As The Wall Street Journal has reported, lawmakers in Washington have greatly eroded the notion of mens rea — the principle that you need criminal intent in order to commit a crime. Thanks to a proliferating number of obscure offenses, Americans now resemble the condemned souls in Jonathan Edwards’ “Sinners in the Hands of an Angry God” — spared from perdition only by the temporary forbearance of those who sit in judgment. “What once might have been considered simply a mistake,” The Journal explains, is now “punishable by jail time.” And as 20-year-old Elizabeth Daly has now learned, you can go to jail even when the person making the mistake wasn’t you.