



## **‘Lawful But Awful’ Vermont Taser Cases**

So-called “less-lethal” weapons such as Tasers have made it easier for police to “go up the use-of-force continuum ladder” (as Philadelphia Police Commissioner Charles Ramsey recently said). But it’s become harder for police to go back down the ladder and de-escalate situations. Results can be tragic. So-called “lawful but awful” cases abound, even in Vermont.

These cases can sometimes seem uniquely Vermont – they took place at a well-known private school, they involved hot tubs, soda, and beer, they occurred at a Cumberland Farms convenience store. “Lawful but awful” cases, however, can be found all around the country. Indeed, police use-of-force has become one of the most intense topics of discussion among law enforcement professionals.

Two years ago, the well-respected Police Executive Research Forum posted notice of its next “Critical Issues in Policing” forum series – “An Integrated Approach to De-Escalation and Minimizing Use of Force.” Registration requests were so heavy the organizers had to close registrations early and arrange for a standing-room-only crowd.

One of the issues identified for discussion at the forum was “Avoiding over-reliance on weapons, such as Electronic Control Weapons, as opposed to hands-on tactics and verbal skills.” This resonates in Vermont. The number of Tasers used by police in Vermont has skyrocketed over the last 10 years; nearly 40 departments now have them.

If “lawful but awful” cases are to stop, standards for the use of such powerful weapons as Tasers must change. Otherwise, Vermont will be dealing with what the Police Executive Research Forum described as “The negative impact on a police agency’s ‘legitimacy’ that can occur from a ‘lawful but awful’ event.”

What follows are incidents involving Vermont police use of Tasers in situations where Taser deployment is questionable – cases where the convenient presence of the weapon on the officer’s belt appears to have trumped recognition that the weapon can injure and even kill. The information about the cases comes from news reports, court documents, state or municipal records obtained through public records requests, and (if noted) citizen testimony submitted to public review agencies. Unlike other cases that have ended in lawsuits and settlements, none of these cases did except the first.

- **Brattleboro protestors Tased while chained to barrel, 2007.** People opposed to the development of a truck stop on Putney Road occupied the empty site in protest. Most of the protestors left after police arrived, but two protestors remained, chaining themselves to a 300-pound barrel filled with concrete and debris. Police tried to remove the protestors first with words and then with physical force but failed. Officers then pulled out their Tasers and used them in “drive stun” mode, which rather than incapacitating an individual shoots intense waves of pain throughout one’s body. The pain compliance approach worked; both protestors released themselves from the barrel and were arrested and charged with trespassing and resisting arrest. The protestors sued, alleging excessive use of force. They lost, in both the federal district and appeals courts. The appeals court judge ruled that the protestors were “actively resisting” arrest and therefore the use of Tasers was justified – despite the passive nature of the protest.
- **Dog dies after being Tased during search, 2007.** State troopers were executing a search warrant at a home in Warren after the couple who lived there was suspected of growing marijuana and arrested. When police arrived with the warrant and entered the home, only a dog was inside. “It was acting in a threatening manner,” the troopers’ barracks commander said. The troopers “believed they needed to do something to control it.” The dog was Tased, but the shock appeared to have no effect. “So it was shocked more than once” (the commander didn’t know how many times), and the dog stopped breathing. “There wasn’t any type of autopsy so we don’t know why (the dog) died,” the commander said. When the owner eventually returned home after being booked, he found the dog dead on his porch. “I haven’t even gotten a sorry from them,” the man said. (A specific provision was added to H. 225 by the House Government Operations Committee to ban Taser use on animals “unless necessary to deter vicious or aggressive animals that threaten the safety of officers or others.”)
- **Hardwick man Tased after visit to Copley Hospital ER, 2008.** A man suffering a bad reaction to anti-smoking medication was taken by ambulance to Copley Hospital in Morrisville. Anxious and irrational from the drug, he decided not to wait for treatment at the hospital’s emergency room, and left. A police officer who was at the ER watched the man leave but made no attempt to stop him. A few seconds later, though, the man was Tased, several times, in the back by the officer. The man described the pain as “excruciating.” He was initially charged with disorderly conduct, but the charge was subsequently dropped.
- **Homeless woman Tased in Barre, 2010.** A 58-year-old homeless woman with a history of mental illness was Tased by a Barre police officer after being asked to leave a convenience store parking lot. She had refused, crossing her arms in front of her chest. The officer said if she didn’t comply with his order, he would Tase her. “Give me a thrill!” the woman said. The officer fired his Taser. The woman was wearing a heavy winter coat, and the barbs of the Taser couldn’t penetrate to her skin. The woman laughed, “You got me!” The officer then rushed her, placed the Taser directly on her body, and fired the gun in “drive stun mode.” “Drive stun mode” causes pain rather than

forcing the body's muscles to freeze. The officer had to attempt the "drive stun" mode several times, resulting in both the woman and the officer on the ground – which, along with an attempted punch at the officer by the woman, led to her being charged with attempted assault. The Barre chief police defended the officer's actions: "When a person is verbally and physically demonstrating that they are not going to comply with orders, it's up to the officer to decide how they are going to get the person to comply," he said. The Barre city mayor, weighing in on the matter, agreed.

- **St. Johnsbury Academy student Tased, 2010.** A 17-year-old student at the academy was deemed "out of control," police were called, and when the student was "reportedly trying to strike the police officer in the stomach" as he was being taken into custody, he was Tased. The student was charged with attempted assault on the officer.
- **Soda bottle spraying leads to Tasing, Bradford, 2011.** Vermont State Police acted on a tip from neighbors that an adjoining apartment was being burglarized, when in reality the "burglar" was a 25-year-old woman who had her father's permission to stay in his apartment while he was away. The woman, scared, locked herself in the apartment's bathroom when she heard the troopers. The troopers "eventually made their way into the room," news reports related, where the woman sprayed a trooper in the face with soda from a bottle, and then scratched and kicked the two troopers – at which point the officers decided to Tase her. The woman was charged with assault and resisting arrest, despite her lawful presence in her father's apartment.
- **Disturbed man on Rutland roof Tased, 2012.** A man in his mid-20s, threatening to harm himself, climbed out of a second-story window of his house and onto a steeply pitched roof when police arrived on the scene after calls from neighbors. "You're not going to take me alive," he yelled, according to bystanders. The man climbed further, to the peak of the roof. Police entered the house, went upstairs, and waited for the man to reach a window where they expected him to return from the roof. The man did indeed climb around the outside of the house to the window. However, when the man tried to re-enter the house, police shot him with a Taser. The man, who hadn't yet passed through the window, collapsed on the roof. Police had to use a ladder to get him down. Taser International, the manufacturer of the weapon, warns to avoid using the device if the target "is on an elevated surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, or stair)". Such persons face serious risks of injuries if they fall, and falls are likely since the electrical shock collapses the body's muscles.
- **Newport man tackled, Tased twice by police in his own home, 2012.** Newport police received a report of a man swinging a bat next to a Lake Road address. There was no one there when officers arrived. But one of the officers, apparently familiar with the address and who lived there, hollered out the occupant's name and asked him to come outside. A man appeared and spoke with the officer. The officer smelled alcohol on the man's breath and asked him to take a breath test. The man refused and went back inside his house. The officer then followed him into his house, tackled him, and Tased

him twice. The man was charged with disorderly conduct and resisting arrest. The local state's attorney argued the officer's actions were legal because the man's resistance to being tackled and Tased amounted to disorderly conduct. The judge didn't buy that reasoning. "The police actions were not justified," he said. He threw out the charges, saying they violated the search and seizure protections under the Fourth Amendment to the U.S. Constitution and Article 11 of the Vermont Constitution.

- **Newport man "physically assaultive" during traffic stop, Tased, 2012.** A Newport man who police insisted changed places with his wife to avoid her being charged with DUI ended up Tased and charged with disorderly conduct and impeding a police officer after he got out of the car and screamed at police. The man claims that it was the officer who was assaultive; the officer poked him in the chest when he wouldn't get back in his car, a poke hard enough that the man lost his balance and threw his hands up in the air. At that point the officer grabbed him, threw him to the ground, bent his arm behind his back, and "kneed" him. "I wasn't fighting back," the man asserted. "I was pinned right there." It was then the man was Tased and put into cuffs. The officer said the Tasing was necessary "to gain control of the situation." Four officers, including one from the U.S. Border Patrol, were at the scene.
- **Elderly North Troy man suffering from dementia found after late-night drive, Tased, 2013.** A North Troy woman whose elderly husband suffered from dementia, high-blood pressure, and diabetes and was taking multiple medications, called police for help in locating him after he had gotten into his car and left their house in the middle of the night. Police found the man several miles away; he was disoriented, gripping the steering wheel of his car. When police told him to get out of the car, and he wouldn't, he was first handcuffed and then Tased. (This account was given by the woman in comments she submitted to the Attorney General's Taser review panel in March 2013. She noted in her comments that neither she nor anyone else in her family would ever again call 911 for assistance.)