

# Burlington Free Press

## St. Johnsbury police settle excessive-force lawsuit

September 27, 2006

**By Adam Silverman**  
**Free Press Staff Writer**

St. Johnsbury's police department has settled a lawsuit filed by two men who claimed officers used excessive force in subduing the pair with an electric stun gun.

Police, without admitting wrongdoing in the April 17, 2005, incident, agreed to pay \$10,000 to Jarrid McKee and Brad Libby, St. Johnsbury Town Manager Michael Welch said.

"They made an offer, and we were pleased to accept it," said David Sleigh, who represented the men in their federal lawsuit. "This was a clear case of excessive force."

The incident occurred when McKee and several friends left the Dawg House bar. McKee was drunk and was climbing into the back seat of his girlfriend's car when police Sgt. Eric Hazard approached, told McKee to get into the car if he "didn't want any trouble," and then grabbed him and threw him to the ground, according to the lawsuit.

Hazard pinned McKee and began to handcuff him when McKee "briefly protested, asserting that he had done nothing wrong," according to the lawsuit. The officer then drew a Taser stun gun and shocked McKee with 50,000 volts, reads a section in the six-page lawsuit.

Libby, meanwhile, had walked to about 25 feet from the scene and yelled repeatedly, "Jarrid didn't do anything wrong." Hazard then fired the Taser at Libby, who received the same jolt when the Taser's two-pronged projectile struck him in the chest, according to the plaintiff's allegations.

McKee spent the night in jail but faced no criminal charges; Libby was cited for interfering with an officer, but the charge later was dismissed, Sleigh said. The men had no criminal records and were not known to police, Sleigh said. The lawyer said he's never received an explanation for why the officer acted as he did.

Welch, the town manager, also said he didn't know why the officers initiated contact. St. Johnsbury's police chief did not return messages seeking comment Monday and Tuesday.

In St. Johnsbury's response to the lawsuit, filed in December in U.S. District Court in Burlington, a town attorney wrote that the police "acted in good faith and with probable cause" and were justified in their actions. The court filing did not provide more details, and the lawyers could not be reached for comment this week.

McKee and Libby formally accused the Police Department of excessive force, unlawful arrest, conspiracy, failure to prevent a violation of their civil rights, outrageous conduct, assault and battery, and false imprisonment. The men asked for compensatory and punitive damages for their pain and suffering, and sought court costs and attorney's fees.

The settlement was signed Friday.

McKee and Libby were particularly happy the case seemed to influence how St. Johnsbury police use stun guns, Sleigh said.

"It has appeared to curtail the inappropriate use of the Tasers," he said.

Welch said Selectboard members will continue to review policies regarding Tasers, which he called "a tool for police to utilize."

"This case will make them look at it a little closer," Welch said.

*Article published Nov. 27, 2009 in Rutland Herald*

## **Vt. AG pays \$40,000 to settle Taser lawsuit**

By MARK DAVIS, VALLEY NEWS

CHELSEA — The Vermont Attorney General's Office has paid \$40,000 to settle the lawsuit brought by a Fairlee man who claims he was Tasered in 2006 by state police troopers as he was having a seizure that police mistook as an attempt to resist arrest.

Lawrence Fairbrother, 57, who has been unable to work for years because of a disorder that causes sudden, random seizures, was shocked by an electric stun-gun by police who had been called to assist him with a medical problem.

The incident resulted in criminal charges that were later dropped. Fairbrother then launched a federal lawsuit in 2007 alleging excessive force.

The state police deny that they did anything wrong, Assistant Attorney General J.J. Tyzbir said in a recent interview, but agreed to the settlement to avoid the risk of trial, where a jury could have awarded a much higher amount.

"We still believe Mr. Fairbrother was not actually in the throes of a seizure," Tyzbir said. "We believe Mr. Fairbrother was actually trying to evade the officers and was resisting them and was noncompliant. But whenever you go to trial, you risk not getting a favorable outcome. This was, frankly, a business decision."

In a recent interview, Fairbrother said the money would make his daily life a little easier. Fairbrother, who lives in a camper near Lake Morey, hopes to help pay off funeral expenses for his young grandson, who, Fairbrother said, died suddenly last summer in Florida.

"It's a hard time to find (work)," Fairbrother said. "If they have a chance to hire me with seizures and a head problem, or a guy 25 years old ... ."

Court records give the following account:

On June 16, 2006, emergency personnel were called to the Fairlee home of a friend of Fairbrother's. The dispatcher told Vermont State Police troopers that Fairbrother, who had driven to the home, was having a seizure, and that he had consumed alcohol. No crime had been reported, court records show, but first responders reported Fairbrother was drunk, and asked for the police to help.

Three Vermont State Police troopers found Fairbrother flailing under a parked pickup. His medication lay on the ground and he was clawing at the

dirt and pulling himself farther under the vehicle. Troopers repeatedly asked Fairbrother to come out from under the vehicle, but Fairbrother did not emerge. Eventually, troopers dragged him out.

They pulled his left arm behind his back, but when Fairbrother, still shaking, did not respond to an order to move his right arm, Trooper Hugh O'Donnell shot him between the shoulder blades with a Taser stun gun.

"What did I do?" Fairbrother asked.

"That's what we're going to find out," one of the troopers replied.

Although they did not observe Fairbrother drive to Fairlee when his blood alcohol level was above the legal limit, authorities initially charged him with driving under the influence.

In Orange District Court in 2006, Fairbrother's public defender Kelly Green argued that all evidence should be dismissed because the use of the Taser was unjustified and represented an illegal arrest.

Judge Patricia Zimmerman agreed.

"In this case there was no indication of any public safety concern — the defendant was hiding under a vehicle," Zimmerman wrote in October 2006. "The officers spent little more than three minutes trying to determine the situation and then placed the defendant under restraints. He was not free to leave ... and the seizure was not justified by suspicion of criminal wrongdoing. Any information about criminal wrongdoing was obtained after the defendant had been seized and in the custody of the three officers."

After losing much of their evidence, prosecutors dismissed the case. Fairbrother's public defender, Kelly Green filed the federal lawsuit months later, alleging excessive force, false imprisonment and assault and batter.

"We're really happy and I hope it does send a message that Tasers can be unsafe and can be misused," Green said of the settlement in a recent interview.

Had a jury returned even a tiny judgment, it would have allowed Fairbrother to seek reimbursement for his legal fees, which could have amounted to tens of thousands of dollars.

"I have mixed thoughts," Fairbrother said. "In the long run, it saved the taxpayer money by not going to trial. It gets it over with, and they found out they were wrong."

## Seven Days

# Off Message: Vermont News and Politics

December 13, 2013

### AG Settles Lawsuit from State Police Taser Death

Posted by [Mark Davis](#) on December 13, 2013 at 12:32 PM



The Attorney General's Office has paid \$30,000 to settle a lawsuit brought by the companion of an unarmed Thetford man who died after a state trooper shot him with a Taser stun gun in 2012.

The settlement, finalized in Orange Superior Court in Chelsea, eliminates the possibility of a trial over claims filed by Theresa Davidonis, who watched her mentally ill boyfriend, Macadam Mason, die after he was shot by a trooper who had been summoned to their house to help.

"The money reflects responsibility on the part of the state police for what they did," Davidonis' attorney, Tom Costello of Brattleboro, said. "It was not for the death of Macadam, but for the emotional distress that Theresa endured; \$30,000 is an amount that's substantial and reflects a fair resolution in the case, particularly in light of the risk of taking it to a verdict."

Because she did not control his estate, Davidonis could not sue on claims related to the death of Mason. Instead, she alleged that police trespassed on her property and inflicted emotional distress on her when they fired the Taser at Mason.

"The State decided to settle this case at a relatively early stage in order to avoid the expense and disruption of litigation," Assistant Attorney General Jana Brown said in a prepared statement. "The matter was resolved with no admission of liability, and the Vermont State Police continue to support the appropriate use of TASERs as a valuable law enforcement tool."

Davidonis could not be immediately reached for comment.

Mason's mother, Rhonda Taylor of New Hampshire, had been named the administrator of his estate in the weeks after his death and was planning to pursue a lawsuit against police alleging wrongful death. However, Taylor is currently embroiled in a dispute over control of the estate with a woman who bore a child with Mason.

State Police responded to Davidonis and Mason's home on June 20, 2012, after Mason, 39, called Dartmouth-Hitchcock Medical Center and threatened to kill himself and others. Davidonis persuaded police to leave when they arrived on the scene, but they eventually returned, for reasons that have never been fully explained.

What happened next is in dispute. State Police have said that Trooper David Shaffer ordered Mason to lie on his stomach on the ground. Instead, they claim, Mason aggressively came at Shaffer with a closed fist.

Davidonis and her son, Aleks, who also witnessed the shooting, countered that Mason never threatened the troopers, instead raising up his hands in a surrender position, with his palms facing outward. They say he made two steps toward Shaffer and said, "Go ahead and shoot me."

Shaffer fired his stun gun, striking Mason in the chest. The stun gun strike caused Mason's death, the New Hampshire Medical Examiner's Office ruled.

Mason had suffered a brain seizure the night before and was in the agitated state patients often suffer — information Davidonis says she relayed to troopers in begging them to give him time to settle down. Attorney General Bill Sorrell cleared Shaffer of wrongdoing; Shaffer remains on active duty.

The Attorney General's Office has refused to release records of its investigation into the incident.



State of Vermont  
Department of Public Safety  
Vermont State Police



## **Press Release**

### **Vermont State Police Mediate Agreement with Disability Rights Vermont**

Colonel Tom L'Esperance, Director of the Vermont State Police – 802-244-7345

A.J. Ruben, Supervising Attorney, Disability Rights Vermont – 802-229-1355

Waterbury, VT – 10/21/11 – On October 11 the Vermont State Police reached an agreement with Disability Rights Vermont (DRVT), Vermont's protection and advocacy system for people with disabilities and mental health issues, regarding a change to the state police's Electronic Control Device policy, commonly known as the Taser policy. The policy revision was prompted by a complaint from the DRVT, stemming from an April 6, 2011 incident involving the tasing of a person with a disability.

The incident occurred in Northeastern, Vermont on April 6 when troopers responded to a residence at the request of developmental services and mental health professionals. A 23 year old male with disabilities including Down Syndrome, was told by his care providers that he was to be transported to a new placement, however was refusing to get dressed and accompany them out of the residence. The troopers attempted to escort the subject from the residence. In the process the subject physically pulled away from troopers and Trooper Paul Mosher deployed his Taser. Subsequently, the man was assisted into his care provider's vehicle, evaluated at the emergency room, released uninjured, and transported to the pre-arranged shelter.

As a result of the mediation and mutual agreement with the man's family, represented by DRVT, the revised state police policy will include the following changes:

- Persons with cognitive impairments will be included within "special populations", which are identified as requiring special consideration before being subjected to the use of an ECD.
- A person with cognitive impairments is an individual that the officer, based on training, experience, and other available information, perceives to be a person with a disability

detrimentally impacting their ability to communicate, move voluntarily, understand or comply with directions.

- ECD use shall be authorized if a person with a cognitive impairment has a weapon or presents an articulable, imminent risk of harm to self or others.
- If not, EDC use shall only be authorized if there are no other reasonable alternatives to maintaining safety or taking a subject into custody.
- Mandatory Interacting with People Experiencing a Mental Health Crisis training developed pursuant to Act 80 for all Vermont State Police sworn members using a taser, with a subsequent two-year recertification in Act 80 training.

"We are pleased with the outcome and the spirit of cooperation in working with the family and DRVT to create a policy that will help protect citizens with disabilities, while providing more clearly defined direction for our troopers," said Colonel Tom L'Esperance, Director of the Vermont State Police. "Our mission is to provide professional, accountable, and compassionate law enforcement services to all Vermont citizens and visitors to the State of Vermont."

"Disability Rights Vermont appreciates the willingness of the Vermont State Police to listen and positively respond to the concerns raised on behalf of the young man who was the subject of the painful taser episode. The actions taken by the state police, including the change of policy, are progress in the continuing effort to restrict the use of the taser against individuals with disabilities for non-threatening disability-related behavior. DRVT appreciates the effort put forth by the family of the young man to establish this policy change," said A.J. Ruben of Disability Rights Vermont.

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Thursday, May 08, 2008 – As ran in *Albuquerque, NM, Journal*

## Vermont Town Settles With ABQ Man Over Taser Use

Associated Press

BRATTLEBORO, Vt. — A former Brattleboro man who accused police of violating his civil rights when they stunned him with Tasers has reached an out-of-court settlement with the town.

Both sides have signed a confidentiality agreement so the details were not released.

Jeffrey Scott, who now lives in Albuquerque, accused police of violating his civil rights when they kicked in his door, dragged him from a hot tub and stunned him before arresting him on drunken driving charges on Oct. 10, 2004. Scott was also charged with resisting arrest and assaulting a police officer.

The charges were dropped after police video and audio recordings raised questions about the officers' behavior.

Scott's attorney accused police of assault and battery, negligent and intentional infliction of emotional distress and the negligent use of a Taser device.

## Shock Value: Taser use grows among Vermont police



By Justin Mason | Special to the Vermont Guardian

*Posted February 25, 2005*

BRATTLEBORO — When a wet, naked suspect refused to get out of his hot tub last fall, Brattleboro police shocked the man with a 50,000-volt Taser. The officers contend Jeffrey Scott appeared drunk and became so disobedient when they tried to take him into custody that they had to stun him.

Scott's attorney says the officers overreacted. Brattleboro Police Chief John Martin insists his officers acted appropriately.

Reports differ about exactly what happened during the October 2004 incident, including whether Scott was shot three or four times. But as a growing number of police departments in Vermont and around the country add the high-voltage stun guns to their arsenals, the incident raises questions about how and when police should use the weapons.

Many consider Taser International's new handheld device, the X26, an invaluable tool for modern law enforcers. Police say the weapon gives patrol officers the ability to tame problematic suspects without resorting to lethal force, thereby preventing potential injury or death.

**Times Argus**

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Article published Aug 29, 2007

## **Dog dies after being tasered during police search**

By Daphne Larkin Times Argus Staff

WARREN – A member of the Vermont State Police Tactical Unit, who was one of several troopers executing a search warrant at a Warren residence earlier this month, killed a dog with a Taser while attempting to gain entry to the residence, according to police.

At the Warren home police found marijuana plants and a dog they said was threatening. Police said they did not know why the dog died but it was shocked by the device more than once, they said.

Police use of Tasers, control devices which deliver a severe electrical shock, has stirred controversy over when their use is justified. Police have recently used Tasers on two peaceful Brattleboro protesters and a man with a mental condition who was dodging traffic on I-89 in Waterbury.

The dog's death was a side effect of an investigation that began after a single vehicle accident, involving driver Lindsay Stafford, 29, of Warren. The accident led police to discover that both Stafford and her husband, Thomas Stafford, 29, had warrants out for their arrest.

Police said evidence of drug use at the scene of the accident, which occurred on the morning of Aug. 9 on Airport Road, led them to obtain a search warrant for the Stafford residence. Police would not say what the evidence was specifically that led them to the home.

Both Lindsay and Thomas Stafford were taken into custody and a search warrant was obtained and executed on Aug. 9.

Thomas Stafford said he told police how to get around his dog, 7-year-old Maxamus Stafford, a black and white Staffordshire terrier, or pit bull.

Maxamus was a dog that was raised on a horse farm, lived with cats and was friendly with people, according to Stafford.

"They talked to me beforehand and I told them what to do to get into the house," said Thomas Stafford. "Then they left (the dog) for dead on my porch."

Police said they discovered 91 marijuana plants in and around the house, seized the plants and cited the couple for cultivation of more than 25 marijuana plants, a charge that carries a maximum of 15 years imprisonment or \$500,000 fine.

Trooper Scot Sawyer, who initially investigated the vehicle accident, referred

reporters' questions about the death of the dog to Lt. Paul White, who did not know all the details.

White said the dog was outside when police approached the house, and he did not know if the dog was chained or not. Thomas Stafford said he left Maxamus inside the house before he left for work that day.

"My understanding is it's a pit bull, and it was acting in a threatening manner, and troopers believed they needed to do something to control it," White said.

Only the tactical unit of the Vermont State Police uses Tasers, and they have only used them for the past year or so, White said.

"They Tased (the dog) – it produces an electrical shock – and the first shock apparently wasn't effective to stop it so it was shocked more than once" and the dog stopped breathing, White said.

White did not know how many times the dog was Tased, but he said the dog was carried into the mud room of the house, and that police informed the Staffords. Thomas Stafford said he heard from police that they didn't mean to kill the dog, but that he still has not spoken to investigating officers about the incident.

"Why wouldn't you call animal control to have the dog removed?" he said. "There was no rush to get into the house."

When asked if Tasing a dog is normal protocol, White said: "It's one of the tools that law enforcement has to control a situation. It's intended to be short of deadly force, (such as) night sticks and pepper spray...Tasers are just one more tool."

White said there are eight troopers involved in the case, and he didn't know which ones specifically executed the search warrant on the Warren home. Vermont State Police Sergeant Marc Thomas is the only trooper who is both on the tactical squad and who is involved in this case, so White deduced he must be the one who Tased the dog.

White said police do not know if the dog had a medical condition that contributed to its death.

"In this particular case with the dog, (Tasing) turned out to be lethal, and there wasn't any type of autopsy so we don't know why (the dog) died," White said.

"Losing my dog is the most important thing to me, I haven't even gotten a sorry from them," Thomas Stafford said. "They Tased and killed my dog on the way into my house; they didn't need to."

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