

http://www.reformer.com/ci_20819225/victim-alleged-police-beating-relieved-at-news-trooper?source=most_viewed

Victim of alleged police beating relieved at news of trooper's resignation

By **BOB AUDETTE / Reformer Staff**

POSTED: 06/09/2012 03:00:00 AM EDT

Saturday June 9, 2012

BRATTLEBORO -- When Kevin Farnan was told that Eric Howley recently resigned his position as a Vermont State Trooper, he experienced a sense of relief.

"It made my day when I heard that," said Farnan.

Howley, 40, of West Dover, resigned his position with the state police on May 14. According to a press release from the Vermont State Police, Howley confronted two men on the shore of Lake Raponda on April 8 and accused them of stealing his canoe, which Howley had reported as stolen to the Wilmington Police Department.

Witnesses told investigators that while speaking with the occupants of the canoe, Howley assaulted them. He was cited with two counts of simple assault and is due to appear in court in Brattleboro on June 12.

The Vermont Attorney General's Office is prosecuting the case.

In September 2005, Farnan was attending a wedding at the West Mountain Inn in Arlington. Farnan, now 37 and living in upstate New York, said he got into a shoving match with one of the groom's friends, a shoving match that turned into a brawl. The fight was broken up and Farnan said he thought it was all over, but then police showed up.

Farnan alleged Howley, fellow trooper Brian Turner and other law enforcement officers beat him with a flashlight, punched him, pepper-sprayed him while he was handcuffed and stunned him with a Taser nine times while restrained.

Farnan sustained a concussion, a fractured sinus cavity and five broken teeth. He was originally cited for resisting arrest, disorderly conduct and felony assault on police, but the prosecutor declined to pursue the case.

Farnan filed a lawsuit, and eventually settled out of court for \$135,000.

Farnan told the Reformer that during mediation prior to the settlement of his lawsuit, he thought Howley "might have felt some remorse, but if he is still out doing it ..."

Devin McLaughlin, of Langrock, Sperry and Wool, who represented Farnan in the lawsuit, was also surprised by the new allegations leveled against Howley.

"You're given a chance to correct your behavior and you don't get the lesson."

Farnan admits on that night in 2005, he did not cooperate with Howley and Trooper Brian Turner who were attempting to escort him to a police cruiser, but the troopers responded with excessive force, he said.

"Howley and Turner started beating on me," said Farnan. "It was clearly punishment."

Farnan said he was being held on the ground by two officers while two others were beating on him, and he was struggling.

"It got to the point that it was self-defense," he said. "Darn right I was squirming."

According to court documents, Turner struck Farnan in the face with his fist wrapped around a metal flashlight and Howley hit Farnan in the face with his flashlight. Farnan was then shackled and stunned with a Taser by a third officer nine times.

Farnan's claims against police were supported by witness statements and a police dashboard video that recorded the event, said McLaughlin. The video showed Farnan being hit in the head with flashlights, which is a violation of the state police's use of force policy.

"It was certainly clear to us that Trooper Howley used excessive force against Kevin," said McLaughlin. "It went well beyond what he needed to do to control the situation."

He said Farnan's injuries, which included broken facial bones and knocked-out teeth, were horrific.

"The pictures were pretty scary," said McLaughlin.

At the time of the settlement, Vermont Attorney General Bill Sorrell said Farnan's injuries were not intentional, but the state decided to pay because even if a jury awarded Farnan only a small amount of money, the state would have been forced to pay his lawyer's fees.

"They defended him so adamantly through this entire thing, as if he did no wrong, but the whole thing was caught on video," said Farnan.

Troopers Howley and Turner made no admissions of wrongdoing after the settlement.

"If I had done what they did, I would be in prison for many years," said Farnan, who said he would have been happy to have dropped the lawsuit if the two troopers had been charged with crimes.

"I would have traded the cash for them doing jail time in a heartbeat."

McLaughlin said he felt the settlement was a fair resolution for Farnan.

In these types of cases, police often fall back on a qualified immunity defense, which has two aspects, he said.

"The officer has to subjectively believe he is acting within the confines of the Constitution," said McLaughlin. "The other aspect is the belief has to be reasonable. In this case, no officer would have said the use of a deadly weapon to the head is reasonable. Because of that, we had success in this case."

Witness statements and the video were crucial in the Farnan suit, said McLaughlin, evidence he called objective and irrefutable.

"In most of these situations, the police are dealing with somebody that they have some obligation to control," said McLaughlin. "They are entitled to use reasonable force, but not excessive force."

McLaughlin was quick to point out that in his work in criminal defense attorney, the vast majority of police officers he deals with are respectful to attorneys, defendants and the legal process.

Bob Audette can be reached at raudette@reformer.com, or at [802-254-2311, ext. 160](tel:802-254-2311).