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Leash-Law Violator Takes Aim at Taser Policy

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SAN FRANCISCO (CN) - Rules governing police Taser use do not gel with 9th Circuit requirements, a lawyer said Wednesday in the battery case by a man whose ordeal stemmed from a run in the park with his dogs.

Gary Hesterberg is [suing](#) the United States for battery and false imprisonment after park ranger Sarah Cavallaro used her Taser on him in Rancho Corral de Tierra, a park near Hesterberg's home in Montara, Calif., that the Golden Gate National Recreation Area had just taken over.

The 50-year-old had been jogging with his beagle and rat terrier but leashed the latter dog only after he was approached by Cavallaro, who allegedly did not identify herself and said that she would merely warn Hesterberg about his leash-law violation.

Though Cavallaro said she would not issue Hesterberg a citation, she sought to detain Hesterberg when the fake name he gave along with his date of birth and address did not check out with dispatch.

Cavallaro grabbed Hesterberg's arm the second time he turned to go and then pulled her Taser on him. She held him at Taser-point for four minutes while she called for backup. It was when the frustrated Hesterberg turned to leave a third time that Cavallaro shot him in the back.

Hunter Bailey, deputy chief of law enforcement and policy with the National Park Service in Washington, D.C., testified Wednesday that Cavallaro followed National Park Service policy when she used her Taser on Hesterberg.

On cross-examination, Hesterberg's lawyer Michael Haddad said Bailey did not know what 9th Circuit standards applied to the legal use of a Taser in 2012.

"You're in no position to give an opinion on whether the force used was legally justified by the 9th Circuit at the time of this incident," Haddad said.

Bailey said, "I'm just here to testify that Ranger Cavallaro was following policy."

Haddad tested that statement with a hypothetical. "If Mr. Hesterberg had been a 9-year-old girl instead of a 50-year-old man, would Ranger Cavallaro have been within policy to Taser her under the totality of the circumstances?" he asked.

Bailey answered: "Sure, if she had evaluated other options."

Haddad pointed to the 9th Circuit case [Bryan v. MacPherson](#), which placed the Taser at a higher level of force. The court applied the analysis from *Graham v. Connor*, a 1989 U.S. Supreme Court case that said lower courts assessing excessive-force claims should always ask about the severity of the crime, whether the suspect presented an immediate threat to officers or others, and whether the suspect attempted to resist arrest or tried to escape.

Bailey said Hesterberg's crime was not severe and that he presented no harm to officers or others, but that he did actively resist arrest by trying to leave and pulling away from Cavallaro when she grabbed his arm.

U.S. Magistrate Judge Jacqueline Scott Corley asked Bailey if the severity of the crime could correlate to the level of resistance, noting that Hesterberg's dog-leash violation was relatively minor. "Do you take into account what they were trying to flee from?" Corley asked.

Bailey said Hesterberg had done more than just walk his dog off-leash. "You can't calculate it down to one specific thing," he said. "There are a number of things going on here."

Arguing that Cavallaro's actions passed muster with National Park Service policy, Bailey noted that Cavallaro told Hesterberg several times that he wasn't free to leave the scene and even tried grabbing him before using her Taser.

"Ranger Cavallaro did a great job," the witness testified. "She did evaluate other options but unfortunately they were not successful."

"It's not as if she went for her Taser as a first option," Bailey added.

He said Hesterberg's failure to cooperate is to blame for the situation getting out of hand. "What started as a very basic contact for a simple violation, for some reason, Mr. Hesterberg decided to escalate the contact," Bailey said.

Cavallaro's supervisors are wrong to say that she should "take no action" if someone tries to flee in the future, Bailey testified. "Technically yeah, she could have let him flee the area but I don't know of any law-enforcement agency that considers it good practice to let someone who is being uncooperative, to let someone wander off the scene on their own terms," he said.

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