

LEASH LAW VIOLATOR TASED AND CONFUSED

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The Fourth Amendment to the United States Constitution prohibits the government from engaging in any unreasonable searches or seizures of one's person or property. Accordingly, consistent with the Fourth Amendment, any stop and detention by a police officer or park ranger with arrest authority must be based upon probable cause. Probable cause exists when there is a reasonable basis and suspicion for the officer to believe that a crime has been committed. The duration of any stop and detention, however, must be reasonable, i.e., limited to the time necessary to determine whether or not a crime has been committed and either free or arrest the suspect.

Assuming the existence of probable cause for the initial stop, as illustrated by the *Hesterberg* opinion described herein, it would generally be reasonable for a police officer or park ranger to detain a suspect during the time necessary to obtain identifying information and perhaps conduct a database search for any outstanding arrest warrant. During such a period of reasonable detention, the suspect would not be free to go. Should the suspect resist or attempt to flee, consistent with the Fourth Amendment, the officer would be authorized to use reasonable force to subdue and detain the suspect.

JOLTED JOGGER

In the case of *Hesterberg v. United States of America*, 2014 U.S. Dist. LEXIS 54336 (N.Dist. Calif. 4/18/2014), an encounter between a park ranger and a jogger ultimately led to federal district court. In January 2012, a confrontation arose when a National Park Service (NPS) ranger tried to detain and question a jogger about running his dog off leash. The NPS had recently enacted a rule requiring dogs to be on leash while in Rancho Corral de Tierra, an open space area in San Mateo County. One month earlier, this space had been incorporated into the Golden Gate National Recreation Area ("GGNRA") which is managed by the NPS.

Plaintiff Gary Hesterberg, then 50 years old, was jogging in Rancho Corral de Tierra with his two small dogs, a leashed beagle and an unleashed rat terrier, when he encountered NPS park ranger, Sarah Cavallaro. Cavallaro was wearing a green uniform, boots, and a utility belt, which contained, among other things, a gun and a Taser. On her jacket was a "patch badge" that said "Park Ranger" in capital letters. Hesterberg stopped running and leashed his rat terrier "as soon as" he saw Cavallaro. Hesterberg did so because he recognized Cavallaro as a "park ranger" and had heard "talk circulating the community that this particular open space land was going to become jurisdiction of another entity and the leash laws might change."

Cavallaro noticed the leash law violation, and decided that she was "going to stop him to talk to him about his dog off leash." Cavallaro's "plan" was to give Hesterberg a verbal warning, rather than a ticket. Cavallaro understood that there was a "phase-in period" for enforcing leash law violations with citations; that is, the focus was on informing the public of the new NPS rules and issuing warnings rather than citations.

Cavallaro informed Hesterberg that his dog needed to be leashed and that she was going to give him a warning, not a citation. She then asked for Hesterberg's identifying information: name, address, and date of birth. When jogging, Hesterberg did not carry any photo identification with him, but he orally provided Cavallaro with the requested information.

Cavallaro requested the identifying information to include in the "local database" or "local file" that catalogues records of leash-law contacts for future reference to check for any outstanding warrants.

Although Hesterberg provided Cavallaro with his accurate address and date of birth, he lied to Cavallaro about his name—he said his name was "Gary Jones." Hesterberg gave a false name because he didn't want his real name to be "put on some offending, or offender list of people that had been walking their dogs without a leash."

Upon receiving the information from Hesterberg, Cavallaro radioed dispatch for verification, requesting that dispatch "run by a name and DOB verbal." Ronald Ritter, the dispatcher who received Cavallaro's transmission to, understood Cavallaro's request to mean that she "wanted to verify the identity of someone."

While Cavallaro was waiting for a "return" from dispatch, she "verbally warned" Hesterberg about the leash law violation. Cavallaro stated she still had to identify Hesterberg "in order to appropriately warn him" and add his name to the warning database. As characterized by Cavallaro, the database was useful in enforcing the leash law as follows:

Often, dog-walkers at GGNRA claim ignorance about the requirements of the applicable leash laws. The local database is a useful and important tool for Park Rangers because it creates a record of prior contacts and warnings that have been given. As a result, on future encounters, Park Rangers are able to identify persons who have previously violated the leash requirements and can take appropriate steps to impose additional sanctions, such as issuing citations and imposing an escalating schedule of monetary penalties, for persons who repeatedly violate the law.

While Cavallaro was communicating with dispatch, Hesterberg asked Cavallaro what her authority was to detain him. Hesterberg claimed Cavallaro did not respond. Hesterberg then notified Cavallaro that he was going to leave. Cavallaro responded that he was not free to go. Hesterberg nevertheless tried to leave. According to Cavallaro, Hesterberg ran fifteen to twenty feet before he heeded her verbal commands to stop. Cavallaro ran after Hesterberg. Once they both stopped, Cavallaro told Hesterberg again that she was "still waiting for information back from his dispatch and that he was not free to go" until she got that information. Hesterberg claimed he did not run away or made any movement. Moreover, Hesterberg stated he did not recall whether Cavallaro told him she was waiting for a dispatch response.

Hesterberg testified that, after being told he was not free to leave, "some tense moments [passed] during which I believe [Cavallaro] was communicating with whoever it was she was communicating with on the radio" and everybody was "essentially standing around waiting."

Around this time, dispatch informed Cavallaro that it had "several returns" and asked for a city or residence, which Cavallaro provided. Several seconds later, dispatch completed its check of Hesterberg's identifying information and relayed its conclusion to Cavallaro: "10-74 not on file for name and D.O.B.", meaning that "there is no valid California driver's license associated with the information given and that there are no outstanding warrants for a person with that identifying information." In addition, after Hesterberg's first attempt to leave, Cavallaro asked dispatch for a "second unit headed this way" and to "repeat that information."

Hesterberg then took it upon himself to advise Cavallaro that he was going to leave, and he made an effort to do so. According to Hesterberg, he only traveled "one step" before Cavallaro grabbed him on or around his arm or shoulder. Cavallaro contends, however, that Hesterberg ran fifty feet or more before she was able to grab hold of his arm and force him to stop. Both parties agree that Hesterberg "pulled away" when she tried to hold him.

As the confrontation escalated, Hesterberg asked Cavallaro questions regarding her authority, what agency she worked for, and whether he was under arrest. Hesterberg asserts that those questions were ignored and that Cavallaro continued to communicate with her radio dispatch.

Although the record is not clear on the exact sequence of the events, the parties appear to agree that Cavallaro then ordered Hesterberg to turn around and put his hands behind his back. Hesterberg refused to do so and told Cavallaro that she "hadn't given [him] [her] proper authority" and he was going to leave. During this time, Cavallaro also asked dispatch for an update on her request for backup and she was told that a unit was "enroute."

Following Hesterberg's failure to obey her orders and his statement that he was going to leave for a third time, Cavallaro upholstered her Taser and aimed it at Hesterberg. Hesterberg recognized the weapon as a Taser and told Cavallaro something to the effect of "you're going to Tase me now? Don't Tase me, because I have a heart condition."

Cavallaro recalls that she again ordered Hesterberg to turn around and put his hands behind his back. Hesterberg testified that he again asked Cavallaro the basis for her authority to detain him, and she responded "the Constitution." Cavallaro acknowledges that Hesterberg "may have been talking or asking questions" at this time, but she was focused on communicating with dispatch to relay her location information to the incoming officers. In any event, rather than put his hands behind his back as Cavallaro had ordered, Hesterberg decided again to leave.

According to Cavallaro, Hesterberg turned and started to run away from her and she ran after him in pursuit. Other witnesses, however, testified that Hesterberg walked away from Cavallaro and did not run. Within moments of Hesterberg's attempt to leave, Cavallaro deployed her Taser in dart mode, striking Hesterberg with the Taser probes in his lower back and buttock.

In "dart mode," a Taser uses compressed nitrogen to propel a pair of "probes"—aluminum darts tipped with stainless steel barbs connected to the Taser by insulated wires—toward the target at a rate of over 160 feet per second. Upon striking a person, the Taser delivers a 1200 volt, low ampere electrical charge. The electrical impulse instantly overrides the victim's central nervous

system, paralyzing the muscles throughout the body, rendering the target limp and helpless.

Hesterberg fell forward on the pavement, causing abrasions to his arm and leg. Hesterberg was tasked for one five-second cycle. He describes the experience of being Tased as "extremely violent," "very, very frightening," and a "ten" on a pain scale of one to ten.

Deputies from the San Mateo County Sheriff's Department arrived minutes later and handcuffed Hesterberg. An ambulance also arrived, but Hesterberg told the paramedics that he didn't need to go to the hospital. Hesterberg was eventually transported to San Mateo County jail in Redwood City, where he was released later that night. Hesterberg was cited for two misdemeanor crimes: California Penal Code § 148(a)(1) (resisting, delaying, or obstructing a peace officer who is engaged in the lawful performance of duties) and California Penal Code § 148.9(a) (giving a false identity to a peace officer for the purpose of avoiding proper identification).

Cavallaro also cited Hesterberg for violation of San Mateo County Ordinance § 6.04.070(a) (the leash rule), an infraction. The San Mateo County District Attorney declined to pursue any charges against Hesterberg.

Subsequently, Hesterberg filed claims against the United States under the Federal Tort Claims Act (FTCA), in part, alleging false arrest and imprisonment. In a motion for summary judgment, the federal government petitioned the federal district court to effectively dismiss Hesterberg's false arrest/imprisonment claim. In so doing, the United States contended there was no evidence that Cavallaro had "unlawfully detained or arrested" Hesterberg.

FALSE ARREST

As noted by the federal district court, federal liability under the FTCA must be based upon the "law of the State" in which the incident occurred, in this case California. Accordingly, under California law, the court found "the elements of a claim for false imprisonment are (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief."

The federal district court noted further, however, that claims of "false arrest and false imprisonment may be established by demonstrating a violation of a constitutional provision." As a result, "in determining whether a false imprisonment occurred" in a federal case, the court would apply the Fourth Amendment of the United States Constitution.

In this particular instance, the issue before the federal district court was whether Cavallaro falsely imprisoned or arrested Hesterberg. In the opinion of the court, "Cavallaro's initial seizure of Hesterberg for having his dog off leash was based on probable cause and concededly lawful."

That being said, the federal district court acknowledged "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." In particular, the court noted the "Fourth Amendment requires that the length and scope of the detention be strictly tied to and justified by the circumstances

which rendered its initiation permissible." In this specific instance, the court found "a seizure that is justified solely by the interest in issuing a warning" could become "unlawful if it is prolonged beyond the time reasonably required to complete that mission."

As described by the federal district court, "an officer's actions that prolong a detention and are unrelated to the stop's purpose violate the Fourth Amendment, even if the initial detention is based on probable cause." Further, the court found "there must be a Fourth Amendment justification" to continue or prolong a detention "for reasons unrelated to the grounds for the original detention." On the other hand, the court acknowledged "mere police questioning does not constitute a seizure."

In this particular instance, the federal government maintained that Hesterberg's detention was prolonged "for two reasons that were related to the purpose of the stop," i.e., "to verify Hesterberg's identity to include in the leash-law violator database and to run a warrants check." Accordingly, given a Fourth Amendment justification for the prolonged detention, the federal government argued that Hesterberg's false imprisonment claim must fail. The federal district court agreed.

In the opinion of the court, the "undisputed facts" established that "Cavallaro extended the detention to both verify Hesterberg's identity to include in a database of leash-law violators and to run a check of outstanding warrants." In so doing, the court noted Cavallaro's testimony that "ascertaining Hesterberg's identity and running a warrants check were all part of the same process." Specifically, additional testimony indicated that this identification and warrants check process would involve an NPS dispatcher issuing "a single query of a person's identifying information into the NPS system, which then runs a 'simultaneous' search for that person in databases for various law-enforcement agencies and the California Department of Motor Vehicles."

MISSION RELATED DETENTION

The federal district court also considered whether the prolonged detention to verify Hesterberg's identity and check for any outstanding arrest warrants "was part of her investigation of the dog leash violation." According to the court, the federal government would be entitled to summary judgment if "Cavallaro's reasons for extending Hesterberg's detention were related to the initial 'mission' of the stop," i.e., investigation of the dog leash violation.

In the opinion of the federal district court, the undisputed facts in this case compelled "a finding that Cavallaro's verification of Hesterberg's identity was part of her initial investigation of the leash law violation" and, therefore, "related to the original justification for the detention."

[O]ne of the reasons Cavallaro requested Hesterberg's name, address, and date of birth was to include the information in the "local database" or "local file" that records leash-law contacts for future reference. The goal of the database is to catalogue leash-law violators who have received an oral warning so that if they violate the same law in the future the officer will be aware of the prior warning.

Accordingly, while Cavallaro had “verbally warned” Hesterberg, an appropriate warning required Cavallaro to wait for a return call from dispatch to properly identify Hesterberg in order to place his name in the local database of leash-law violators for future enforcement use by NPS park rangers.

The federal district court, therefore concluded that “Cavallaro's continued detention of him pending verification of his identity did not violate the Fourth Amendment” because the “mission of Cavallaro's stop was not complete while Cavallaro was attempting to verify Hesterberg's identity with dispatch.” In other words, the court found “Cavallaro did not prolong the detention beyond the time reasonably required to complete Cavallaro's ‘mission’ as a matter of law.” In so doing, the court found that “the warrants check alone did not prolong the detention” because the warrants check and the identification verification were part of a “simultaneous” process. Moreover, the court found any delay in this simultaneous process was attributable to Hesterberg giving Cavallaro “false identifying information.”

CONCLUSION

The federal district court, therefore, held “Cavallaro's initial seizure of Hesterberg was undisputedly lawful” because “Hesterberg had violated the leash law in Cavallaro's presence.” Moreover, the court held the detention was prolonged for reasons related to the grounds for the original detention, i.e., identification of leash law violators for inclusion in the NPS database. Having found, “as a matter of law, the detention was not prolonged for reasons unrelated to Cavallaro's ‘mission’ in issuing the warning, the court found a sufficient “Fourth Amendment justification for continuing the stop.” As a result, the federal district court granted partial summary judgment in favor of the federal government, effectively dismissing Hesterberg’s false arrest/imprisonment claim, but not Hesterberg’s claims of negligence and assault/battery.

While the federal district court found this particular stop and detention to be constitutional, with 20/20 hindsight, I would suspect that this unfortunate incident might prompt an agency review of the authorized use of Tasers in subduing non-violent violators of park rules and regulations, including violators of the new leash law. Moreover, a review of contemporaneous media reports and commentary would suggest that the NPS use of a Taster on a recalcitrant 50-year-old dog walker was not viewed favorably in the “court of public opinion.”

Virtual visit to Rancho Corral de Tierra on YouTube:
<https://www.youtube.com/watch?v=VAS1TiHSEps>

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