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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
BEFORE THE HONORABLE C. DON CLAY, JUDGE
DEPARTMENT NO. 2

---000---

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF,)
)
 VS.)
)
 JOHANNES MEHSERLE,)
)
 DEFENDANT.)

COPY

NO. 547353

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRELIMINARY HEARING

RENÉ C. DAVIDSON COURTHOUSE
1225 FALLON STREET, OAKLAND, CALIFORNIA

WEDNESDAY, MAY 27, 2009

A-P-P-E-A-R-A-N-C-E-S

FOR THE PEOPLE: DAVID STEIN
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: MICHAEL RAINS
ATTORNEY AT LAW

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DEFENDANT JOHANNES MEHSERLE:

E X A M I N A T I O N

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIR</u>	<u>RECRS</u>	<u>V/D</u>
MARYSOL DOMENICI	600	620	710	724	
ANTHONY PIRONE	724				

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1 WEDNESDAY, MAY 27, 2009

DEPARTMENT 2

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: All right. Mr. Rains.

4 MR. RAINS: Thank you.

5 DIRECT EXAMINATION RESUMED

6 BY MR. RAINS:

7 Q. Officer Domenici, good morning.

8 A. Good morning.

9 Q. When we recessed yesterday, you were explaining, as I
10 recall, the events that were occurring as Officer Pirone had
11 gotten up from the ground, was now approaching where you were
12 standing with the individuals that you were detaining, and you
13 were describing what was occurring. And I recall during that
14 description you mentioned something about you remember seeing a
15 hand come up as if someone might be doing the pledge of
16 allegiance. Do you recall that?

17 A. Yes.

18 Q. First of all, would you demonstrate how that hand
19 came up?

20 A. From the angle I was at, I saw the hand come up this
21 way.

22 Q. So you're raising your right hand?

23 A. I'm looking -- the hand came up. I saw the back of
24 the hand like this (indicating).

25 Q. So you saw the back of the hand?

26 A. Yes.

27 Q. Do you know whose hand that was?

28 A. Yes. That was Officer Pirone's hand.

1 Q. All right. So that was Pirone's hands coming up?

2 A. Yes.

3 Q. And they were coming up in front of you?

4 A. No, in front of Grant.

5 Q. In front of Oscar Grant?

6 A. Yes.

7 Q. The gentleman who's identified up there as Grant?

8 A. Yes.

9 Q. All right. And did you see what Officer Pirone did
10 with his hand as it came up in the direction of Mr. Grant?

11 A. As the hand came up, when I saw the hand, I turned
12 towards my right towards my -- I had another threat. It was an
13 Asian male. He kept taunting me and calling me a bitch. So I
14 went -- once I saw the hand, I knew Officer Pirone would be
15 fine, and I turned and I went towards that direction.

16 Q. Okay. So you actually moved from your location?

17 A. Yes.

18 Q. About how far did you move, if you recall?

19 A. Probably here to him (indicating).

20 Q. Here to the judge?

21 A. Yes.

22 Q. That would be roughly 6 to 7 feet?

23 THE COURT: 7 feet.

24 MR. RAINS: All right.

25 Q. And when you moved to that location, what did you
26 then do?

27 A. I went towards this threat, which was the Asian male,
28 and I still kept scanning going back and forth, and I knew

1 Pirone would be fine. And I kept looking towards the Asian male
2 and that's when he threw his cell phone at me.

3 Q. The Asian male threw a cell phone at you?

4 A. Yes.

5 Q. Let me ask you, Officer Domenici. You just said you
6 knew Pirone would be fine and yet he was standing there at that
7 time with, what, four other guys, right?

8 A. Yes.

9 Q. And you still thought he'd be fine?

10 A. I knew he'd be fine because by the time I moved and I
11 was looking at the Asian male, all I saw was police uniforms
12 coming towards our direction. That's why I knew he'd be fine.

13 Q. All right. So just at that point, other police
14 officers appeared to be arriving?

15 A. Yes.

16 Q. Had you yourself got on the radio and made a request
17 for additional officers?

18 A. No, I did not.

19 Q. Do you know if Officer Pirone had, from anything you
20 heard?

21 A. I believe he did.

22 Q. All right. When you saw the other officers arriving,
23 do you recall seeing who they were or making note of that?

24 A. It was so chaotic up there. I didn't pay attention
25 to their faces. All I remember was seeing the badge and
26 uniform.

27 Q. All right. Now, the Asian male who threw the cell
28 phone at you when you moved to the location you said you did,

1 did he say anything before he threw the cell phone?

2 A. Yes. He kept calling me a fucken bitch, fucken BART
3 police. And he just kept coming back and forth taunting me,
4 coming back and forth. And then he just threw the cell phone.

5 Q. Did you -- at that time, did you know the name of
6 this individual?

7 A. No, I did not.

8 Q. Since this occurrence, have you learned the name of
9 that individual?

10 A. I believe his last name is Anicete.

11 Q. Anicete?

12 A. Yes.

13 Q. All right. When Mr. Anicete threw the cell phone at
14 you, did it hit you?

15 A. No, it did not hit me.

16 Q. Where did it go in relation to you?

17 A. I don't know what it hit. But the direction and the
18 velocity and the way he threw it at me was as if you're going to
19 throw a baseball, and I expected that to hit me across the face.
20 And I had my Taser in my left hand. And as he threw it, I
21 flinched and I turned towards my left and I expected the impact.
22 When I heard some noise of the phone shatter, I don't know what
23 it hit, what side of the pillar it hit, I just saw fragments of
24 the phone by my feet. And that's when I looked up and I
25 transitioned the Taser to my strong hand because I was going to
26 tase him.

27 Q. So at the very moment he threw the phone, Taser is in
28 your left hand; is that correct?

1 A. Yes.

2 Q. And when he throws the phone, you say you transition.
3 Meaning, you change the Taser off to your right hand?

4 A. As he threw the phone, the Taser was in my left hand.
5 And as he threw it and I saw this, I did this (indicating), and
6 I was waiting for it to hit me across the face. I was waiting
7 for the impact. When I didn't feel the impact and I just saw
8 the fragments of the phone on the ground, I looked up and that's
9 when I transitioned the Taser from my weak hand to my strong
10 hand and I pointed the Taser at him.

11 Q. All right. You just described as you moved your head
12 and you said, "I did this." And as you said this, it appeared
13 you turned your head to the left and downward; is that correct?

14 A. Yes.

15 Q. As if to sort of duck, in a way, the phone?

16 A. I did this in a sense where just impact -- I was
17 waiting for it, and I was just -- the smaller you get, the less
18 pain you feel.

19 Q. So when you transitioned as you -- to use your term
20 -- the Taser from the left hand to the right hand, did you
21 actually deploy the Taser?

22 A. No, I did not.

23 Q. How long as of January 1st, 2009, had you been
24 carrying a department Taser?

25 A. Probably, if you round it off, maybe at least a
26 month.

27 Q. About a month?

28 A. Yes.

1 Q. All right. And had you received training on how to
2 use the Taser?

3 A. Yes.

4 Q. And how many hours of training had you received, if
5 you recall?

6 A. I believe it was 10 hours.

7 Q. All right. And in the month that you had carried the
8 Taser -- strike that.

9 You transitioned to the right hand. Had you trained with
10 the Taser to use the right hand to shoot the Taser?

11 A. With the Taser, they train you to shoot it with your
12 weak hand in case you have to transition to lethal force to use
13 your firearm. And at that time, based on the incident and
14 everything that was happening around me, I wanted to make sure
15 that I hit Anicete with the Taser.

16 Q. And so you transition to your right hand. Is that
17 because your right hand is your strong hand?

18 A. Yes.

19 Q. And when you use the term strong hand in police work,
20 you mean the hand that you would pull your firearm with?

21 A. Yes.

22 Q. And you transition to the right hand. Is that
23 because you felt you were more accurate shooting the Taser with
24 the right as opposed to the left hand?

25 A. Yes. And I also -- at that time, my mentality was
26 I'm better with my right hand. I want to make sure I eliminate
27 this threat as he goes down. Because my theory, at that point,
28 if I would have used my left hand, I could miss him and then

1 there's two other guys that are with him also.

2 Q. So you made a conscious, deliberate choice to then
3 transition the Taser even though you were instructed, I guess,
4 in training to use that left hand to shoot the Taser?

5 A. Yes.

6 Q. All right. Now, did you actually -- I think we've
7 asked this. You didn't shoot the Taser, did you?

8 A. No, I did not.

9 Q. Why not?

10 A. As I had the Taser pointed at him and I was ready to
11 tase him, in the background I saw Officer Knudtson running
12 towards my direction. And as I saw him running, he was just
13 running normal, and then you can just see him get more
14 aggressive in the run and then he started dipping like a
15 football player. And that's when I knew, okay, if I tase him,
16 I'm going to hit Emery -- or Officer Knudtson. So then I just
17 held the Taser up. And then when I saw Officer Knudtson's body
18 language, that's when he took him down, and then I did not
19 assist in handcuffing him and that's when I went towards the
20 train.

21 Q. What do you remember seeing Mr. Anicete do after he
22 threw the phone at you? Did he just stand still or did he move?

23 A. No. He kept calling me a fucken bitch. Fucken BART
24 police. You don't know shit. That's fucked up. And he just
25 kept coming at me, and that's when I was going to tase him. He
26 was just really angry and upset with me.

27 Q. And when you transition the Taser from the left to
28 the right hand, did you point the Taser in his direction?

1 A. Yes, I did.

2 Q. Did that cause him to do anything?

3 A. He stopped, and he was just in that position. Just
4 -- he kept going off on me.

5 Q. He stopped his advance toward you?

6 A. Yes, he stopped advancing towards me.

7 Q. It was sometime after he stopped his advance toward
8 you that Officer Knudtson tackled him?

9 A. Yes.

10 Q. Do you remember him backing up at all between the
11 time he stopped his advance toward you and the time he was
12 tackled by Knudtson?

13 A. Yes. Because after he threw the phone at me and I
14 did this and then I transition the Taser, that's when he -- and
15 he's still going off on me, that's when he kinda stepped back a
16 little and that's when Officer Knudtson came up from behind.

17 Q. And tackled him?

18 A. Yes.

19 Q. As you saw Knudtson running toward him, if you
20 recall, I don't know if you do, were there other people that
21 were out on the platform at that time?

22 A. Yes. There were two other guys that Anicete was
23 with. People were coming off the train. There was people
24 behind Knudtson around as he's running down the platform.

25 Q. And so he had to run around people or run through
26 people to get --

27 A. He had to run straight and the people were on the
28 side coming off the train.

1 Q. So after Knudtson tackles Anicete, did you assist him
2 in handcuffing Mr. Anicete?

3 A. No, I did not.

4 Q. What did you do while Anicete is being handcuffed?

5 A. I didn't assist. After Officer Knudtson tackled him,
6 my -- again, there's threats all around us and there's only a
7 few of us at that time now. So my thing was officer safety.
8 And first thing I saw was people coming off the train. And I
9 went towards that direction and there was video cameras in my
10 face, people with their cell phones, saying, "Fucken BART
11 police. They're security guards. This is fucked up. This is
12 fucked up." And my thing was, okay, if Officer Knudtson is
13 handcuffing, I have to protect his back because now his back is
14 turned towards everybody that's on the train coming off with
15 their cell phone and cameras.

16 Q. All right. So you did see people using cell phone
17 cameras or other cameras to photograph?

18 A. Yes, because they were in my face.

19 Q. All right. So if they were in your face, did you
20 want them in your face?

21 A. No. I kept pushing people back. They kept saying to
22 me, "What's your fucken name? What's your fucken name? This is
23 fucked up." And I did respond and I said, "If you can fucken
24 read, it's Domenici."

25 Q. That was your words to them?

26 A. Yes.

27 Q. And so these folks are in your face. Were you trying
28 to get them not to photograph the goings on in any way?

1 A. No. I was keeping them back from where we were. And
2 also as I'm pushing these people back, there's a time where I
3 transition my Taser back towards my right hand and I'm pushing
4 these people back on the train and I have my Taser, and I'm
5 doing this. And then there was a gentleman, he had a white
6 shirt. I can't ID him, but he had the camera in my face, and
7 that's the one I said, "If you can read ...". And he just kept
8 coming at me, and that's when I put the Taser back and I just
9 kept pushing him back. This person kept sticking out his hand
10 and his leg. And I released the train, but it wouldn't leave.
11 People with just -- their hands kept coming out, everything, and
12 I kept pushing them back and pushing them back.

13 Q. Just a minute ago, Officer Domenici, for the record,
14 you had said that at some point in time you transition your
15 Taser back to your, I think -- and you motioned toward your left
16 hand, but you said your right hand.

17 Did you mean at some point in time after you held it in
18 your right hand as if to fire, you put it back in your left
19 hand?

20 A. Yes, because I moved forward to people to push them
21 back.

22 Q. Did you keep the Taser out when you put it back in
23 your left hand.

24 A. Yeah, I had it out, and I'm pushing people back with
25 my right. Especially that person because his camera was just in
26 my face the whole time, and I wouldn't let him come by. And N
27 Bryson kept calling him blood. And he was with that group that
28 was with Anicete on the platform. Anicete kept telling the

1 person with the white shirt with the camera in my face, he kept
2 telling him, "Blood, get back on the train. Get back on the
3 train." And that's the one I just kept pushing back and I'm
4 pushing him back like this and I had my Taser like this
5 (indicating).

6 Q. In your left hand?

7 A. Yes. And then at the point where he just kept coming
8 at me and he just kept saying, "What's your fucken name? What's
9 your fucken ..." That's when I put the Taser back and I kept
10 pushing him back, and then he just kept pushing his hands out
11 and his legs and the doors wouldn't close.

12 Q. All right. Officer Domenici, one thing. I just say
13 this, the court reporter is probably trying to take down
14 everything you're saying. I don't know how much success she's
15 having. So you're trying to describe the events, but try to go
16 slow enough so that the court reporter can capture all of it.

17 THE COURT: So far she's getting it all, Mr. Rains.
18 I'm looking at it right here.

19 MR. RAINS: That's good. She's good.

20 Q. Officer Domenici, so at this point in time you're
21 trying -- you say that you're trying to push people back in the
22 train. And did you say something about the train had been
23 cleared or something of that nature?

24 A. Yes. The train was released and it was still there.
25 I don't know how many minutes it was, but it seemed like an
26 eternity. And when the doors were trying to close, and that
27 person with the camera in my face, he just kept sticking his
28 hand out with the camera. I just kept trying to push him back

1 and he would stick his leg out. And I kept pushing him back and
2 finally there's a point where the doors finally closed and the
3 train took off.

4 Q. And who had cleared the train to leave, if you know?

5 A. I remember hearing Officer Pirone clear it, and I
6 remember clearing it as well, but it wasn't released on time.
7 It wasn't released in the quantity it should be released.

8 Q. Why wasn't it released, if you know?

9 A. I don't know.

10 Q. So the train remained there on the platform for a
11 period of time after it had been released?

12 A. Yes. I remember Officer Pirone releasing the train
13 after he off boarded Greer and the train just sat there.

14 Q. All right. Now, let me ask you this: You had seen
15 other officers arrive just as Pirone's arm was moving in toward
16 Grant and you turned, right?

17 A. Yes.

18 Q. How many officers had arrived, to the best of your
19 memory, at about that time?

20 A. I don't know how many arrived. All I remember was
21 seeing Officer Knudtson and Officer Woffinden because they were
22 in the area where I was at.

23 Q. Knudtson and Woffinden were in the area where you
24 were?

25 A. Yes.

26 Q. And you were in an area different than that where
27 Officer Pirone was?

28 A. Yes. My back was turned towards him.

1 Q. All right. At any time when you were dealing with
2 Anicete and these events had followed the arrest -- I'll use the
3 term arrest/handcuffing of Anicete -- had you turned around to
4 see what was going on behind you?

5 A. There was points where as -- with my threats and I'm
6 pushing people back, you're scanning everything. You're
7 scanning, making sure, you know, officers are okay if there's
8 other people there. And my thing, I'm just standing making sure
9 everything was good, but I just looked once. That was it.

10 Q. So you weren't able to really tell or hear what was
11 going on behind you between the officers and the individuals
12 detained against that wall?

13 A. No.

14 Q. All right. So at some point in time, did you hear
15 what sounded like a pop or a sound of a gunshot possibly?

16 A. Yes. When I was pushing people back on the train,
17 that's when I started -- people on the train kept saying, "You
18 fucken shot him," and you hear this pop. You first hear the pop
19 and then you hear people saying that. And after that sound, I
20 just looked over and then you can start -- you can smell it.
21 It's a distinct smell when you shoot your gun. And that's when
22 I realized that something had happened.

23 Q. All right. And so when you realized you smelled --
24 gun powder, I take it?

25 A. Yes.

26 Q. And when you smelled the gun powder and you realized
27 something had happened, what did you do?

28 A. I stayed where I was. I made sure people got back

1 because that's when everything -- it just got worse. It was
2 very difficult to hear what people were saying. If there was
3 radio transmission, I didn't hear anything. I kept holding my
4 ground. I kept staying, you know, there with Officer Knudtson
5 and where I was standing at. And it was very hard.

6 Q. Did people after the gunshot or this pop sound went
7 off, did people continue to yell and scream?

8 A. Yes.

9 Q. Did it stay the same level? Did it become more
10 intense and loud? Can you tell us? Do you remember?

11 A. It became more intense because this way -- again,
12 people with their cameras and their videos. They just kept
13 coming off the train. They kept saying, "That's fucked up.
14 That's fucked up. This is fucken BART police." And they wanted
15 to see. So where they were at, you can just see more people
16 coming off. And then I had to stay where I was at because --
17 again, Officer Knudtson, his back was turned. He's still
18 handcuffing.

19 And the thing was that N Bryson, he was so animated, and
20 he just kept -- he kept looking at me and calling me "Fucken
21 bitch. Fucken mom. Why don't you fucken save me?" And the
22 fact that he just kept going off -- it's like everybody, his
23 friends that were on that platform, the other two guys that were
24 with Anicete, it just got more hyped up, more hyped up. And
25 then it just got so -- it was similar to where it's so loud and
26 chaotic that you're just looking to make sure everything is
27 going how it's supposed to go. As an officer, you're making
28 sure, you're trying to control the scene and you can't. You

1 can't hear. You don't know what we're saying to each other.
2 All you're trying to do is deescalate the situation and you
3 can't. It was similar to a riot. It was bad.

4 Q. You say we're trying to hear what we're saying to
5 each other, you mean the officers that you're in proximity to?

6 A. Yes.

7 Q. All right. And you couldn't even hear what they were
8 telling you because of the loudness?

9 A. Yes.

10 Q. All right. And do you recall ever seeing Officer
11 Mehserle on the platform prior to the pop you heard or the shot?

12 A. No.

13 Q. You recall seeing him afterward?

14 A. I saw him afterwards.

15 Q. How much after the pop or the shot did you see
16 Mehserle?

17 A. I saw him after lieutenant showed up on the platform.

18 Q. So how about -- about how long after the pop was shot
19 did the lieutenant show up, if you know?

20 A. I don't know. If I had to estimate, maybe five, six
21 -- I don't know -- seven minutes.

22 Q. What was the name of the lieutenant who showed up?

23 A. There was two lieutenants, Franklin and Lieutenant
24 Ledford.

25 Q. Officer Domenici, you said yesterday that you have
26 seen the video a number of times or some of the videos that
27 captured some of the events that night. Do you recall that?

28 A. Yes.

1 Q. Thinking back about the video just for a moment, do
2 you recall in one of the videos that it appears that Anicete's
3 legs are on the ground, that as he's down on the ground and
4 hearing the shot or hearing a pop go off as Anicete is on the
5 ground, do you recall hearing or seeing that in a video?

6 A. I remember just hearing the pop sound, but I wasn't
7 paying attention to how he was on the ground.

8 Q. The reason I ask that is that you had talked about
9 the fact that Anicete got taken to the ground by Knudtson and
10 was handcuffed and there were people coming out of the train and
11 you're trying to, I get the sense, push them back on --

12 A. Yes.

13 Q. -- and all that. And I'm just wondering if you
14 remember the gunshot going off while Anicete is still laid on
15 the ground. Do you remember that or not?

16 A. No.

17 Q. Okay. And going back to the video at some point in
18 time, officer, do you recall at some point in time during the
19 video -- well, let me direct your attention to Exhibit F here.

20 In this exhibit, it appears that you are looking in the
21 direction of J Bryson. Am I right about that?

22 A. Yes.

23 Q. It appears that J Bryson has his mouth open and is
24 engaging you in some kind of discussion. Am I right about that?

25 A. Yes.

26 Q. Do you remember what was being said by him or by you
27 at this time?

28 A. He kept telling me, "This is fucked up. This is

1 fucked up." And I kept pushing him back and I kept telling him
2 to stay out of it.

3 Q. All right. Then according to Exhibit F, it appears
4 slightly to your left, Mr. Grant is standing there, correct?

5 A. Yes.

6 Q. Did Mr. Grant at all get involved in this discussion
7 you were having with Mr. Bryson at that time?

8 A. He just kept saying, "It's fucked up."

9 Q. All right. Now, at some point in the video do you
10 recall Mr. Grant's hand sort of coming up between you and J
11 Bryson as if he's stepping in?

12 A. No.

13 Q. You don't remember seeing that?

14 A. No.

15 Q. From your own independent recollection of events that
16 occurred there on the platform, roughly in the timeframe we're
17 dealing with with Exhibit F, did Mr. Grant ever, in your
18 opinion, become someone who is trying to keep the peace between
19 you and any of the other individuals?

20 A. No.

21 Q. Did he ever say anything close to, "Come on. Let's
22 all calm down and cooperate"?

23 A. No.

24 Q. Did he do anything to deescalate the actions of those
25 that he was around?

26 A. No. He made it worse. When Pirone was handcuffing
27 Greer, he tried -- kept advancing towards Tony's direction. And
28 that's when I kept pushing him multiple times to stay out of it,

1 stay out it, and he just kept telling me, "It's fucked up. It's
2 fucked up."

3 Q. Could you tell, Officer Domenici, from your dealing
4 with -- and I'm going to refer to the individual s now in
5 Exhibit F that you were in close proximity to; Grant, Reyes, J
6 Bryson, N Bryson.

7 Could you, in your dealings with any of those individuals,
8 make any determinations about their sobriety at the time you're
9 dealing with them?

10 A. No. At the time, I couldn't even assess that
11 situation if they were intoxicated or not. Because there were
12 so many threats and the fact that I couldn't focus on one, I had
13 to focus on all four of them.

14 Q. So it wasn't a situation where you had the luxury of
15 assessing, for instance, the eyes of one and smelling his breath
16 and making those kinds of individual determinations?

17 A. No. Because, again, all the threats around me and
18 around Officer Pirone, I had to keep scanning the area. I
19 didn't have time.

20 Q. Would you describe the situation that you encountered
21 on the platform that morning as scary?

22 A. Yes.

23 Q. In your years of service as a BART police officer,
24 can you think of any moment you've been more scared than you
25 were that morning?

26 A. No.

27 Q. And from the time that you first ran up the platform
28 after leaving the arrestee with the station agent, when was the

1 first time that you did not feel threatened after you first
2 arrived on the platform? Did there come a point in time where
3 no longer did you feel physically threatened?

4 A. No. Once I got on that platform and set foot on that
5 platform and I saw how many people were on the train, again,
6 first thing that came to mind is officer safety, officer safety.
7 And as I'm running, there was -- from the beginning, it wasn't
8 normal the way these people were acting, everyone on the train.
9 And from the get-go, you know, you're at high alert the whole
10 time. And then there was a point where you just became afraid
11 when you start realizing you're an officer, you have a badge,
12 you're an authority figure, and no one is listening to your
13 orders.

14 Q. There's been some testimony in this proceeding about
15 officers having what's referred to as an emergency button. Do
16 you know what that is?

17 A. Yes. It's a red button that's on the radio. And
18 when you push that button, it gives you the priority on the
19 radio, you know, if you're that officer that pushes it. In this
20 case, I did not push the button.

21 The thing is, when you push the button --

22 MR. STEIN: Objection. Nonresponsive.

23 THE COURT: Sustained.

24 BY MR. RAINS:

25 Q. Okay. Let me ask you a followup question. So you
26 described the emergency button?

27 A. Yes.

28 Q. And were you trained on how to use the emergency

1 button or when to use it?

2 A. They tell you to use the emergency button for 1199,
3 which is you need help. It's usually when you're by yourself
4 and there's nobody around you and you're getting beat up.

5 Q. Now, from your training on the use of the emergency
6 button, when an officer pushes that button, what does it do?

7 A. When it pushes the -- again, it gives that officer
8 priority over everybody else on the radio. So that way dispatch
9 knows what's -- you know, you can hear everything. So it's an
10 open mic pretty much. So once you press it, it takes 3 seconds.
11 And once you press it, it's an open mic and you can hear
12 everything around you and then that officer. Then you have so
13 many seconds to say things on there and dispatch gets this.
14 This way other officers don't cross over and the emergency comes
15 out.

16 Q. So hypothetically, Officer Mike Rains is dealing with
17 somebody alone and I'm in trouble and I decide I need help.
18 Somebody else is squawking over the radio and I can't get on the
19 radio. Do I hit the emergency button so that I can interrupt
20 what's happening and get some help?

21 A. Yes.

22 Q. By merely hitting that button, you say it takes
23 3 seconds?

24 A. You have to hold it down and then it will go off.

25 Q. So I'm in trouble and I need help and I have to hold
26 it --

27 A. You have to hold it for 3 seconds, yes.

28 Q. -- for 3 seconds?

1 A. Yes.

2 Q. Wow. So assuming I'm able to hold it down for 3.
3 seconds, that just opens up the airway?

4 A. Yes.

5 Q. It doesn't cause the troops to come running
6 automatically to where I'm standing?

7 A. No.

8 Q. So I have to, now that I've held it down for
9 3 seconds, assuming I'm still alive, I have to say something to
10 alert people who I am and where I'm at?

11 A. Yes. And if dispatch is paying attention, doing
12 their job, they'll know your location. But if you're in a
13 different location, it's your job as an officer to tell them
14 where you're at. That way, your troops respond to your
15 location.

16 Q. I think you've already said you yourself did not hit
17 that emergency or that --yeah, that emergency button that night?

18 A. I did not.

19 MR. RAINS: All right. Officer Domenici, I don't
20 think I have any other questions. Thank you.

21 THE COURT: All right. Mr. Stein, cross-examination.

22 CROSS-EXAMINATION

23 BY MR. STEIN:

24 Q. Why didn't you push that button?

25 A. I didn't push the button for the fact that it was
26 just Officer Pirone and myself. And the fact that it was us
27 two, I didn't want to override him and I can see where we were
28 at. And the fact that he put out that we needed more officers,

1 dispatch had us on camera, and you can hear the chaos in the
2 background and other officers knew that we needed help.

3 Q. How did you know that other officers knew that you
4 needed help?

5 A. Because trained -- the way we're trained, our
6 experience, when you hear -- obviously, it's New Year's Eve.
7 People are going to be intoxicated. And we knew it was going to
8 be an alert on New Year's Eve. And the fact that when Officer
9 Pirone asked for more officers, they heard the noise, they heard
10 the screaming in the background and dispatch also saw us on
11 tape.

12 Q. How do you know that other officers heard noise in
13 the background?

14 A. Because they started responding to us.

15 Q. Oh, and so you knew that before they responded?

16 A. Yes. Because being an officer, when somebody asks
17 for other officers, you can hear the background noise and that's
18 when you step it up.

19 Q. And how do you know that dispatch saw something on
20 the surveillance cameras?

21 A. Because they were telling our officers.

22 Q. What were they telling them?

23 A. They were telling them that there were a lot of
24 people on the platform.

25 Q. You heard that?

26 A. Yes.

27 Q. You heard that before you went on the platform?

28 A. No, when Officer Pirone asked for more officers.

- 1 Q. And when was that?
- 2 A. When we were up there.
- 3 Q. When during the time you were up there?
- 4 A. When -- after Officer Pirone took Greer off the
5 train.
- 6 Q. How much time after that?
- 7 A. I don't know.
- 8 Q. Was it before the shot?
- 9 A. It was before the shot, yes.
- 10 Q. And what did you hear? You said you heard Officer
11 Pirone call for more officers. What did you hear?
- 12 A. Exactly what you just said. He called for more
13 officers.
- 14 Q. You heard that on the radio?
- 15 A. Yes.
- 16 Q. How long have you been an officer?
- 17 A. A little over four and a half years.
- 18 Q. And you are a defensive tactics instructor; is that
19 right?
- 20 A. Yes.
- 21 Q. Are you right-handed?
- 22 A. Yes, I am.
- 23 Q. In this photograph, Defense Exhibit F, you seem to be
24 pointing with your right hand; is that correct?
- 25 A. Yes.
- 26 Q. Did you know whether any of these people had guns
27 when you were doing that?
- 28 A. No.

1 Q. In fact, you thought that there's a high probability
2 that they may have, right? Given the calls, New Year's Eve,
3 officer safety, all of that, that's what you assumed, right?

4 A. You assume, yes.

5 Q. As a defense tactics instructor, are you ever
6 instructing officers that in such a situation when you're
7 dealing with people who may have a gun, it's not very smart to
8 put your strong arm out in front of them, because if they were
9 to grab it, then you wouldn't be able to grab your gun?

10 A. In that situation, I just pushed them back. And
11 there's techniques also if you use your strong lead forward.

12 Q. But my question is: Do you teach that when you're
13 dealing with suspects in this situation, that you should never
14 put your strong arm forward for fear that they may grab it so
15 that you can't get your gun? Isn't that what you teach?

16 A. It varies on the situation scenario that you're put
17 in.

18 Q. What about this situation?

19 A. In this situation, I'm just pushing J Bryson back.

20 Q. And he could have grabbed your right hand, could he
21 not?

22 A. Yes.

23 Q. And any one of those three individuals standing could
24 have grabbed your right hand at that point, couldn't they?

25 A. Yes. But I was also instructing them to sit down.

26 Q. But they weren't obeying your instructions to sit
27 down.

28 A. No.

1 Q. Were you not afraid that maybe one of them could grab
2 your strong arm and prevent you from getting your firearm? Were
3 you not concerned about that?

4 A. No.

5 Q. Not at that time?

6 A. Not at that time.

7 Q. You have given a number of statements to
8 investigators in connection with this incident; isn't that true?

9 A. Yes.

10 Q. The first interview you gave was on the morning of
11 the 1st, 2009, and you gave that interview to a Detective Smith
12 and a Detective Carter, true?

13 A. Yes.

14 Q. And then about six days later, you gave a second
15 interview and that was also at the Lake Merritt station, and you
16 gave that interview to Detective Smith and Detective Carter; is
17 that right?

18 A. Yes.

19 Q. And then you gave a third interview; is that correct?

20 A. Yes.

21 Q. That was on or about March 7th of 2009, correct?

22 A. Yes.

23 Q. And who was present for that interview?

24 A. Allison Berry-Wilkinson, Sergeant Fueng and
25 Lieutenant Alkire.

26 Q. Who is Allison Berry-Wilkinson?

27 A. She's my representative.

28 Q. I'm sorry?

1 A. She's my representative.

2 Q. She's your attorney?

3 A. Yes.

4 Q. And is your attorney here today?

5 A. Yes, she is.

6 Q. And where was that interview held?

7 A. It was held in her office.

8 Q. Have you described these events in any type of
9 written report?

10 A. No.

11 Q. Other than these three interviews that I've referred
12 to, have you given any other interviews concerning the events
13 that took place in the early morning hours of January 1st, 2009?

14 A. No.

15 Q. In those interviews, at any time did you ever
16 exaggerate the conduct of those people on the platform so as to
17 make it appear that you were in more danger than you in fact
18 were?

19 A. No.

20 Q. At any time during any of those statements or your
21 testimony here, did you ever exaggerate the conduct of those on
22 the platform so as to make it appear that your fellow officers
23 were in more danger than they actually were?

24 A. No.

25 Q. When were you first notified that you would be needed
26 to testify in this matter?

27 A. Probably a month maybe afterwards.

28 Q. And who notified you?

1 A. My lawyer.

2 Q. And that was Ms. Berry-Wilkinson?

3 A. Yes.

4 Q. Have you met Mr. Rains before coming to court?

5 A. No.

6 Q. Have you had the occasion to speak with fellow
7 officers about the events that took place the night of the
8 incident prior to coming to court today?

9 A. No.

10 Q. Not at all?

11 A. No.

12 Q. Have you spoken to any officers who were on the
13 platform since this occurred?

14 A. I've spoken to them, and we pretty much just asked
15 how we're doing.

16 Q. Which officers have you spoken to?

17 A. Officer Knudtson.

18 Q. Who else?

19 A. Jonathan Guerra. He left a message, but I never
20 returned his call.

21 Q. Who else?

22 A. And Flores.

23 Q. What about Tony Pirone?

24 A. And Jon Woffinden.

25 Q. What about Tony Pirone?

26 A. No.

27 Q. You haven't talked to him since this incident?

28 A. No, I have not.

1 Q. When you spoke with these four other officers, you
2 never spoke about any of the events that took place on the
3 platform when this took place?

4 A. No.

5 Q. Have you had the opportunity to look at any reports
6 or transcripts of any statements?

7 A. Only my statements.

8 Q. Has anyone told you about anything that any other
9 witness may have said about this incident?

10 A. Just yesterday, that was it, on the news.

11 Q. What happened yesterday?

12 A. Just what the news says.

13 Q. So you've been reading what different witnesses have
14 said in the newspaper?

15 A. No. I just watch the news.

16 Q. Or on TV?

17 A. Yes.

18 Q. Beyond that, has anyone told you about what other
19 officers have said?

20 A. No.

21 Q. Now, you've described a crowd. You said it was a
22 near riot. When I say or refer to a crowd, I often think of
23 maybe 20, 30, 40, 50 people or more. When you say crowd, how
24 many people are you referring to?

25 A. There was hundreds of people on that train.

26 Q. How many people were on the platform?

27 MR. RAINS: Objection. Vague as to time.

28 THE COURT: Sustained.

1 BY MR. STEIN:

2 Q. When you were referring to the crowd kept coming at
3 you, you weren't referring to the people on the train, were you?

4 A. Yeah. On the train and around us, yes.

5 Q. So when you said the crowd kept coming at us, you
6 were referring to people who were on the train or on the
7 platform?

8 A. People that were on the train coming off the train
9 towards our direction.

10 Q. How many people are we talking about?

11 A. If I had to estimate, I would probably say a group
12 like we have here.

13 Q. Like we have where?

14 A. In the courtroom.

15 Q. As many people in the courtroom?

16 A. 30, 30-40 people, yes.

17 Q. So there were 30 to 40 people on the platform
18 advancing in your direction?

19 A. In the area where we were at.

20 Q. How many people were on the platform advancing in
21 your direction?

22 A. I wasn't counting how many people. All I saw was
23 bodies on the platform.

24 Q. Approximately how many bodies are we talking about?

25 A. In the area where I was at or in the whole platform?

26 Q. I'm talking about the number of people who were
27 advancing towards you while you were on the platform?

28 A. There were several people around me. Again, I did

1 not count.

2 Q. Can you give me an approximation of the number of
3 people that were on the platform advancing towards you?

4 A. Again, I wasn't keeping track of people based on the
5 chaos and the threats that were around me.

6 Q. Is your answer to that question, "No, I cannot give
7 you an approximation," of the number of people advancing towards
8 you on the platform?

9 A. There were several people coming at us.

10 Q. And when you say several, are you referring to 30 or
11 40?

12 A. If you look, you had four people. It was just
13 Officer Pirone and myself. You have the four people, you had
14 Officer Pirone and that subject, and then you had Anicete with
15 -- there was four of 'em and then you had everybody else coming
16 off of the train where we were at.

17 Q. Well, these people against the wall, they weren't
18 advancing towards you, were they?

19 A. Yes, at one point they were.

20 Q. And how close were they when -- this is when they
21 were up against the wall?

22 A. Yes.

23 Q. Okay. Well, let's leave those folks out of it. I'm
24 talking about the people who you turned your attention to who
25 were coming off the train and advancing towards you. Can you
26 tell us approximately how many people there were?

27 A. I just answered that question. The people that were
28 around us and the people that were coming off the train. If you

1 can be more specific. Do you want where I was at or the whole
2 platform?

3 Q. No. I'm going to try and be as specific as I can,
4 and if I need to be more specific let me know.

5 At some point you turned your attention from the folks
6 against the wall to people at your right who were advancing
7 towards you. Are you clear? Are we on the same page?

8 A. Yes.

9 Q. And when you did that, my question to you is: How
10 many people were advancing towards you, approximately?

11 A. There was Anicete and the three other guys and behind
12 him there was more people. In that case, there was -- round it
13 off to four coming at me towards my right, not including the
14 people behind.

15 Q. How many people behind?

16 A. There were several people coming off the train.

17 Q. How many several?

18 A. Well, with the train open, there was just a group of
19 people.

20 Q. How many are in the group?

21 A. I don't know because there was so many packs coming
22 out.

23 Q. Were there more or less than a hundred people coming
24 off the train?

25 A. They came off in various time elements.

26 Q. How about the time when you first turned to your
27 right and you saw the four individuals that you've just named?
28 At that time, were there more or less than a hundred people

1 coming off the train?

2 A. There were less.

3 Q. Were there more or less than 50 people coming off the
4 train or about 50?

5 A. Within the area where I was at?

6 Q. As far as you could see, how many people were
7 advancing towards your direction who were coming off the train?

8 A. The people on the train that were coming off were
9 just -- they just stayed there by the train, just kind of came
10 out.

11 Q. Are we talking about looky-loos or people advancing
12 towards you in a threatening manner? Because those are the
13 people I'm asking about, and forgive me if I wasn't clear. I'm
14 not talking about looky-loos, people who may just be looking.
15 I'm talking about the threat that you've described, people
16 advancing toward you?

17 A. That's more specific. There was four coming at me.

18 Q. Okay. And so when you said this crowd was coming
19 toward you, we're talking about four people?

20 A. There's four. And there's only Officer Pirone and
21 myself, yes, at that time on the platform.

22 Q. So the crowd consists of four?

23 A. Yes, from my right, from my direction.

24 Q. Did you see anyone coming at you in any other
25 direction?

26 A. Yes. There was there and where Officer Pirone was
27 there was maybe four people coming off behind his back off the
28 train.

1 Q. Behind Officer Pirone?

2 A. Yes.

3 Q. And where were those people coming from?

4 A. The train.

5 Q. Were they advancing towards you as well or were they,
6 say, just people watching?

7 A. What you call onlookers. They just got off the train
8 just looking at us.

9 Q. So they weren't threatening?

10 A. At the time, no.

11 Q. Now, you've seen a number of videos that have been
12 out in the media pertaining to this incident; is that correct?

13 A. Yes.

14 Q. Do you know the names of any of the people who took
15 those videos?

16 A. Just the one that stands out is Vargas.

17 Q. So how many different videos do you think you have
18 seen?

19 A. I saw her video and another video, but I don't know
20 who took the other video.

21 Q. And where were you when you saw these videos?

22 A. Based on that photograph that you guys had up there
23 earlier, I was in that general area.

24 Q. My question was not clear. Where were you when you
25 viewed these videos? Were you at your attorney's office? Were
26 you at home? Were you at work? Where were you?

27 A. I was at home and my attorney's office.

28 Q. Now, when you first got this call, you testified that

1 you were downstairs in what I believe was the free area; is that
2 correct?

3 A. Yes.

4 Q. And yesterday you testified that the call came out as
5 a 242 on a train; is that right?

6 A. Yes.

7 Q. 242 is a battery, correct?

8 A. Yes.

9 Q. Do you know if a 242 is a felony or a misdemeanor?

10 A. It's a misdemeanor.

11 Q. And when you got this call regarding a misdemeanor on
12 the train, you testified yesterday that this train, you were
13 told through dispatch, was the same train that there was a
14 previous gun call on. Do you remember your testimony about
15 that?

16 A. Yes.

17 Q. And dispatch told you that?

18 A. Dispatch -- you're listening to your radio
19 transmission. And when the gun call initially came out
20 Embarcadero, that same train went on to West Oakland and that's
21 where the gun call also -- because it went from one area and it
22 just went to the next. And, again, your trained to just
23 remember the stuff on the radio traffic because then all that is
24 coming towards your direction. It's coming down the line.

25 Q. But my question was yesterday when you said that
26 dispatch told you on that call that the fight, the 242, was on
27 the same train that was coming that had the gun call on it, my
28 question is: Is that, in fact, what you heard on the call?

1 A. They said 242 and -- common sense, you're going to
2 still have whatever people on that train coming down the line.
3 They did not say anything that I recall of that nature. They
4 just said the 242. So it's again officer safety, and based on
5 our training, the way you're trained, you need to pay attention
6 to the radio.

7 Q. All right. And so if you said yesterday that
8 dispatch advised you that there was a gun call on this train,
9 you were mistaken?

10 A. No. You listen. At the time when I was in the free
11 area, you're listening to these calls. And then you start
12 realizing that train is coming down the line. So then, you
13 know, you start assessing everything, okay. Caution. Train is
14 coming down the line and there is a fight on the train.

15 Q. And you knew for a fact that this was the same train?

16 A. Yes.

17 Q. But there are a number of trains that go through
18 Fruitvale, right?

19 A. Because the fact that it happened at Embarcadero, it
20 held the train, then that train is being delayed, and then in
21 got delayed at West Oakland. So you know that's the only train
22 -- that's the only train that they're keeping. And BART likes
23 to -- they don't like to hold trains. It's all about how they
24 run things. So the fact that they're being delayed, me being
25 down the line, you know this is going to be that same train
26 coming down the line.

27 Q. And how much time passed between the time you heard
28 the call of the gun call and the time you got the call regarding

1 the 242 upstairs?

2 A. The Embarcadero incident -- the tube ride is about 5
3 to 8 minutes in the tube. So when the call comes out, I was not
4 paying attention how long it held the train and they were
5 looking for the outstanding subject. So as the train goes in,
6 round it off 8-10 minutes in the tube, and then they stop it
7 again at West Oakland. I don't know how long they were holding
8 the train, but I did know that that train was coming down the
9 line.

10 Q. Okay. And so you didn't know what time it would be
11 coming, but you assume that when you got to 242 call that that
12 had to be the same train; is that correct?

13 A. It was the same train, yes.

14 Q. You know that for a fact now?

15 A. It's the same train because, again, BART -- the train
16 and their system, they don't like holding trains.

17 Q. I understand your testimony. But my question is: Do
18 you know for a fact that Oscar Grant got off the train where the
19 gun call -- particularly the call regarding the gun at West
20 Oakland?

21 A. Yes, because it was a Dublin bound train.

22 Q. It could not have been any other train?

23 A. No.

24 Q. Now, when you received this initial call of the 242
25 on the train, what description, if any, did you get of the
26 people involved?

27 A. All I heard was 242. I didn't hear any description.

28 Q. Did you get any information about how many people

1 were involved in this 242?

2 A. No. Because as the call came out, that's when the
3 female downstairs stopped me and that's when Officer Pirone was
4 running upstairs.

5 Q. My question was: Did you get any information
6 regarding the number of people involved and your answer was?

7 A. No.

8 Q. You did not?

9 A. I didn't hear it, no.

10 Q. So are you saying that no information was provided or
11 that if it was you didn't hear it?

12 A. If information was provided, I didn't hear it.

13 Q. Were you told whether or not weapons were involved in
14 this fight?

15 A. Again, the thing is, as an officer, when there's
16 fights, you always have to assume there's weapons involved for
17 your safety. You don't want to become complacent.

18 Q. I understand that, and that's probably good policy.
19 But my question is: When you received the initial call, were
20 you told whether or not weapons were involved?

21 A. No.

22 Q. Now, when you arrived on the platform, you described
23 for us you had to run a distance from when you first came up the
24 stairs, set foot on the platform, you had to run a distance to
25 get to Officer Pirone and the people he was with, true?

26 A. Yes.

27 Q. That distance was about, what would you say? The
28 length of a football field?

1 A. Probably twice the size of this room lengthwise.

2 Q. So what is it about? I think that's -- is that --

3 MR. RAINS: 41 feet double.

4 MR. STEIN: A little under a hundred feet.

5 Q. And you said that when you first got up there, you
6 noticed the number of people on that train and that their
7 demeanor, their attitude, was different?

8 A. Yes.

9 Q. And as you ran, people spilled off the train, they
10 were coming off the train, and you were afraid that someone was
11 going to throw something at you, true?

12 A. Yes.

13 Q. Tell me, when you were going -- did you have to kind
14 of make your way around these people in order to get to where
15 Officer Pirone was?

16 A. As I'm running, they're coming off. So I had to
17 semi-veer a little bit.

18 Q. And so you did have to -- did you have to ask anybody
19 to move out of your way or did you run into anybody?

20 A. If people were in my way, they saw me coming and they
21 moved.

22 Q. Were they in your way?

23 A. No.

24 Q. So how did you get around them? You just went to one
25 side?

26 A. No. If this is the train here, this wood section
27 here, and people start coming off, I'm running and I did not run
28 real close to the train because of these people. So I'm running

1 this way. And then when they start coming off, because they
2 don't see me, the people that are closest to where the incident
3 was happening, they didn't see me coming. So they were already
4 this way and I just kind of veered over.

5 Q. How close did they get to you?

6 A. Pretty close. From here to this envelope right here.

7 Q. About 3 feet?

8 A. Yeah.

9 Q. And so were they threatening you as you ran?

10 A. They were just saying, "Ooh, there's a female BART
11 police. They're security guards." And they just kept singing
12 some cop song that just came out.

13 Q. And how did that make you feel?

14 A. The fact that they were just coming off and saying
15 blatant things and being the time of year, New Year's Eve, I
16 knew they were intoxicated.

17 Q. You knew by looking at them as you ran by them they
18 were intoxicated?

19 A. The way they were acting, yes.

20 Q. How many people are we talking about?

21 A. Several people that were coming off the train.

22 Q. Again, are we talking 20, 30, 40?

23 A. Well, if you put them all together, yeah, 40-50.

24 Q. And describe the manner in which you ran to Officer
25 Pirone. Were you running as fast as you could? Was it a jog?
26 How were you running?

27 A. I was running pretty fast.

28 Q. And did you stop?

1 A. No. I stopped when I got to Officer Pirone.

2 Q. And that's when Officer Pirone told you or asked you,
3 I should say, to stop and watch these guys?

4 A. Yes.

5 MR. STEIN: Your Honor, I have a CD which contains a
6 video tape. I'd like to play it to see if Officer Domenici
7 recognizes herself in it.

8 THE COURT: All right. That's marked as what?

9 MR. STEIN: It's marked as 27A.

10 THE COURT: All right.

11 BY MR. STEIN:

12 Q. Now, Officer Domenici, this purports to be a
13 surveillance tape, and I want to know if you recognize yourself
14 running down that platform towards Officer Pirone. I'm going to
15 start this as frame 13200.

16 Can you see the monitor where you're at?

17 A. Which one do you want me to focus on.

18 Q. But you can see the monitor?

19 A. Yes.

20 THE COURT: And if you can't, you can get up and take
21 a look at it.

22 BY MR. STEIN:

23 Q. Can you see that frame? It's in the upper left hand
24 frame, the biggest one. This one here. The bottom says A21FR.
25 I'm going to play it here and I'm going to ask you if you
26 recognize yourself running down the platform towards Officer
27 Pirone.

28 (Video played.)

1 A. Yeah, that's me running.

2 Q. And I'm going to stop at 14290. That's the
3 surveillance camera capturing you running from one end of the
4 platform to Officer Pirone; is that right?

5 A. Yes.

6 Q. Isn't it true there's not a soul on that platform as
7 you're running down?

8 A. When you see me get on that platform, did you see
9 that group of people that came off the train right -- if you
10 rewind it, you can see that. That's what I remember seeing.

11 Q. Oh, okay. So you saw the crowds of people that you
12 described earlier, the 30 or 40 people that you had to run
13 around. You saw them on that video?

14 A. Right there, yes.

15 Q. Let me play it again. And you tell me to stop.

16 A. You see them coming off.

17 Q. I'm going to start at 13200 again, and you can tell
18 me to stop when you see the 30 or 40 people.

19 A. There was a group of people.

20 THE COURT: Hold on. Let him finish his question and
21 then you can answer.

22 BY MR. STEIN:

23 Q. When you see the 30 or 40 people that came off the
24 train -- just so we're clear, I'm talking about the people you
25 had to run around that you just described.

26 MR. RAINS: Well, that misstates her testimony. She
27 said she veered to the right.

28 THE COURT: To whatever extent, let's just see it,

1 Mr. Stein.

2 BY MR. STEIN:

3 Q. Okay. I'm at 13200. And now, officer, if you can
4 just tell me to stop when you see the 30 or 40 people you
5 referred to. And you can see it from where you're at, right?

6 A. Yes.

7 Q. I'm going to hit play now.

8 (Video played.)

9 A. Right there. When you go back you see.

10 Q. I've stopped it right where you told me. In this
11 image, you asked me to stop. I stopped it at frame 13779. If
12 you can hang on just a second.

13 In this frame 13779, you see the 30 or 40 people who came
14 off the train?

15 A. If you go back a little, you see people coming off.
16 And then back in the background where it's dark, there's people
17 coming off.

18 Q. I can go frame by frame. You tell me when you see
19 it.

20 (Video played.)

21 A. Right there. You see the bodies coming out right
22 there.

23 Q. Okay. This is frame 13746. And in this frame you
24 see 30 or 40 people who've come off the train?

25 A. I said a group of people.

26 Q. No, no, no. You said 30 or 40. Do you want to
27 change your testimony?

28 A. You said 30 or 40, and I said a group of people.

1 Q. No. And you said about 30 or 40, did you not?

2 MR. RAINS: I object. That misstates her testimony.

3 THE COURT: Hold on. Overruled.

4 BY MR. STEIN:

5 Q. Did you not say 30 or 40 people?

6 A. I said a group of people. You wanted a number and I
7 said a group of people.

8 Q. Did you not say earlier that it was about 30 or 40
9 people?

10 A. I said a group of people.

11 Q. That's not my question. Did you or did you not say
12 that it was about 30 or 40 people who came off the train as you
13 were running towards Officer Pirone?

14 A. You wanted an estimate, and I said, yes, 30 or 40
15 people.

16 Q. In this frame, do you see 30 or 40 people coming off
17 the train?

18 A. They're right there in the opening of the train door.

19 THE COURT: Hold on. Give the witness the pointer
20 and let her go up and point where she sees those people. Why
21 don't you go point.

22 THE WITNESS: You can't see it from there, sir. From
23 the angle where I was running, you see the door. Think of a
24 door frame, and I see the people there.

25 THE COURT: Okay. All right. Next question.

26 BY MR. STEIN:

27 Q. Nobody came off the train, did they?

28 MR. RAINS: Objection. Argumentative.

1 THE COURT: Overruled.

2 BY MR. STEIN:

3 Q. Did they?

4 A. People did come off the train.

5 Q. You have testified under oath that 30 or 40 people
6 came off that train so that you could make it appear that you
7 and your fellow officers were in more danger than you actually
8 were; isn't that true?

9 A. People came off the train at this time, no, but I
10 remember seeing people on that platform.

11 Q. When you reached Officer Pirone, what was your goal?

12 A. What do you mean by my goal?

13 Q. I assumed you had some sort of an objective, some
14 sort of a goal when you responded to this call, did you not?

15 A. To cover.

16 Q. What does that mean?

17 A. As a cover officer, you go and you do what the
18 primary officer wants you to do.

19 Q. So Officer Pirone was the primary officer?

20 A. Yes. He was there first on scene, yes.

21 Q. And that's what made him the primary officer?

22 A. Yes, because he was first on the platform.

23 Q. If you had been first on the platform, would that
24 have made you the primary officer?

25 A. Yes.

26 Q. In this case, he was the primary officer. And as
27 such, you do anything he asked you to do, correct?

28 A. Yes.

1 Q. And when you got there, he asked you to stay with
2 these young men who were lined up against the wall, true?

3 A. Yes.

4 Q. And it was at that time that Officer Pirone said to
5 you, "I have to go get someone else off the train;" isn't that
6 correct?

7 A. Yes.

8 Q. Officer, showing you what's been marked as People's
9 28 for identification. This is a diagram of a BART train, which
10 purports to be at the Fruitvale station. If this were the
11 number one train. You have one car here, one car here and one
12 car here.

13 As you look at this, can you see the area where Officer
14 Pirone had the young men lined up against the wall?

15 A. Yes. Right here.

16 Q. With this pen, can you just draw a circle around that
17 area.

18 A. I have a question. Is there a pillar here? If
19 there's a pillar, we can say there's a pillar in this area.

20 Q. Well, why don't you put an X where you believe there
21 to be a pillar?

22 A. This is the bench. This would be a pillar here
23 within this area here.

24 Q. Okay. And I think where you say pillar, it says
25 column with BART map schedule. Is that the pillar you're
26 referring to?

27 A. Yes.

28 Q. So would that be an accurate description of whatever

1 that object is where you put the X?

2 A. Yes. This is where the bench is at.

3 Q. So if you have your bearings, if you can just put a
4 circle around the area where Officer Pirone had these young men
5 detained against the wall?

6 A. All four and the one that was handcuffed?

7 Q. Originally when you got up to the platform. And from
8 that, from that circle, can you draw a line down with the number
9 one next to it.

10 And that indicates where Officer Pirone and the young men
11 were when you first approached them, true?

12 A. Yes.

13 Q. Now, when you approached him, those young men, they
14 were already sitting against the wall, weren't they?

15 A. They were standing.

16 Q. You're sure of that?

17 A. I remember them standing.

18 Q. Are you as sure of that as you were of the 30 or 40
19 people coming off the BART train?

20 MR. RAINS: Objection. Argumentative.

21 THE COURT: Sustained.

22 BY MR. STEIN:

23 Q. Are you just saying -- I want to get an idea of how
24 certain you are that those young men were standing and not
25 sitting when you reached them?

26 A. I remember Officer Pirone pointing at them and I
27 remember them standing.

28 THE COURT: All right, Mr. Stein. That's a good

1 point. My reporter needs a recess. 15 minutes.

2 (Court in recess.)

3 THE COURT: Mr. Stein.

4 MR. STEIN: Thank you, your Honor.

5 Q. Officer, when you arrived and you saw Officer Pirone
6 with the three individuals -- by the way, there were three; is
7 that correct?

8 A. There was four.

9 Q. When you first arrived on the platform, there were
10 four individuals he had detained?

11 A. Yes.

12 Q. And then he went and got two more?

13 A. One more.

14 Q. And so the four individuals that he had against the
15 wall, when you got there, your recollection is that those
16 individuals were standing; is that correct?

17 A. Yes.

18 Q. And when you arrived there, when Officer Pirone told
19 you that he had to go back on the train to get someone else,
20 before he left, did he have those individuals sit?

21 A. No.

22 Q. You certain of that?

23 A. Yes.

24 Q. And given the fact that you believed that this was
25 the same train that the gun call had come out on, you know,
26 previously at West Oakland, did it ever occur to you to maybe
27 tell Officer Pirone, "Before you leave, let's have these four
28 guys sit down for officer safety reasons"?

1 A. No.

2 Q. That never occurred to you?

3 A. At that time, no.

4 Q. Why not?

5 A. Because at the time there was four of them and then
6 Officer Pirone said he had to go back and get another one.

7 Q. But what's the rush? Why didn't it occur to you to
8 tell him, "Let's have these guys sit down for my safety so they
9 can't get up and get me if they decide to"?

10 A. Because the people on the train were screaming, and
11 then the one that he was looking for wasn't coming off the
12 train.

13 Q. The people on the train were screaming at you?

14 A. Yeah. They were just loud, being obnoxious.

15 Q. Was the noise level very high at that time?

16 A. It was pretty high in the train.

17 Q. Okay. But where you were specifically, was it loud
18 at that time?

19 A. Where I was standing, no.

20 Q. Didn't you say earlier in a previous statement that
21 the noise level at that time was so loud that Officer Pirone had
22 to shout at you that he was going to get someone off the train
23 and at that time he was only an arm's distance away?

24 A. That's when he was getting the subject off of the
25 train.

26 Q. Well, that was before he left right to go do that
27 right?

28 A. No that was when he was getting him off of the train.

1 Q. Didn't you say in an earlier statement that when
2 Officer Pirone said to you I have to go get someone off the
3 train, that he had to shout it at you from an arm's distance
4 away?

5 A. He yelled at me, yes.

6 Q. And he had to yell at you from an arm's distance away
7 that he was going to go back on the train because the noise
8 level was so high?

9 A. In the train, yes, it was high.

10 Q. I want to play a video. It's the Karina Vargas
11 video. You may or may not have seen it. It's the first of the
12 two.

13 Now, in this image here, this is frame zero. Can you see
14 that from where you're at?

15 A. Yes.

16 Q. And what we see here are four individuals, three of
17 them who are seated and I think one who's just about to get
18 seated. That's you in front of them, correct?

19 A. Yes.

20 Q. Now, I'm going to play this clip, and I want you to
21 tell me if the noise level at this time was as high as it was
22 when Officer Pirone had to shout at you to tell you that he was
23 going back on the train.

24 (Video played.)

25 Q. Were you able to see the video clip from where you
26 are, officer?

27 A. Yes.

28 Q. And did you hear it?

1 A. Yes, I did.

2 Q. And did the video accurately describe the noise level
3 at the time Officer Pirone had to shout at you from an arm's
4 distance away that he had to go back on the train to get
5 someone?

6 A. You need to understand where Tony was at. She's in a
7 different car train. So the car train that he's at, that car
8 train was louder than what you heard now.

9 Q. So is your answer to my question that it is, "No. It
10 does not accurately depict the level of sound"?

11 A. It was in a different car train. So, no.

12 Q. It would appear that the noise level that we hear on
13 the video, things were quite calm, would you agree?

14 A. But that's in a different car train.

15 Q. I understand that. But in the video clip that we've
16 just listened to, you would agree that the noise level that was
17 recorded sounds relatively calm, is it not?

18 A. That specific car train, yes.

19 Q. But it didn't sound anything like that over where you
20 were?

21 A. No. Because the fact that the subject was hiding in
22 the train and Officer Pirone saw him and people on the train
23 were telling him, "Man, just get off of the train," and they're
24 yelling at this person to get off and Officer Pirone is
25 following him alongside of the window of the train. So that
26 specific car train was a lot louder than this one.

27 Q. And you said that right off the bat these individuals
28 were physically and verbally threatening towards you; is that

1 correct?

2 A. At one point, yes.

3 Q. Well, right when you first got there --

4 A. Yes.

5 Q. -- they were physically and verbally threatening
6 towards you; is that correct?

7 A. They were standing there and then when I was
8 instructing them to sit down they would not sit down at first.

9 Q. And this is -- you refer to one of them who was
10 calling you a bitch and all kinds of different things; isn't
11 that right?

12 A. Yes.

13 Q. That was the one I think you said was N Bryson; is
14 that right?

15 A. The one closest to that bench.

16 Q. And in this frame, same video, frame 862, he appears
17 to be combing his hair here; is that right? Do you remember
18 seeing that?

19 A. No.

20 Q. Does he appear to be combing his hair in this part of
21 the video?

22 A. On this video I just see his hand movement brushing
23 back his hair.

24 Q. Looks like he's got a comb going through his hair; is
25 that right?

26 A. I can't see.

27 Q. Do you remember that?

28 A. No.

1 Q. How can you not remember him having something in his
2 hands when, for officer safety reasons, those were the most
3 important things that you wanted to keep your eyes on?

4 A. Because I kept looking back at Officer Pirone when he
5 was trying to get the other subject off the train. So I just
6 kept scanning back and forth.

7 Q. So instead of a comb if it were a gun, something bad
8 could have happened, right?

9 A. It could have.

10 Q. But in your mind you were thinking officer safety the
11 whole time?

12 A. Yes.

13 Q. Even while Mr. N Bryson is combing his hair; is that
14 right?

15 A. Yes.

16 Q. Now, you said that when you first arrived to the area
17 where Officer Pirone was, the three men were standing and they
18 would not sit down, correct?

19 A. Yes.

20 Q. Now, when you first gave your statement the morning
21 of the 1st to Detective Smith and Detective Carter, you never
22 said anything about them not sitting down, did you?

23 A. I don't recall. I need to see the statement. You
24 also need to understand I was awake for hours. I was tired and
25 exhausted.

26 Q. So it's possible that you just didn't mention it?

27 A. Yes.

28 Q. You said in earlier statements that in order to get

1 them to sit down, you had to pull your Taser out and point it at
2 them, correct?

3 A. I also said that I had to change my tone of voice
4 when I was instructing them to sit down, and I did say there was
5 also a point where they did sit down but then they popped back
6 up and they would not sit down again until I took out the Taser.

7 Q. We'll get to that. But did you not say that
8 initially when you ordered them to sit and they wouldn't, you
9 had to take out your Taser and point it at them in order to get
10 all of them to sit down? Did you or did you not say that?

11 A. I said that I instructed them several times to sit
12 down and they would not sit down. There's two occasions where
13 this happens.

14 In that picture that you just showed, right now Officer
15 Pirone was trying to take the subject off the train. So nobody
16 is coming off the train, okay. At that time when I instructed
17 them to sit down several times, they wouldn't sit. They finally
18 sat down.

19 Then when Officer Pirone took the subject off of the
20 train, that's when they popped up. At that point, that's when
21 everybody on the train starts coming off and starts coming
22 towards us. And that's when they wouldn't sit down and I kept
23 instructing them to sit down and then I took out the Taser.

24 MR. STEIN: Your Honor, I have a series of
25 transcripts I'd like to have marked.

26 THE COURT: All right.

27 MR. STEIN: I have copies for counsel.

28 THE COURT: You want to refer for the record.

1 THE CLERK: People's Exhibit 29, 30, and 31 are
2 marked for identification.

3 (People's Exhibits 29 30 31 were marked for
4 identification.)

5 THE CLERK: And People's 32.

6 (People's Exhibit 32 was marked for
7 identification.)

8 BY MR. STEIN:

9 Q. Okay. I'm showing you four transcripts. At the top
10 there's Transcript No. 1, No. 2, 2A and 3. Although you gave
11 three statements. In your second interview, they went off tape
12 and they went back on tape, so that's why there's 2 and a 2A,
13 okay? This is 1 and this is 2 and this is 3.

14 THE COURT: And, Mr. Rains, you have a copy of this?

15 MR. RAINS: He's going to provide that. Thanks.

16 BY MR. STEIN:

17 Q. Now, if you could turn to -- you said that when you
18 first asked them to sit down, they wouldn't, correct?

19 A. Which one?

20 Q. I'll ask you. I'll direct you to the transcript.
21 But let me see if you can remember this based on your own
22 independent recollection.

23 Initially, when you first asked them to sit down, did they
24 comply?

25 A. Can I ask you a question?

26 Q. Sure.

27 A. If I have them here, why can't I look at them?

28 THE COURT: Hold on. Because those are the rules.

1 So answer the question and then he'll ask you another, then
2 he'll give you an opportunity.

3 BY MR. STEIN:

4 Q. When you asked them to sit down, did they, in fact,
5 sit down?

6 A. In the beginning, no.

7 Q. Okay. And I'm talking about the beginning. So I
8 want you to focus on that time period.

9 When you first asked them to sit down, what, if anything,
10 did they do?

11 A. They didn't want to sit down and one of them said,
12 "Why can't we sit on this bench?" And I said, "No. I want you
13 to sit right here."

14 Q. And do you remember which one of them said, "Why
15 can't we sit on this bench"?

16 A. No.

17 Q. And there were four of them against the wall at this
18 time?

19 A. Yes.

20 Q. And when you said, "No. You can't sit on this
21 bench," what's the next thing that happened?

22 A. They wouldn't sit down and then I kept asking them,
23 "Sit down. Sit down." And then they finally sat down.

24 Q. And did all four of them sit down as we see here in
25 frame zero on this video? I think you see one of them actually
26 on his way down. Is that how they sat when they finally sat
27 down?

28 A. Yes, they sat down.

1 Q. And prior to this you had not pulled out your Taser.
2 Is that your testimony?

3 A. I did not have my Taser out, no.

4 Q. Prior to this?

5 A. In the beginning.

6 Q. Prior to this?

7 A. This picture -- after they sat down, no, I didn't
8 have my Taser out.

9 Q. Prior to this incident that we see here in the image,
10 you did not have your Taser out?

11 A. No.

12 Q. And you have something in your hand. Do you remember
13 what that was?

14 A. No, I do not.

15 Q. Okay. Do you remember taking anything from any of
16 the four individuals?

17 A. No.

18 Q. Now, at this time when all four were seated, did they
19 ever fail to direct an order that you gave them?

20 MR. RAINS: Objection. Vague.

21 THE COURT: Overruled. Only if you understand. If
22 you don't, then it will be sustained.

23 Do you understand the question?

24 THE WITNESS: No.

25 THE COURT: Sustained. Re-ask the question.

26 BY MR. STEIN:

27 Q. After you had all four lined, sitting against the
28 wall, at that time, did you ever give them an order that they

1 failed to comply with?

2 A. Asked them to sit down, they sat down. It took them
3 a while to sit down.

4 Q. When you say it took them a while to sit down, what
5 do you mean by that? What happened?

6 A. I had to repeat myself again. When they were
7 standing up, I told them to sit down. I don't know which one
8 said, "Well, there's a bench right here." And I said, "No.
9 You're going to sit right here. I need you to sit down." And
10 then they finally sat down.

11 Q. This bench, would you say it was about maybe half the
12 distance of this bar here?

13 A. Probably half, yeah.

14 Q. About half. Maybe here? About 8-10 feet
15 approximately?

16 A. Pretty much, yes.

17 Q. Did you think that to be an unreasonable request to
18 sit on a bench?

19 A. To have them sit on the bench?

20 Q. Did you think that his request of you to allow them
21 to sit on a bench was unreasonable?

22 A. I did not want them to sit on the bench for the fact
23 that I was dealing with four subjects and Officer Pirone was
24 still trying to take one off the train. And my knowledge at
25 that time and my thinking was, If I have them sit on that bench,
26 they can come at me a lot faster. So, again, officer safety. I
27 had them sit on the ground. So then if they did try to come up,
28 I would see it and I can react a lot faster.

1 Q. And, again, did you think his request was
2 unreasonable?

3 A. I just didn't want him sitting on the bench.

4 Q. Prior to Officer Pirone leaving you and going onto
5 the train for the first time, all four were standing, correct?

6 A. Yes.

7 Q. Now, when Tony -- Officer Pirone got to the train,
8 were you about where you are in this image, frame zero of the
9 first Vargas video, when you heard him say the words, "Whoever
10 else is involved, get off the train"?

11 A. What's the question?

12 Q. Okay. You heard Officer Pirone say the words,
13 "Whoever else is involved, get off the train." You heard
14 Officer Pirone say those words, did you not?

15 A. Yes.

16 Q. And my question is: Were you standing in or about
17 the area you appear to be standing in this image, frame zero of
18 the first Vargas video, when you heard him say that?

19 A. I don't know where I was standing. I wasn't paying
20 attention to where I was standing when he said that.

21 Q. Would it be fair to say that you were in this general
22 area where you were standing in this frame?

23 A. Again, I don't know where I was standing, and I was
24 probably -- I don't know if I was in that same little area, but
25 I was close to it.

26 Q. You were close to it?

27 A. Yes.

28 Q. You don't remember wondering off or going off

1 anywhere before he came back, correct?

2 A. No. I stayed there.

3 Q. And so when you heard him say, "Whoever else is
4 involved, get off the train," did you ever hear him use any
5 profanity?

6 A. No. I was paying attention to the four I had.

7 Q. Never heard him use any profanity?

8 A. I didn't hear him use any profanity at the time.

9 Q. Okay.

10 A. All you can hear is the people on that actual car
11 train.

12 Q. Well, you heard more than that?

13 A. I heard noises, but I wasn't paying attention.

14 Q. But you heard his voice?

15 A. I heard his voice, yes.

16 Q. When you heard his voice, you heard no profanity?

17 A. I, again -- I don't -- I wasn't paying attention to
18 what he was saying. All I heard was "Whoever else ... get off
19 the train," and I just kept looking at my guys. But then they
20 started talking and that's when they were telling me, "Why can't
21 we sit on the bench?"

22 Q. Right. Now, when you saw Officer Pirone take someone
23 off the train -- by the way, that person was later identified as
24 Michael Greer; is that correct?

25 A. Yes.

26 Q. And were you in or about this area where you were in
27 this frame, frame zero, when you saw Officer Pirone take
28 Mr. Greer off the train?

1 A. I was standing in that area.

2 Q. Okay. And you saw him with -- you saw Officer Pirone
3 holding Mr. Greer with both of his hands and walking him towards
4 the wall against which these young men are seated, correct?

5 A. I saw that Greer did not want to get off the train.
6 And like I described yesterday, like a child you're trying to
7 move him and they just stiffen up. And I saw him grab -- I did
8 not pay attention to where his hands were placed. All I
9 remember him grabbing him and I just kept looking back and forth
10 to his direction and where I was at with my guys.

11 Q. And when he, Officer Pirone, got him off the train
12 and got him to the wall, you testified yesterday that somehow he
13 got to the ground, Mr. Greer did, but you didn't see how?

14 A. I didn't see how he was taken to the ground.

15 Q. And you have said earlier in one of your interviews
16 that you observed Officer Pirone struggling with Mr. Greer and
17 that Mr. Greer, well, he wasn't listening and he wasn't going
18 with the program. Do you remember saying that?

19 A. Yes.

20 Q. And that's true; is that right?

21 A. Yes.

22 Q. And when you say he wasn't going with the program or
23 that he wasn't listening, what was he not listening to?

24 A. Again, if you're instructed as law enforcement
25 figure, someone of authority, to get off the train, you should
26 comply. He did not. Again he refused to get off the train and
27 that's when Officer Pirone had to take him off.

28 Q. When Officer Pirone got him to the ground, you didn't

1 hear any conversation between Officer Pirone and Mr. Greer at
2 that time, did you?

3 A. No, I did not. That's when the guys that I was
4 dealing with -- and I remember Oscar kept trying to go towards
5 him. Because they popped up and they kept trying to go towards
6 him and they kept saying, "It's just fucked up. This is fucked
7 up." That's what they all kept saying.

8 Q. Did it ever occur to you that them popping up had
9 anything to do with the manner in which Officer Pirone was
10 taking Mr. Greer off the train?

11 A. The fact that when they got up and I looked and
12 Officer Pirone was handcuffing him, that's when they came up,
13 when he was taken to the ground.

14 Q. Right. And given that those things happened almost
15 simultaneously, did it ever occur to you that one thing had
16 anything to do with the other?

17 A. Why would you get up when an officer is trying to
18 apprehend this other subject? They should have stayed down.
19 They shouldn't have got up and got involved.

20 Q. What if they were viewing a person who was a friend
21 of theirs being manhandled and mistreated by an officer? Did
22 that ever occur to you as to why they were getting up?

23 MR. RAINS: That assumes facts not in evidence.

24 THE COURT: Overruled. Only assuming that occurred,
25 so.

26 BY MR. STEIN:

27 Q. Did it ever occur to you that these young men who
28 popped up were upset with the fact that Officer Pirone was

1 manhandling and being overly aggressive with the person he was
2 taking off the train?

3 MR. RAINS: Calls for speculation.

4 THE COURT: Overruled.

5 THE WITNESS: I don't believe Officer Pirone was
6 manhandling him.

7 BY MR. STEIN:

8 Q. That's not my question. My question is: Did it ever
9 occur to you that their conduct was in any way related to what
10 they were perceiving in regards to Officer Pirone and Mr. Greer?
11 Did that ever -- did you ever make that possible connection?

12 A. The connection that when he's trying to handcuff they
13 come up because they don't like what they see?

14 Q. Yeah.

15 A. No.

16 Q. You never made that connection?

17 A. No.

18 Q. Why did you think they popped up when they did?

19 MR. RAINS: Calls for speculation.

20 THE COURT: Overruled. It's what she thought.

21 THE WITNESS: The fact that when Officer Pirone is
22 taking Greer off of the train, and you can see before that
23 happens and after several times of instructions having them sit
24 down, they sit down. Right there, you know, the situation is
25 calm. When they see this -- and the question you just asked me,
26 why didn't I put two and two together why they got up, they just
27 should have sat down. And I just kept telling them after when
28 they came up, "Just stay out if it. Stay out of it."

1 BY MR. STEIN:

2 Q. And what was the "it" you were referring to?

3 A. The fact that Greer was trying to get -- or Officer
4 Pirone was trying to handcuff Greer.

5 Q. Now, I want to ask you a little bit about this crowd.
6 The crowd -- you've had prior experience dealing with crowds,
7 true?

8 A. Yes.

9 Q. You've worked Raider games, true?

10 A. Yes.

11 Q. You've worked New Year's Eve in the past, true?

12 A. Yes.

13 Q. And is it your testimony that the crowd you observed
14 the night Oscar Grant was shot, is no way comparable to any of
15 the crowds that you've dealt with before, true?

16 A. Yes.

17 Q. You've stated previously that the demeanor of these
18 people was different, correct?

19 A. Yes.

20 Q. You've said that in the past you've dealt with crowds
21 where people were friendly and asking you for directions. But
22 in this particular incident, well, no one was asking you for
23 directions; is that correct?

24 A. Yes.

25 Q. Now, with regard to this crowd, it is your testimony
26 that when Officer Knudtson tackled Mr. Anicete, that the crowd
27 again came off the train, true?

28 A. After he tackled him, there was a group of people

1 that came off.

2 Q. And it was at that time that you were concerned
3 officer safety for Officer Knudtson's personal safety because he
4 had his back to the train, right?

5 A. Yes.

6 Q. And there were people coming off the train who posed
7 a threat to his safety, true?

8 A. Yes.

9 Q. And that's why you walked towards his direction to
10 protect him?

11 A. I walked past him, yes.

12 Q. Did you force any of those people back onto the
13 train?

14 A. Yes, several times.

15 Q. Did they get past you?

16 A. I remember pushing one person back. I wasn't paying
17 attention to the people that passed me. Just that certain
18 person was just in my face, with the camera in my face, telling
19 me he wanted my fucken name.

20 Q. And these are the people who were coming towards
21 Officer Knudtson from his back?

22 A. When Officer Knudtson tackled him and his back is
23 turned, they're coming this way and I went this way.

24 Q. Okay. Well, how far was the train from Officer
25 Knudtson when Officer Knudtson was taking Mr. Anicete into
26 custody in terms of feet?

27 A. After he tackled him?

28 Q. Yes.

1 A. About my distance to her.

2 THE COURT: Meaning my reporter?

3 MR. STEIN: The reporter.

4 THE COURT: That's 6 feet.

5 BY MR. STEIN:

6 Q. And if the distance between Officer Knudtson and the
7 train was 6 feet, what's the distance between Officer Knudtson
8 and the people who were coming off the train? Is that also
9 6 feet?

10 A. It varies on the people. I wasn't paying attention
11 to how many people were coming close. Because, again, I was
12 distracted with the one person that just kept having that camera
13 in my face and I kept pushing him back.

14 Q. Right. But I'm trying to understand from what
15 direction they were coming from. You said that from the closest
16 point from Officer Knudtson to the train was 6 feet.

17 Would it be fair to say that the distance between Officer
18 Knudtson and some people who were coming off the train towards
19 him was also about 6 feet?

20 A. People varied.

21 Q. Did it include 6 feet?

22 A. I couldn't control everybody.

23 Q. But did it include the distance of 6 feet?

24 A. It varied on each individual because I was only
25 handling that one.

26 Q. Let me ask it a different way.

27 At the time you saw Officer Knudtson taking Mr. Anicete
28 into custody, did you see anybody approaching him from a

1 distance of 6 feet away?

2 A. If they did, I didn't see it because I was dealing
3 with this other guy.

4 Q. I'm going to show you another clip of the Vargas
5 video. It's the second video. And I'm going to show you
6 starting at frame number 5712. I'm rolling forward and I'm
7 stopping here.

8 Now, frame 5947. Do you see Officer Knudtson in this
9 frame?

10 A. Yes.

11 Q. Do you see Mr. Anicete in this frame?

12 A. No.

13 Q. You do not?

14 A. No.

15 Q. You see this person laying on the ground?

16 A. Oh. Excuse me. Yes.

17 Q. That's Mr. Anicete, right?

18 A. Yes.

19 Q. And the person putting cuffs on him is Officer
20 Knudtson, right?

21 A. Yes.

22 Q. And this is you here to the right, as you're looking
23 at the image, with your Taser in your right hand; is that
24 correct?

25 A. Yes.

26 Q. Now, I'm going to scroll forward and I want you to
27 tell me to stop when you see the crowd, if you do, coming off
28 the train advancing towards Officer Knudtson.

1 (Video played.)

2 Q. Now, I've played it to the end and most of that
3 footage, you would agree, was shown inside the train; is that
4 correct?

5 A. Yes.

6 Q. So it didn't really show much part of the platform;
7 is that correct?

8 A. Shows the platform right there.

9 Q. By the way, did you see in the clip that I played
10 someone throwing something in your direction?

11 A. Yes.

12 Q. That wasn't Mr. Anicete though, was it?

13 A. That was a second phone that was thrown.

14 Q. That was a second phone that was thrown?

15 A. Yes.

16 Q. Okay. Well, this appears to be Officer Knudtson
17 tackling Mr. Anicete, true?

18 A. Yes.

19 Q. This is frame 5311.

20 A. Would you like me to focus on the bigger picture or
21 the small one?

22 Q. The bigger one, please. Yeah, the bigger one.

23 I'm going to ask you first if you see any of the people
24 coming off the train towards him, if that can be seen in this
25 clip as I'm going forward.

26 (Video played.)

27 A. The angle of the camera --

28 Q. I understand there's only certain segments of this

1 that would show. But if there is a segment that shows it, I'd
2 like you to let me know.

3 A. There's a segment in that portion where --

4 Q. Go ahead.

5 A. If you play it again, I'll stop and tell you.

6 Q. Did it already pass?

7 A. Yes. I wanted to make sure I saw the entire video.

8 Q. Okay. Now, this is the officer taking him into
9 custody. Just tackled him.

10 (Video played.)

11 Q. Do you know where you are at this point in time at
12 frame 5698?

13 A. I'm not right there right now. If you rewind it a
14 little, you can see me in the background.

15 Q. You're to the right, if you're looking at the image?

16 A. If I'm looking at it, I'm right in the back. You
17 just saw me.

18 Q. There you are?

19 A. Right there.

20 Q. Has the crowd come off at this point?

21 A. Where Officer Flores is at on this end. Again, the
22 camera angle, you don't see the people coming off the train
23 right there.

24 Q. Okay. And that's because they're coming off further
25 down the train?

26 A. Up this way.

27 Q. That would be towards the north side of the platform?

28 A. Towards where you are.

1 Q. They're coming off the train. The train --

2 A. So if you're going towards Lake Merritt BART station.
3 That direction.

4 Q. The train is going in this direction, correct?

5 A. Yes.

6 Q. So the people who are coming off the train towards
7 Officer Knudtson, your testimony is they're coming --

8 A. Farther.

9 Q. Okay. So I'm pointing to an area off the monitor to
10 the left, as you're looking at it?

11 A. Yes. That door area frame right there, that's when
12 they start coming off. And there's a clip there. You see the
13 reflection of my badge.

14 Q. This door here?

15 A. You see a clip there. You see the reflection of my
16 badge on the window when the doors close, and I'm pushing back
17 that one subject that kept coming out.

18 Q. Okay. This is 5876. But you're over looking out in
19 5926. Isn't this you?

20 A. Yes.

21 Q. So in those frames you've moved from pushing those
22 people on to the -- back onto the train to back over here?

23 A. There's different time elements in this footage. So
24 I would have to see it because you keep pausing it.

25 Q. In this frame 5950, doesn't seem like anybody is
26 posing a threat, at least in this image, to Officer Knudtson.
27 Do you agree with that?

28 A. No, because you don't see the people behind him.

1 Q. But in this image what we can see, we can't see
2 anyone physically threatening Officer --

3 A. There's threats there, but you do not see them in
4 this clip.

5 Q. Okay. But you recall them. They were certainly
6 there?

7 A. Yes.

8 Q. Because people came off the train?

9 A. Yes.

10 Q. How long did you stay on the platform after you heard
11 the shot?

12 A. I stayed until I was instructed to leave.

13 Q. And how long would that have been?

14 A. Several hours.

15 Q. You were on the platform?

16 A. After the shot?

17 Q. Yes.

18 A. I was at the Fruitvale BART station. I can't tell
19 you how long I was on that platform. I wasn't keeping track.

20 Q. I understand you weren't looking at your watch the
21 whole time. But if you were to approximate for us, as best you
22 could, how long would you say you were on that platform after
23 the shot?

24 A. I can't approximate it. It just seems forever.

25 Q. Would you say it was more or less than 5 minutes?

26 A. Again, I don't know.

27 Q. So it could be 5 minutes?

28 A. Again, I don't know.

1 Q. Could be an hour, right?

2 A. I don't know.

3 Q. But it could be an hour?

4 A. I don't know how long I was on there.

5 Q. Could it have been 3 hours?

6 A. Again, I don't know. I can't give you an estimate
7 because I don't know.

8 Q. Could it have been 24 hours?

9 A. I don't know how long I was on there. I wasn't on
10 there more than 24 hours.

11 Q. So you know -- if you were to give me an
12 approximation as best you can do right now is sometime less than
13 24 hours?

14 A. Yes.

15 Q. Can you be any more specific than that?

16 A. I don't know how long I was on that platform.

17 Q. So the answer to my question is, No, you can't be any
18 more specific than that?

19 A. No.

20 Q. So we know sometime less than 24 hours.

21 You said in an earlier statement that this crowd was angry
22 and they were upset and they wanted to hurt you and your fellow
23 officers; is that correct?

24 A. Yes.

25 Q. And you said that they didn't know or understand what
26 was happening at the time; is that correct?

27 A. Based on incidents and certain timeframes.

28 Q. You said earlier that they, the crowd, did not

1 understand what was happening at the time; is that correct?

2 A. It varies within the scene. Because in the
3 beginning, they didn't know what was happening. So they started
4 thinking, Why are we being held?

5 Q. Did you know what was happening?

6 A. From the beginning?

7 Q. Yeah.

8 A. The call came out, yes.

9 Q. But you didn't feel that the people, the crowd, they
10 didn't know what was happening; is that correct?

11 A. Well, when we see the beginning, the one that you
12 showed me where you see me running, obviously when people get at
13 their station, the train stops. People, if that's their stop,
14 they're going to get off. The people that remained on the
15 train, what you called onlookers, they started coming off the
16 train wondering why the train wasn't moving, why the train was
17 stopped at Fruitvale BART station. So then when they see me
18 running by and then they still figure why aren't we moving,
19 that's when people started coming off the train.

20 Q. You said in prior statements that this noise level
21 was so loud you couldn't even hear the radio.

22 A. Yes.

23 Q. And that it was so loud that, as I said before,
24 Officer Pirone had to shout at you to tell you that he was going
25 back onto the train to get someone, right? Is that right?

26 A. Yes.

27 Q. And despite that, you've also said on prior
28 statements that you did hear certain radio calls while you were

1 on that platform, didn't you?

2 A. I heard bits and pieces, but I didn't hear the whole
3 entire transmission.

4 Q. Well, after the shot you heard Officer Guerra call
5 for medical, did you not?

6 A. Well, the fact that when I turned and I heard that
7 pop sound and then I smelled it and I looked, that's when I knew
8 something was wrong and that's when I saw Officer Guerra on the
9 radio.

10 Q. How did you --

11 A. I put two and two together.

12 Q. So you didn't hear that?

13 A. I heard him.

14 Q. You just assumed that?

15 A. No. I heard him say to route medical. And then
16 again within that time, I believe Officer Pirone asked for the
17 ETA, which is estimated time of arrival, for the medical. And
18 they said they were going Code 3, which is an emergency
19 response, and they said 5 to 8 minutes. I remember that.

20 Q. And you remember hearing that on the radio, right?

21 A. Yes.

22 Q. So you did hear some things on the radio?

23 A. There was portions on that platform where you heard
24 certain things, other times you couldn't hear at all.

25 Q. Didn't you say that at no time on the platform could
26 you hear because the noise level was so loud?

27 A. It varied, and you had to -- I remember covering my
28 ear.