

1 Q. You also heard on the radio that Tony asked for  
2 run-throughs. I assume you're referring to Officer Pirone. He  
3 asked for run-throughs and you told him, "Don't worry about  
4 that. I've taken care of it"?

5 A. This is after.

6 Q. Yes.

7 A. Yes.

8 Q. What's a run-through?

9 A. A run-through is where central -- you advise dispatch  
10 to talk to central, which is the main people that operate the  
11 trains. And what you tell them is run through. When a train  
12 goes through and it's not going to stop and let passengers out.  
13 So they run through with the doors closed. So whoever had to  
14 get off at Fruitvale, they had to get off at the next station.

15 Q. Given your concern for your safety and the safety of  
16 your fellow officers with regard to these people lined up  
17 against the wall, why didn't you ever search them if you thought  
18 there was a high probability that they might have guns?

19 A. The fact that I didn't search them at the time was,  
20 in the beginning, it was just Tony and I. And for me to direct  
21 all my attention on one or two individuals at that time knowing  
22 that there was four and me not covering Officer Pirone's back  
23 when he was trying to get the other subject off the train, I did  
24 not want to do that.

25 Q. Why didn't you say to Officer Pirone, "Well, Tony,  
26 before you go do that, hey, this is New Year's Eve. We just had  
27 that gun call. I know that the people on that train have guns.  
28 Before you go do that, what do you say you assist me in

1 searching these guys just to make sure they don't have guns"?  
2 How come you didn't do that?

3 A. Because, again, if we would have done that, our backs  
4 would have been turned and it would have just been us. Who is  
5 protecting whose back on that platform when you have all these  
6 other people on the train and you still have one outstanding  
7 subject on that platform?

8 Q. Well, isn't it true that Officer Pirone could have  
9 drawn his gun, pointed it at the young individuals against the  
10 wall and have you search every one of them, and have the train  
11 there, be watching the train and watching these people at the  
12 same time? Isn't that possible?

13 A. The fact is you -- why would you pull out your gun on  
14 these subjects that are just there?

15 Q. I don't know. Go ahead. I'm sorry.

16 A. The fact that that's more of a lethal force fact.  
17 You would have pulled out your Taser instead of a gun at that  
18 particular situation. You would not have pulled out -- excuse  
19 me -- you would have pulled out your Taser instead of your gun  
20 at that particular situation. There's no need for you to pull  
21 out your gun at that point.

22 Q. So why couldn't Officer Pirone pull out his Taser,  
23 point it at these young men while you searched them?

24 A. Because we still had one outstanding.

25 Q. But the train wasn't going anywhere, was it?

26 A. But also you had people on that train, New Year's  
27 Eve, they're intoxicated and they could have come off.

28 Q. And that's why you didn't search them because you

1 were afraid that people on the train might come off?

2 A. The fact that there was two of us, and for one of us  
3 to be paying attention to these four subjects and one of us to  
4 be searching one and the other one not being covered, no, I  
5 would not have searched them. I would have waited.

6 Q. Why didn't you wait for more officers?

7 A. We did wait for more officers.

8 Q. Why didn't you wait for more officers before Tony  
9 went on the train?

10 A. Because the fact that when this call came out,  
11 officers were already in route. So it took several minutes for  
12 them to arrive.

13 Q. So they're already on their way. You wouldn't have  
14 to wait long.

15 A. The situation with the people on the train, being New  
16 Year's Eve, intoxicated.

17 Q. You didn't even ask these people if they had weapons  
18 on them, did you?

19 A. No, I did not.

20 Q. Why didn't you even ask them, "Hey, you guys got  
21 weapons?"

22 A. Yeah, like they're going to volunteer, "Yeah, by the  
23 way, there's a gun in the back of my pants." No. They're not  
24 going to voluntarily tell you they have weapons.

25 Q. So when you stop people in the course of your work,  
26 you never ask them, "Hey, you got anything on you I should know  
27 about?"

28 A. You go contact them, you talk to them and you ask

1 them, yes.

2 Q. So you do ask people?

3 A. Yes. But at this particular time I chose not to.

4 Q. Despite your high concerns for officer safety and  
5 that these specific people had guns, right?

6 A. And the fact there's only two of us, yes.

7 Q. I understand. Officer Pirone, he never asked them  
8 whether they had guns, did he?

9 A. There's no time to ask questions.

10 Q. No time to ask questions. What was the big rush?  
11 The train wasn't going?

12 A. We had one outstanding. And again, like we were  
13 pointing out, the weapons. He could have had a weapon.

14 Q. You said that you were afraid for your life on that  
15 platform; is that correct?

16 A. Yes.

17 Q. And you said that it was just you and Tony up there  
18 protecting each other's lives; is that correct?

19 A. In the beginning, yeah.

20 Q. You think that might be just a little bit of an  
21 overstatement on your part?

22 A. No.

23 Q. Now, you said that when Officer Pirone came up from  
24 Mr. Greer and came up to where you were, you had been holding  
25 Oscar Grant against the wall. I think you said many times that  
26 you had to push him against the wall, correct?

27 A. Yes.

28 Q. Have you ever seen a video documenting or showing

1 that?

2 A. I see -- I saw a video where you see me just holding  
3 him back. Because the fact that Vargas did not, in that video  
4 footage, if you want to focus on that one, you do not see the  
5 beginning from where it started. You do not see all that.  
6 Oscar Grant just kept -- he would -- Greer was taken to the  
7 ground and trying to be handcuffed, he gets up and then he just  
8 kept telling me, "That's fucked up. That's fucked up." And I  
9 kept pushing him on his chest. I kept pushing him back. I kept  
10 telling him, "Stay out of it. Stay out of it."

11 Q. The times that you were pushing Oscar Grant up  
12 against the wall, that's not on any video that you've seen,  
13 true?

14 A. There's a portion where you just see me touching  
15 Oscar.

16 Q. And would you characterize your touch as pushing him  
17 up against the wall?

18 A. The fact where he was at, I remember there was like a  
19 indentation. There's a pillar and then there's like -- if you  
20 want to look -- this much, like my hand width of where it's at,  
21 the window. And I remember him just kind of coming over. If  
22 you want to go back to the footage right there.

23 You see the cement pillar, the frame of the window where  
24 Oscar is at, there's a little indentation right there and Oscar  
25 just kind of kept coming over, and I just kept telling him,  
26 "Stay out of it. Stay out of it."

27 Q. And I'm not as concerned as what you're telling him  
28 at this point as I am interested in what you are doing

1 physically. You've said many times that during this period you  
2 were actually pushing him up against the wall?

3 A. I'm touching. I'm doing this.

4 Q. With both hands. So you're taking both hands in  
5 front of you and making a pushing motion?

6 A. And I'm telling him to stay out of it, yes.

7 Q. And telling him to stay out of it. Now, I'm going to  
8 roll through this, and you tell me if you ever see that conduct  
9 which you've just described in this video. Tell me when to stop  
10 when you see it, if you do.

11 (Video played.)

12 A. Okay. When you go back before that.

13 Q. Going back.

14 A. A little more. There's footage before Officer Pirone  
15 comes towards us, that's when I'm pushing him and I'm telling  
16 him to stay out of it. There's a different angle that I've  
17 seen. I haven't seen -- this video doesn't show that angle.

18 Q. This video doesn't show that, correct?

19 A. Yes.

20 Q. You've seen that somewhere else?

21 A. Yes.

22 Q. In a different video?

23 A. Yes.

24 Q. Do you know who took that video?

25 A. No. I remember seeing it.

26 Q. And it shows you clearly pushing Oscar up against the  
27 wall with both hands?

28 A. Just touching him. And then again my attention went

1 towards the Bryson, the bigger one, not the one that was sitting  
2 down. Because he got off the wall and that's when you see me  
3 pushing him.

4 Q. Okay. I'm only interested in Mr. Grant at this  
5 point. You've described how you pushed him with both hands up  
6 against the wall. Is it your testimony that you've seen a video  
7 that shows that?

8 A. I've seen -- you don't see me pushing him like this.  
9 You see me touching him, but I kept pushing him back and he was  
10 at an angle because he kept trying to advance towards Officer  
11 Pirone's direction. All he can tell me was, "This is fucked  
12 up."

13 Q. Pardon me?

14 A. All he kept telling me is that it's fucked up.

15 Q. Where were you when you saw this video?

16 A. Just clips that I've seen.

17 Q. Is it this video or is it a different one?

18 A. There's a different one where I'm just touching him,  
19 just like (indicating).

20 Q. And in that different video, where were you when you  
21 saw it? At home? At your attorney's office?

22 A. I don't recall where I was.

23 Q. How many times have you seen it?

24 A. I don't know.

25 Q. Was it on TV? Was it on a computer?

26 A. I know that I pushed him. I know what I did.

27 Q. I understand what you are saying. But I want to know  
28 where the video is of what you're saying?

1           A.     You see a portion of it here where I'm just touching  
2 him. That's what I mean. You don't see me doing everything  
3 that I'm explaining to you. You see me just touching him like  
4 you see right now. That's what I mean.

5           Q.     But there's another video out there that I'm  
6 interested in. And it shows you pushing Oscar Grant with both  
7 hands against the wall. True or false?

8           A.     Portion.

9           Q.     I'm sorry?

10          A.     You don't see me like this. You see me touching him.

11          Q.     Touching him how?

12          A.     If this is his body, let's say.

13                THE COURT: Mr. Stein, why don't you come up. Come  
14 up, Mr. Stein.

15                Why don't you demonstrate with Mr. Stein using him as  
16 Oscar.

17                THE WITNESS: If you can stand here.

18                BY MR. STEIN:

19          Q.     This is the wall.

20          A.     This is the wall and there's an indentation here.  
21 And act like you're going to go that way. Okay. And I kept  
22 pushing him back like this. If I can just --

23          Q.     Yeah.

24          A.     I kept doing this. I kept telling him, "Stay out of  
25 it. Stay out of it." He kept telling me, "This is fucked up."  
26 If you're going to walk that direction, so your body motions  
27 like this and I kept doing this.

28                THE COURT: The record is you've shown you actually



1 grab --

2 THE WITNESS: I do this. I go, "Stay out of it.  
3 Stay out of it." And there's a portion where I grab him. And  
4 as he's doing this and his hands are moving, I just tell him to  
5 stay out of it and he keeps saying, "This is fucked up."

6 THE COURT: Mr. Stein, next question.

7 BY MR. STEIN:

8 Q. You can have a seat. And this video that you're  
9 talking about shows this, what you've just --

10 A. You just see me touching the portion of him. You  
11 don't see all that. You see this.

12 Q. What portion?

13 A. This half of your body.

14 Q. Okay. So it shows you with your two hands on the  
15 upper part of his chest?

16 A. No. You see this.

17 Q. Your hands are up in front of him?

18 A. But you see me touching this part of his body like  
19 this, because then I get distracted by the bigger Bryson. And I  
20 move back and I push him back. If you push play, you can see a  
21 portion of that.

22 Q. But I'm interested in the video that shows this. The  
23 video that you're describing --

24 A. I don't know what video it was.

25 THE COURT: Hold on, the question is whether or not  
26 there is a video that exists that shows what you just described.  
27 You've seen that?

28 THE WITNESS: I remember seeing a video, yes.

1 BY MR. STEIN:

2 Q. And it's a video other than this one, true?

3 A. I don't know if it was this one or another one. I  
4 remember seeing it.

5 Q. Well now, you said earlier, I thought, that it was  
6 some video other than this one?

7 A. Yeah. There was a video, but I don't know which one  
8 it was. There's so many out there. But you see that part.

9 Q. Okay. Do you see that part in what I've just shown  
10 you?

11 A. Yeah, you see a little portion of it.

12 Q. You tell me to stop when you see it, okay.

13 (Video played.)

14 Q. I'm going to back up. Okay. Now, here you appear to  
15 be putting your right hand out to Mr. Jackie Bryson, holding him  
16 back?

17 A. Yes.

18 Q. Now I'm scrolling forward, and you tell me where it  
19 is you see what you've described.

20 A. I don't see it because when Officer Pirone takes  
21 Greer down, that's when it happens.

22 THE COURT: So you don't see it in this video?

23 THE WITNESS: This is a different clip, yes.

24 BY MR. STEIN.

25 Q. I thought you said we could see it in this video.

26 A. But then I just saw -- my understanding seeing how  
27 Greer -- because I remember when Greer was taken down, that's  
28 when it happened. But seeing that he's being handcuffed in this

1 clip, that's not the scene.

2 Q. I want to break this down so we're really clear. So  
3 there can be no dispute if someone were to look at this record  
4 down the road.

5 The conduct that you described right here on me is that or  
6 is that not depicted on this Vargas video?

7 A. On this clip right here that I'm looking at right  
8 now, no.

9 Q. It is not?

10 A. No, not on this little -- right now that's paused,  
11 that clip right there.

12 Q. No. Not the frame, but this video. Not just this  
13 particular frame, but this video. You've seen it before. Is it  
14 portrayed in this video?

15 A. Could you rewind it?

16 Q. Sure. And I'll go frame by frame. Would it be okay  
17 to start here?

18 A. No, because it's --

19 Q. Further back, okay. I can start at zero. How about  
20 I start at zero. I'm starting at zero, and I want you to tell  
21 me to stop when you see the conduct you described for us or even  
22 a part of that conduct.

23 (Video played.)

24 A. Right there. Before Pirone touches him, I was  
25 pushing him back.

26 Q. Right here?

27 A. Before he even gets close to us, I'm touching him.

28 Q. I'm going to scroll back here, and you tell me to

1 stop when you see the conduct that you --

2 A. The guy covers it. Because before Tony gets up, I  
3 was touching him before he even got to us.

4 Q. So it happens when this person in the dark hooded  
5 sweatshirt who has their back to the camera is blocking the  
6 camera?

7 A. Yes. Because Tony, he wasn't close to us when I was  
8 touching him holding him back. That's when I -- again, when I  
9 described the hand.

10 THE COURT: So the record is you can't see it in this  
11 video then?

12 THE WITNESS: No.

13 BY MR. STEIN:

14 Q. Can't. Meaning you cannot, right?

15 A. It did happen, but you cannot see it.

16 Q. Is it your testimony that you can see it in some  
17 other video?

18 A. Yes.

19 Q. Can you find that for me?

20 A. Sure.

21 Q. You'll be able to get that for me?

22 A. I'll look.

23 THE COURT: Next question. She's answered it.

24 BY MR. STEIN:

25 Q. You never pushed Oscar Grant up against the wall, did  
26 you?

27 A. Yes, I did.

28 Q. You're saying it now to make it appear that Oscar

1 Grant was more aggressive than he actually was; isn't that true?

2 A. I know what I did. I pushed him back because he kept  
3 telling me it's fucked up and I kept telling him to stay out of  
4 it.

5 Q. When Officer Pirone came up, you did not see -- you  
6 made a motion for us earlier similar to one making the pledge of  
7 allegiance. And I think you were describing that motion as the  
8 motion that Officer Pirone made towards Mr. Grant. Am I correct  
9 in saying that?

10 A. Yes.

11 Q. And at that time, you have no idea what he was doing  
12 because you're attention was directed to your right to an Asian  
13 male, correct?

14 A. When Officer Pirone -- if Grant's here and I was  
15 doing this and Officer Pirone comes up, I see the hand. Common  
16 sense, you know he's going to go hands on. You see the hand  
17 come up, I go toward my threat, which is the Asian male.

18 Q. Common sense he's going to go hands on?

19 A. Why would you touch somebody if you're not going to  
20 detain them or handcuff them?

21 Q. That's a very good question. And why do you think he  
22 was going to do that motion, go hands on --

23 A. Because when I kept instructing them to sit down,  
24 they wouldn't sit down after they popped up. And that's when  
25 I'm pushing Grant back and I'm saying, "Stay out of it. Stay  
26 out of it." And he just kept telling me, "It's fucked up." And  
27 I still kept telling them, "Sit down. Sit down." And Officer  
28 Pirone came and he did that. Officer Pirone said something to

1 the effect of "You were instructed to sit down."

2 Q. And what --

3 A. That's when he grabbed him to sit him down.

4 Q. How did he grab him?

5 A. I saw the hand. That's what I saw.

6 Q. What part of Oscar Grant did Officer Pirone grab?

7 A. Just like this (indicating).

8 Q. So he grabbed his upper left shoulder area?

9 A. Yeah. I saw this motion like this (indicating).

10 Q. Did you see --

11 A. And then I turned.

12 Q. Did you see Officer Pirone's hand grab and take hold  
13 of any part of Mr. Grant?

14 A. I saw like a cup motion like this. Like this  
15 shoulder (indicating).

16 Q. So is the answer to my question, yes, you did see  
17 Officer Pirone grab hold of some part of Mr. Grant?

18 A. The shoulder area, yes.

19 Q. And when he grabbed hold of Mr. Grant's shoulder  
20 area, what happened?

21 A. I turned.

22 Q. And so you did not see what, if anything, Officer  
23 Pirone did to Mr. Grant after you turned, true?

24 A. Yes.

25 Q. And you've testified earlier that when you did turn,  
26 you knew that Officer Pirone would be fine, true?

27 A. Yes.

28 Q. Why did you think that?

1           A.     Because we've been doubled up that month several  
2 times, and I know how Officer Pirone functions and the way he  
3 works.

4           Q.     How does he function?

5           A.     The fact that we're on calls, I know that if we have  
6 to go hands on, he'll be okay.

7           Q.     What if that person has a gun?

8           A.     Well, if he would have had a gun, he would have used  
9 it, but don't hesitate.

10          Q.     That's my point. Why did you assume that Officer  
11 Pirone would be fine because you thought there's a high  
12 probability that these guys might have guns, given the  
13 information that you had previous to this call? Why did you  
14 assume when you turned that he would be fine?

15          A.     No. There's a high probability that that same train  
16 that there could have been a gun on that train, not these  
17 particular people.

18          Q.     Okay. But the train that these people were on, you  
19 thought there was a high probability that someone on that train  
20 had a gun?

21          A.     Yes.

22          Q.     My question is: With that knowledge, why did you  
23 assume everything would be fine when he had to go hands on with  
24 a guy who hadn't even been searched?

25          A.     Because the fact that if someone has a weapon and  
26 they're going to use it, if they're going to do it, they're not  
27 going to hesitate. If he did have a gun from the get-go, he  
28 would have used it.

1 Q. And you were willing to take that chance?

2 A. Well, the fact is if somebody would have pulled a  
3 gun, this would have been a whole different situation.

4 Q. Someone did pull a gun in this situation.

5 A. I mean in subject-wise.

6 Q. You never heard Officer Pirone say anything to the  
7 three individuals up against the wall as he walked from  
8 Mr. Greer to those individuals, true?

9 A. True.

10 Q. And you described that at some point, you don't have  
11 any recollection of this, but the video shows otherwise -- and  
12 what I'm referring to is, I think, you said that Oscar Grant  
13 grabbed hold of your left arm; is that correct?

14 A. Yes.

15 Q. You have no memory of that, true?

16 A. Yes.

17 Q. That's true you don't have a memory?

18 A. I didn't remember that.

19 Q. And, in fact, you never mentioned anything about  
20 Oscar Grant laying a finger on you in your first statement,  
21 true?

22 A. If I would have remembered, I would put it down. So,  
23 true.

24 Q. And nor did you mention anything about that in the  
25 second statement that you gave, true?

26 A. Yes.

27 Q. And why is it that you are certain that that in fact  
28 happened today?



1           A.     Because the fact that the third interview when I was  
2 interviewed by Allen Fueng and Lieutenant Alkire and my attorney  
3 was present, she showed me a video and right there she pointed  
4 out that he touched me. And I said to her, "I don't remember  
5 him touching me." And you can see it when I push the bigger  
6 Bryson, you see him grabbing my arm.

7           Q.     Your attorney told you that that's --

8           A.     She pointed it out to me. Because I said to her, "I  
9 don't remember him touching me."

10           THE COURT: Mr. Stein, for the record.

11           MR. RAINS: I'm going to object to this as attorney  
12 client communication. I move to strike any testimony that  
13 recounts attorney-client communication.

14           THE COURT: Overruled.

15           Mr. Stein, for the record, can you tell us the dates of  
16 these statements because I don't have any.

17           MR. STEIN: The first statement was taken on  
18 January 1st of 2009 at approximately 08:48 hours. The second  
19 statement was taken on January 7, 2009, from approximately  
20 09:43 hours to 11:28 hours. The third statement was taken on  
21 March 7th, 2009, at approximately 11:00 hours to 12:46 hours.

22           THE COURT: So that's referring to the March 7th  
23 statement?

24           MR. STEIN: Yes.

25           Q.     Isn't that correct? That was taken at your  
26 attorney's office?

27           A.     The third, yes. The third statement, yes.

28           Q.     And it was at that time that your attorney pointed

1 out to you Oscar Grant touching your arm?

2 A. He's grabbing my arm, yes.

3 Q. And when -- let me see if I can find that image. It  
4 was after the individuals popped up, correct?

5 A. If you rewind it a little bit, you can probably see  
6 it.

7 Q. Okay. I'm going forward here. If you can tell me if  
8 you see that.

9 (Video played.)

10 A. And the angle that I saw, I'm not sure if it was on  
11 this footage here.

12 Q. We haven't seen it all just yet. Let me keep  
13 scrolling.

14 THE COURT: Mr. Stein, we'll take a 15-minute recess  
15 and you can find it.

16 (Court in recess.)

17 THE COURT: Mr. Stein.

18 MR. STEIN: Thank you, your Honor.

19 Q. Officer, when we left off, I was at frame 395. What  
20 I'd like you to do is tell me to stop when you see the image, if  
21 you can, where Oscar Grant touches your arm.

22 (Video played.)

23 A. If I can interrupt.

24 Q. Sure.

25 A. You can't see it on this angle.

26 Q. You mean the angle from which you are viewing it  
27 or --

28 A. No, no. The way the camera is.

1 Q. Oh. So did you not say that your attorney pointed it  
2 out to you in this video where Oscar Grant touched your arm?  
3 Did you not testify to that earlier?

4 A. There's a footage where, yeah, you can see where he  
5 grabs my arm.

6 Q. That's what I'm asking you to look for.

7 A. Yeah.

8 Q. Are we clear on that?

9 A. Yes.

10 Q. Okay. You tell me to stop when you see Oscar Grant  
11 touching your arm.

12 (Video played.)

13 A. Right there you see his hand come up.

14 Q. Whose hand?

15 A. Go back. Keep coming back.

16 Right here where you see Officer Pirone's hand come up  
17 before he makes contact. You can't see from that angle, but I  
18 know what I did and I know right there is where I was holding  
19 him back and that's when Officer Pirone comes in.

20 Q. Okay.

21 A. You can't see it from this angle. That's what I'm  
22 referring to.

23 Q. Okay. I know you said this repeatedly you know what  
24 you did and all that. But I'm asking you now if you can tell me  
25 where it was in this video that your attorney said, "Yeah, right  
26 there. Oscar Grant is touching your arm." And you said  
27 something, "I don't remember that." But, yes, that is what that  
28 image shows.

1 A. I also said it was from a different angle.

2 Q. So it was a different video?

3 A. And you asked me to find that video.

4 THE COURT: No, no, no, no, no. Answer that question  
5 first, then you can explain.

6 BY MR. STEIN:

7 Q. The video that your attorney showed you, was it the  
8 video that I'm showing on the monitor now?

9 A. No.

10 Q. It was a different one?

11 A. Different one.

12 Q. Okay. Well, do you know who took that video?

13 A. No, I do not.

14 Q. Okay. But you are certain it's not this one?

15 A. It's not this one because it's from a different  
16 angle.

17 Q. Okay. And did you see that video on TV?

18 A. It was -- yes, it was on TV. It was on the news.

19 Q. It was out in the media?

20 A. Yes. I would probably check Channel 2 News.

21 Q. Okay. You think you saw it on the Channel 2 News?

22 A. They were the ones showing most of these videos.

23 Q. You weren't injured in any way after the course of  
24 these events that took place?

25 A. No.

26 Q. Your uniform wasn't damaged? Nothing like that,  
27 right?

28 A. No.

1 Q. Would it be fair to say that one thing that was  
2 crystal clear to you when you were dealing with these young men  
3 against the wall is that they did not want to be tased?

4 A. Yes. When you pulled out the Taser, yes, it was  
5 obvious.

6 Q. And it was obvious because when you pulled out the  
7 Taser, and when I say you I'm referring to you and Officer  
8 Pirone, that these young men repeatedly said, "Don't tase me.  
9 Don't tase me." Correct?

10 A. Yes.

11 Q. And when they said, "Don't tase me," they kind of put  
12 their hands up in front of them the way I am now, right?

13 A. Yes.

14 Q. You knew that you could get compliance from these  
15 young men by pointing the Taser at them, true?

16 A. Yes.

17 Q. And when I say these young men, I'm including Oscar  
18 Grant, correct?

19 A. Yes.

20 Q. In fact, it is when you pointed the Taser at them  
21 that they began to listen, to obey your commands. I believe  
22 that's what you said in the past; is that right?

23 A. Yes.

24 Q. And you said that these young men were able to see  
25 the red dot coming from the Taser and they knew that that red  
26 dot had come from the Taser, correct?

27 A. When you have a Taser out and you point it at  
28 somebody, there's a red light that comes on. So when they did

1 this, they can see the beam of the red light on their body.

2 Q. And so wherever you point the Taser, that's where the  
3 red beam goes, right?

4 A. Yes.

5 Q. And, in fact, I think you said in the past that the  
6 use of the Taser in this situation was a good tool or a good  
7 weapon because just the mere sight of it caused the people to  
8 comply with your orders because they didn't want to get tased,  
9 right?

10 A. Yes.

11 Q. At some point after Officer Pirone got Mr. Grant to  
12 the ground, he went to the train operator, true?

13 A. At one point, yeah, he did.

14 Q. And you remember seeing him go towards the train  
15 operator?

16 A. I seen him walk away, and then there was obedience on  
17 the scene at that time.

18 Q. Okay. When he came back from the train operator, you  
19 don't remember him saying anything to the young men against the  
20 wall?

21 A. No.

22 Q. Do you ever remember him saying, "Sit the fuck down,"  
23 to Oscar Grant when he returned from the train operator?

24 A. No. But where he grabbed him, that part, he told him  
25 -- he said, "You were instructed to sit down," and he did curse  
26 a little bit.

27 Q. At that time?

28 A. Yes.

1 Q. Was that the first time that evening that you heard  
2 him curse?

3 A. Within the entire day or just on that scene --

4 Q. Just that incident?

5 A. -- on the platform? He cursed then right there and  
6 probably some other times too.

7 Q. Okay. I want to show you the first of the three  
8 Vargas videos and ask you if this -- if you can recognize this  
9 voice here.

10 Okay. I'm starting at image 495. Can you see that from  
11 where you're at?

12 A. Yes.

13 Q. What we have are -- appears to be Oscar Grant seated  
14 against the wall, someone to his left, as you're look at the  
15 image, and then two officers standing in front of the young men.  
16 Is that what you see?

17 A. Yes.

18 Q. And I'm going to go ahead and play this, and I want  
19 to see if you recognize the voice of the person who can be heard  
20 when Oscar Grant is being taken down, okay?

21 A. You want me to identify the voice?

22 Q. Yeah, if you can.

23 A. Okay.

24 (Video played.)

25 Q. Okay. I stopped it. Did you hear someone say, "Sit  
26 down God damn. Sit the fuck down"? Can you hear that?

27 A. Can you rewind it one more time?

28 Q. Sure. Starting at 697.

1 (Video played.)

2 Q. Did you hear that?

3 A. I heard, "Sit the fuck."

4 Q. Did you recognize that voice?

5 A. Yes.

6 Q. Is that Officer Pirone?

7 A. Yes.

8 Q. Do you remember him saying that, independent of what  
9 you've just seen?

10 A. No.

11 Q. But you do recognize that as being his voice?

12 A. Yes.

13 Q. You saw in the other video a person winding up and  
14 throwing something up in your direction. Do you remember that?

15 A. Yes.

16 Q. Person in a dark hood sweatshirt?

17 A. Yes.

18 Q. Someone other than Mr. Anicete, correct?

19 A. Yes.

20 Q. And did you hear anything shatter after that person  
21 threw that object?

22 A. I didn't hear. No, I didn't hear that. I was too  
23 busy focusing on Anicete.

24 Q. When Anicete threw whatever it is he threw -- by the  
25 way, do you know what Anicete threw?

26 A. He threw a cell phone at me.

27 Q. You know it was cell phone?

28 A. It appeared to be a cell phone because I just saw



1 little pieces everywhere.

2 Q. Is it possible that you could be mistaken that the  
3 person who threw the object was the person in the dark hooded  
4 sweatshirt and not Mr. Anicete?

5 A. No. Because I saw Anicete, this motion, and he kept  
6 calling me a fucken bitch, and that's when he did this and he  
7 just chugged it at me, and that's when I turned my face waiting  
8 for the impact.

9 Q. But when this person with the hooded sweatshirt threw  
10 an object at you, you turned away at that time, did you not?

11 A. I just saw him, this motion.

12 Q. You don't remember flinching or turning away?

13 A. I don't remember flinching for him. I remember  
14 flinching for Anicete.

15 Q. The person wearing the hooded sweatshirt, whatever he  
16 was throwing, was he not throwing it in your direction?

17 A. I don't remember him. I remember Anicete throwing it  
18 at me because he was looking at me and he just had this look of  
19 anger.

20 Q. Okay. But you don't remember this other individual  
21 throwing something at you?

22 A. No.

23 Q. Okay. If it weren't for this video, is it your  
24 testimony that you would never have realized that that person  
25 ever threw something at you?

26 A. After watching this video, and the question that  
27 you're asking me, at the time all this happened, after the  
28 incident, you just start thinking of everything that happened on

1 that platform. So when they start asking what happened, you  
2 start saying things. And on my second interview I start  
3 remembering things. And then when you start seeing footage, you  
4 start remembering more things that were actually happening on  
5 around you at the scene. Because I was focusing on certain  
6 things. And then when you see other things like this footage,  
7 you start noticing like, Wow, this happened.

8 Q. Right. And in frame -- I'm showing the second of the  
9 two Vargas videos starting at frame 6202. You see yourself  
10 there in the image of the far left, as you're looking at the  
11 image?

12 A. Yes.

13 Q. And as I scroll forward, you see this person who is  
14 making this throwing motion right in your direction?

15 A. Yes.

16 Q. Officer Woffinden looks like he's flinching, does he  
17 not?

18 A. Yes.

19 Q. I think this is after the shot rang out, correct?

20 A. I don't know.

21 Q. You don't know. Okay. Now, my question is: Do you  
22 think that maybe you are confusing the person who threw the item  
23 at you?

24 You thought it was Mr. Anicete. But in the chaos and  
25 everything that -- when you see this, maybe it was this person  
26 in the dark hooded sweatshirt.

27 A. No, because Anicete -- again, when I left Tony and I  
28 looked towards his direction, he just had this look at me and he

1 just kept looking at me and he kept calling me a fucken bitch  
2 and then he just kept going back and forth, back and forth, and  
3 then I saw the motion of his hand throw something at me. That's  
4 when I flinched and I new it was him. He just got my entire  
5 attention because the way he was acting towards me.

6 Q. So is it your testimony that you in no way are  
7 confusing these two throwers, if you will?

8 A. All I know and I remember seeing Anicete. I don't  
9 remember seeing the other male throwing objects. I was focussed  
10 on him. Seeing this video, I don't even remember seeing that  
11 when he's over here and Anicete is right there. I don't  
12 remember that.

13 Q. So you don't think you're confusing the two?

14 A. No.

15 Q. When you heard the shot ring out, you knew it was a  
16 shot because you smelled gun powder, correct?

17 A. At first, I didn't know what it was. I just heard  
18 like a pop noise. And then when people on the train said, "They  
19 fucken shot him," and I stopped for a couple seconds and then I  
20 just -- it's just like everything stopped on the plat -- just  
21 for a couple seconds. And then that's when I looked up and I  
22 saw Officer Guerra. He just had this look on his face and then  
23 you can smell it and that's when people were saying, "They shot  
24 him. They shot him."

25 Q. And so when you smelled the smell and you heard the  
26 people saying, "They shot him. They shot him," is it at that  
27 point that you figured someone's been shot?

28 A. Yeah. I didn't know who was shot or what happened.

1 Q. And would it be fair to say that that was a matter of  
2 seconds between the time you heard the shot and the time you  
3 made the conclusion that someone's been shot?

4 A. Yes. And everyone started panicking on the platform.

5 Q. And after you heard the shot and you realized that  
6 was a gun, right, and possibly someone's been shot, you never  
7 pulled your gun, did you?

8 A. No, because there were officers there. So I knew  
9 that situation would have been handled. And then when you start  
10 looking, that's when I saw Jonathan Guerra come down on Grant  
11 and that's when I knew one of us wasn't involved. Somebody had  
12 been shot.

13 Q. Well, how did you know those officers would be fine  
14 just because they were there? I mean, you said earlier that you  
15 didn't know who had the gun and who had been shot. Could have  
16 been a fellow officer for all you knew, correct?

17 A. Well, if it would have been a fellow officer, I think  
18 officers' reaction would have been different and I would have  
19 reacted to that.

20 Q. But you chose nonetheless to leave your gun in its  
21 holster at that time, true?

22 A. When you heard -- let me go back to your question.  
23 When I heard the pop noise and I was over here with the guy with  
24 the camera, I just -- I stopped and I -- you just look. And  
25 then the officers that were there were just, you know, they  
26 start assessing the situation. And, again, if it would have  
27 been an officer involved, then you would have seen their  
28 reactions different.

1 Q. And after you heard the pop, you never pulled your  
2 gun from its holster, true?

3 A. Yes.

4 Q. After -- I'm sorry -- before you heard the pop, you  
5 never heard anyone say words to the effect of "I'm going to tase  
6 you," true?

7 A. I wasn't in that vicinity. I couldn't hear anything  
8 they were saying.

9 Q. Now, when you realized that this was an  
10 officer-involved shooting -- first of all, when was that when  
11 you realized that an officer had shot someone on the platform?

12 A. It was probably several minutes afterwards and then  
13 when I saw the lieutenant.

14 Q. It wasn't until then that you realized that an  
15 officer had shot someone?

16 A. Because I saw them escorting Officer Mehserle off the  
17 platform.

18 Q. And that was several minutes after hearing the pop?

19 A. I just remember them escorting him off the platform.  
20 Again, I don't know. I can't give you specific 1, 2, 3,  
21 4 minutes. I don't know how long it took for me to finally  
22 assess that.

23 Q. And during the time, however long it was, what did  
24 you think had happen?

25 A. He shot somebody.

26 Q. Who shot somebody?

27 A. Officer Mehserle. Afterwards, I starting putting  
28 things together after the platform was cleared and everything

1 kind of started calming down and the paramedics showed up.

2 Q. And it wasn't until that time that you realized that  
3 it was Officer Mehserle who had shot someone else on the  
4 platform?

5 A. Yes. Because I never saw him on the platform. I  
6 didn't see him come up. Again, when I stayed there, I just saw  
7 uniformed personnel up there. And then after everything calmed  
8 down and the train was released, that's when I started putting  
9 things together.

10 Q. And during that time, however long it was between the  
11 time you heard the shot and the time you put things together,  
12 you were just on the platform not knowing who had been shot, if  
13 anyone; is that correct?

14 A. I saw Oscar there. I put my gloves on, but I did not  
15 touch him. The AMR units showed up. And then at that time, I  
16 started taking everybody off the platform.

17 Q. At any time, do you recall any officers telling any  
18 of the young men who were being detained that they were under  
19 arrest for anything?

20 A. No. I just remember them there.

21 Q. Now, you've said in the past that when you were on  
22 the platform that night, you came very close to using lethal  
23 force, correct?

24 A. Yes.

25 Q. And so I'm clear on what you meant when you said  
26 that, you felt that you were very close to pulling out your  
27 firearm and shooting people; is that correct?

28 A. Yes.

1 Q. Who were you going to shoot first?

2 A. The fact that you're a law enforcement figure, an  
3 authority figure. The fact that you're giving specific and  
4 direct orders for people to back up, to stay back, and they  
5 wouldn't listen. I started thinking to myself, I only have two  
6 cartridges. Cartridges are on your Taser.

7 So when you tase somebody and you go and you point it and  
8 shoot it, these two little prongs come out and they get stuck to  
9 that person. That's a cartridge. If you take it off, you can  
10 dry stun somebody. So they give us two of those. So the one  
11 that's on your Taser and then the extra one that's on the back  
12 of the Taser.

13 So my thinking was, everything after the shot was fired,  
14 it was just so chaotic. And nobody was listening, everybody was  
15 coming everywhere. And I said to myself, "Jesus Christ, I'm  
16 going to have to -- if I have to, I'm going to have to kill  
17 somebody." And I said to myself, "I have two cartridges and  
18 that's all I have and then I'm going to have to go to lethal  
19 force."

20 And I chose not to use my baton because I would not focus  
21 my attention on one person, knowing that there's several more  
22 people. I would not have chosen my pepper spray for the fact  
23 that, what use am I if I can't protect our officers if the  
24 pepper spray affects me? That's why I had my Taser and that's  
25 why I said to myself, "Okay. Once my Taser, I got to go to my  
26 gun."

27 THE COURT: Wait a minute. Let's answer the  
28 question. Who were you going to shoot first?

1 THE WITNESS: The people that weren't paying  
2 attention -- they were just coming at us. It was just so  
3 chaotic.

4 THE COURT: Next question.

5 BY MR. STEIN:

6 Q. So you're referring to the four -- well, Mr.  
7 Anicete's been taken into custody, right? So now we're down to  
8 three?

9 A. Everybody off the train. There was no one listening.  
10 You don't see in these picture the background. You don't see  
11 like the gentleman with the camera that was in my face telling  
12 me, "I want your fucken name. I want your fucken name." You  
13 had other people -- you had other people telling, "Hey, blood.  
14 No man. Get back on the train." And you have more of them  
15 coming at you. You don't see that in some of these footages.  
16 That's when I started thinking that if I have to go to lethal  
17 force, I will go to lethal force.

18 Q. And that thought definitely crossed your mind?

19 A. Yes, it did.

20 Q. When these people were advancing towards you, this  
21 was after the shot had rung out?

22 A. Yes.

23 Q. And we're talking about -- I know we're not going to  
24 be exact on this -- but about how many people? 30? 40?

25 A. Again, I can't give you the number. There was a lot  
26 of people on there. And that's another thing. You know, we  
27 needed more police presence up there. It was -- what we had up  
28 there, I can't tell you how many officers were up there. I



1 didn't keep track of how many law enforcement personnel, how  
2 many people were on the train, how many people were on the  
3 platform. But all I know is that we needed mutual aid. It was  
4 just so bad up there.

5 Q. What's is mutual aid?

6 A. Mutual aid is the fact that BART police -- I'll give  
7 you an example. An agency. And the fact that we're in Oakland  
8 and we're in the Fruitvale BART station. Mutual aid is said  
9 when you call outside agencies within that jurisdiction. So  
10 OPD, Oakland Police Department, which is there. I would have  
11 requested Oakland Police Department to show up and assist us, as  
12 many officers as we can get on that platform.

13 Q. Why didn't you just request for some BART officers to  
14 show up?

15 A. We didn't have enough bodies.

16 Q. How many BART officers --

17 A. I don't know how many officers were on that platform.

18 Q. No. How many BART officers were working that night?

19 A. There were several officers. Again, I don't know how  
20 many they had in different zones. We're divided into zones. So  
21 Oakland itself is one zone. A lot of the officers of BART, they  
22 had them in San Francisco Embarcadero and Oakland West. And  
23 they have a tactical team. So these people are in groups. So  
24 they dispersed us within the whole entire district. So we only  
25 had so many people come. We even had people from Hayward, which  
26 we consider that Zone 3 and we had Zone 2, which was the  
27 Richmond area. We had people coming from different zones, which  
28 were BART police personnel. But the fact that it's too far of a

1 distance, you're looking at 20, 15, 30 minutes for them to get  
2 here because we're so spread out. But the officers that  
3 responded that night were in the Oakland area in that vicinity,  
4 and that's why I felt that we needed mutual aid. We needed  
5 other agencies to assist us in that.

6 Q. Okay. But you never called for more officers, did  
7 you?

8 A. We called for our units and OPD did show up.

9 Q. No. My question is you personally, Officer Marysol  
10 Domenici, never called for additional officers, true or false?

11 A. True.

12 Q. But you thought that you needed more officers to  
13 assist you than BART really had available that night?

14 A. Yes. I didn't have time to get on my radio and I  
15 didn't know what was being said on the radio at certain points  
16 where people were out of control.

17 Q. And how many officers do you think you needed that  
18 night to assist you in what you were doing?

19 A. As many as we can get.

20 Q. Can you give me an approximate number of officers?

21 A. As many as you can get. We needed a lot.

22 Q. Okay. 600. Do you think you needed 600 officers?

23 A. No.

24 Q. Do you think maybe a hundred officers would have been  
25 sufficient?

26 A. Preferably yes, based on the people that were on that  
27 train.

28 Q. Give or take a hundred officers would have been

1 needed to control that situation?

2 A. Yes. And if we would have gotten more, that would  
3 have been fine as well.

4 Q. And your testimony is that you had this button that's  
5 on your radio that you did not push, right?

6 A. I never pushed it, no.

7 Q. You never pushed it. And I think you said that if  
8 you do push it, that that signals out that you need the air so  
9 you can talk without people talking over you, right?

10 A. Yes.

11 Q. And when you push that button, do you know whether or  
12 not the people at dispatch know that you've pushed this button  
13 whether or not you say anything?

14 A. When you push the button, dispatch -- each radio is  
15 assigned to each officer and they have a number for that  
16 officer. So when you push the button, it's going to show on  
17 their screen. I don't know what it looks like on their screen,  
18 but it shows, and they'll respond to you. They'll say, "Officer  
19 Domenici or 496, you have traffic." They can see that on there.  
20 So if you push it, they know it's you.

21 Q. So if you push it, right, they know it's you. They  
22 know something bad has happened. Otherwise, you wouldn't be  
23 pushing it. By the way, is there a reason why you have to hold  
24 it down for 3 seconds?

25 A. Real quick, people push it by accident sometimes.

26 Q. And that's why you have to hold it down for 3 seconds  
27 to accidental --

28 A. Yes.

1 Q. So that makes sense. So that people don't push it  
2 accidentally, you have to hold it down for 3 seconds?

3 A. Yes.

4 Q. If you were to hold it down for 3 seconds, dispatch  
5 know there's an officer and, in fact, they know who it is, needs  
6 help immediately, true?

7 A. Yes.

8 Q. Okay. But for whatever reason, you chose not to push  
9 that button, right?

10 A. I chose not to push the button because I knew they  
11 were watching us on video and they called OPD for us.

12 Q. After the shooting, you went to Lake Merritt. You  
13 were transported there; is that correct?

14 A. Yes.

15 Q. How were was transported from Fruitvale to Lake  
16 Merritt?

17 A. I was transported by Commander Gibson.

18 Q. And was there anyone in the car besides you and  
19 Commander Gibson?

20 A. Commander Gibson, myself, and Officer Pirone was in  
21 the backseat.

22 Q. Officer Pirone was with you?

23 A. Yes.

24 Q. Did you and Officer Pirone speak during the trip from  
25 Fruitvale to Lake Merritt?

26 A. We were given specific orders not to talk to each  
27 other and we were advised just to sit there quietly all the way  
28 to Lake Merritt.

1 Q. So you didn't speak to one another. I guess that's  
2 the answer to my question?

3 A. Yes.

4 Q. And who gave you those orders?

5 A. Commander Gibson.

6 Q. And what happened when you got to Lake Merritt  
7 station?

8 A. They put me in a room by myself. I believe it was an  
9 office. And they just left me there and they said somebody  
10 would come and talk to me.

11 Q. I think you said on direct examination that Oscar  
12 Grant did nothing to deescalate the situation. That, in fact,  
13 he was the problem; is that correct?

14 A. Yes.

15 Q. Isn't it true, officer, that you're saying that now  
16 because you're trying to justify the conduct of a fellow officer  
17 when he shot and killed him?

18 A. No. Because if they would have followed specific  
19 orders and if they would have stayed sitting down, this wouldn't  
20 have happened and they probably just would have been cited and  
21 released.

22 Q. Cited for what?

23 A. 148.

24 Q. Which is what?

25 A. When an officer is handling the situation -- you put  
26 it in the situation that Officer Pirone is taking Greer off the  
27 train, and the fact that in the beginning afterwards when they  
28 sat down they were being cooperative, and then when they popped

1 up, that's when they -- pretty much my attention had to go  
2 towards them. It escalated the situation, and the fact that  
3 Oscar Grant was going towards Tony's direction when he was  
4 handcuffing Greer. If he would have just stayed seated, he  
5 would have been fine. I kept telling him to stay out of it and  
6 he just kept trying to go and he wouldn't listen.

7 Q. Are you trying to suggest that it was his fault?

8 A. I kept pushing him back.

9 Q. Is that a yes?

10 A. It's not -- he just kept -- if he would have sat  
11 down, if he would have just stayed down, he would have been  
12 fine.

13 Q. You've said in earlier statements that there is  
14 nothing that you would have changed that night in terms of what  
15 you did; is that correct?

16 A. Yes.

17 Q. And you have said that you did your job and that  
18 you'd do it again; isn't that right?

19 A. Yes.

20 Q. You still have no regrets?

21 A. None.

22 MR. STEIN: That's all I have.

23 THE COURT: All right. Mr. Rains, anything further?

24 MR. RAINS: Yes. Thank you.

25 REDIRECT EXAMINATION

26 BY MR. RAINS:

27 Q. Officer Domenici, just so we are clear on the  
28 interviews you've gone through, I have transcripts here that

1 were provided to me by Mr. Stein. Do you have those up there in  
2 front of you?

3 A. Yes.

4 Q. The one that appears to be TX No. 1, can you find  
5 that one. You have that? It's up there at the top of the first  
6 page, appears to be handwritten.

7 That is the first interview that you had conducted by  
8 members of the BART PD, correct?

9 A. Yes.

10 Q. That's dated January 1, 2009?

11 A. Yes.

12 Q. And it appears that started, and I want this for the  
13 record, that started at 8:48 a.m.?

14 A. Yes.

15 Q. Correct. And if you'll look at the page nine of that  
16 interview transcript. That concluded at what time in the  
17 morning?

18 A. 9:04 in the morning.

19 Q. So the very first interview that you had lasted a  
20 total of 16 minutes?

21 A. Yes.

22 Q. And let's see. If it started at 8:48 in the morning,  
23 what time were you due to get off that day?

24 A. We were supposed to get off at, I believe, 4:00 a.m.  
25 But then they told us that it varied on, you know, on New  
26 Year's, if it was going to be a quiet night, and we weren't  
27 guaranteed if we were going to get off at that time.

28 Q. Did you testify yesterday you believed you came in

1 the day before at 3:00 p.m.?

2 A. Yes. But we came -- I volunteered to come in a  
3 little early.

4 Q. But you actually got there before 3:00 p.m.?

5 A. Yes.

6 Q. Thinking back about December the 31st, do you have  
7 any sense as you testify today, what time you'd gotten up on the  
8 31st to go to work and be there before 3:00 p.m.?

9 A. I think I got up around 8:00.

10 Q. 8:00 in the morning?

11 A. 8:00 in the morning.

12 Q. So by the time you were giving this interview, you'd  
13 been up 24 hours?

14 A. Yes.

15 Q. And it appears that Detective Smith starts the  
16 interview off. It says -- and this is -- I'm reading from page  
17 one:

18 "In regards to the incident that happened at the  
19 Fruitvale BART station, knowing that it's been  
20 several hours and you're probably pretty tired, why  
21 don't you just tell me that best that you can about  
22 you remember about what happened in the Fruitvale  
23 BART station last night."

24 Is that the way that started?

25 A. Yes.

26 Q. So you just basically gave them a narrative?

27 A. Yes.

28 Q. And you responded to any questions he may have had as



1 a followup?

2 A. Yes.

3 Q. All right. That's your first interview. And the  
4 second interview -- and I want to get this for the record. I'm  
5 looking at a transcript of what's set as marked as TX No. 2.  
6 You see that?

7 A. Yes.

8 Q. That appears to be January 7th, right?

9 A. Yes.

10 Q. And it appears to start at 9:43 a.m., correct?

11 A. Yes.

12 Q. And then if you look at page 22 of that transcript,  
13 what time does that end?

14 A. 10:10 a.m.

15 Q. Okay. So from 9:43 to 10:10 for TX No. 2, correct?

16 A. Correct.

17 Q. By the way, had you seen videos, if you recall, had  
18 you look at videos before the interview that occurred on  
19 January 7th?

20 A. I didn't want to watch any videos after it happened  
21 because I was there. I didn't want to see anything.

22 Q. So to the best of your memory, you had not seen  
23 videos --

24 A. No.

25 Q. -- before this video interview --

26 A. No.

27 Q. -- on January 7th?

28 A. No.

1 Q. Now, it appears that -- and if you'll pick up the  
2 transcript TX 2A. That appears also to be on January 7th,  
3 correct?

4 A. Yes.

5 Q. And that appears to be starting at 10:15 a.m.,  
6 correct?

7 A. Yes.

8 Q. Now, so what 2A is it's just the same interview that  
9 started earlier in the day. It looks like you took a 5-minute  
10 break; is that right?

11 A. Yes.

12 Q. And you start again at 10:15. And then what time is  
13 that interview over, page 52, I think it is?

14 A. 11:28.

15 Q. All right. And then finally, for the record, your  
16 transcript TX No. 3, appears to be an interview that occurs on  
17 March 7th, correct?

18 A. Yes.

19 Q. And do you recall during that interview, by the way,  
20 being shown photographs by those who were interviewing you, that  
21 is, still frame photographs?

22 A. Yes.

23 Q. Did you see video clips as well?

24 A. When they interviewed me that day, I just saw the  
25 photographs, but I did see videos.

26 Q. Before this interview?

27 A. Yes.

28 Q. And so that interview starts on March 7th at 11:00

1 a.m., correct?

2 A. Yes.

3 Q. And page 57, what time did that end?

4 A. 12:46.

5 Q. All right. Thank you. And I've got a couple  
6 questions.

7 And perhaps, Mr. Stein, I'm going to call on you for help  
8 in a minute.

9 You were asked a series of questions a few minutes ago  
10 about when you were dealing with the four guys up against the  
11 wall that the your use of the Taser seemed to have an effect  
12 right in it achieved compliance on their part?

13 A. Yes.

14 Q. Is that right? And you were dealing with them,  
15 relative to the shooting, you were dealing with them earlier  
16 that evening, correct?

17 A. Yes.

18 Q. Some time had passed. Do you know if the Taser had  
19 an effect on them after you turned your attention away from them  
20 and was dealing with the crowd out in front of you?

21 A. What do you mean?

22 Q. Well, do you know if the Taser achieved compliance if  
23 it was pointed at them by Pirone or Mehserle or somebody else?

24 A. It achieved compliance in the sense where when they  
25 saw the red dot on their body, that's when they started  
26 complying, yes.

27 MR. RAINS: Okay. Mr. Stein, can you show that  
28 video, the last clip that you showed Officer Domenici when she

1 was -- you had asked her if she heard an officer say something  
2 like, "Sit the fuck down," or something like that. Is that  
3 Cross or Carazo?

4 MR. STEIN: Cross.

5 BY MR. RAINS:

6 Q. You remember looking at this video clip just a few  
7 minutes ago when you were asked if you can identify a voice  
8 about "Sit down" or some profanity directed at Mr. Grant?

9 A. Yes.

10 MR. RAINS: Okay. That's what I'm going to ask  
11 Mr. -- okay, and I think Mr. Stein you are there at that same  
12 frame.

13 Q. I want you to look at this video and I want you to  
14 look at it in particular to see if you recognize a red dot  
15 appearing on the body or the person of Mr. Grant there at some  
16 point in time either before or at the time he raises up, gets up  
17 off the ground.

18 A. I can't see. Can I move down?

19 THE COURT: You can go on down.

20 MR. RAINS: If it would help you, come on down.

21 MR. STEIN: For the record, this is the first of the  
22 three Cross videos, and I'm beginning at frame 628. I'm going  
23 to push play.

24 (Video played.)

25 THE WITNESS: You can see it on his leg.

26 BY MR. RAINS:

27 Q. So you saw a red dot on his leg?

28 A. Yes.

1 MR. RAINS: Mr. Stein, can you keep playing?

2 (Video played.)

3 Q. Did you see that same dot reappear on Mr. Grant?

4 A. Yes, on his chest.

5 Q. And did you see that appear at or about the same time  
6 that he was getting up off the ground?

7 A. It was -- well, right now he just saw it and it just  
8 kind of came off.

9 MR. RAINS: For the record, Mr. Stein, what clip did  
10 you stop at?

11 MR. STEIN: This stopped at 848.

12 MR. RAINS: Thank you. You can have a seat.

13 Q. Officer Domenici, it wasn't clear to me. Did you  
14 hear Officer Pirone's voice yell something about "Sit down" or  
15 "Sit the fuck down" or something like that?

16 A. It sounded like his voice.

17 Q. All right. And you did see a light that you identify  
18 as a Taser light on Mr. Grant's chest?

19 A. Yes.

20 Q. And you saw Mr. Grant get up after the light was on  
21 both his leg and his chest?

22 A. Yes.

23 Q. Would you say that the Taser light seemed to achieve  
24 compliance, assuming that Pirone was telling him to get down?

25 A. Well, he went down but then -- no, he got back up.

26 Q. Now, I want to show you something.

27 MR. RAINS: Mr. Stein, could you return this to the  
28 A20 platform camera that you showed earlier in your cross.

1 I'm going to show the witness Exhibit 28.

2 Q. Officer Domenici, showing you exhibit that's been  
3 marked as People's 28. Do you recognize that as a diagram that  
4 you drew during cross-examination?

5 A. Yes.

6 Q. And this is a diagram of the BART train where you  
7 identified the location where you believe the bench is located  
8 where the individuals were seated next to; is that correct?

9 A. Yes.

10 Q. All right. Now, that train that arrived at the  
11 Fruitvale BART that morning. Do you remember how many cars that  
12 train consisted of?

13 A. I don't remember. But I remember looking down the  
14 lead where the train operator is at and it was all the way to  
15 the end, and usually 10-car trains go down to the end of the  
16 platform.

17 Q. And you apparently ran the distance of that train,  
18 right?

19 A. Yes.

20 Q. So you believe that was probably a 10-car train?

21 A. Yes. Because behind me the train still continues.

22 Q. All right. Now, this diagram that you helped  
23 complete here, Exhibit 28, appears to be -- and I don't know if  
24 this is a scale model -- but you would put yourself in this  
25 bench back about at the -- toward the end of the second car of  
26 this train, right?

27 A. Yes.

28 Q. All right. Now, the BART -- you recognize what Mr.

1 Stein has displayed up here right now as a still frame which is  
2 taken by a platform camera?

3 A. Yes.

4 MR. STEIN: I'm sorry. Just for the record, I'm  
5 showing 27A frame 13200.

6 MR. RAINS: Thank you.

7 Q. So what we'd be looking at would be a still frame  
8 that is taken by the camera that's mounted on the Fruitvale BART  
9 platform?

10 A. Yes.

11 Q. And looking at this camera here -- I know you were  
12 asked questions relative to people coming out of the train at  
13 various times -- do you know where this camera showing the train  
14 here is located in relation to the train? That is, is it  
15 midway? Is it at the front? Where is it?

16 A. I don't know where it's at on the platform.

17 Q. It looks like -- at least we see -- if you can tell  
18 us, officer, you see one car. You see the breaks in the car  
19 here, right?

20 A. Yes.

21 Q. There's one car here, right?

22 A. Yes.

23 Q. Appears to be one car behind that, right?

24 A. Yes.

25 Q. And maybe one car behind that?

26 A. Yes. Each -- to make it easy, each two black lines  
27 is where a door is at. So if you put two lines, two of the  
28 black lines together, that's one car. That will be easy for you

1 guys to distinguish on the yellow strip. So where each black  
2 line is at, that's one car right there, the two. And then the  
3 next two black lines, that would be another car.

4 Q. That's one there?

5 A. Yeah. That's so when the train stops, the door opens  
6 where the black strip is at. So there's two doors on each car  
7 train.

8 Q. If you want to get off -- I would like to ask you a  
9 question. Can you give us any idea, looking at this camera and  
10 knowing what you know about the BART train, how many cars, if  
11 you can tell us, are shown in this still frame?

12 A. From here from where I'm sitting, if you count  
13 there's one, two, three, four, five. You can only see the five  
14 black little strips on the yellow line.

15 Q. Uh-huh.

16 A. So if you don't count the first division of the first  
17 lead car -- we only see a portion of it right there -- you can  
18 say there's two cars that you can see right there.

19 Q. Okay. You can see two cars for sure?

20 A. Yes.

21 Q. And you believe there to be more than two?

22 A. There's more than two, yes.

23 Q. Maybe as many as five?

24 A. Yes. Because when I reached the platform, there were  
25 still more people back here.

26 Q. But you don't see 10, do you?

27 A. No. That's why when you asked me where the train  
28 operator -- the front of the train was towards the end of the



1 platform going towards the Coliseum. So then --

2 Q. I'm sorry.

3 A. So usually 10-car trains have to go to the end of  
4 each platform.

5 Q. So as you ran from the back and Mr. Stein showed you  
6 the clip of you running, you are running toward the front of the  
7 train, correct?

8 A. Yes.

9 Q. And you were running toward the incident that is  
10 occurring then where you see Officer Pirone with these  
11 individuals detained?

12 A. Yes.

13 Q. And that's not captured on this camera either, is it?

14 A. No, it's not captured. Because when you think about  
15 it, now that it's, you know, just still, so you don't see --  
16 it's not being played or anything, people that get off the  
17 train, you're assuming that's their stop. So when I do get to  
18 my location. And then you think about it also, people start  
19 assuming, Well, why are we being held? And then they see me  
20 running, and that's when they start coming off from there.

21 Q. As you sit here testifying today, do you have any  
22 specific recollection about the fact that some of these people  
23 that you said were getting off the train are not getting off the  
24 train, in fact, in front of where this camera appears between  
25 where the camera picks up and the front of the train? Were  
26 people getting off the train there?

27 THE COURT: Yes or no.

28 THE WITNESS: Yes.

1 BY MR. RAINS:

2 Q. All right. Let me ask you this: I went back and  
3 looked at my notes and tried to understand the testimony that  
4 Mr. Stein elicited concerning this.

5 You recall telling Mr. Stein that as you were running  
6 toward the front of the train where Pirone was dealing with  
7 these individuals, that people didn't get in your way. You  
8 recall saying that?

9 A. Yes.

10 Q. And do you recall saying that as you ran toward the  
11 front of the train to get to where Pirone was dealing with these  
12 individuals, that the people you're dealing -- that the people  
13 that you said came off the train were closest to where the  
14 incident was happening?

15 A. Yes.

16 Q. Is that what you remember?

17 A. Yes.

18 Q. So the people that were coming off the train weren't,  
19 at least to your memory, coming off the train at the very back.  
20 They were coming off closer to where the incident with Pirone  
21 was happening?

22 A. Yes.

23 Q. And you said that -- you said you got about 3 feet to  
24 where people were, you know, about 3 feet from where people were  
25 coming off the train at some point?

26 A. Yes.

27 Q. They were about 3 feet away from you?

28 A. Yes.

1 Q. You said that -- there was a question by Mr. Stein  
2 that I looked at. Mr. Stein asked you, "Are we talking 20? 30?  
3 40?" You recall being asked that question by him?

4 A. Yes.

5 Q. And do you recall giving the answer to the effect of,  
6 "If you put them together, yeah, maybe 40, 50." You recall  
7 giving an answer similar to that?

8 A. Yes.

9 Q. What did you mean by, If you put them together, maybe  
10 40 or 50?

11 A. If you put the people that were on the platform and  
12 the people that were here and then the people that were behind  
13 us within the area where I myself and Tony was, that's what I  
14 meant, and then everybody else on the platform.

15 Q. All right.

16 A. Because you did have some people waiting for some  
17 trains up there and you don't see them there on the bench.  
18 There are benches down there where I came up at. So that's what  
19 I'm referring to people that were on the platform.

20 Q. At any time, Officer Domenici, before testifying,  
21 have you seen the A20 platform camera to shows a group of  
22 individuals that are walking from what appears to be this front  
23 car in the video to the back of the train and then getting on in  
24 a car at the rear of the train?

25 A. No.

26 MR. RAINS: You know, I don't have any other  
27 questions. Thank you.

28 THE COURT: Mr. Stein, brief.

1 MR. STEIN: Very briefly.

2 RE-CROSS-EXAMINATION

3 BY MR. STEIN:

4 Q. The point where Officer Pirone escorted Mr. Grant off  
5 the train, can that be seen in this frame, if you know?

6 A. I don't know. I wasn't up there when he took them  
7 off the train.

8 Q. You weren't there?

9 A. I wasn't there. I wasn't there when he took them off  
10 the train.

11 MR. STEIN: That's all I have.

12 THE COURT: All right. Mr. Rains, anything further?

13 MR. RAINS: No, your Honor.

14 THE COURT: All right. May she be excused?

15 MR. STEIN: Yes.

16 MR. RAINS: Yes.

17 THE COURT: Thank you.

18 You want to call your next witness, Mr. Rains.

19 MR. RAINS: Yes, your Honor. We call Officer Anthony  
20 Pirone.

21 ANTHONY PIRONE

22 called as a witness on behalf of Defendant, having been duly  
23 sworn, testified as follows:

24 THE CLERK: Thank you, sir. You may have a seat.  
25 Please state your name and spell it for the record.

26 THE WITNESS: Anthony Pirone. Last name is P, as in  
27 Paul, I-R-O-N-E. First name is Anthony.

28 DIRECT EXAMINATION

1 BY MR. RAINS:

2 Q. Good afternoon, Officer Pirone.

3 A. Good afternoon, sir.

4 Q. Officer Pirone, would you please tell us your  
5 occupation.

6 A. Police officer with BART Police Department.

7 Q. And how long have you been employed by the BART  
8 Police Department?

9 A. Approximately 4 years.

10 Q. And prior to joining the BART Police Department  
11 approximately 4 years ago, did you have any other experience in  
12 law enforcement?

13 A. Yes, sir.

14 Q. And what was that?

15 A. I worked at the Lawrence Livermore National  
16 Laboratory approximately 2 years.

17 Q. Were you a police officer there?

18 A. Federal police officer, correct.

19 Q. So you would say that you have about a total of  
20 6 years as a law enforcement officer?

21 A. Yes, sir.

22 Q. Now, before joining or when joining the BART Police  
23 Department, did you attend a police academy?

24 A. Yes, sir.

25 Q. What was that?

26 A. It was the Evergreen College San Jose Police Academy.

27 Q. And is that a post approved academy?

28 A. Yes, sir.

1 Q. You recall approximately how long that academy was?

2 A. Approximately 6 months, sir.

3 Q. And then after this 6 months of academy, you went to  
4 work for BART?

5 A. Yes, sir.

6 Q. Was there a period of field training?

7 A. Yes, sir.

8 Q. And how long was that?

9 A. Approximately 18 weeks.

10 Q. All right. Now, Officer Pirone do you have any  
11 military background at all?

12 A. Yes, sir.

13 Q. What is that?

14 A. Marine Corps, sir.

15 Q. What is your experience with the Marine Corps?

16 A. 11 and a half years with the military police.

17 Q. And are you currently in the Marine Corps as a  
18 reservist or not?

19 A. No, sir.

20 Q. Officer Pirone, you have been -- strike that.

21 I'm going to ask you a series of questions that will focus  
22 on events that occurred at Fruitvale BART station on  
23 January 1st, 2009, roughly 2:00 a.m. in the morning.

24 You know that's why you're here to testify, right?

25 A. Yes, sir.

26 Q. All right. And I want to ask you, sir, if you've  
27 been interviewed about those events prior to coming here?

28 A. Yes, I have, sir.

1 Q. About how many times, if you know, have you been  
2 interviewed?

3 A. Four times, sir.

4 Q. Four times. And did the first interview occur on  
5 January 1st, 2009?

6 A. Yes, sir.

7 Q. All right. And the second -- I only actually have  
8 three transcripts here. So I may be missing one. I have a  
9 second interview that occurred on January 26th, 2009.

10 Do you recall an interview occurring on or about that  
11 date?

12 A. Yes, sir. I believe that was with the DA's office,  
13 sir.

14 Q. Appears to be Inspector Frank Moschetti. Do you  
15 recall him being there?

16 A. Yes, sir.

17 Q. Do you recall a Deputy District Attorney named John  
18 Creighton being there?

19 A. Yes, sir.

20 Q. And Inspector Bob Conner?

21 A. Yes, sir.

22 Q. All right. And did you, on that occasion with the  
23 District Attorney's Office, agree to give them a voluntary  
24 statement?

25 A. Yes, sir.

26 Q. All right. And I have another interview transcript  
27 that's dated March 17th, 2009, and do you recall being  
28 interviewed by Sergeant Fueng and Lieutenant Alkire?

1 A. Yes, sir.

2 Q. And did you give them then a voluntary interview?

3 A. Yes, sir.

4 Q. Were you advised at that time that you were under  
5 investigation for possible criminal activity?

6 A. Yes, sir.

7 Q. And you still went ahead and gave them a voluntary  
8 interview?

9 A. Yes, sir.

10 Q. All right. Officer Pirone, let me direct your  
11 attention to January 1st of 2009 at approximately 2:00 o'clock  
12 in the morning.

13 First of all, were you on duty on that date at that time?

14 A. Yes, sir.

15 Q. And what were you wearing?

16 A. Police uniform.

17 Q. A BART police uniform?

18 A. Correct.

19 Q. That would include patches, right?

20 A. Yes, sir.

21 Q. And that would include a badge?

22 A. Yes, sir.

23 Q. Did you have a equipment belt on?

24 A. Yes, sir.

25 Q. Were you carrying a firearm?

26 A. Yes, sir.

27 Q. Were you carrying a Taser?

28 A. Yes, sir.



1 Q. All right. Now, at approximately 2:00 o'clock a.m.  
2 on January 1st, do you remember where you were?

3 A. Yes, sir.

4 Q. Where?

5 A. Fruitvale BART station.

6 Q. What was your assignment there?

7 A. That was my beat.

8 Q. Your beat that date was to patrol the Fruitvale BART  
9 station?

10 A. Yes, sir. The Fruitvale BART station along with the  
11 Oakland Coliseum BART station.

12 Q. All right. What time had you come on duty, if you  
13 recall?

14 A. 15:30 hours, sir.

15 Q. My time that's 3:30?

16 A. I'm sorry. 3:30, sir.

17 Q. And what time were you due to get off?

18 A. Approximately 4:00 a.m. 04:00 a.m.

19 Q. About 4:00 a.m.?

20 A. Yes, sir.

21 Q. Did you have a partner?

22 A. At which point, sir?

23 Q. At 2:00 a.m. in the morning.

24 A. Yes, I did.

25 Q. Who was that?

26 A. Marysol Domenici.

27 Q. So based upon your question to me, I take it that at  
28 some point in time you did not have a partner?

1 A. That's correct, sir.

2 Q. And when was it that you didn't have a partner in  
3 that shift?

4 A. From 3:30 to 6:00 p.m.

5 Q. And then at 6:00 p.m. that's when you and Domenici  
6 partnered up?

7 A. Correct. That's when the second shift came on.

8 Q. So you are at the Fruitvale BART station at 2:00  
9 o'clock a.m. And do you recall hearing a radio call alerting  
10 you to some kind of problem on a BART train?

11 A. Yes, sir.

12 Q. Tell us about the radio call you heard.

13 A. It was involved -- had a 242 on the train, lead car,  
14 train was holding on the platform.

15 Q. A 242 to you meant what?

16 A. Battery. Fight.

17 Q. All right. And you say it was on the lead car?

18 A. Correct, sir.

19 Q. Does that mean the front car?

20 A. The very first one in the train, sir.

21 Q. All right. And where did that information come from?

22 A. The dispatcher.

23 Q. The BART dispatcher?

24 A. Correct, sir.

25 Q. All right. And did you receive any additional  
26 information other than what you just relayed about this 242?

27 A. Yes, I did.

28 Q. What other information did you get?

1 A. Well, as I was making my way up to the platform,  
2 dispatch came back and informed me that the call had five  
3 suspects, black males, wearing black, no weapon scene.

4 Q. All right. And again, did that come from the BART  
5 dispatcher to you?

6 A. Correct, sir.

7 Q. All right. And where were you in relation to what  
8 I'm going to call the platform of the Fruitvale BART when you  
9 heard that additional information?

10 A. Going up the stairs.

11 Q. Okay. And as you went up the stairs, can you  
12 describe what you saw on the platform after receiving that  
13 information?

14 A. Well, as I made my way up the stairs, I could look  
15 down the platform towards the lead car where the front of the  
16 train is, if you will, and I saw a group of people, six people  
17 standing outside the lead car matching the description that was  
18 given to me over the radio.

19 Q. Meaning these were male, black individuals in dark  
20 clothing?

21 A. Correct, sir, with one female.

22 Q. With one female?

23 A. Yes, sir.

24 Q. All right. Now, when you saw them initially, how far  
25 from you were they?

26 A. Approximately 100-150 feet.

27 Q. All right. And as you saw them, what did you do?

28 A. Well, I was looking to see what their activity was.

1 Q. What was it?

2 A. Well, at first they were just talking amongst each  
3 other and I saw a younger female wearing a black and red plaid  
4 type skirt and she had a finger up in somebody's face. I was  
5 trying to see exactly what was going on. Aside from that, there  
6 was no other movement or there was no fight. I was looking for  
7 a fight and I didn't see anything other than her actions.

8 Q. All right. So did you then move closer to that  
9 group?

10 A. Well, I was walking towards them as I observed that.

11 Q. All right. And as you walked closer to the group,  
12 did you see any additional activity occur?

13 A. It appeared that one of them had spotted me or looked  
14 over my direction because then they all turned around and looked  
15 towards me and they all started walking towards me.

16 Q. They all, you mean this group of six?

17 A. The entire group, yes, sir.

18 Q. Including this woman with the plaid skirt?

19 A. Yes.

20 Q. And did you continue walking towards them as they  
21 walked towards you?

22 A. Yes, I did, sir.

23 Q. What's the next thing that happened?

24 A. I saw that this was a large number of people and I  
25 deployed my Taser.

26 Q. Okay. Now, when you say you deployed your Taser,  
27 what does that mean?

28 A. I pulled it out of the holster on my duty belt.