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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, JUNE 3, 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

VOLUME 5

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	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIR</u>	<u>RECRS</u>	<u>V/D</u>
ANTHONY PIRONE	758	803			

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1 WEDNESDAY, JUNE 3, 2009

DEPARTMENT 2

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

3 THE COURT: All right. Counsel.

4 MR. RAINS: Good morning, your Honor.

5 THE COURT: Good morning.

6 MR. RAINS: Your Honor, if it pleases the Court. I
7 was here at 8:30 to put matters on the record. I'd advised your
8 clerk on Friday that we wanted to be here at 8:30 to put matters
9 on the record concerning the Court's intended ruling on the
10 duration of this proceeding. We were seated upstairs at 8:22
11 waiting to be brought down for that purpose. I would like to
12 put those matters on the record at some time the morning.

13 THE COURT: It's time to do this witness. You'll get
14 your opportunity witness by witness as the law requires. That's
15 what you'll get.

16 I'm here. You know, I saw Mr. Allen was here, one of the
17 lawyers I know who represents in the civil matter. I passed him
18 at 7:40 standing there at the security gate. So to the extent
19 the lawyers know. I told you what time to be here and you
20 weren't here and downstairs. Let's go. We have a witness.

21 DIRECT EXAMINATION RESUMED

22 BY MR. RAINS:

23 Q. Officer Pirone, good morning.

24 A. Good morning, sir.

25 Q. Officer Pirone, I think when we recessed last week
26 you had described your handcuffing of an individual named
27 Michael Greer; is that correct?

28 A. Yes, sir.

1 Q. Now, you were in the process of handcuffing
2 Mr. Greer. And at that point in time, did you have any
3 interaction with any of the other individuals who were against
4 the wall?

5 A. Yes, I did.

6 Q. First of all, do you know the name of any individuals
7 you may have had interaction with?

8 A. Other than Oscar Grant, no, I do not.

9 Q. You did have some kind of interaction with Oscar
10 Grant?

11 A. That's correct, sir.

12 Q. And describe what occurred.

13 A. In the process of handcuffing Mr. Greer, I believe it
14 was his right arm that I got handcuffed, at that time, Mr. Grant
15 and two other individuals stood up and started advancing towards
16 me with some cursing words.

17 Q. Mr. Grant stood up and started advancing toward you?

18 A. That's correct.

19 Q. And where were you when Mr. Grant started advancing
20 towards you? Were you still dealing with Greer or were you up
21 from dealing with Greer?

22 A. I was still dealing with Mr. Greer. Again, I only
23 had one hand handcuffed. I wasn't able to get the second one
24 before I noticed Mr. Grant and two others stand up and start to
25 come towards me, and I feared at that point as that was my next
26 threat.

27 Q. All right. Now, at that point in time when Mr. Grant
28 and these other two individuals stood up, was Officer Domenici

1 in the area, if you recall?

2 A. She was in the area.

3 Q. All right. And when Mr. Grant stood up and started
4 to approach you, did he say anything that you can recall?

5 A. Permission to speak freely, sir.

6 THE COURT: Absolutely.

7 THE WITNESS: Some of the words were: "Hey, you punk
8 ass motherfucker. You can't do that. You're not even the real
9 police. You're a fake police bitch." Something along those
10 lines were the words that were coming out of his mouth.

11 BY MR. RAINS:

12 Q. And what did you do as Mr. Grant stood, approached
13 you and used those words?

14 A. With my left hand I held a chain of the handcuff, and
15 with the right hand I pointed at him and I told him to get back.
16 "Get back against the wall. Sit down."

17 Q. Did he do that?

18 A. No, he did not.

19 Q. What happened next?

20 A. I believe Officer Domenici came over and started to
21 corral him back to where they were initially seated. At that
22 time, I finished handcuffing Greer, gave him a quick pat search.

23 Q. All right. And when you say a quick pat search, just
24 tell us what that means.

25 A. I check for any weapons in his immediate small of his
26 back and his back pockets.

27 Q. All right. And then after you did the pat search,
28 what did you do next?

1 A. I looked up and I see Grant and two -- of the two --
2 the same two that were standing up with him. There were a total
3 of three advancing towards Officer Domenici. What appeared to
4 me, it looked like somebody was grabbing her left arm because in
5 her right arm, I believe, she had a Taser out. At that point, I
6 could see that as being a threat because she has three
7 individuals advancing towards a uniformed officer with a weapon
8 in her hand and not complying with the orders to get back and
9 sit down.

10 Q. So what did you do?

11 A. Well, at that point, I got up and I went to address
12 the situation, which was -- Mr. Grant seemed to be the leader of
13 the aggression and I addressed him.

14 Q. How did you address Mr. Grant?

15 A. When I came to step in front of Mr. Grant, he took a
16 swing at me with his right arm, kind of stepped into it and
17 absorbed it with my left arm, grabbed him and pushed him back up
18 against the wall.

19 Q. Where did you grab?

20 A. Why did I grab him?

21 Q. Where, if you remember?

22 A. In the upper shoulder, would be his left shoulder
23 area.

24 Q. All right.

25 A. With my right hand.

26 Q. And you say you pushed him against the wall?

27 A. Correct.

28 Q. So you took your right hand and just made a pushing

1 motion?

2 A. Yes.

3 Q. And did he go back up against the wall?

4 A. Yes, he did, sir.

5 Q. Did you say anything to him when you pushed him?

6 A. I said, "Get back and sit down."

7 Q. All right. And what happened then?

8 A. At that point, he made a couple of attempts to knee
9 me in the groin. I think the second time he actually went
10 through with it. And at that point, I grabbed his arm, grabbed
11 him by the back of his head and bent him over.

12 Q. Now, which -- if you remember, which hand did you use
13 to grab his arm?

14 A. I used my left hand to grab his right arm, pulled it
15 that way and my right hand came up, pushed him back and I
16 grabbed the back of his neck.

17 Q. And when you grabbed the back of his neck, did you
18 say you tried to bend him over?

19 A. Correct.

20 Q. Did you, in fact, bend him over?

21 A. Yes, sir.

22 Q. And when you bent him over, what did you do with him?

23 A. Just held him down.

24 Q. All right. So you're holding him bent over at the
25 waist at this point?

26 A. That's correct, sir.

27 Q. Do you remember was he standing at that time or was
28 he in some other position when you had him bent over as you

1 described?

2 A. He was still on his feet.

3 Q. All right. So you have him bent over and what's the
4 next thing that happened after you have him bent over?

5 A. I deploy my Taser.

6 Q. And when you say deploy your Taser, does that mean
7 you actually used it?

8 A. No. I pulled it out of my holster, turned it on and
9 point it back up, point it at him and told him to sit down.

10 Q. So you had a Taser with you that night?

11 A. Yes, I did.

12 Q. And which hand did you draw your Taser with?

13 A. Left hand, sir.

14 Q. Is that the hand that you commonly use to draw your
15 Taser?

16 A. Yes, sir.

17 Q. Is that your strong hand?

18 A. No, it is not.

19 Q. What does a strong hand mean to a police officer?

20 A. Generally speaking, a strong hand is whatever hand
21 you use to fire your weapon, meaning your gun.

22 Q. So in your case, your gun was on which side of your
23 duty belt?

24 A. I wear my duty weapon on my right side.

25 Q. And your Taser, what side of your duty belt is that
26 on?

27 A. It's on the front of my right side in front of my
28 weapon.

1 Q. So if you are then drawing the Taser, how do you have
2 to do that using your weak hand?

3 A. It's what's considered a cross-draw. Take my left
4 hand and come over. The reason why it's called cross because
5 you cross the centerline of your body and deploy my Taser in
6 such a fashion where I un-holster it, pull it out, turn it on
7 and operate it with my weak hand.

8 Q. So, at that point in time, you had come out, you've
9 done the cross-draw, you came out with the Taser in your left
10 hand and you're pointing at Mr. Grant?

11 A. Correct. I stepped away after I pulled it out and
12 had it on, stepped away, Mr. Grant stood back up, I pointed it
13 at him and told him to sit down.

14 Q. All right. I want to go back in time. I know you
15 said you looked at some video of the events that night before
16 testifying today, how many videos have you looked at, if you
17 know?

18 A. I do not know.

19 Q. Okay. Do you remember seeing any video where you
20 were seen to be pointing the Taser at the windows of a BART
21 train with your right hand?

22 A. No, I do not.

23 Q. To the best of your knowledge, did you hold the Taser
24 that night, if you held it during the course of the night, would
25 you have held it in your weak hand?

26 A. Yes.

27 Q. To the best of your knowledge?

28 A. Yes.

1 Q. So, now you have pulled out the Taser. You pointed
2 it at Mr. Grant, correct?

3 A. Yes, sir.

4 Q. And did you say anything to him when you pointed the
5 Taser at him?

6 A. Told him to sit down, sir.

7 Q. All right. And when you pointed it at him, did you
8 have -- well, strike that.

9 Do you have to do anything to the Taser to activate it
10 once you pull it out of the holster?

11 A. Yes. You have to turn the device on and that's
12 usually a thumb flip switch. It's an ambidextrous switch that
13 can be flipped with either your left thumb or your right thumb
14 depending on how the particular person is using it or deploying
15 it.

16 Q. So you would have flipped the switch to turn it on?

17 A. Correct.

18 Q. And what happens when you turn a Taser on?

19 A. Depending on how you have your Taser set up, either a
20 light or laser or both come on or you can actually turn it on
21 with nothing on. It is activated and there's no light and
22 there's no laser.

23 Q. You remember if anything came on when you activated
24 your Taser?

25 A. I had -- my setting was for the light laser to come
26 on.

27 Q. Is that a red dot?

28 A. Yes, sir.

1 Q. When you told Mr. Grant to sit down after pointing
2 your Taser at him, what happened?

3 A. He sat down.

4 Q. All right. And when he sat down, what did you do?

5 A. I addressed the individual to his left and ordered
6 him to sit down. He sat down. Then I went to the individual to
7 his right and pointed it at him and ordered him to sit down and
8 he sat down.

9 Q. All right. Do you know the names of the individuals
10 to Mr. Grant's left who you order to sit down?

11 A. No, I do not.

12 Q. Do you know the name of the individual to his right
13 that you described?

14 A. No, sir.

15 Q. Did they sit down?

16 A. Yes, they did.

17 Q. And at that point in time, were any of those group --
18 that were against the wall, were any of them standing at that
19 point in time or were they all sitting?

20 A. I'm confused with the question.

21 Q. After you ordered the other two to sit down, they sat
22 down, right?

23 A. Once Grant and the two individuals on each side of
24 him sat down, everybody was sitting down.

25 Q. And again, was Officer Domenici in the area at this
26 time?

27 A. Yes, she was.

28 Q. All right. And do you know what she was doing as you

1 were telling these people to sit down?

2 A. She was addressing the multiple threats that were
3 coming up from behind us.

4 Q. So after these individuals are now seated, what's the
5 next thing you do?

6 A. Well, I specifically remember looking down that
7 direction, meaning towards the south end -- actually, it's the
8 north end of the platform, the back half of the train, because I
9 can hear commotion. I'm not sure what exactly is being said. I
10 heard curse words, different voices, different people, and I see
11 people coming off of the train and some of them are coming at
12 us.

13 Q. And how many officers besides you and Domenici are
14 there at that time?

15 A. None.

16 Q. Just you and Officer Domenici?

17 A. Yes, sir.

18 Q. And when you see the people coming at you, you hear
19 the curse words, what do you do?

20 A. I grab the radio and ask for more units.

21 Q. All right. There's been some discussion, some
22 testimony in this hearing, about some sort of an emergency
23 button that officers have on their radios. Are you familiar
24 with such a button?

25 A. Yes, I am.

26 Q. And did you use that button that night?

27 A. No, sir, I did not.

28 Q. Why not?

1 A. Well, the button, I think, would have hindered radio
2 traffic at that particular time. I knew I had more units
3 coming. Just simply when I was walking up the stairs, I heard
4 the other units responding and heading my direction.

5 When you press that button, it activates an emergency
6 signal on your radio and it basically keeps the mic keyed up for
7 approximately 5 to 10 seconds. I'm not sure. It's an
8 approximation. I don't know the exact time. But it keeps the
9 mic keyed up, so no one can make any radio transmissions at that
10 point.

11 Q. All right. But it doesn't automatically send people
12 to your location?

13 A. People have to know where you are.

14 Q. Do you remember -- so you get on the radio and you
15 call for units, do you remember what you said? Do you have any
16 recollection of that?

17 A. Not exactly. No, sir.

18 Q. All right. You knew some units were already on the
19 way?

20 A. Yes.

21 Q. But you hadn't seen them?

22 A. Not yet, sir.

23 Q. All right. After you make the radio transmission,
24 what occurs?

25 A. I look up and I see Officer Mehserle, Officer
26 Woffinden and Officer Guerra coming our direction down the
27 platform.

28 Q. To the best of your memory, are they walking? Are

1 they running?

2 A. They're running, like a fast jog. Not a full blown
3 sprint, but they're not walking.

4 Q. Okay. What's the next thing that happens then?

5 A. I believe it's Officer Guerra and Mehserle that come
6 to exactly where I'm at and I tell them to watch subjects that
7 are against the wall.

8 Q. All right. And what do you do?

9 A. I go over to -- I make my way over to the train
10 operator that's driving the train.

11 Q. Okay. Why did you go over there?

12 A. That's where the call was -- that's where the call
13 came from.

14 Q. Call of the fight?

15 A. The reporting party for that particular call was a
16 train operator.

17 Q. Okay. So you went to talk to the train operator?

18 A. Correct.

19 Q. Did you, in fact, talk to the train operator?

20 A. Yes, sir, I did.

21 Q. About how long was your talk with the train operator?

22 A. A couple of quick questions and a couple of quick
23 responses. That's about how long it was. It wasn't a long
24 conversation.

25 Q. Based upon the talk that you had with the train
26 operator, did you form any opinions as to whether the
27 individuals that were detained against the wall had been
28 involved in the fight?

1 A. Yes. I asked her what she had. My exact words were:
2 "What do you have?" And she goes, "Those five that you pulled
3 off the train were the five that were causing the problem on my
4 train." I said, "Okay. What kind of problem?" She goes, "I'm
5 not sure. I couldn't see. Crush load."

6 Crush load means there's standing remotely on the train.
7 She couldn't really see throughout the entire train car. She
8 just saw people on the seats. I said, "Okay. Well, has anyone
9 else come forward to make complaint or say that they're hurt or
10 need medical attention?" She said, "No." I said, "Okay. You
11 should be getting your release here soon." Meaning, me
12 releasing the train.

13 Q. Meaning the train could drive on?

14 A. Yes.

15 Q. All right. Do you have anything to do with that
16 release that's sent to the train to drive on? That is, do the
17 police have something to do with that?

18 A. It's somewhat of a protocol that when there's an
19 incident on a train and they hold the train at a station
20 platform, that the BART police release it when they're done
21 conducting their investigation of that particular crime.

22 Q. All right. So after you then had this discussion
23 with her, what did you do?

24 A. I started walking down back to the area of where the
25 subjects were being detained. I started to look in the car as I
26 was walking past the car, but my attention was drawn towards the
27 north end of the platform because now the number of people was
28 just getting larger that were coming off the train coming

1 towards the area where we had detained -- the subject detained.

2 Q. All right. And as these individuals were coming off
3 the cars moving in the direction of where you have to subjects
4 detained, what were they doing?

5 A. Yelling, cursing, things of that nature.

6 Q. At the police, it appeared?

7 A. At the police.

8 Q. Do you remember any particular words hearing -- you
9 may have heard from this group that was coming off the train?

10 A. Yes. Yes, I do.

11 Q. What kind of words did you hear?

12 A. Again, permission to speak freely, your Honor.

13 THE COURT: Yes.

14 THE WITNESS: "What are you doing niggers? You
15 niggers ain't shit. Why you messing with my cousins? You
16 niggas ain't even real cops." Those types of things.

17 BY MR. RAINS:

18 Q. All right. Was this repeated time and time again?

19 A. Consistently.

20 Q. From your observation, about how many individuals do
21 you estimate were involved in the approach to that area in this
22 kind of language that you've described?

23 A. I don't know.

24 THE COURT: Mr. Rains, hold on for a second.

25 (Pause.)

26 THE COURT: Go ahead.

27 BY MR. RAINS:

28 Q. So as your attention is drawn to that part of the

1 platform, hearing what you heard, seeing what you saw, what did
2 you do?

3 A. Stopped looking for anyone to contact on the lead car
4 because there's no one that's come forward. The train's been
5 there for a long time. My concern at first was is there someone
6 bleeding out that's in need of medical attention. That's been
7 made clear that there isn't anybody. I need to get that train
8 out of here so I can get the number of people that are coming
9 off of the train to decrease, if not go away.

10 Q. All right. So you're concerned at that point in time
11 is let's get this train out of here?

12 A. Yes.

13 Q. And how did you try to do that?

14 A. I went over the radio and transmitted release the
15 train.

16 Q. Did that cause the train then to move away?

17 A. No, it did not.

18 Q. What did you do after you went on the radio to
19 release the train?

20 A. Continued my way back down to where the location was
21 the subjects were being detained was. I'm not sure which
22 officer, whether it was Guerra or Officer Mehserle that asked
23 me, "What do you got?" And at that particular time, I pointed
24 to Mr. Greer on the ground and Mr. Grant, and I said, "He's
25 going for 148 and he's going for 148."

26 Q. Let me just stop for a minute. You say that you
27 talked to either Mehserle or Guerra as you returned to this area
28 where the individuals were detained?

1 A. That's correct, sir.

2 Q. Were, to the best of your knowledge, Mehserle and
3 Guerra standing in close proximity to each other?

4 A. Yes, sir.

5 Q. All right. So you're talking to one of them, who you
6 can't recall now; is that right?

7 A. That's correct, sir.

8 Q. And you point at Mr. Greer whose on the ground and
9 you say, "He's under arrest or he's going for 148"?

10 A. Yes.

11 Q. Was that your words, "He's going for 148"?

12 A. My words were, "He's going for 148." And I pointed
13 to Mr. Grant and my words again were, "He's going for 148."

14 Q. Now, what's 148?

15 A. 148 is resisting, obstructing, arrest.

16 Q. And when you pointed at -- let's talk about Mr. Grant
17 in particular. You point at Mr. Grant and say, "He's going for
18 148." How far from Mr. Grant were you when you did that?

19 A. Approximately from here to that podium right here in
20 front of me.

21 MR. RAINS: About 7 feet, your Honor.

22 THE COURT: About 7 feet.

23 BY MR. RAINS:

24 Q. And the -- can you give us an idea of your voice?
25 Was it speaking as you are now? Was with it louder than it is
26 now?

27 A. It was loud.

28 Q. Why was it loud?

1 A. There were many people yelling, screaming,
2 everybody -- there was noise coming from everywhere. It felt
3 like being in a crowd at a football game and somebody -- the
4 home team scored a touchdown. That's how loud it was. You can
5 almost feel the electricity from the noise level.

6 Q. When you pointed at Mr. Grant and said, "He's going
7 for 148," and you're about 7 feet from 'em, would you say you
8 were yelling that information, "He's going for 148"?

9 A. I'm sure I was speaking very loudly to get over that
10 noise to speak to whoever it was that I was addressing.

11 Q. All right. And so what's the next thing that
12 happened after you said to either Guerra or Mehserle, "He's
13 going for 148"?

14 A. Mr. Grant started to stand up, I believe, and started
15 to use more profanities.

16 Q. All right. And when he started to stand up and use
17 more profanity, what did you do?

18 A. I addressed him. I saw him raising to his feet as
19 another threat. Here he is again not following the very simple
20 instructions to stay seated.

21 Q. Now, at that point in time, Greer was already
22 handcuffed, right?

23 A. Yes, he was.

24 Q. So -- and at that point in time, as I understand your
25 testimony, there was just two individuals that you had intended
26 to arrest. And that was Greer and Grant; is that right?

27 A. Yes, sir.

28 Q. What about those other individuals that were detained

1 against the wall? What were you going to do with them?

2 A. Release them.

3 Q. All right. Because they hadn't committed a crime, to
4 your knowledge?

5 A. They've been what cooperative to the point where I
6 didn't have to use a physical force to subdue them or to comply
7 with my orders.

8 Q. First of all, when you indicated that Greer was under
9 arrest for 148, what had he done that in your mind at the moment
10 constituted a violation of Penal Code Section 148?

11 A. The entire time of removing him from the train after
12 he wouldn't come with my requests and then when he turned around
13 and stood up with a combative stand with fists clenched and one
14 foot forward like he's about to strike a punching bag.

15 Q. And as to Mr. Grant, what had he done to justify in
16 your mind an arrest for Penal Code Section 148?

17 A. Well, there were the attempts of kneeing me in the
18 groin and the punches. There was that.

19 Q. All right. So after you point at Mr. Grant and say,
20 "He's going for 148," he responds, you say, with profanity?

21 A. Yes.

22 Q. And he's starting to stand up?

23 A. Yes, sir.

24 Q. Did he actually get up at some point in time on his
25 feet?

26 A. I don't remember.

27 Q. But you remember him starting to stand up?

28 A. Yes.

1 Q. Do you remember -- and he's calling you names?

2 A. Yes, sir.

3 Q. You remember any names?

4 A. Yes, sir. The other thing that I remember was his
5 hand was in his pocket as well.

6 Q. Which hand?

7 A. His right hand was in his right front pant's pocket.

8 Q. Do you remember seeing him using a cellular telephone
9 at about this time?

10 A. No, sir.

11 Q. Did you see him come out of the pocket at any time
12 with a cellular telephone?

13 A. No, sir.

14 Q. So when you see his right hand in his -- or, yes, his
15 right hand is in his right pant's pockets --

16 A. Yes, sir.

17 Q. -- what did you do? What did you say?

18 A. I yelled at him.

19 Q. What did you yell?

20 A. "Hey, get your hands out of your pockets. Sit down."

21 Q. Did he get his hands out of his pocket?

22 A. I don't remember how his hands came out of his
23 pocket. I don't know if I took them out of his pocket or if he
24 took them out voluntarily. I don't remember.

25 Q. All right. And did he sit down?

26 A. Yes.

27 Q. What happened next?

28 A. I don't recall exactly the chain of events. If I

1 pushed him down or if he sat down voluntarily. I don't
2 remember.

3 Q. You remember ever putting your knee against him at
4 any time --

5 A. Yeah. Yes, I do.

6 Q. When did that happen?

7 A. At that time.

8 Q. Okay. So you put your knees against him?

9 A. Yes.

10 Q. And what position was he in when you put your knees
11 against him?

12 A. At the time, he was standing up. And then I think
13 what my intent was was to hit him in his hand on his thigh
14 giving him a charley horse, because his hand was in his pocket.
15 I was trying to distract him to where I could get that hand free
16 because I have no idea what's in his pockets.

17 Q. And when you say give him a charley horse, what do
18 you mean by that?

19 A. Drive my knee into the meaty portion of the thigh to
20 cause a distraction blow for him to release his hand or whatever
21 was in his hand that was in his pocket.

22 Q. And do you remember actually connecting with your
23 knee to his --

24 A. No, I do not.

25 Q. -- thigh?

26 A. Never happened.

27 Q. What did happen then?

28 A. Because I think at that time I don't know if I was

1 push him down or if he sat down. Again, I don't recall the
2 exact chain of events of how it went down, but I remember
3 holding him down and pushing him down or something to that
4 effect and telling him to take his hands out of his pockets.

5 Q. Okay. And did you hold him against the wall with
6 your knees, if you recall?

7 A. I don't recall.

8 Q. Okay. So now he's apparently back down after you've
9 told him to take the hand out of the pocket, right?

10 A. Yes, sir.

11 Q. And what's the next thing that happens, as you
12 recall?

13 A. He starts to use more profanities.

14 Q. Toward you?

15 A. Yes. He's looking right at me when he was speaking
16 to me.

17 Q. And what kind of profanities is he using as he's
18 looking right at you?

19 A. He called me a bitch ass nigger.

20 Q. All right. You'd heard that term during the course
21 of the night, right?

22 A. Yes.

23 Q. Other people were using that kind of term, right?

24 A. Yes, sir.

25 Q. And so he's calling you now a bitch ass nigger?

26 A. Yes.

27 Q. And as he's doing that, what are you doing, if you
28 recall?

1 A. I was just holding him down.

2 Q. All right. Just holding him down. Did you ever say
3 to him, "Sit the fuck down"?

4 A. Very well possibly, yes.

5 Q. All right. You said you used profanity?

6 A. A few times.

7 Q. And as Mr. Grant is referring to you with his racial
8 slur and calling you this term that you've just described, did
9 you respond to him?

10 A. Well, I was in shock to be quite honest.

11 Q. You're in shock that he's calling you this term
12 looking right at you?

13 A. Yes.

14 Q. And so you're in shock and my question is: Do you
15 remember saying something to him like, you know, "You calling me
16 a bitch ass nigger?" Anything like that?

17 A. I don't remember, but it very well may have happened.

18 Q. All right. Is that something you would have
19 initiated on your own, calling him names?

20 A. No, I don't talk like that.

21 Q. But he's talking to you like that?

22 A. Yes, sir.

23 Q. And if you would have used a term, it would have been
24 in response to what he was yelling at you?

25 A. I'm not understanding the question.

26 Q. Okay. I mean, you know, you described what he's
27 saying to you and, you know, the effect it had on you. You say
28 if you would have used a term that included this racial term

1 that you just described, it would have been in response to him?

2 A. Yes, sir.

3 Q. But you don't have a recollection of doing that?

4 A. No.

5 Q. Have you tried to listen to or have you tried to
6 listen to the videos and the audio portion to see if that's
7 there?

8 A. The only audio video that I've heard has been the
9 Karina Vargas, I believe, video. The raw footage or whatever
10 that's called. Every other video that I've seen has had no
11 audio whatsoever.

12 Q. So the only audio you've heard from anything you've
13 looked at or listened to would have been audio from the Karina
14 Vargas video?

15 A. Yes, where you can actually hear Karina Vargas
16 yelling, "Tase him," you know, that sort of thing.

17 Q. So now he's yelling at you, you are dealing with him.
18 What's the next thing you remember happening?

19 A. There was some other dialogue and then Mehserle, I
20 believe, came over and initiated contact with Grant.

21 Q. Okay. Now, as you are dealing with Mr. Grant and
22 he's yelling at you as you've described and, you know, whatever
23 you're saying back to him is happening, do you know what
24 Mehserle was doing at that time?

25 A. I have no idea.

26 Q. Did you ever -- were you ever in a position to see
27 Mehserle handcuffing Jackie Bryson -- strike that -- handcuffing
28 another individual who was to the immediate left of Oscar Grant?

1 A. Well, I had somebody's back. When I say somebody, I
2 mean an officer. I'm not sure if it was Officer Guerra or if it
3 was Officer Mehserle. If I'm in this position here with Oscar
4 Grant in front of me on the floor holding him down, I had
5 another police officer's back towards me or right here in front
6 of me, in between myself or -- I'm sorry -- in between Oscar
7 Grant and myself -- no. Scratch that. In between -- right
8 after Oscar Grant, there was another officer's backside that was
9 bent over dealing with somebody. Who that was or what they were
10 doing, I don't know. I'm trying to deal with Oscar Grant and
11 what's in his hands because that's, to me, posing a threat to
12 me.

13 Q. You as a police officer, is it dangerous to see
14 people with their hands in their pocket?

15 A. Absolutely.

16 Q. Had Mr. Grant been pat searched up to that point in
17 time?

18 A. No, he had not.

19 Q. And was there a reason why you had not taken the time
20 to pat search him?

21 A. We were vastly outnumbered, sir.

22 Q. You did do a quick pat search of Mr. Greer?

23 A. He was on the ground being handcuffed, yes.

24 Q. But you hadn't been able to do that to Mr. Grant?

25 A. Or anyone else.

26 Q. The right hand in the pocket, did that pose a threat
27 to you, a physical threat?

28 A. Yes, it does.

1 Q. And when you talk about threat, do you couple that
2 with the sort of combination of the interactions plus their
3 outward demeanor?

4 A. Yes.

5 Q. Given what you saw Mr. Grant doing, saying and
6 moving, did he appear to be a physical threat to you at that
7 moment?

8 A. Absolutely.

9 Q. And so at some point in time you say there's an
10 officer with his back to you, you don't know what he's doing,
11 but at some point in time you see Mehserle move in and start to
12 deal with Mr. Grant?

13 A. Correct.

14 Q. And when you first have this memory of seeing
15 Mehserle move in and start to deal with Mr. Grant, do you
16 remember what was happening between you and Mr. Grant?

17 A. Again, there was some dialogue.

18 Q. Okay. Some yelling back and forth?

19 A. Yes.

20 Q. All right. And as Mehserle then moves in, what do
21 you remember happening with Mr. Grant?

22 A. Him going to the ground.

23 Q. Okay. Do you remember how Mr. Grant was moved to the
24 ground?

25 A. No, not exactly. I don't remember.

26 Q. Did you do that or did Mehserle?

27 A. I initially thought I did, but when I was shown some
28 video, it was proven to me that I was not the one who put Oscar

1 Grant on the ground.

2 Q. Who was it?

3 A. It was Officer Mehserle.

4 Q. Now, let me ask you this: Prior to January 1st,
5 2009, at about 2:00 in the morning, had you ever worked with
6 Officer Mehserle as partners?

7 A. Yes, sir, I have.

8 Q. About how many times?

9 A. More than 10. I don't have a specific number.

10 Q. So working with partners you kind of get to know each
11 other's style and habits as a police officer?

12 A. Yes.

13 Q. So he wasn't a perfect stranger to you?

14 A. No, he was not.

15 Q. Was he just so we know, did you consider him a friend
16 as of January 1st, 2009?

17 A. Yes, I did.

18 Q. Did you socialize with him away from work?

19 A. No, I did not.

20 Q. All right. So he was a guy that you knew at work,
21 you considered him a friend, and you've worked with him on maybe
22 10 occasions?

23 A. Yes, sir.

24 Q. Had you had any level of communication that night or
25 that morning, I guess I should say, with Mehserle about what was
26 happening after you saw him arrive? Had you talked to him at
27 all?

28 A. The first time I was Officer Mehserle is when Officer

1 Mehserle arrived on scene.

2 Q. Okay. When he was running along with the other
3 officers?

4 A. That's correct, sir.

5 Q. And you hadn't talked to him since then?

6 A. No. No, sir.

7 Q. Other than maybe saying, "He's going for 148,"
8 pointing at Grant and you can't remember if you directed that to
9 Mehserle or to Guerra?

10 A. That's correct.

11 Q. So Mehserle moves Grant to the ground; is that right?

12 A. Yes, sir.

13 Q. And when he moved Mr. Grant to the ground, did Mr.
14 Grant go down as you recall in a compliant fashion?

15 A. No, sir.

16 Q. How did he go down?

17 A. I don't remember exactly how he went down, but his
18 hands were at his waistband and I never saw his hands again.

19 Q. When he went to the ground initially, when Mehserle
20 moved him to the ground, do you remember if Mr. Grant went down
21 on his back or on his stomach?

22 A. I don't remember.

23 Q. And when Mr. Grant went to the ground and Mehserle
24 moved him to the ground, what did you do?

25 A. I went and held the upper portion of his body. The
26 upper back and the head, held that down.

27 Q. Where was Mehserle at that time?

28 A. The lower region of his body, the upper thighs/waist

1 area, I believe. When I looked back, Officer Mehserle was
2 straddling Oscar Grant.

3 Q. Could you tell what Mehserle was doing when you
4 looked back?

5 A. I don't remember if it was there or when I had to
6 switch the other side because Oscar Grant was flopping around
7 trying to get away and he got free from underneath me. I went
8 back to the other side and held him down from his left side
9 because at first I started on his right side. At some point in
10 time I remember seeing Officer Mehserle with two hands tugging
11 on Oscar Grant's right elbow.

12 Q. All right. And were you holding Mr. Grant down at
13 the upper body area when you saw that?

14 A. Yes, sir.

15 Q. Can you describe for us how you were holding him
16 down?

17 A. With both hands. I was pushing down on his hand and
18 upper back shoulder, shoulder blade area. I was knelt down and
19 pushing down his body.

20 Q. Okay. Where were your knees?

21 A. One was over the shoulder blade area of his back.
22 The other one off to the side.

23 Q. All right. So you actually have one of your knees,
24 as you recall, in the shoulder blade area of his back?

25 A. Well, not at first, no.

26 Q. Okay. At first --

27 A. At first, I'm just holding him down with two hands.

28 Q. Okay. Okay. And then at some point in time the knee

1 moved to the shoulder blade area?

2 A. When I went to the other side, that's when I put my
3 weight, my knee, on his upper shoulder blade area.

4 Q. How long did you hold him down with your hands before
5 you may have changed the position you were in?

6 A. I don't know, but I changed my position because he
7 broke free.

8 Q. He meaning?

9 A. Oscar Grant.

10 Q. And how did he break free?

11 A. I didn't have control of his upper body.

12 Q. And what did he do to break free?

13 A. He was squirming around.

14 Q. All right. So Mehserle is still tugging to get his
15 hands; is that right?

16 A. Yes, sir.

17 Q. And was Oscar Grant struggling?

18 A. Yes, he was, the entire time.

19 Q. Was he moving?

20 A. Yes, he was.

21 Q. And while this is going on, were you saying anything
22 to Oscar Grant?

23 A. I was ordering him to put his hands behind his back.

24 Q. How many times did you order him?

25 A. At least two times.

26 Q. Did you hear Officer Mehserle saying anything to Mr.
27 Grant?

28 A. I heard Officer Mehserle repeating those same words.

1 Q. "Put your hands behind your back"?

2 A. Yes. Correct.

3 Q. More than once on Mehserle's part?

4 A. More than one.

5 Q. So the two of you were yelling the same thing, "Put
6 your hands behind your back"?

7 A. I believe that somebody was yelling, "Stop
8 resisting."

9 Q. And you think maybe that's Mehserle?

10 A. Yes, but I don't know.

11 Q. Okay. And you say you never saw him put his hands
12 behind his back?

13 A. Never.

14 Q. And then at some point in time you said that Oscar
15 Grant squirmed out from under you?

16 A. That's correct, sir.

17 Q. And then what did you do when he squirmed out from
18 under you?

19 A. I repositioned myself to the other side, pushing him
20 down, pushed him back down, and that's when I put both knees on
21 the back.

22 Q. All right. And when you put both knees on his back,
23 were you applying some of your weight to hold him down?

24 A. Absolutely.

25 Q. All right. Were you ever in a position that you can
26 recall with a single knee in the back area and the other leg out
27 spread from his body some way. Do you remember that?

28 A. I'd have to look at video for that because I don't

1 remember that off the top of my head.

2 Q. Okay. Other than putting weight on his body using
3 both knees, you don't remember applying weight from your body
4 prior to that?

5 A. No.

6 Q. All right. And so now you've got both your knees on
7 his back, correct?

8 A. Yes, sir.

9 Q. And how much did you weigh on January 1st, 2009?

10 A. With or without my duty belt, sir?

11 Q. Let's do with.

12 A. Approximately 250 pounds.

13 Q. Okay. And so now you're on his back. What's
14 Mehserle doing, if you know, when you put the weight of your
15 body on his back with your knees?

16 A. He started yelling, "I'm going to tase him. I'm
17 going to tase him."

18 Q. All right. And could you see if Mehserle had either
19 hand out from under him at that moment?

20 A. No, I did not.

21 Q. Did it appear to you that either hand -- Mr. Grant's
22 hands was behind his back?

23 A. No, it did not.

24 Q. Had Mr. Grant done anything up to that point in time
25 -- well, strike that.

26 Had Mr. Grant ever said to you, "I give up"?

27 A. No, he did not.

28 Q. Had Mr. Grant ever said, "I'll give you my hands"?

1 A. No, he did not.

2 Q. Did Mr. Grant ever say, "Please, just arrest me"?

3 A. No, he did not.

4 Q. Did Mr. Grant ever say anything that led you as an
5 officer to believe that he was giving up?

6 A. No.

7 Q. Or that he was complying with your request to put his
8 hands behind his back?

9 A. No, sir.

10 Q. What about his actions? Did anything about his
11 actions indicate to you that he was giving up?

12 A. Absolutely not.

13 Q. Did anything about his actions indicate to you that
14 he wanted to put his hands behind his back to be handcuffed?

15 A. No.

16 Q. So Mehserle now says, "I'm going to tase you," right?

17 A. Twice.

18 Q. And when you hear that, how loud is Mehserle saying
19 that?

20 A. It sounds like he's yelling.

21 Q. And from your own Taser training, are you supposed
22 to, if you know, are you supposed to alert other people that you
23 may deploy the Taser?

24 A. Yes, you are.

25 Q. Why do you do that?

26 A. I'm guessing to protect the officers that are nearby
27 in the vicinity.

28 THE COURT: What do you mean you're guessing?

1 THE WITNESS: Well, because I can't speak for why
2 officers do that, sir.

3 THE COURT: That's what I want to know. You can't
4 speak for other officers, correct?

5 THE WITNESS: Yes.

6 THE COURT: Next question.

7 BY MR. RAINS:

8 Q. The training says, before you deploy the Taser,
9 you're supposed to give a command or an alert?

10 A. Yes, sir.

11 Q. And so you're hearing Mehserle yell twice, "I'm going
12 to tase him," right?

13 A. Yes.

14 Q. And what's the next thing that happens when you hear
15 Mehserle yell that twice?

16 A. He starts to yell, "Get back, get back."

17 Q. "Get back, get back"?

18 A. Yes, sir.

19 Q. Is he using your name?

20 A. He did after he said, "Get back, get back." Then he
21 yelled out, "Tony, Tony." And that's when I popped up.

22 Q. Did anything that Mehserle said at this time purport
23 to narrate what was happening, what he was seeing, what he was
24 doing? Did he given you any indication?

25 A. At some point in time, I don't know when Mehserle was
26 yelling, "His hands are in his waistband. His hands are in his
27 waistband. I can't get his hands. I can't get his hands."
28 Those words were being yelling from Mehserle. Exactly where in

1 the struggle, I don't know. It was before he said, "I'm going
2 to tase him."

3 Q. Okay. So before he said he's going to tase him, he
4 was saying he couldn't get his hands?

5 A. Correct.

6 Q. And then he yells twice, "I'm going to tase him."
7 And then after that he says, "Get up"?

8 A. "Get back."

9 Q. "Get back"?

10 A. Correct.

11 Q. And then he yelled your name?

12 A. Yes.

13 Q. What did he say?

14 A. "Tony, Tony, get back."

15 Q. And when he said, "Tony, Tony, get back," what do you
16 remember doing?

17 A. I got up. I had no idea why I was getting up, but I
18 got up.

19 Q. Let me ask you something, Officer Pirone. You said
20 that Mr. Grant had called you a name that shocked you, and you
21 used the term "bitch ass nigger," correct?

22 A. Yes, sir.

23 Q. Did you harbor any animus, that is, any hatred for
24 Mr. Grant for the things he called you?

25 A. No, sir.

26 Q. When Mr. Grant went to the ground, when Mehserle took
27 him to the ground, do you remember if you took any actions to
28 try to prevent his head from striking the ground?

1 A. I don't remember.

2 Q. Let me go on from here, sir. So Mehserle is yelling
3 at you, "Tony, get back, get back." Did you respond to that in
4 some way?

5 A. Yes, I did. I got up.

6 Q. And when you got up, what do you remember happening?

7 A. Before I even stood erect, I heard a gunshot.

8 Q. All right. And when you heard the gunshot, what did
9 you do?

10 A. Well, to be perfectly honest, I thought the Taser had
11 malfunctioned because I was looking at Oscar Grant's back and
12 I'm thinking I need to be -- I should be seeing probes. I'm not
13 seeing any probes. What's going on? We just had a malfunction.
14 And as all of that is going through my head, I look up and I see
15 Officer Mehserle with a gun in his hand.

16 Q. Now, you said you were looking down and thinking you
17 should see probes. What does that mean?

18 A. When the Taser is actually deployed and triggered,
19 two probes that puncture the skin come out and penetrate the
20 skin of the body. At that time, the actual mechanism -- I'm not
21 sure the nomenclature -- inside the Taser sends out the voltage
22 for approximately five seconds.

23 Q. All right. So you're actually examining Mr. Grant's
24 back at this time looking for the presence of these probes?

25 A. At the end of the probes are very thin copper wires.
26 So it's clear as day when probes are deployed.

27 Q. All right. And you didn't see any probes?

28 A. I did not see any probes.

1 Q. Did you see anything else that you recognized right
2 then in Mr. Grant's back?

3 A. I saw what looked like a black hole.

4 Q. All right. And you say at that point in time you
5 looked over at Mehserle and saw a gun in his hand?

6 A. Yes.

7 Q. How did you know it was a gun as opposed to a Taser?

8 A. Because it looked like his gun.

9 Q. All right. And where was he holding it, if you
10 recall, in his hand when you first saw it? Was it at his side?
11 Where was it?

12 A. I believe it was still pointed at Oscar Grant.

13 Q. Where do you remember Officer Mehserle standing in
14 relation to Oscar Grant when you first saw that gun pointed?

15 A. At the lower portion of his body, at his feet, off to
16 the side.

17 Q. Which side, if you remember?

18 A. His left side. The same side that I was on when I
19 stood up. I was standing -- if I stood up right here, Oscar is
20 right here, Officer Mehserle was standing over here
21 (indicating).

22 Q. And was the gun pointed directly down at his back?

23 A. Yes, it was.

24 Q. And so at that point in time, what do you remember
25 happening next?

26 A. I believe -- again, excuse me, your Honor -- I think
27 I said, "Oh shit."

28 Q. Okay. Why did you say, "Oh shit"?

1 A. It's not something that I was expecting to see or
2 hear.

3 Q. A gunshot?

4 A. Yes.

5 Q. You expected to see or hear a Taser?

6 A. That's correct, sir.

7 Q. And so when you said, "Oh shit," did you ever see
8 Mehserle's face at about this time?

9 A. Yes, I did.

10 Q. Describe it.

11 A. It was a look of shock. Almost like if he had the
12 same thought, Oh shit.

13 Q. All right. And so you say, "Oh shit," and what did
14 you do next?

15 A. Well, I'm thinking now I need to go from arrest mode
16 to life-saving mode, because now I've got a gunshot victim on
17 the ground.

18 Q. Could you smell the gun powder?

19 A. I don't remember.

20 Q. Okay. And so you got a gunshot victim on the ground.
21 What did you do?

22 A. I grabbed my radio and asked for Code 3 Medical. And
23 I specifically remember telling dispatch to not have them stage.
24 Reason for that is because generally speaking when shots are
25 fired, AMR is not going to roll to your exact location until
26 they know or that you have cleared the scene or deemed it as
27 what is considered Code 4, which means safe. So I told them to
28 have them roll Code 3 Medical and not have them stage. We have

1 a gunshot victim on platform two -- correction -- platform one.

2 Q. In other words, you wanted to get this medical group
3 there as quickly as possible?

4 A. I need -- yes, I need paramedics now.

5 Q. All right. And after you requested this medical
6 response, what did you do?

7 A. I look up and Officer Mehserle's looking like he's
8 lost. At that time, I no longer saw a gun in his hand. So I'm
9 assuming he re-holstered. I told him -- as I was telling him to
10 handcuff Oscar Grant, Oscar Grant started to get up. He put his
11 left hand down on the pavement and started to do a pushup type
12 move to try to erect himself or sit up, if you will. At that
13 time, I told him, "Hey, relax. Get back down." And I told
14 Officer Mehserle to handcuff him.

15 Q. I want to go back in time just slightly, Officer
16 Pirone. Up until the point in time that you heard the gunshot
17 go off, had Mr. Grant ever stopped squirming and moving?

18 A. No. Not until the gunshot went off.

19 Q. Up until that time that the gunshot went off, had you
20 ever seen Mr. Grant engaging in actions that you, as an officer,
21 believed were in compliance to your request that he put his
22 hands behind his back?

23 A. No, he never did.

24 Q. Do you believe at the time the gunshot went off that
25 Mr. Grant had presented his hands behind his back to be
26 handcuffed?

27 A. No, they were not there.

28 Q. So we go forward. You told Mehserle now to handcuff

1 Mr. Grant after he was shot?

2 A. That's correct, sir.

3 Q. Why did you do that?

4 A. We still -- I still do not know at that particular
5 time whether or not he does, in fact, have a weapon.

6 Q. All right. And so you had him handcuff him. Did
7 Mehserle handcuff him?

8 A. Yes, he did.

9 Q. And what happened after Mr. Grant was handcuffed?

10 A. I didn't watch Officer Mehserle handcuff Oscar Grant,
11 because at that time there was somebody against the wall -- I'm
12 not sure who it was -- who became very animated, started yelling
13 and screaming, and I went to address him because again he has
14 yet to be searched and he's literally at the feet of Oscar
15 Grant.

16 Q. And did this individual appear to be angry?

17 A. He was angry, distraught, yes.

18 Q. All right. And how did you address this individual?

19 A. I told him that he needed to calm down. I said, "You
20 need to calm down so I can take care of your friend."

21 Q. All right. Did that individual calm down?

22 A. No, he did not.

23 Q. Do you know who that person is today?

24 A. I have no idea, sir.

25 Q. Do you recall what his stature was like? Was he a
26 big guy? A small guy?

27 A. He was heavysset.

28 Q. So what happened? He's not calming down. How are

1 you dealing with him?

2 A. I'm trying to talk him down. I think maybe three or
3 four times that conversation went through, and at some point I
4 believe it was an Oakland police officer who came up and took
5 control of that particular individual, and at that point I
6 turned around and started requesting for more assistance.

7 Q. Police assistance?

8 A. Correct, sir.

9 Q. Why were you requesting more police assistance?

10 A. I just had an officer-involved shooting. I've got a
11 gunshot victim on the ground. I asked for a supervisor and
12 detectives.

13 Q. And at that point in time, was the train still there
14 at the station?

15 A. The train had left.

16 Q. By then, the train had left?

17 A. By then, the train had left. Exactly where in the
18 chain of events it left, I don't know.

19 Q. All right. The train has now left. You're asking
20 for more assistance. Did you attend at any time after that to
21 Mr. Grant while he was on the ground?

22 A. Not until after I made that request for more
23 assistance.

24 Q. And then after you made the request for more
25 assistance, what did you do?

26 A. I went over and sat down by Mr. Grant and stayed with
27 him until AMR came and took him away.

28 Q. All right. What was Officer Mehserle doing at the

1 point in time when you turned your attention away from this
2 individual you were trying to get calmed down and then turned
3 back to Mr. Grant?

4 A. As I was transmitting, he was following me.

5 Q. Officer Mehserle was?

6 A. That's correct.

7 Q. He was kind of following you around?

8 A. Yes.

9 Q. And was he doing anything other than following you
10 around, as you recall?

11 A. He started to say something and I told him to wait
12 because I felt that I needed to get this transmission out.

13 Q. Okay. So you got the transmission out. I assume
14 that's the one requesting more assistance?

15 A. Yes. Requesting for an L unit, which means
16 lieutenant and DD, which is an acronym for detectives.

17 Q. And then after you got that transmission out, you
18 attended to Mr. Grant?

19 A. Yes.

20 Q. Did you talk to Mehserle right after the
21 transmission?

22 A. As I was walking towards Mr. Grant, Mehserle stopped
23 me and said, "Tony, I thought he was going for a gun."

24 Q. All right. Anything else?

25 A. No.

26 Q. And what did you say to Mr. Mehserle?

27 A. I just said, "Okay."

28 Q. And so then you took -- you attended to Mr. Grant?

1 A. That's the next most important thing to me right now.

2 Q. What did you do?

3 A. I just spoke with him.

4 Q. Did you give him CPR or anything like that?

5 A. No. We don't give CPR for people that are conscious
6 and breathing.

7 Q. Okay. That's your training?

8 A. Yes.

9 Q. He was breathing?

10 A. I was talking to him.

11 Q. All right. And was the wound in the back, was that
12 bleeding profusely at the time?

13 A. No. But when Officer Guerra -- at some point,
14 Officer Guerra went downstairs to get a gunshot trauma kit, and
15 he came up and applied pressure to the back.

16 Q. All right.

17 A. I think he rolled Mr. Grant over at some point,
18 because once we deemed him safe, someone searched him. I don't
19 know who, but we removed the handcuffs. And when Officer Guerra
20 rolled him over, you can see a shiny, what looked like a spent
21 round that had been smashed, a piece of lead protruding or
22 actually sitting on the shirt of Oscar Grant.

23 Q. And you're pointing to in this case --

24 A. The right.

25 Q. The right chest area?

26 A. The upper right chest area.

27 Q. It appeared to be something shiny protruding --

28 A. Yes, sir.

1 Q. -- from the chest? So what did you -- you say Mr.
2 Grant was conscious, he was breathing, he was talking, correct?

3 A. Yes. There wasn't too many words that were being
4 said. But when I was telling him, "Hey, are you still with me?"
5 Because I was holding his hand. I said, "Hey, squeeze me if you
6 can still hear me," and he did.

7 Q. Were you telling him anything as you were --

8 A. I tried to coach him to "Stay with me."

9 Q. "Stay with me"?

10 A. "Stay with me."

11 Q. In other words, not lose consciousness?

12 A. Well, my words were "Stay with me," yes.

13 Q. And to your knowledge, Officer Pirone, did Mr. Grant
14 remain conscious the entire time until medical help arrived?

15 A. Yes, he did.

16 Q. All right. Did you see Mr. Grant taken on a gurney
17 away from the scene?

18 A. They took him on a board. No gurney came up to the
19 platform.

20 Q. Did he appear to be conscious at that time?

21 A. Yes.

22 Q. All right. And at some point in time after the
23 events that you've testified to, you were taken away from the
24 scene?

25 A. Yes, sir.

26 Q. How were you taken away from the scene? That is, did
27 you drive yourself somewhere or did somebody drive you?

28 A. I left with Commander Gibson and Officer Domenici.

1 Q. And where did you go?

2 A. To the Lake Merritt BART station.

3 Q. After you got to the Lake Merritt BART station,
4 sometime later that same day, did you give an interview to
5 somebody?

6 A. Yes, I did.

7 Q. Do you remember what time of day it was when you gave
8 an interview?

9 A. I want to say late morning.

10 Q. All right. Late morning. And when you gave an
11 interview, had you been up a number of hours by then?

12 A. Yes. Yes, I had.

13 Q. Following your interview that you gave sometime late
14 morning of January 1st, 2009, were you interviewed on subsequent
15 dates that you can recall?

16 A. Yes, I was.

17 Q. Couple of times?

18 A. Three to be exact, sir.

19 Q. Officer Pirone, I know I've asked you a lot of
20 questions about events that happened, it sounds like, in rapid
21 succession. When you were first interviewed, had you remembered
22 all of the events that transpired that night?

23 A. No, sir.

24 Q. Did there come a point in time where you remembered
25 for instance having some kind of a conversation with Mr. Grant
26 about him having a child?

27 A. Yes, sir.

28 Q. First of all, what do you remember about the

1 conversation with Mr. Grant about him having a child?

2 MR. STEIN: Objection. Excuse me, your Honor.
3 Withdrawn.

4 THE COURT: You can answer.

5 THE WITNESS: The question again.

6 BY MR. RAINS:

7 Q. What do you remember about the conversation you had
8 with Mr. Grant about him having a child?

9 A. I remember him telling me that he had a daughter, a
10 four-year-old daughter.

11 Q. And when in relation to the evens that you've
12 testified to did that discussion occur?

13 A. I'm not sure exactly.

14 Q. All right. Had you remembered that discussion
15 occurring when you were first interviewed?

16 A. I don't remember. I'd have to look at the transcript
17 or listen to the tape.

18 Q. Okay. But at some point you did remember that
19 happened?

20 A. Yes, sir. As a matter of fact, it was the last
21 interview that I had with BART.

22 Q. The last interview?

23 A. I believe it was March 17th.

24 Q. All right. You remember what triggered in your mind
25 the fact that, you know, you'd had this conversation?

26 A. They showed me a video that I'd never seen before.

27 Q. During the interview itself?

28 A. Yes, sir.

1 Q. All right. And it was that, the showing of that
2 video you'd never seen before that triggered that recollection
3 in your mind?

4 A. Yes.

5 MR. RAINS: All right. Thank you, Officer Pirone. I
6 don't think I have any other questions.

7 THE COURT: We'll take a 15-minute recess.

8 (Court in recess.)

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

10 CROSS-EXAMINATION

11 BY MR. STEIN:

12 Q. Officer Pirone, you testified that at no time did you
13 ever see Oscar Grant with his hands behind his back in a cuffing
14 position; is that true?

15 A. If that's what I said, then yes, sir.

16 Q. Is it true?

17 A. I'm asking you. I don't understand the question.

18 Q. Did you ever see Oscar Grant with his hands behind
19 his back in a cuffing position?

20 A. No, I did not.

21 Q. I'd like to direct your attention to the monitor.
22 Can you see that from where you are, sir?

23 A. No. There's a horrible glare coming off of those
24 windows.

25 THE COURT: Officer Pirone, why don't you get over to
26 where you need to see it. If you need to get closer, go ahead.

27 THE WITNESS: Right here, sir. I'm right in between
28 that glare.

1 BY MR. STEIN:

2 Q. Can you see it clearly from where you are?

3 A. His hands, sir?

4 Q. No. Can you see the monitor from where you are
5 without the glare. I'm going to play a clip of this and I just
6 want you to be able to see it clearly while it's playing.

7 A. Go ahead.

8 Q. For the record, I'm showing the Cross video, the
9 first of three, starting at frame 2335.

10 (Video played.)

11 Q. I've stopped at frame 2474.

12 Officer Pirone, you said that after the shot you were
13 looking for probes in the back of Oscar Grant's back. What do
14 you see in this frame?

15 A. What appears to be two hands.

16 Q. In a cuffing position, true?

17 A. I appears that way, yes, sir.

18 Q. And do those hands appear to be those of Oscar
19 Grant's, true?

20 A. Yes, sir.

21 Q. And those hands are in exactly the area where you say
22 you were looking for probes, true?

23 A. Well, I was looking for the probes in the back, sir.

24 Q. And that's where his hands are, true?

25 A. Those are at the small of his back, perhaps maybe in
26 the buttocks, sir.

27 Q. Do you think that when you were looking for probes in
28 the back, that maybe you missed Oscar Grant's two hands behind

1 his back in a cuffing position?

2 A. I was looking for the probes, sir.

3 Q. You can have a seat.

4 You've testified that you are friends with the defendant,
5 Johannes Mehserle; is that correct?

6 A. Yes, sir.

7 Q. And on occasion you had worked together. I think you
8 said approximately 10 times, true?

9 A. Yes, sir.

10 Q. You have said in the past that your relationship with
11 the defendant Johannes Mehserle is like a big brother
12 relationship; is that right?

13 A. Yes, sir.

14 Q. And in that type of a big brother relationship, who's
15 the big brother?

16 A. That would be me, sir.

17 Q. And as a big brother relationship, do you mean to
18 imply that you are someone who is somewhat of a mentor to Mr.
19 Mehserle like a big brother?

20 A. When it comes to work, yes.

21 Q. When it comes to work. And when it comes to work,
22 did you mean to suggest that you are someone that Mr. Mehserle
23 maybe respects professionally?

24 MR. RAINS: That calls for speculation.

25 THE COURT: Overruled. Cross-examination.

26 If you know. If you don't know, you don't know.

27 THE WITNESS: The question one more time, please.

28 BY MR. STEIN:

1 Q. The question is: When you describe your relationship
2 with Mr. Mehserle as a big brother relationship, do you mean to
3 suggest that you are someone who Mr. Mehserle respects
4 professionally, like a younger brother would of a big brother?

5 A. In a work environment, yes, sir.

6 Q. And in a work environment, you also mean to suggest
7 that he is someone who may emulate you in a work environment,
8 true?

9 MR. RAINS: Objection. Calls for speculation.

10 THE COURT: Sustained. It does.

11 BY MR. STEIN:

12 Q. When you stated that you have a big brother
13 relationship, is that what you were referring to?

14 A. What?

15 Q. That you have a relationship such that he is someone
16 who may emulate you, like respect you, in a working environment.
17 Is that what you meant to suggest?

18 MR. RAINS: Calls for speculation.

19 THE COURT: Sustained.

20 BY MR. STEIN:

21 Q. Now, when you worked with the defendant, did you work
22 in Oakland?

23 A. I don't remember.

24 Q. Could you have worked in Oakland during the times
25 you've worked with the defendant?

26 A. Yes.

27 Q. And do you know what shift you would work? Would it
28 vary?

1 A. Yes, sir.

2 Q. Could be day shift, could be night shift?

3 A. Usually swing or graveyard, sir.

4 Q. And swing shift are what hours?

5 A. 15:30 to 01:30.

6 Q. And graveyard is what hours?

7 A. 22:00 to 06:00.

8 Q. Now, you've testified that prior to your testimony
9 here, you have had the opportunity to look and hear at some
10 videos; is that correct?

11 A. Yes, sir.

12 Q. How long after the shooting did you become aware of
13 the fact that videos existed?

14 A. I don't remember.

15 Q. How about the morning of the shooting, were you aware
16 of a video exiting at that time?

17 A. No, I was not.

18 Q. Did you ask members of the BART Police Department if
19 you could look at a video prior to giving your statement the
20 morning of January 1st, 2009?

21 A. I asked for the platform cameras, yes.

22 Q. And your purpose for doing that what was?

23 A. To help me refresh my recollection of the chain of
24 events that took place that morning.

25 Q. Did you have any other purpose for looking at that
26 video?

27 A. No, sir.

28 Q. Were you given that opportunity?

1 A. No, sir.

2 Q. Now, when you were first interviewed, that was at the
3 BART Police Department. Who was present for that interview?

4 A. If I remember correctly, I believe it was Detective
5 Enriquez, Detective McNack, and I don't remember who else from
6 the BART Police Department. I believe there were two attorneys
7 there from the Mastagni Law Firm.

8 Q. Does the name David Mastagni sound familiar?

9 A. Yes, sir.

10 Q. Do you remember a David Mastagni being present?

11 A. I believe there's a senior and a junior, and I think
12 junior was the one who was present. I'm not certain.

13 Q. Do you remember a Daniel McNamara being present?

14 A. Yes, sir.

15 Q. Do you know who that is?

16 A. Yes, sir.

17 Q. Who is that?

18 A. The other attorney.

19 Q. So you had two lawyers with you at that time?

20 A. Yes, sir.

21 Q. Now, three days after you gave that statement, you
22 participated in what I will refer to as a walkthrough at the
23 Fruitvale BART platform; is that correct?

24 A. Yes, sir.

25 Q. And the following people were present: Was
26 Lieutenant Lucarelli there, if you remember?

27 A. I don't remember.

28 Q. How about Lieutenant Alkire?

1 A. Yes. I remember him, sir.

2 Q. Sergeant Fueng?

3 A. Yes, sir.

4 Q. Detective Smith?

5 A. Yes, sir.

6 Q. Detective Maes?

7 A. Yes, sir.

8 Q. Detective Enriquez?

9 A. Yes.

10 Q. Detective McNack?

11 A. Yes.

12 Q. And attorney Daniel McNamara?

13 A. Yes, sir.

14 Q. All those people were present on the Fruitvale BART
15 station -- at the Fruitvale BART station on the platform for
16 this walkthrough; is that correct?

17 A. Yes, sir.

18 THE COURT: Mr. Stein, hold on one second, okay.

19 (Pause.)

20 THE COURT: Go ahead.

21 BY MR. STEIN:

22 Q. With regard to this walkthrough that took place on
23 the 4th of January 2009, you, your attorney and a number of
24 other people from BART were present on the platform; is that
25 right?

26 A. Yes, sir.

27 Q. And your understanding of the purpose of this meeting
28 on the platform was what?

1 A. To assist with the investigation.

2 Q. And how were you personally going to do that?

3 A. Answer questions.

4 Q. And were you going to describe to them what took
5 place at the time of the shooting?

6 A. Yes.

7 Q. And was it your intention to provide as much
8 information as you could to these investigators?

9 A. Yes, it was.

10 Q. Was it your intention to be as accurate and as
11 truthful and as forthcoming as one could possibly be?

12 A. Absolutely.

13 Q. And were you?

14 A. As best as I could at the time, sir.

15 Q. Now, on January 26th of 2009, you were interviewed
16 again here at the Alameda County DA's office; is that correct?

17 A. Yes, sir.

18 Q. And among the people present for that interview, was
19 Mr. William Rapoport; is that correct?

20 A. Yes, sir.

21 Q. He is your attorney now; is that correct?

22 A. Yes, sir.

23 Q. And was he present with us last week when you
24 testified?

25 A. Yes, sir.

26 Q. Is he present here today?

27 A. Yes, sir.

28 Q. And when you gave the statement on January 26th of

1 2009, again, your purpose was to answer questions and provide
2 information as best you could to assist in the investigation of
3 the shooting death of Oscar Grant; is that correct?

4 A. Yes, sir.

5 Q. And as best you could you did that, is that your
6 testimony?

7 A. Yes, sir.

8 Q. Now, on March 17, 2009, you again provided a
9 statement, a recorded statement, to investigators from BART; is
10 that right?

11 A. Yes, sir.

12 Q. And Sergeant Fueng was one of those investigators?

13 A. Yes, sir.

14 Q. And was Lieutenant Alkire present?

15 A. Yes, sir.

16 Q. And what about your attorney, Mr. Rapoport, was he
17 also present?

18 A. Yes, sir.

19 Q. And again you were asked questions about what took
20 place on the night that Oscar Grant was killed; is that correct?

21 A. It was the morning, correct?

22 Q. Yeah, it was the early morning hours of January 1st.

23 A. Yes, sir.

24 Q. And you did everything you could to provide as much
25 information as possible in terms of what took place on the
26 platform at that time; is that right?

27 A. Yes, sir.

28 Q. And when prior to giving that statement, you were

1 given an opportunity to review and listen to your prior
2 statements that you had given; is that correct?

3 A. Yes, sir.

4 Q. And you were also given a supplemental report
5 authored by a Detective Maes which described the events that
6 took place at the walkthrough; is that correct?

7 A. Yes, sir.

8 Q. And you reviewed that report as well?

9 A. I believe so, sir.

10 Q. Okay.

11 MR. STEIN: Your Honor, I have marked before for
12 identification four transcripts and a supplemental report. They
13 are marked 34 through 38, and I would ask permission to lay
14 these out so Officer Pirone can refer to them during his
15 testimony, if necessary.

16 The record should also reflect that each transcript is
17 numbered at the top, Transcript 1, Transcript 2, Transcript 3,
18 Transcript 3A, and then finally the supplemental report.

19 THE COURT: All right.

20 MR. STEIN: We'll leave those there for now. And I
21 have copies for counsel.

22 Q. Now, you have testified, sir, that on occasion you
23 have seen some videos. Is it your testimony that you don't know
24 how many videos that you've seen?

25 A. That's correct, sir.

26 Q. Could it be more or less than two?

27 A. I would guess more than two.

28 Q. More or less than five?

1 A. I don't know.

2 Q. Somewhere around there; is that fair to say?

3 A. That's a guesstimation, yes.

4 Q. You've testified, sir, that when viewing these videos
5 except for one, you haven't listened to the audio portion; is
6 that right?

7 A. Yes. That's correct, sir.

8 Q. Why is that?

9 A. It was never provided.

10 Q. What was never provided? The audio portion?

11 A. Yes.

12 Q. And was that --when you say it wasn't provided, how
13 did you gain access to these videos?

14 A. Some were on the news, watching it live on TV.

15 Q. Okay. And others?

16 A. Internet.

17 Q. So you -- when -- the videos you viewed on the
18 internet, they had sound, did they not?

19 A. Some did. Some had narrative. For instance, the
20 KRON video with Mr. Cardoza from the Karina Vargas video, that
21 was a narrative.

22 Q. Who's Mr. Cardo -- who?

23 A. I think it's Michael Cardoza, something to that
24 effect. Like I said, it was on KRON.

25 Q. And who is this person Michael Cardoza?

26 A. A legal analyst, I think, is what it said on the
27 bottom screen.

28 Q. So what you're saying is that you were watching a

1 video tape and it has this legal analyst by the name of Michael
2 Cardoza commenting on the video?

3 A. Correct, sir.

4 Q. So did you ever watch any videos in any of your
5 attorney's office?

6 A. Yes, sir.

7 Q. And when you watched those videos, did they have
8 sound?

9 A. Some did, sir, yes.

10 Q. And with regard to the sound that you heard, did any
11 of the sound that you heard refresh your memory of what you
12 heard the night that this took place?

13 A. No. No, it did not, sir.

14 Q. So your testimony here today is based entirely on
15 your independent recollection of what you heard as opposed to
16 being influenced by any video or audio; is that correct?

17 A. Yes, sir.

18 Q. You have testified to various things that I would
19 describe as very detailed. And what I'm referring to are times
20 when you say you took your right hand and grabbed a person on
21 their left shoulder and then -- you know, you're very specific.
22 Is that all based on your independent recollection or were you
23 assisted by watching the events as they unfolded on video?

24 A. Some of them were statements, sir.

25 Q. Now, when you got this call, you were downstairs in,
26 I think you said, the free area; is that right?

27 A. That's correct, sir.

28 Q. The initial call that you received was a fight on the

1 lead car; is that correct?

2 A. Correct, sir.

3 Q. And you have said before that when you first got that
4 initial report, that the call came out as not only a fight on
5 the lead car, but a fight on the lead car with five African
6 males; isn't that true?

7 A. I believe they were specified as black males.

8 Q. But you have described the call as it came out in a
9 prior statement as it being a fight on the lead car with five
10 African males; is that true?

11 A. That was from my recollection of the radio
12 transmission, that's correct.

13 Q. Since this incident, have you heard the radio
14 transmission?

15 A. Yes, I have.

16 Q. And where were you when you heard the radio
17 transmission?

18 A. My attorney's office, sir.

19 Q. Your attorney played it for you?

20 A. Yes, sir.

21 Q. Which attorney?

22 A. I'm sorry?

23 Q. Which attorney?

24 A. Bill Rapoport.

25 Q. Did he tell you how he got his hands on the recording
26 of that transmission?

27 MR. RAINS: Objection. Calls for a privileged
28 communication.

1 THE COURT: Overruled.

2 BY MR. STEIN:

3 Q. Did Mr. Rapoport show you any transcripts of any
4 other witnesses who provided statements in this investigation?

5 MR. RAINS: Calls for a privileged communication.

6 THE COURT: Overruled. You can answer.

7 THE WITNESS: What was the question again?

8 BY MR. STEIN:

9 Q. Did Mr. Rapoport show you any transcripts of any
10 statements that were given by other witnesses during this
11 investigation?

12 A. Yes, sir.

13 Q. Whose transcripts did he show you?

14 A. There are a lot, sir. I don't have them memorized.

15 Q. Did you ask to look at what other people said in
16 their statements?

17 MR. RAINS: Calls for a privilege communication of
18 counsel.

19 THE COURT: Not whether or not he asked to look at it
20 or not, whatever the contents might be. So it's overruled.

21 THE WITNESS: No, I don't remember.

22 BY MR. STEIN:

23 Q. Did you listen to any statements that were given by
24 other individuals pertaining to this investigation?

25 A. No, sir.

26 Q. So you just read their recorded transcripts; is that
27 right?

28 A. Yes, sir.

1 Q. And how long ago was it that you did that?

2 A. I don't remember.

3 Q. Has it been in the last week?

4 A. No, sir.

5 Q. Within the last month?

6 A. I don't know.

7 Q. Could possibly be within the last month?

8 A. I don't know.

9 Q. And on how many occasions have you looked at
10 transcripts? Was it one occasion or more than one?

11 A. There were more than one transcripts. I'm not really
12 understanding your question.

13 Q. Well, let me ask you this way: Did you ever look at
14 these transcripts at your house?

15 A. Yes.

16 Q. So you have your own copy?

17 A. Some.

18 Q. What about the videos? You got your own copy of the
19 videos?

20 A. Whatever you can download off the internet.

21 Q. What about what you saw in your attorney's office?

22 A. No. What I saw in my attorney's office, the video
23 there was on the internet.

24 Q. And with regard to these dispatched communications,
25 the radio calls, do you have access to those at your house?

26 A. Transcripts?

27 Q. Yes.

28 A. Yes, sir.

1 Q. Now, when you got this initial call, did you -- were
2 you given information about what the individuals were wearing?

3 A. Yes, sir.

4 Q. And what information were you given?

5 A. Black clothing.

6 Q. Anything more specific than that?

7 A. Not that I remember.

8 Q. So you remember hearing five individuals, males, were
9 African-American, fighting on the lead car, wearing black; is
10 that right?

11 A. Correct. Yes, sir.

12 Q. And when you got to the top of the platform, you
13 chose at some point to detain Oscar Grant based on that
14 description; is that correct?

15 A. Well, there was a group. I'm not understanding.

16 Q. Well, when you got to the platform, Mr. Grant
17 didn't -- he was not wearing black clothing, was he?

18 A. He was one of five individuals that came off the lead
19 car.

20 Q. My question was: When you went to the platform and
21 saw Mr. Grant, he wasn't wearing black clothing, true?

22 A. I don't remember what he was wearing.

23 Q. Well, let me see if it would refresh your
24 recollection. If you could grab Transcript 1 you have before
25 you. Do you see that?

26 A. Yes.

27 Q. Can you turn to page 17 of that transcript. Are you
28 on page 17, Officer Pirone?

1 A. Yes, I am.

2 Q. Can you look down to lines 21 to 25. I'm going to
3 ask you if this refreshes your recollection as to what he was
4 wearing.

5 "Question: And can you describe the suspect,
6 including his clothes, Mr. Pirone?

7 "Answer: An African male, approximately 5'8" maybe
8 160-170 pounds, wearing a red T-shirt and, I think, a
9 white one underneath and blue jeans and, I think,
10 white tennis shoes."

11 Does that refresh your recollection as to what you believe
12 Oscar Grant was wearing when you set foot on the platform?

13 A. Apparently, that's what I said this day.

14 Q. My question is --

15 A. On the 7th or -- I'm sorry -- the 1st. Yes.

16 Q. Does that refresh your recollection as to what you
17 believed he was wearing when you first set foot on the platform?

18 A. Yes, sir.

19 Q. And so Oscar Grant, at least with regard to his
20 clothing description, did not match the radio call that was sent
21 out to you initially, true?

22 A. In the clothing department?

23 Q. Yes.

24 A. Yes, sir.

25 Q. There were several, several African-American males on
26 that train, were there not?

27 A. I didn't count.

28 Q. Would you say that there were many?

1 A. On the train?

2 Q. Yes.

3 A. I didn't look on the train.

4 Q. How about on the platform?

5 A. There were five males and one female coming at me on
6 the platform.

7 Q. Weren't there other people on the platform that you
8 saw after you first set foot on the platform?

9 A. No, there was not.

10 Q. You never saw anyone else on the platform?

11 A. No, sir.

12 Q. You're sure of that?

13 A. From what I remember.

14 Q. Now, initially when you approached these five men,
15 you saw fit to withdraw your Taser; is that correct?

16 A. Yes, sir.

17 Q. And what had any of these men done that caused you to
18 draw your Taser at that point in time?

19 A. Nothing.

20 Q. And so they didn't threaten you?

21 A. Not at first, no.

22 Q. They didn't threaten you verbally?

23 A. No, sir.

24 Q. But you saw fit to pull your Taser nonetheless?

25 A. Yes, sir.

26 Q. And that was based in part on the radio call that you
27 got and that these five individuals appeared to be together; is
28 that right?

1 A. I was outnumbered, yes, sir.

2 Q. And your specific recollection is that when you
3 received the initial call, you remember the number five; is that
4 right?

5 A. Yes.

6 Q. Now, when you took your Taser out of its holster, you
7 turned the safety switch to the armed position, correct?

8 A. Yes, sir.

9 Q. And as you've testified, that causes a light and a
10 laser to shine from the Taser weapon, correct?

11 A. Yes, sir.

12 Q. Now, as you approach this group, one of the
13 individuals tried to get around you; is that right?

14 A. There were three of them, sir.

15 Q. Well, one of them you put your hands on, correct?

16 A. Yes, sir.

17 Q. That's the one I want to focus on right now. That
18 person tried to go around you, correct?

19 A. Yes, sir.

20 Q. And you took your hand and you grabbed him by the
21 chest; is that right?

22 A. I put it on his chest, sir.

23 Q. Okay. Did you take hold of his clothing?

24 A. No, I did not, sir.

25 Q. Was your palm open when you put it against his chest?

26 A. Yes, sir.

27 Q. And your purpose for doing that was what?

28 A. To gain his attention.

- 1 Q. And did you get his attention?
- 2 A. Not at first, sir.
- 3 Q. What happened?
- 4 A. As far as?
- 5 Q. After you put your hand on his chest, what happened?
- 6 A. I instructed him to have a seat against the wall.
- 7 Q. And then what happened? Did he comply with that
- 8 request?
- 9 A. No, he did not.
- 10 Q. Where did he go?
- 11 A. He did not go anywhere. He continued to push against
- 12 my hand like if he was going to continue walking.
- 13 Q. Approximately how tall was this individual?
- 14 A. Somewhere between 5'8" and 6 foot.
- 15 Q. Approximately how much did this person weigh?
- 16 A. 180 to 200 pounds.
- 17 Q. How tall are you?
- 18 A. 6 foot.
- 19 Q. And you told us that you weighed, with your duty
- 20 belt, approximately 250 pounds. Without your duty belt, how
- 21 much do you weigh?
- 22 A. 225 pounds.
- 23 Q. Now, were you able to stop this individual from
- 24 walking past you?
- 25 A. With a little bit of force, yes, sir.
- 26 Q. How much force?
- 27 A. Using my hand and a little bit of muscle.
- 28 Q. Now, your testimony is you just put your hand up

1 against his chest with your five fingers out stretched; is that
2 right?

3 A. That's correct.

4 Q. You have a specific recollection of that; is that
5 right?

6 A. Yes.

7 Q. Okay. Now, after you put your hand on his chest and
8 told him again to go against the wall, did he comply at that
9 time?

10 A. No, he did not.

11 Q. Then what happened?

12 A. I threatened to tase him.

13 Q. What did you say?

14 A. I said, "I will tase you if you don't sit down."

15 Q. And then did he comply?

16 A. Somewhat.

17 Q. When you say somewhat, was does that mean?

18 A. He looked at me with a puzzled look like if he was
19 shocked I was talking to him, and I told him to have a seat
20 again.

21 Q. What are the other individuals doing while you're
22 dealing with this one individual?

23 A. They stopped in their tracks.

24 Q. This individual who you were dealing with, that was
25 not Oscar Grant, correct?

26 A. No, it was not.

27 Q. It was one of the people you saw him with, correct?

28 A. Yes, it was.

1 Q. So at that time did that individual sit down against
2 the wall?

3 A. I remember correctly, yes.

4 Q. What about the other individuals who he was with?

5 A. I instructed them to sit down again --

6 Q. And did they?

7 A. -- also, and they did.

8 Q. And what did you do after all these, I think, five
9 individuals -- right? How many sat down next to the wall?

10 A. When are we in time? I'm lost.

11 Q. We haven't moved at all. We're still -- you stopped
12 the one individual with your hand and you tell him --

13 A. You jumped forward because my initial contact was
14 with all of them. Oscar Grant and Michael Greer jumped on the
15 train. That was my initial contact with all of them.

16 Q. Okay.

17 A. And then when I addressed the individual that I put
18 my hand on, there were only three left because, again, Michael
19 Greer and Oscar Grant jumped on the train, sir.

20 Q. So when the three sat down -- right?

21 A. Yes, sir.

22 Q. Did they all sit along the wall together?

23 A. Yes, sir.

24 Q. Did you tell them, you know, "Keep your hands where I
25 can see them"?

26 A. I said keep their hands out of their pockets.

27 Q. Did they?

28 A. Yes, sir.

1 Q. They complied with that order?

2 A. Yes, sir.

3 Q. Now, this is all prior to Officer Domenici ever
4 setting foot on the platform, as far as you know, correct?

5 A. Correct.

6 Q. So when Officer Domenici arrives, what did you do?
7 Did you give her any directions?

8 A. I instructed her to watch the three against the wall.

9 Q. Now, before she arrived -- first of all, how did you
10 get into communication with her?

11 A. I used my radio.

12 Q. And what did you say on your radio?

13 A. I asked her to 98 with me up on the platform.

14 Q. And 98 means meet with me?

15 A. Yes, sir.

16 Q. And you heard that radio communication since this
17 incident, correct?

18 A. Well, the TAC channel doesn't get recorded. So I
19 haven't heard the transmission.

20 Q. You don't hear yourself saying, "Officer Domenici, 98
21 me upstairs"?

22 A. That's correct. I did not hear that.

23 Q. And so how long does it take for her to get to your
24 position after you make that radio communication with her?

25 A. Couple of minutes.

26 Q. Okay. And during those couple of minutes, the three
27 individuals are still seated against the wall, correct?

28 A. That's correct.

1 Q. They're not verbally abusing you, they're not
2 physically threatening, nothing of the sort, true?

3 A. That's not true.

4 Q. Oh, it's not?

5 A. No, it's not.

6 Q. Tell me what happens as these three individuals are
7 seated against wall?

8 A. After I asked for Domenici to meet with me on the
9 platform, I instructed -- I informed them the reason why I was
10 detaining them. I got so far into the conversation as to "We
11 got a report of a fight on the train," and that was it because
12 after I said those words, all of them started shouting out with
13 "We didn't do shit." Excuse me. "Why you fucking with me? Why
14 you fucking with us?"

15 Q. Did that pose a threat to you?

16 A. No at the time it did not.

17 Q. But these individuals, based on, you know, what had
18 taken place earlier in the evening with regard to West Oakland
19 and the Embarcadero, you felt that there was a high probability
20 that someone in this group had a gun, true?

21 A. Yes.

22 Q. But when you had these three individuals against the
23 wall, you never searched them, did you?

24 A. No, I did not.

25 Q. You never even asked them if they had weapons, did
26 you?

27 A. No, I did not.

28 Q. Why didn't you?

1 A. I couldn't even get into the sentence of why or the
2 reason for detainment without hearing cursing and other language
3 so I stopped communicating with them all together.

4 Q. Why didn't you just stop communicating with them
5 altogether then proceed to pat search them?

6 A. Because that's not safe.

7 Q. Why is that not safe?

8 A. Because I'm occupied with one person I don't know and
9 I can't possibly keep track of what two others are doing.

10 Q. Any other reason for not searching them at that time?

11 A. Aside from being outnumbered, no, sir.

12 Q. Well, then when Officer Domenici arrived, why don't
13 you search them then?

14 A. We're still outnumbered.

15 Q. How so?

16 A. Two police officers, three suspects.

17 Q. Is it your testimony, sir, that it is not in accord
18 with policy and procedure to ever search someone if there are
19 more detainees than there are officers?

20 A. Well, I still don't know what they have, sir.

21 Q. That would be the reason to search them because you
22 don't know, correct?

23 A. Yes.

24 Q. So since you don't know and since you are operating
25 under the belief that there is a high probability that someone
26 in this group has a gun, why not ask Officer Domenici to stand
27 back and hold her Taser against these three individuals while
28 you pat search them?

1 A. Well, because then I would be putting her at risk,
2 sir.

3 Q. And how so?

4 A. Because I still have two outstanding suspects who
5 fled and evaded my initial contact, sir.

6 Q. And they fled your initial contact in response to
7 your call to a misdemeanor; is that right?

8 A. Yes, sir.

9 Q. And you felt that if you had asked Officer Domenici
10 to stand back and point her Taser or even her firearm, if she
11 felt it necessary, at these three individuals while you pat
12 searched them, that would pose a threat to Officer Domenici; is
13 that your testimony?

14 A. Yes, it is.

15 Q. How many officers do you think you would have needed
16 just to pat search these three individuals of whom you believe
17 there's a high probability that one of them has a gun?

18 A. I still wouldn't search. I would still need to find
19 those two outstanding suspects because I don't know why they're
20 evading my contact.

21 Q. What's more important, officer safety or apprehending
22 two outstanding suspects to a misdemeanor?

23 A. I'm sorry, misdemeanor?

24 Q. A 242 is what you were called for. That's a
25 misdemeanor, right?

26 A. Yes.

27 Q. So what's more important, officer safety or you
28 trying to apprehend two suspects who you believe may have been

1 involved in a misdemeanor?

2 A. We're getting misdemeanor from a outside source; is
3 that correct?

4 Q. Well, you tell me. What was your source that they
5 were involved --

6 A. We're not trained to possibly judge the safety of any
7 call that we ever get based on a classification of the call by a
8 call -- by a reporting party. As a matter of fact, we are
9 trained the exact opposite in the academy to treat everything as
10 it appears.

11 Q. And how did it appear?

12 A. Well, at the time, these three were being cooperative
13 in the sense that they weren't reaching in their pockets, they
14 weren't getting up. They did what I asked them to do.

15 Q. But you said that they were cursing at you and
16 yelling at you such that you couldn't even proceed with a
17 conversation with them. So how is that cooperative?

18 A. Well, the conversation is just that. When you follow
19 it up with violent actions or actions that may be perceived as
20 being violent, that poses a threat.

21 Q. So would you say that their verbal conduct was not
22 consistent with their physical conduct? Is that what you're
23 saying?

24 A. I'm saying they sat there and cursed at me. They
25 didn't get up. They didn't raise their hands or reach in their
26 pockets of any sort.

27 Q. And so I want to ask you again: What were you more
28 concerned with, officer safety in terms of these three

1 individuals and there being a high probability that one of them
2 had a gun and apprehending two people who got back onto the
3 train who may or may not have been involved in a fight? What
4 was more important to you at that particular time?

5 A. To get everybody.

6 Q. So which was more important?

7 A. To get all the suspects.

8 Q. Despite any threat about officer safety; is that
9 correct?

10 A. Well, they all kept their hands out where I needed to
11 see them, so they no longer posed a threat.

12 Q. Could you not have just pat searched them as they
13 kept their hands out while Officer Domenici stood guard with a
14 Taser?

15 A. No. My concern at this point, again, is still the
16 other two that ran from my initial contact. Why would you run
17 from the police?

18 Q. Well, you have testified or you have at least said
19 earlier in your statements that there was -- you believed in
20 your mind there was a high probability that these people had
21 guns.

22 Now, could there be a more dire concern or immediate
23 concern on an officer's part than dealing with subjects who you
24 believe there is a high probability are armed?

25 MR. RAINS: Let me object to that high probability.
26 I don't know that that was the witness's testimony.

27 THE COURT: That's what the testimony was.
28 Overruled. You can answer the question.

1 THE WITNESS: I need the question again, sir.

2 BY MR. STEIN:

3 Q. Can you think of a more dire scenario or a more
4 serious concern that an officer may have other than dealing with
5 someone who they believe has a gun on them?

6 A. Besides the other two that I don't know their
7 location?

8 Q. Yeah.

9 A. No.

10 Q. So you would agree with me then that between the two
11 scenarios, you going back on the train and dealing with three
12 individuals who you believe there is a high probability that one
13 of them has a gun, the concern really between those two
14 scenarios is with regard to the people against the wall, the
15 people with the gun, correct?

16 A. Who has the gun?

17 Q. Well, you've said before, have you not, that it is
18 your belief that the people you detained you believed there was
19 a high probability that one of them had a gun?

20 MR. RAINS: That misstates his testimony.

21 THE COURT: Overruled.

22 BY MR. STEIN:

23 Q. Didn't you say that?

24 A. I don't know. Did I?

25 Q. Why don't you just grab the first transcript there
26 before you, Transcript 1.

27 A. Uh-huh.

28 Q. You got page 9 there, Transcript 1?

1 A. Yes.

2 Q. See if this refreshes your recollection. And I'm
3 beginning on line nine.

4 "Because the other two had gotten on the train and I
5 had my three initial suspects, and I gave them
6 instructions to keep their hands where I could see
7 them because, again, I'm thinking there's a high
8 probability of somebody who's got a gun."

9 Does that refresh your recollection as to what your mental
10 state was in terms of these people possibly having guns?

11 A. Yes.

12 Q. And so is it true that when you stopped them, you
13 believed that there was a high probability that one of the
14 people in that group had a gun, true?

15 A. Sure.

16 Q. Okay. And so despite this belief, you thought that
17 it would be okay for you to leave your partner, right, with
18 these three individuals -- by the way, did you tell your partner
19 that these people had not been searched?

20 A. I believe so.

21 Q. Did you tell them that they hadn't been pat searched
22 at all as opposed to gone through their pockets?

23 A. Then that would be an illegal search, sir.

24 Q. Okay. Did you tell her, your partner, whether or not
25 you conducted any search?

26 A. I said, "They're un-searched. Watch them."

27 Q. And what do you think now looking back about the
28 wisdom of leaving your partner with three individuals who you

1 believe there's a high probability one of them had a gun?

2 MR. RAINS: Objection. Irrelevant.

3 THE COURT: Overruled.

4 THE WITNESS: Again, the question.

5 BY MR. STEIN:

6 Q. The question is: Now that since you're able to look
7 back and think about the events that took place, what do you
8 think about the wisdom of leaving your partner there with three
9 individuals about whom you believe there's a high probability
10 one of them has a gun while you go back onto the train and look
11 for two people who may have been involved in a fight?

12 A. Well, they too might also have a firearm.

13 Q. Okay. And you believe that, true?

14 A. Yes.

15 Q. And so you were willing to leave your partner with
16 those three individuals under those circumstances?

17 A. Yes, sir.

18 Q. Now, when you first got onto the platform, you walked
19 towards these individuals as these individuals walked towards
20 you, right?

21 A. Yes, sir.

22 Q. And isn't it true that before you even spoke to any
23 of these people, that the two individuals went back onto the
24 platform?

25 A. I'm sorry. The question one more time.

26 Q. The question is: Isn't it true that before you even
27 spoke to the group of men on the platform, two individuals went
28 back on to the train?