

1 A. No.

2 Q. That's not true?

3 A. No.

4 Q. Isn't that what you told the detectives at the time
5 that you were present on the platform for the walkthrough?

6 A. I don't recall.

7 Q. Well, you have a copy of the report there in front of
8 you. Can you pick that up, please. And if you could --

9 A. Which one is it?

10 Q. This is the supplemental.

11 THE COURT: What's the evidence number, Mr. Stein?

12 MR. STEIN: I think it's 38. It's marked People's
13 38.

14 Q. If you can turn to page two. See if this refreshes
15 your recollection. Midway through the first paragraph, do you
16 see where it says:

17 "When the males reached the area between the second
18 and third train cars and saw Pirone approaching, two
19 of the males split from the group and boarded the
20 train. Pirone contacted the other three males on the
21 platform and directed them to the wall to his right."

22 Do you see that, sir?

23 A. Yes, I do, sir.

24 Q. Does that refresh your recollection as to whether or
25 not those two individuals broke for the train before you even
26 said anything to any members of the group?

27 A. No, it does not.

28 Q. It does not refresh your recollection?

1 A. No, it does not.

2 Q. Is it true that that's the way it happened, that
3 those two individuals went to get back onto the train before you
4 even spoke or uttered a word to any member of the group?

5 A. No, sir. That's not how it happened.

6 Q. And if that's not how it happened, why didn't you
7 tell the detectives when they interviewed you for the last time
8 after you've had an opportunity to review this, meaning People's
9 38?

10 A. Tell them what, sir?

11 Q. Tell them that this isn't correct the way this is
12 written here.

13 A. They didn't ask me that, sir.

14 Q. I know they didn't ask you that, but you testified
15 that it was -- you felt it was your duty to provide as much
16 information as you could possibly give them to assist in the
17 investigation. That was your objective, was it not?

18 A. Yes, sir.

19 Q. So when you read this paragraph and you realized
20 that's not true, why didn't you tell them and explain it to
21 them?

22 MR. RAINS: Objection. That misstates his testimony
23 and that's not true.

24 THE COURT: Sustained.

25 BY MR. STEIN:

26 Q. Is this true or is it not true the way it's written
27 here?

28 A. I'm not understanding the question. Are you asking

1 me if the words that you read, are they on this piece of paper?
2 Yes, they are. If you're asking me if that's how it went down,
3 no.

4 Q. Okay. So you've clarified that for us. That's not
5 how it went down?

6 A. That's correct.

7 Q. And so when you read this prior to giving your last
8 statement on the 17th of March, why did you not tell the
9 detective that that is not the way it went down?

10 A. It never came up.

11 Q. Even though it didn't come up, you read this, did you
12 not?

13 A. I don't think I ever read the actual supplement. No,
14 I did not.

15 Q. Okay. Well, look at Transcript No. 3. See if this
16 refreshes your recollection about whether you reviewed this.
17 You have Transcript No. 3 in front of you, Officer Pirone?

18 A. Yes, sir.

19 Q. Turn to page two, if you would. Starting at line 85,
20 see if this refreshes your recollection. Actually, line 83.
21 This is the answer you give:

22 "One, maybe twice. Her video would be a good
23 estimation.

24 "Question: Okay. Okay. You've had a chance to
25 review the information or the past interviews that we
26 submitted to your attorney prior to this interview?"

27 Another question. This is posed by your lawyer:

28 "There were two documents that I received. One was a

1 CD of an interview conducted -- conducted by
2 -- something -- on January 1st. And the other was a
3 supplemental report of a walkthrough, I believe, was
4 on the 4th of January."

5 Does that refresh your recollection as to whether or not
6 you reviewed this, People's 38, before giving the statement to
7 the investigators on the 17th of March 2009?

8 A. Yes, that was said.

9 Q. Well, I know it was said. But my question is: Does
10 it refresh your recollection as to whether or not you, in fact,
11 reviewed this supplemental?

12 A. I don't remember reviewing the supplemental, sir.

13 Q. And when you heard your attorney -- you did hear your
14 attorney speak those words at the time that he spoke them, true?

15 A. Yes, sir.

16 Q. And do you think that if he was saying that you had
17 reviewed certain things that in fact you hadn't, that maybe you
18 would have said, "Hey, time out. I don't know what he's talking
19 about. I haven't reviewed anything"? Would you be expected to
20 say that or something like that?

21 A. What, that I didn't review the supplemental?

22 Q. The supplemental that he had suggested that you had?

23 A. He says that he received them. That's all that it
24 says.

25 Q. Okay. So this doesn't refresh your recollection as
26 to whether or not -- this was said in response to a question of
27 "What have you reviewed?" Is that true?

28 A. I don't know. Yes.

1 Q. Okay. And so when it was said in response to what
2 you, Officer Pirone, have had a chance to review, wasn't he
3 suggesting or did you not take that as a suggestion that you
4 had, in fact, reviewed the supplemental?

5 A. I don't understand the question. What is the
6 question?

7 Q. The question is whether or not the portion of the
8 transcript that you have before me that I've read, whether or
9 not that refreshes your recollection as to whether or not you
10 reviewed this supplemental report prior to giving the statement?

11 MR. RAINS: It's been asked and answered.

12 THE COURT: Overruled.

13 THE WITNESS: The question again.

14 BY MR. STEIN:

15 Q. Are you having trouble understanding me, Officer
16 Pirone?

17 A. Yes.

18 Q. Okay. Maybe I'm speaking too fast, so I'll slow
19 down.

20 In the supplemental report it reads:

21 "When the males reached the area between the second
22 and third train cars and saw Pirone approaching, two
23 of the males split from the group and boarded the
24 train. Pirone contacted the other three males on the
25 platform and directed them to the wall to his right."

26 First of all, it is your testimony today that that is not
27 an accurate description of what took place, true?

28 A. Correct.

1 Q. And prior to giving your last statement on the 17th
2 of March 2009, you read this supplemental, true?

3 A. I don't remember saying that.

4 Q. You don't remember saying or seeing? You don't
5 remember seeing this?

6 A. You're telling me what I said and I'm telling you I
7 don't remember saying that.

8 Q. Okay.

9 A. That's what I'm confused.

10 Q. You are of the opinion that you never -- this
11 description of events that I've just read is not accurate. Why
12 it's in this report, you don't know because you never said that
13 to anyone?

14 A. Correct.

15 Q. Okay. Now, assuming that it's not accurate, assuming
16 that whoever wrote this report got it wrong, nonetheless, you
17 did review this supplemental prior to giving your statement on
18 the 17th of March. Are you with me so far?

19 A. Yes, I am.

20 Q. Is that true?

21 A. I don't remember reading the supplemental.

22 Q. Okay. And my next question is, having heard what was
23 said at that interview as it pertains to what you reviewed prior
24 to the interview, my question is: Does that refresh your
25 recollection as to whether or not you actually reviewed this?

26 A. No, it does not refresh my recollection on whether or
27 not I reviewed the supplemental.

28 Q. Okay. Now, it is your testimony today that -- and

1 correct me if I'm wrong -- that when Officer Domenici arrived,
2 you told her that you had not searched the three individuals; is
3 that correct?

4 A. Yes.

5 Q. And you say that with certainty that you told her?

6 A. From what I remember, yes.

7 Q. Isn't it true that when you were interviewed by the
8 officers -- excuse me -- by the members of the District
9 Attorney's Office, when you were asked that same question, you
10 couldn't remember if you had told Officer Domenici that these
11 individuals had not been pat searched?

12 A. Wasn't that similar to what I just said, sir, from
13 what I remember?

14 Q. No. Right now you are of the opinion that you, as a
15 matter of fact, told Officer Domenici that these people had not
16 been searched, true?

17 A. From what I remember, yes.

18 Q. And my next question is: When you met with members
19 of the District Attorney's Office on the 26th of January, did
20 you not tell them that you didn't -- you don't recall or you
21 don't remember whether or not you told Officer Domenici?

22 A. I don't remember what I told the District Attorney.

23 Q. In an attempt to refresh your recollection of what
24 you told the District Attorney, could you please take out
25 Transcript No. 2, if you have that. Do you have Transcript No.
26 2? Can you turn to page 39. Do you have page 39?

27 A. Yes, sir.

28 Q. Now, I want to direct your attention to 1708, line

1 1708, and I'm going to ask if this refreshes your recollection
2 as to what you told the District Attorney.

3 "Question: Okay. And then these guys got put over
4 against the wall?

5 "Answer: Yes.

6 "Question: And Domenici comes over to watch them?

7 "Answer: Yes.

8 "Question: Did you ever tell her these guys had not
9 been pat searched or anything for weapons?

10 "Answer: I don't recall. I don't remember."

11 Does that refresh your recollection as to what you told
12 the District Attorney's Office on January 26, 2009?

13 A. Yes, it does.

14 Q. And, in fact, you did tell that the District
15 Attorney's Office that at that time you did not recall nor did
16 you remember whether or not you had told Officer Domenici that
17 you hadn't pat searched these individuals for weapons, true?

18 A. Yes, sir.

19 Q. And then why is it now that you can testify under
20 oath that, in fact, you did tell her that?

21 A. Well, sometimes things come into memory. I don't
22 know what else to tell you.

23 Q. Sometime things what?

24 A. Things refresh your memory. Small details sometimes
25 later come into the whole scheme of things, if you will.

26 Q. Okay. Well, this isn't a small detail. Well, let me
27 ask you this: When did that happen in regards to this specific
28 event that I'm talking about?

1 A. I don't remember.

2 Q. So sometime between you giving the statement on the
3 26th and your testimony here on the 3rd of June, something
4 happened that caused you to remember specifically telling
5 Officer Domenici that these guys have not been searched; is that
6 true?

7 A. Yes.

8 Q. You don't know what it was that triggered that
9 recollection, true?

10 A. Yes, sir.

11 Q. And you don't know when it was that that recollection
12 was triggered, true?

13 A. That's correct, sir.

14 Q. Now, when Officer Domenici did arrive, you told her
15 that you were going to go back onto the train to get two other
16 suspects, true?

17 A. I don't remember exactly what I said.

18 Q. Did you say words to that effect?

19 A. I'm sure it was something to that effect.

20 Q. So you in some way communicated where you were going
21 and what you were about to do, true?

22 A. If I remember correctly, yes.

23 Q. And when you went back onto the train -- first off,
24 before you left her just prior to you going back on the train,
25 it appeared to you that she had control over the situation,
26 otherwise, you wouldn't have left her, correct?

27 A. Yes, sir.

28 Q. So before you left her with these three individuals,

1 they were seated, they were compliant physically at least, and
2 they had their hands out where you could see them, true?

3 A. Yes.

4 Q. Now, when you went back to the train to look for
5 individuals -- the two individuals who had gone back onto the
6 train, where did you go specifically? And what I mean by that
7 is do you have any recollection as to which train you went
8 towards, which car you went towards?

9 A. No, I do not.

10 Q. If say where I am here is where Officer Domenici is
11 with the three individuals. Okay. Assume that this is the area
12 here. And the train would be to my back, correct?

13 A. Yes, sir.

14 Q. If I were to turn around from this spot, do you have
15 a recollection as if -- as to whether or not you walked directly
16 straight for the train, to your right, or to your left? What's
17 your recollection?

18 A. I recollect walking towards the right, which would be
19 approximately -- from your direction, if you stand right where
20 you're at, maybe about the 2:00 o'clock timeframe, to the car
21 where I saw them get on.

22 Q. And so you walk to your right?

23 A. Yes.

24 Q. 2:00 o'clock?

25 A. Yes.

26 Q. And when you got to the -- did you get to the door of
27 that car?

28 A. No, I did not, sir.

1 Q. How far did you get to that car?

2 A. To where the two cars couple up.

3 Q. And what did you do when you got to that point?

4 A. I could see through the window that someone had just
5 left the car.

6 Q. Okay. And you saw that from where you were?

7 A. Yes.

8 Q. Then what happened?

9 A. I went to the next car over and saw who is now known
10 as Oscar Grant coming through the train.

11 Q. Then what happened?

12 A. I saw him pushing his way through some people. I hit
13 the window to get his attention and ordered him off the train.

14 Q. How did you hit the window?

15 A. With my hand.

16 Q. With your hand?

17 A. Yes.

18 Q. Did you have your Taser out?

19 A. Yes, I did.

20 Q. And did you hit the window with your Taser?

21 A. No, sir.

22 Q. You're sure of that?

23 A. That wouldn't seem to be very smart.

24 Q. Okay. That's not my question as to whether or not it
25 was smart. My question is: Did you do it?

26 A. Not that I remember.

27 Q. And did you ever point your Taser at Mr. Grant while
28 he was inside the car and you were outside the car?

1 A. I may have. I don't remember.

2 Q. And when you pointed -- let me ask you this: After
3 you saw Mr. Grant moving from one car to the other, what
4 happened?

5 A. From where? I already said that I knocked on the
6 window and told him to get off the train.

7 Q. And then what happened?

8 A. He did not. He just sat there and looked at me.

9 Q. Then what happened?

10 A. I ordered him again to get off the train.

11 Q. And then what happened?

12 A. He said, "Who? Me?"

13 Q. And where was he when he said that?

14 A. On the train.

15 Q. Was he still on the train when he said that?

16 A. Yes, he was.

17 Q. Then what happened?

18 A. I walked over to the train door.

19 Q. And?

20 A. Ordered him off the train again.

21 Q. And then he came out?

22 A. Yes.

23 Q. Now, you said that, I believe, you had requested to
24 see or look at some platform video prior to giving your first
25 statement; is that correct?

26 A. That's correct.

27 Q. Since this incident has occurred, have you ever seen
28 any platform video?

1 A. No, sir.

2 Q. I want to direct your attention to People's 19 and
3 direct your attention to the upper left hand quadrant. Do you
4 recognize who's depicted in that quadrant?

5 A. No, I do not.

6 Q. Well, that's you, isn't it?

7 A. It could be.

8 Q. Is there any doubt in your mind that that's you
9 pointing the Taser through the glass window?

10 A. It looks like there's a digital blur where my face
11 is, but it looks like me.

12 Q. It does look like you?

13 A. Yes, it does.

14 Q. Does that refresh your memory as to whether or not
15 you pointed your Taser through the glass at Oscar Grant?

16 A. Yes, it does.

17 Q. And that's, in fact, what you did, correct?

18 A. That's correct.

19 Q. And your purpose for doing that at that time was
20 what?

21 A. To get his attention.

22 Q. You can't shoot a Taser through a glass, right?

23 A. Correct, sir.

24 Q. So you wanted to do something physically to get his
25 attention and get him to comply, true?

26 A. Yes, sir.

27 Q. Now, after you asked Oscar Grant to get out and when
28 he stepped out from the car onto the platform, you laid hands on

1 him, true?

2 A. Yes, sir.

3 Q. And when I say lay hands, I mean -- you didn't hit
4 him, right?

5 A. No, sir.

6 Q. You just escorted, correct?

7 A. That's what it's called. Yes, sir.

8 Q. You took your hand and you put it next to his --
9 either his -- what was it, his right elbow?

10 A. I believe so. I don't remember exactly which elbow,
11 but I grabbed an elbow.

12 Q. And he didn't physically resist?

13 A. No, he did not.

14 Q. He walked with you?

15 A. Yes, he did.

16 Q. And he walked with you to the area where the other
17 three individuals were already seated, true?

18 A. Correct, sir.

19 Q. And when you got back, Officer Domenici, she was
20 still there, wasn't she?

21 A. Yes, she was.

22 Q. And when you got back and Officer Domenici was still
23 there, she still seemed to you to have control over the
24 situation, true?

25 A. Yes.

26 Q. The individuals who were on the ground when you got
27 back with Oscar Grant still were seated, true?

28 A. Yes, sir.

1 Q. Still had their hands out, true?

2 A. Yes, sir.

3 Q. And appeared to you anyway to be compliant?

4 A. Once I got Oscar Grant to sit down, yes, everyone was
5 compliant.

6 Q. Now, when you actually got Mr. Grant to step out from
7 the car onto the platform, why didn't you search him?

8 A. I still have an outstanding suspect, sir.

9 Q. Okay. But now you have one individual. It's a
10 one-on-one type of situation, right? You could have pat
11 searched him, right?

12 A. Well, I still had my Taser in my hand.

13 Q. Well, you can put that away pretty easily, can't you?

14 A. Sure.

15 Q. Okay. So why didn't you put that away and pat search
16 him?

17 A. Because if things turn south, I'm still vastly
18 outnumbered.

19 Q. Well, if he pulled a gun, that poses even a bigger
20 problem, doesn't it?

21 A. Yes, it does.

22 Q. And given the fact that you thought one of the people
23 in his group had a gun, wouldn't it make sense to pat search
24 him?

25 A. No, sir.

26 Q. Why not?

27 A. Because I still have another outstanding suspect on
28 the train with my back towards him, sir.

1 Q. But this person who you believed it was a high
2 probability that one in his group had a gun, you were not
3 concerned of him pulling that gun and using it on you as you
4 escorted him from the train?

5 A. At that point, he had not been resistive.

6 Q. Isn't it true that you didn't have any concern for
7 Oscar Grant having a gun at that time; isn't that true?

8 A. You're asking my opinion, sir?

9 Q. I'm asking what your mental state was at the time you
10 took Oscar Grant off that train?

11 A. That I needed to get him seated down and the fifth
12 outstanding person off the train.

13 Q. And you had no concern that this person may have a
14 gun?

15 A. I don't think no concern would be good words for me
16 to have because, of course, I had concern.

17 Q. But isn't it true that when you say you believed that
18 these individuals had guns or at least you believed there was a
19 high probability that they had guns, that you're just
20 exaggerating a little bit to make it look like the shooting
21 death of Oscar Grant was justified?

22 MR. RAINS: That's argumentative.

23 THE COURT: Overruled.

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

25 BY MR. STEIN:

26 Q. When you say and describe these individuals as people
27 who you believe that there is a high probability that they are
28 armed, are you not saying that just to make it appear that the

1 shooting of Oscar Grant was justified?

2 A. You're asking me if I think the shooting of Oscar
3 Grant was justified? Is that the question?

4 Q. That's not my question.

5 A. I don't understand the question then.

6 Q. My question stems from the fact that on the one hand,
7 you were saying that you believed there's a high probability
8 that these people have guns. And on the other hand, you don't
9 even ask any of them if they, in fact, have guns. So that's
10 where I'm coming from. There seems to be a disconnect there.
11 Would you not agree with that?

12 A. About our disconnect?

13 Q. Yes.

14 A. Yes.

15 Q. You believe those things are entirely consistent; is
16 that correct?

17 A. I'm getting lost again. Can you help me with that?

18 Q. Sure. On the one hand, you are saying that it is
19 your mental state, your belief, when you set foot on that
20 platform, that the group that Oscar Grant is with, including
21 Oscar Grant, there's a high probability that all of them or one
22 of them has a gun, true?

23 A. Yes.

24 Q. And my disconnect comes from the fact that you got
25 this mental state, yet your actions are not consistent with one
26 who has that mental state. Are you with me so far?

27 A. Isn't that your opinion though, sir?

28 Q. No. I'm asking you: What do you think about that?

1 Is that consistent in your opinion? I know what I think. I'm
2 asking you what you think.

3 A. No. Of course, I think there's a high probability
4 that someone's got a gun, but I also have an outstanding suspect
5 that I need to get control over and at least the location on so
6 we can get this train out of here and I can move on with this
7 case.

8 Q. So you get Oscar Grant off the train, you don't pat
9 search him, you don't even ask him if he's got a gun, and you
10 have him sit down next to his friends, true?

11 A. Correct.

12 Q. Now, when you got him to the wall and you asked him
13 to sit, did he comply immediately?

14 A. No, he did not.

15 Q. Tell me about that.

16 A. I asked him to have a seat.

17 Q. Okay. And then what happened?

18 A. He did not sit down.

19 Q. Then what happened?

20 A. He asked why -- excuse me, your Honor -- "Why you
21 fucken with me."

22 THE COURT: Mr. Stein, that's a good point. My
23 reporter needs a break. Have a 15-minute recess.

24 (Court in recess.)

25 THE COURT: All right. Mr. Stein.

26 BY MR. STEIN:

27 Q. Officer Pirone, prior to the break --

28 MR. RAPOPORT: Could I be heard before Mr. Stein

1 starts?

2 THE COURT: About what?

3 MR. RAPOPORT: I need to re-express to the Court the
4 problems I have in scheduling, since I am here as Officer
5 Pirone's representative. I'm William Rapoport, his attorney. I
6 am in trial in federal court. I've gotten Judge White to excuse
7 me for today only. And I wanted to see if there's any way to
8 try and ensure that we get through at least my client's
9 testimony today.

10 THE COURT: I don't know. We're in session.

11 Mr. Stein, next question.

12 BY MR. STEIN:

13 Q. Just prior to the break, we were talking about the
14 point in time where you had escorted Mr. Grant to the wall,
15 correct?

16 A. Yes, sir.

17 Q. And you were describing for us the fact that although
18 he was not physically resisting, true?

19 A. Yes, sir.

20 Q. He was saying things to you that -- I don't know how
21 to say it -- but that he was saying profanities to you; is that
22 correct?

23 A. That's correct, sir.

24 Q. Now, tell me, when you got him to the wall, you asked
25 him to sit and he did not?

26 A. That's correct, sir.

27 Q. You take it from there. What happened then?

28 A. I ordered him to sit down again and he did not. I

1 told him to sit down. And then when he didn't a third time, I
2 pointed to the ground and I said, "Sit the fuck down."

3 Q. Then what happened?

4 A. He squatted.

5 Q. And when you say he squatted, are you referring --
6 describe what it is you mean when you say he squatted. What, in
7 fact, did he do?

8 A. He squatted down to the ground. I'm not
9 understanding. A squat position meaning he never sat down. He
10 squatted.

11 Q. So would it be fair to say that the position that he
12 took was that similar to one who is playing baseball who is
13 playing the role of catcher?

14 A. Yes.

15 Q. So that is the position that Oscar Grant went to,
16 correct?

17 A. Yes, sir.

18 Q. But that's not what you asked him to do, true?

19 A. That's correct, sir.

20 Q. And since that was not what you had asked him to do,
21 what happened next?

22 A. I went to go get the fifth suspect off the train.

23 Q. Well, why did you leave Oscar Grant after he failed
24 to comply with the direct order that you had given him?

25 MR. RAINS: Objection. Relevance.

26 THE COURT: Sustained.

27 BY MR. STEIN:

28 Q. You said that he squatted and he remained in that

1 position before you left; is that correct?

2 A. Yes, sir.

3 Q. There has been testimony that someone in that
4 position poses a risk to officers, because they can get up
5 quickly and they could attack an officer. Are you in agreement
6 with that assessment?

7 A. Yes, sir.

8 Q. And that it is better to have someone seated on their
9 rear end as opposed to being in the squatting position because
10 it would take more time for them to get up?

11 A. True.

12 Q. But it's your testimony that although Oscar Grant was
13 in this squatting position, you were not concerned with him
14 being in that position because you just turned your back on him
15 and went back onto the train, true?

16 A. Well, I wouldn't say I wasn't concerned.

17 Q. Well, you weren't concerned enough to pull out your
18 Taser, point it at him and say, "I will tase you if you don't
19 sit on your back side"?

20 A. That's correct.

21 Q. And the reason why you didn't do that was what?

22 A. I still need to get the number five suspect off the
23 train.

24 Q. How long would that have taken to pull your Taser,
25 point it at him and say, "Sit or I tase"?

26 A. That would depend on his response to that threat.

27 Q. Assuming he was going to go along with what you asked
28 him to do at the point when you pull your Taser, how long would

1 that take?

2 A. Assuming he would go along with the program, sir?

3 Q. Yeah.

4 A. Maybe a second or two.

5 Q. Not very long, right?

6 A. No, sir.

7 Q. So why didn't you do it?

8 A. Again, because I went to go get number five.

9 Q. And so although it could have taken just a matter of
10 seconds for you to do that, you chose not to?

11 A. That's correct, sir.

12 Q. And you were still concerned with the risk that he
13 posed in terms of him carrying a gun, true?

14 A. Yes, sir.

15 Q. Now, the other guys, at this point, they were still
16 seated, true?

17 A. Yes, sir.

18 Q. Had their hands out?

19 A. Yes, sir.

20 Q. It would seem to me that that would have been the
21 perfect opportunity for you to just cuff them. Why didn't you
22 do that?

23 MR. RAINS: Objection. Relevance.

24 THE COURT: What's the relevance, Mr. Stein?

25 MR. STEIN: Well, he's testifying that these
26 individuals posed a high risk of danger to he and his partner
27 and that is inconsistent with what he is doing.

28 THE COURT: I'll allow it subject to a motion to

1 strike. You can answer the question.

2 THE WITNESS: The question one more time, sir.

3 BY MR. STEIN:

4 Q. The question is, is that when Oscar Grant went to the
5 squatting position, the other three individuals were still
6 seated with their hands out in front of them, right?

7 A. Yes, sir.

8 Q. Were compliant, true?

9 A. Yes, sir.

10 Q. And that would seem to me anyway to be a perfect
11 opportunity to slap cuffs on them. Why didn't you do that?

12 A. To me, at the time, the unknown location of suspect
13 number five was a greater threat.

14 Q. A greater threat than the now four individuals that
15 were seated against the wall among whom you believe one of them
16 or maybe all of them was a high degree that they might have a
17 gun?

18 A. Correct.

19 Q. Okay. Did you ever ask your partner to put handcuffs
20 on any of those individuals?

21 A. No, sir.

22 Q. Now, when you went back and you got Mr. Greer off the
23 train, you actually went onto the train to do that, correct?

24 A. Yes, sir.

25 Q. And when you walked onto the train, I think you said
26 last week that you walked towards Mr. Greer. And as you did so,
27 the crowd between you and he parted like the red sea. You
28 remember saying that?

1 A. Yes, sir.

2 Q. As you walked towards Mr. Greer, when you got to him,
3 you grabbed him by the hair and you grabbed him by the back; is
4 that true?

5 A. No, it is not.

6 Q. Okay. Did you grab him by the hair?

7 A. No, I did not.

8 Q. Did you grab him at all?

9 A. Yes, I did.

10 Q. Where did you grab him?

11 A. I grabbed him with my right arm to his upper right
12 chest area by the shirt.

13 Q. Okay. And how did he go from having his back to you
14 to having his chest to you in order for you to grab him by the
15 chest or did you come around in front of him?

16 A. I don't remember saying he had his back, towards me.

17 Q. Okay. So when you walked towards him, what part of
18 his body was facing you?

19 A. I was looking at the blade of his body.

20 Q. And when you say the blade of his body, does that
21 mean the side?

22 A. Yes, the right side of the body.

23 Q. And it is at that time you grabbed him by the chest.
24 Did you grab him anywhere else besides the chest area?

25 A. I grabbed his shirt approximately right in this area
26 right here.

27 Q. Indicating the upper right hand --

28 A. Correct.

1 Q. -- portion of your chest?

2 A. Yes, sir.

3 Q. And with your other hand, did you grab him with that
4 hand?

5 A. Not at first.

6 Q. And prior to grabbing him in that fashion when you
7 got to him, did you say anything to him?

8 A. Yes, I did.

9 Q. And what did you say to him when you got up to him?

10 A. I said, "Come on. Let's go."

11 Q. And did you say anything else?

12 A. I said, "I asked you nicely."

13 Q. Anything else?

14 A. No.

15 Q. And when you said that you asked him nicely, what
16 exactly were you referring to?

17 A. When I was standing outside the train and I announced
18 my presence. "BART police. You know who I'm here for. Come
19 off the train. Come out of now."

20 Q. Anything else that you remember saying?

21 A. No, sir.

22 Q. You don't remember saying, "Get the fuck off my
23 train. Get off before I have to come in and take you off"? You
24 remember saying anything like that?

25 A. No, sir.

26 Q. Could you have said something like that and you just
27 don't remember now?

28 A. No, sir.

1 Q. And that is because you would never use such
2 language?

3 A. I didn't say that, sir.

4 Q. You don't remember saying anything like that?

5 A. Not at that particular point in the contact, no, sir.

6 Q. At some point before that, did you use that?

7 A. I used the profanity when I was directing Oscar Grant
8 to get off the train.

9 Q. But not with Mr. Greer?

10 A. No, I did not.

11 Q. Ever?

12 A. Not that I remember.

13 Q. And when you grabbed him by the chest and you said,
14 "I asked you nicely. Let's go," did he respond verbally?

15 A. Yes, sir.

16 Q. What did he say?

17 A. "Get your fucken hands off of me."

18 Q. This person Mr. Greer, how tall is he?

19 A. Approximately 5'8" to 5'10".

20 Q. And how much would you say he weighed approximately?

21 A. Somewhere between 160-180.

22 Q. 160 to 180?

23 A. Guesstimation, of course.

24 Q. You're a good deal larger and heavier than he is; is
25 that correct?

26 A. Yes, sir.

27 Q. Nonetheless he was saying something like -- what was
28 he saying again, "Get the fuck away --

1 A. "Get your fucken hands off me."

2 Q. By the way, in court you seem somewhat unwilling to
3 use profanity; would that be fair to say?

4 A. Yes, sir.

5 Q. Did you have the same unwillingness to use profanity
6 when you were on that platform?

7 A. No, sir.

8 Q. Why is that?

9 A. Because I use it as a level of force.

10 Q. Is that something you do periodically when you feel
11 it's necessary?

12 A. Yes.

13 Q. Is that approved by any BART policy, as far as you
14 know?

15 A. Not that I'm aware of, sir.

16 Q. Now, when you got him off the train, did you change
17 your position? That is, you had your hand on his chest and
18 where was your other hand?

19 A. Well, you keep putting your hand up. I'm not sure.
20 Do you want me to demonstrate? Or I'm not sure what you're
21 asking me.

22 I grabbed him with my right hand.

23 Q. Yes.

24 A. And when he started to struggle and try to break free
25 from my grasp, I used my left hand and reached over and grabbed
26 the back of his left shoulder.

27 Q. This is while you're still on the train?

28 A. Yes, sir.

1 Q. Tell me, why didn't you just walk up to him and say,
2 "Hey, listen. I need for you to put your hands behind your
3 back. I gotta put handcuffs on you, so put your hands behind
4 your back"? Why did you say that?

5 A. I don't know.

6 Q. When you walked up to him, instead of saying, "I
7 asked you nicely. Let's go," why didn't you just pat search him
8 real quick and say something like, "Hey, I gotta pat search you
9 for weapons. I need to talk to you for a minute"? Why didn't
10 you say that?

11 A. It was a crush load. There's no room to do any of
12 that safely on the train.

13 Q. But the crowd parted like the red sea, right?

14 A. Enough to walk on. Yes, sir.

15 Q. Well, if they parted like the red sea enough to walk
16 on, didn't they give you enough room to do a limited pat search
17 for weapons just for your safety?

18 A. No, sir.

19 Q. They didn't?

20 A. No.

21 Q. And is that the reason why you didn't pat search
22 Mr. Greer while you were on the train?

23 A. No. I just needed to get him off.

24 Q. Well, you needed to do so in a manner that you were
25 safe, correct?

26 A. Yes, sir.

27 Q. Mr. Greer, you believed, was part of that original
28 group who you believed had a high degree that one of them had a

1 gun, right?

2 A. Yes, sir.

3 Q. So when you got him off the train before getting him
4 to the wall, why didn't you stop him there and say, "Hey,
5 listen. I need to pat search you"?

6 A. Because he was resistive the entire time.

7 Q. And he was resisting you how?

8 A. Wiggling, squirming, trying to break free from my
9 grasp.

10 Q. And when you got him off the train car, where did you
11 take him?

12 A. We started walking towards the direction on the wall
13 where the other suspected were seated.

14 Q. When you got him to that wall, what happened?

15 A. I pushed him.

16 Q. And why did you push him?

17 A. To throw him off balance.

18 Q. And your purpose for throwing him off balance was
19 what?

20 A. Safety.

21 Q. Safety?

22 A. That's correct, sir.

23 Q. Whose safety?

24 A. Mine, sir.

25 Q. And how far did you throw him?

26 A. I didn't throw him.

27 Q. I'm sorry. I thought you said you threw him.

28 MR. RAINS: No. He said he pushed him to throw him

1 off balance.

2 BY MR. STEIN:

3 Q. Excuse me. You pushed him?

4 A. That's correct, sir.

5 Q. How far did you push him?

6 A. Approximately 3 to 4 feet.

7 Q. So when you pushed him, is it fair to assume that you
8 released your control of him in terms of your hands?

9 A. Yes, sir.

10 Q. So when you did that, what, if anything, would have
11 been stopping him from pulling a gun from his waistband and now
12 turning it on you?

13 A. Catching himself on the wall, sir.

14 Q. But nothing was stopping him from pulling a gun on
15 you at that point, was there?

16 A. It would be a little difficult to do when your head
17 is in the wall, sir.

18 Q. When your head is in the wall?

19 A. If you don't catch yourself, the next part of your
20 body is going to be your head, no?

21 Q. Well, when you pushed him, you released him, true?

22 A. Correct.

23 Q. And after you released him, you don't have control
24 over him, right?

25 A. That's correct sir.

26 Q. Were you concerned that maybe he could spin around
27 and pull a gun on you? Were you concerned about that?

28 A. Sure.

1 Q. But you were willing to release him anyway, true?

2 A. With a push, yes, sir.

3 Q. And when he pushed against the wall, I think you
4 described that he put his hands up against the wall and caught
5 his balance and then turned towards you and I think you said he
6 had his hands up in a fighting stance; is that true?

7 A. That's true, sir.

8 Q. And at that time he could easily, had he had a gun,
9 pulled it out and used it against you, true?

10 A. Yes, sir.

11 Q. Did you feel lucky that that didn't happen?

12 A. Yes, sir.

13 Q. Given the fact that you had a high probability -- you
14 felt there was a high probability that he had a gun, right?

15 A. Yes, sir.

16 Q. When you got Mr. Greer off the train car, did you
17 ever ask him if he had any weapons on him?

18 A. No, sir.

19 Q. The reason why was what?

20 A. I was just trying to keep control of him, sir.

21 Q. Were you not concerned for your safety as to whether
22 or not he had a weapon?

23 A. Yes, I was, sir.

24 Q. So why didn't you ask him if he had one?

25 MR. RAINS: Asked and answered.

26 THE COURT: Sustained.

27 BY MR. STEIN:

28 Q. Now, as you took Mr. Greer to the ground, you

1 described for us -- I think it was last week -- the hair pull
2 takedown; is that correct?

3 A. Yes, sir.

4 Q. That is a maneuver that you have been trained on how
5 to execute. You've used it before, true?

6 A. Yes, sir.

7 Q. And the way you did it was you grabbed his hair in
8 some fashion and took him over a leg; is that fair to say?

9 A. Yes, sir.

10 Q. And how was it that you were able to grab hold of the
11 back of his hair after he took a fighting stance towards you
12 with his hands up in front of him?

13 A. I didn't take control of the back of his hair. I
14 just pulled his hair.

15 Q. What part of his hair did you pull?

16 A. The dreads.

17 Q. And the dreads were where?

18 A. Everywhere.

19 Q. Well, what part did you pull?

20 A. The side of the head.

21 Q. What side?

22 A. Right side, sir.

23 Q. And when you pulled the right side of his hair, it is
24 at that time that you pulled him over your leg?

25 A. Yes, sir.

26 Q. And he went to the ground?

27 A. Yes, sir.

28 Q. Now, when he went to the ground, that is when

1 Mr. Grant and the others popped up; is that correct?

2 A. Yes, sir.

3 Q. Now, did you at that time make a connection between
4 the use of force that you were using on Mr. Greer and the
5 reaction of Mr. Grant and his friends?

6 A. I don't understand the question.

7 Q. Sure. Let me ask it this way: You take Mr. Greer
8 down with the hair pull takedown, correct?

9 A. Yes, sir.

10 Q. And when you did that, you were a matter of feet away
11 from Mr. Grant and his friends who were seated against the wall,
12 correct?

13 A. Yes, sir.

14 Q. And when you did that, they popped up and voiced
15 their objection, true?

16 A. Yes, sir.

17 Q. When that happened, did you in your mind make any
18 connection whatsoever between your conduct and their conduct?

19 MR. RAINS: Objection. Relevance.

20 THE COURT: Overruled.

21 THE WITNESS: The question one more time, sir.

22 BY MR. STEIN:

23 Q. I'm trying to see what your mental state was at the
24 particular point in time. At the time you took Mr. Greer down
25 with the hair pull takedown in the manner in which you did that
26 and then Oscar Grant and his friends getting to their feet, did
27 you at that time make any connection between the level of force
28 you were using and their reaction?

1 A. No, sir.

2 Q. That never entered your mind?

3 A. No, sir.

4 Q. Now, you said that when Oscar Grant got to his feet,
5 at some point he advanced towards you, correct?

6 A. Yes, sir.

7 Q. And you took that as a threat, true?

8 A. Yes, sir.

9 MR. STEIN: For the record, I'm showing the Vargas
10 video, the second of two.

11 Q. Officer Pirone, you may need to step down so that you
12 can see the screen without the glare. Okay. I'm showing the
13 second of -- can you see it from where you are, sir?

14 A. Yes, sir.

15 Q. Now, I'm starting at frame zero. In this frame, can
16 you see yourself handcuffing Mr. Greer on the ground?

17 A. Yes, sir.

18 Q. And you can see Mr. Grant who is looking towards the
19 camera?

20 A. Yes, sir.

21 Q. And you see another individual who has his back
22 towards the camera, seems like he's got his left and his right
23 arm out beside him?

24 A. Yes, sir.

25 Q. I'm going to scroll here frame by frame, and you tell
26 me to stop when he advances towards you, okay?

27 A. Well, there needs to be -- can you rewind it a little
28 more?

1 Q. No. I'm going to play this from the beginning and
2 you tell me if you see the conduct that you've described here in
3 court.

4 A. Well, I can tell you right now it's not going to be
5 on this video.

6 Q. Why do you know that, sir?

7 A. Because I'm looking down and it looks like I'm
8 handcuffing the right hand of Greer.

9 Q. You can see the right hand of Mr. Greer there?

10 A. I'm guessing that's what I'm doing. It's just a
11 speculation.

12 Q. We don't want to speculate. You said the right hand.
13 Can you see something in that frame that suggests to you that
14 you're handcuffing --

15 A. I'm not looking at --

16 Q. Excuse me, sir. You're going to have to wait until I
17 finish the question.

18 A. Okay.

19 Q. My question is: Can you see something in that frame
20 that suggests to you that you are handcuffing the right hand of
21 Mr. Greer?

22 A. No, I cannot.

23 Q. So when you testified just a minute ago -- sorry --
24 less than a minute ago that you were in this frame handcuffing
25 the right hand of Mr. Greer, that is not accurate, true?
26 Because you can't say so one way or the other, true?

27 A. I think that's what I'm doing on the screen.

28 Q. And you do that -- you say that based on what?

1 A. My actions.

2 Q. And what is it about your actions that suggests to
3 you that you're handcuffing the right hand of Mr. Greer?

4 A. Because I'm looking at the back of Mr. Greer.

5 Q. Okay. And so why does it necessarily have to be the
6 right hand that you're handcuffing?

7 A. Because when the left hand was being handcuffed
8 everyone was still seated.

9 Q. You remember that?

10 A. Yes, sir.

11 Q. As you sit there now, you have an independent
12 recollection of that?

13 A. Yes, sir.

14 Q. Okay. So I'm going to go frame by frame, and you
15 tell me if you see the conduct that you've described here in
16 court in terms of Mr. Grant advancing towards you.

17 MR. RAINS: It's irrelevant. He's already described
18 that he won't see the conduct.

19 MR. STEIN: He hasn't seen this, your Honor.

20 THE COURT: Hold on. Hold on. I'll rule. The
21 lawyers don't get to talk. Overruled. Show the video.

22 (Video played.)

23 BY MR. STEIN:

24 Q. Now, I've stopped the video at frame number 560. You
25 can have a seat, officer.

26 A. Thank you, sir.

27 Q. In the clip that I've just shown, Mr. Grant does not
28 appear to be advancing towards you, true?

1 A. True.

2 Q. In the clip that I've just shown, you don't even so
3 much as look towards Mr. Grant, true?

4 A. True.

5 Q. Now, you've testified, I believe, that when you were
6 in the process of handcuffing Mr. Greer, you heard something
7 that was going on between Officer Domenici and the individuals
8 against the wall; is that true?

9 A. Yes. That's correct.

10 Q. And who did you hear speaking at that time?

11 A. I don't remember exactly who was speaking, sir.

12 Q. Do you recall what was being said?

13 A. To whom, sir?

14 Q. At all. Do you recall as you sit there now anything
15 about words being spoken while you were in the process of
16 handcuffing Mr. Greer?

17 A. Well, I remember Oscar Grant coming at me and cursing
18 while I was handcuffing.

19 Q. And it was your belief that he was directing that
20 profanity at you; is that correct?

21 A. Yes, sir.

22 Q. And I'd like you to now focus on any conversation, to
23 the extent there was any, between Officer Domenici and any of
24 the people standing against the wall. Do you recall any
25 dialogue or anything as it relates to that?

26 A. No, I do not.

27 Q. So you don't remember Oscar Grant saying anything to
28 Officer Domenici or any of the other individuals saying anything

1 to Officer Domenici at that time, true?

2 A. At what time are you speaking of?

3 Q. While you were taking Mr. Greer into custody,
4 handcuffing.

5 A. No. I remember her saying something along the lines
6 of "Stay back. Stay out of it." And that was the extent of any
7 dialogue that I remember between the group of individuals and
8 Officer Domenici.

9 Q. Now, at some point while you were taking Mr. Greer
10 into custody, you said that Oscar Grant hit your partner Officer
11 Domenici, true?

12 A. It appeared that way, yes.

13 Q. It appeared that way to you, true?

14 A. Yes.

15 Q. In the clip that I played here from zero to 560, it
16 does not capture or it doesn't preserve or show Oscar Grant
17 striking or hitting your partner Officer Domenici, true?

18 A. Correct.

19 Q. Now, when you saw Oscar Grant strike your partner,
20 you believed that it was necessary for you to intervene,
21 correct?

22 A. Yes, sir.

23 Q. And at that time, you walked up to Oscar Grant and
24 you told him to sit down, true?

25 A. Yes, sir.

26 Q. And you pushed him against the wall at that time,
27 true?

28 A. Yes, sir.

1 Q. Now, when you pushed him against the wall, can you
2 give me some sense of the level of force that you used during
3 that push?

4 A. Just enough to get him against the wall.

5 Q. Would you describe it as a forceful push?

6 A. What is a forceful push?

7 Q. I'm asking you. It's your opinion that matters.

8 Would you describe --

9 A. It was enough to throw him off balance and get him
10 against the wall.

11 Q. And when you did that, did he get pushed off balance
12 and was he thrown up against the wall?

13 A. Yes, he was.

14 Q. Now, when you pushed him up against the wall -- first
15 of all, in your first statement to the BART investigators, you
16 didn't say anything about that, did you?

17 A. No, sir.

18 Q. And, in fact, when you met with the other people from
19 BART on the platform, you never told them that you had to push
20 Oscar Grant up against the wall at that time, did you?

21 A. That's correct, sir.

22 Q. Was it something that you had just forgotten about
23 and at some point since you have recollected that?

24 A. Yes, sir.

25 Q. Do you recall when you got that recollection?

26 A. Yes, sir.

27 Q. When was that?

28 A. When the video came out from the cell phone, the

1 other angle of that particular section of time.

2 Q. Okay. Do you know who took that video that caused
3 you to recollect that you had to push Oscar Grant against the
4 wall?

5 A. No, sir.

6 Q. And what did you see on the video that caused you to
7 remember you pushing him against the wall?

8 A. The entire video.

9 Q. It was the whole thing?

10 A. Yes. Whatever they showed on the news that day.
11 Actually, I think it was the next day because I didn't see it
12 when it came out.

13 Q. And now you testified that at some point after you
14 pushed him up against the wall, Oscar Grant -- well, he tried to
15 knee you, correct?

16 A. Yes, sir.

17 Q. And he tried to knee you, I think you said, 2 or 3
18 times, true?

19 A. I think I said he tried to once and he did the second
20 time.

21 Q. You've said in the past that he also tried to kick
22 you in the groin, true?

23 A. Yes.

24 Q. And that he was successful at that?

25 A. True.

26 Q. So he kneed you -- he attempted to knee you in the
27 groin once. He successfully kneed you in the groin once and
28 then he kicked you in the groin once; is that true?

1 A. Well, it was either a knee or a kick. I'm not
2 100 percent certain.

3 Q. So it is fair to say that he was successful one time?

4 A. Yes, sir.

5 Q. Now, I want to play this video for you again. It's
6 the same video, and I'm going to continue on from frame 560. If
7 you can step down again, officer, so you can see it.

8 I want you to stop -- or tell me to stop at the point in
9 time when Oscar Grant either attempts to knee or successfully
10 knees or kicks you in the groin, and I'm just going to go frame
11 by frame here.

12 (Video played.)

13 A. Was that his hand reaching for my gun?

14 Q. Excuse me?

15 A. If you back up, it looks like that was his hand
16 reaching for my gun.

17 Q. You think Oscar Grant was reaching for your gun?

18 A. Just going off of what I'm looking at the video, sir.

19 Q. Okay. But what makes you think he was reaching for
20 your gun?

21 A. Because it looks like his hand is near my gun, sir.
22 Right there. Is that not Oscar's hand?

23 Q. So this is what you believe. As you sit there now
24 and you see this, you believe he's trying to reach for your gun?

25 A. I'm just looking at the video, sir. At the time, I
26 didn't -- as a matter of fact, when I was interviewed by BART, I
27 didn't even remember this entire segment at all.

28 Q. But my question is, officer, as you sit there right

1 now and you see this video, and we're talking about frame 558,
2 you see this and it is your opinion that that's what he's doing;
3 is that your testimony?

4 A. Yes.

5 Q. Okay. And you base that just on what you see here in
6 this frame 558; is that right?

7 A. I have no idea why his hand would be there.

8 Q. Then why would you assume he's trying to reach for
9 your gun if you have no idea what he's doing?

10 A. That's what's there. He's been resistive the entire
11 time. He's threatened to kick my ass already and beat me. So I
12 just assume he's going to continue on with the violence, sir.

13 Q. We'll continue on.

14 (Video played.)

15 Q. Okay. I'm stopping now at frame 726. Does the
16 footage that I just showed show Oscar Grant either attempting to
17 knee or successfully kneeling or kicking you in the groin?

18 A. No, sir.

19 Q. And if it did happen, did it happen before this frame
20 726 or do you think it could have happened after this frame?

21 A. It would be before.

22 Q. Okay. Would it be fair to say that for someone who's
23 been kicked in the groin, you're standing up pretty erect there,
24 sir?

25 A. It appears that way, sir.

26 Q. And you're backing up. And you don't seem to have
27 any trouble walking here, do you, sir?

28 A. No.

1 Q. But you're certain that you were kicked in the groin?

2 A. Well, you know, adrenaline was going. I was in fear
3 for my life, that type of thing.

4 Q. You were in fear for your life at this point in time?

5 A. In the actual split second of fighting with Mr.
6 Grant, yes.

7 Q. And I'm talking about when you pushed him up against
8 the wall and he attempted to knee you or kick you in the groin.
9 At that time, you were in fear for your life?

10 A. For a split second. Yes, sir.

11 Q. And what caused you to no longer be in fear for your
12 life after you were in fear for your life?

13 A. I bent him over.

14 Q. When you bent him over, what happened?

15 A. I deployed my Taser, stepped back and ordered them
16 all to the ground.

17 Q. You can have a seat now.

18 MR. STEIN: Do you need to take a break, your Honor?

19 THE COURT: No. Keep going.

20 BY MR. STEIN:

21 Q. You would agree, sir, that having just been kicked in
22 the groin, you remarkably did not appear in any way to have any
23 physical reaction to that having occurred to you; would you
24 agree with that?

25 A. Physical reaction, sir?

26 Q. Yes. Like doubling over or going down to the ground,
27 anything like that?

28 A. In the video, no.

1. Q. Now, I want to show you another video, and I want you
2 to tell me, if you can, whether or not this video shows or
3 whether or not this is the video that caused you to remember
4 having been kicked in the groin.

5 (Video played.)

6 Q. I stopped it at frame number 449. First of all, sir,
7 does that video -- is that the video that caused you to remember
8 having been kicked in the groin?

9 A. I don't think it was that video, sir.

10 Q. And did this video show, in your opinion, you being
11 kicked in the groin?

12 A. Not at that speed, no.

13 Q. When you look at this video, and I'm stopping at 449,
14 frame number 449, you appear to be -- I think you have a Taser
15 in your left hand; would that be fair to say?

16 A. Yes.

17 Q. And you're walking towards the train operator, true?

18 A. Yes, sir.

19 Q. Didn't have any trouble walking, did you?

20 A. No, sir.

21 Q. I'm going to continue.

22 (Video played.)

23 Q. I'm stopping at frame 495. Now -

24 MR. RAINS: Counsel, is that the Liu video?

25 MR. STEIN: It is.

26 Q. Do you recall when it was prior to your testimony
27 here as to when it was you remember being kicked in the groin?

28 A. I don't understand the question.

1 Q. Well, you didn't say anything about that when you
2 talked to the BART police officers the morning this happened,
3 right?

4 A. That's correct, sir.

5 Q. And you didn't say anything about this on the 4th of
6 January when you met on the platform with all those other
7 detectives and you were describing to them what took place. You
8 didn't say anything about it then, right?

9 A. That's correct, sir.

10 Q. So my question is: When did the light bulb go on and
11 you remembered having this happen to you?

12 A. Well, like I said before, sir, when the video came
13 out, sir.

14 Q. So I guess then my next question is: About when was
15 that?

16 A. Before the DA interview, sir.

17 Q. So if the DA interview was on January 26th, it was
18 sometime between the 4th and the 26th?

19 A. Yes, sir.

20 Q. Where were you when you saw the video and you had
21 this memory?

22 A. In my attorney's office, sir.

23 Q. Did your attorney have to tell you that that's what
24 took place?

25 A. No, sir.

26 Q. You just saw the video and then you remember?

27 A. Well, we played it over and over again, sir.

28 Q. And how many times did you have to play it over and

1 over until you remember being kicked in the groin?

2 A. Three, maybe four times, sir.

3 Q. Have you ever been kicked in the groin before in your
4 work as a BART police officer?

5 A. No, sir.

6 Q. This was the first time it's ever happen?

7 A. There's been attempts, but this was the first time
8 actually being kicked.

9 Q. Now, at the point when you pulled out your Taser, Mr.
10 Grant went straight to the ground and put his hands up in front
11 of him, right?

12 A. Yes, sir.

13 Q. So did you at that point realize that when you point
14 the Taser at Mr. Grant, he was going to pretty much comply to
15 whatever you asked him to do based on his conduct at that
16 particular instance?

17 A. He did comply.

18 Q. And after you got him to the ground, you turned and
19 you walked to the train operator, correct?

20 A. After I got the other two on the ground too.

21 Q. And that is when other officers arrived, correct?

22 A. Yes, sir.

23 Q. Officer Mehserle, true?

24 A. Yes, sir.

25 Q. As well as Officer Woffinden?

26 A. I don't know when Officer Woffinden showed up, sir.

27 Q. And Officer Domenici was still there?

28 A. Yes.

1 Q. What about Officer Guerra?

2 A. Officer Guerra was there. Yes, sir.

3 Q. Now, at that time, you had other officers there. How
4 long would it have taken to slap some cuffs on these people for
5 officer safety reasons?

6 A. Well, now my biggest problem is the train behind me,
7 sir.

8 Q. And what's the problem with the train behind you?

9 A. As you saw in that video, it starts to get rowdy and
10 people are off boarding and now coming to us in an angry
11 fashion.

12 Q. These people who were coming towards you in an angry
13 fashion, where were they coming from?

14 A. The train, sir.

15 Q. What part of the train?

16 A. I do not know, sir.

17 Q. Well, did you see them get off the train?

18 A. No, sir.

19 Q. When you saw these people, where were they in
20 relation to where the young men were who were seated against the
21 wall?

22 A. To my right, sir.

23 Q. Would that be the north end of the platform?

24 A. Yes, sir.

25 Q. And these people that you've described, showing you
26 frame number 416 of the Liu video, the first of two, they're at
27 your right, as you're looking at this frame; is that correct?

28 A. No, sir.

1 Q. Coming from the south end of the platform?
2 A. Well, it's the north end of the platform.
3 Q. Excuse me. The north end of the platform.
4 A. Yes, sir.
5 Q. How many people are we talking about?
6 A. I don't know, sir.
7 Q. Would it be more than five?
8 A. I don't know.
9 Q. Was it more than 50?
10 A. I don't know, sir.
11 Q. Could it be more than 500?
12 A. I would venture to say less than 500 people, sir.
13 Q. Is it your testimony that the best guess you can give
14 us is between 50 and 500, or can you be any more specific than
15 that?
16 A. I would guesstimate somewhere less than a hundred
17 people, sir.
18 Q. Somewhere less than a hundred but more than 50?
19 A. I don't know.
20 Q. What would the bottom end of that range if the top
21 end was a hundred?
22 A. I don't know.
23 Q. Ten?
24 A. I didn't spend much time looking down the platform.
25 Q. I understand, but you did see them?
26 A. Yes, sir.
27 Q. And since you did see them, give me -- and I'm not
28 asking to be specific, I'm just asking for a range. Somewhere

1 between X and 100 people. Can you do that?

2 A. At which time? That particular time?

3 Q. Yes.

4 A. I don't know.

5 Q. So it's somewhere -- could it be somewhere between
6 two and a hundred people?

7 A. Well, I think in the video you see more than three
8 people coming at us.

9 Q. I'm not concerned what can be seen in the video. I'm
10 concerning about what you're saying you saw and you saw at a
11 particular point in time -- hand on a second.

12 You're saying that at this point when these guys went to
13 the ground, you looked to your right and you saw upwards of a
14 hundred people walking, advancing in your direction. And my
15 question is, can you put a bottom number on that range?

16 THE COURT: Only if you can.

17 THE WITNESS: No, sir.

18 BY MR. STEIN:

19 Q. You can't.

20 THE COURT: Next question.

21 BY MR. STEIN:

22 Q. Now, with these people, they were advancing towards
23 you, correct?

24 A. Yes, sir.

25 Q. Can you tell me why it is in this video then that we
26 can see you turning your back to these people and walking in the
27 other direction?

28 A. Are you asking me why I'm walking away, sir?

1 Q. In the direction that you're walking, you're walking
2 away from the crowd of the people advancing towards you, true?

3 A. Yes, sir.

4 Q. Tell me why you're doing that when you're concerned
5 about this group of people, which would number upwards of a
6 hundred people.

7 A. Because I need to get the train out of the station.

8 Q. Okay.

9 A. As well as check for possible victims from the
10 original call on the first car.

11 Q. You said that you need to get the train out of there
12 because it was posing some kind of a problem?

13 A. Yes, sir.

14 Q. Didn't you say that on a prior occasion that the
15 reason why you went to the train operator to see if the train
16 operator could give you any information as to who was
17 participating in this fight?

18 A. What is the question, sir?

19 Q. Well, you were there to investigate a fight, right?

20 A. Yes, sir.

21 Q. When you first set foot on that platform, you had a
22 goal, right? You had an objective, right?

23 A. Yes, sir.

24 Q. And your objective in part was to investigate the
25 report of a fight?

26 A. Yes, sir.

27 Q. You had detained some individuals, right?

28 A. Yes, sir.

1 Q. And now you're going to the train operator because
2 you said that's where the call originated and you wanted to find
3 out what information, if any, the train operator could provide
4 in terms of this fight, true?

5 A. Yes, sir.

6 Q. Okay. So you go to the train operator to investigate
7 further this report of a fight and the train operator tells you
8 that she can't really provide any information because she
9 couldn't see the fight, true?

10 A. That's correct, sir.

11 Q. So when you spoke with the train operator and she
12 told you that she couldn't see the fight, she couldn't identify
13 anybody, you said that you returned to where the young men were
14 seated against the wall; is that right?

15 A. Yes, sir.

16 Q. You also have said previously that one of your
17 reasons for going to the train operator was to see if someone
18 was, quote, bleeding out in the first car?

19 A. That's correct.

20 Q. When you're say bleeding out, you're referring to
21 someone who is bleeding, right? Someone maybe could be stabbed,
22 could have been shot, and they need medical attention, true?

23 A. Yes, sir.

24 Q. That's what you refer to when you say bleeding out?

25 A. Yes, sir.

26 Q. And despite the fact that you went to the train
27 operator to the first car to see if someone was bleeding out,
28 you never set foot on that car; isn't that correct?

1 A. That's correct, sir.

2 Q. And was your concern of someone bleeding out in the
3 first car at some point relieved or did that concern go away?

4 A. Yes, it did, sir.

5 Q. And what caused that concern to go away?

6 A. Looking down the platform, sir.

7 Q. And what did you see when you looked down the
8 platform?

9 A. More people coming off the train.

10 Q. More than a hundred?

11 A. Yes. More than whatever was on there. I wouldn't
12 put a number on exactly how many people on the platform at that
13 time, but more people were coming off the train.

14 Q. And they were advancing in your direction?

15 A. Yes, sir.

16 Q. And so is it your testimony that no longer are you
17 concerned about someone being on the train of the first car
18 bleeding out, because you had more important matters to attend
19 to, namely this enormous crowd advancing towards you; is that
20 correct?

21 A. Yes, sir.

22 Q. Now, when you got back to -- I'm sorry -- when you
23 left the train operator, you walked back to the officers who
24 were standing in front of Mr. Grant and the individuals who were
25 seated against the wall ; is that right?

26 A. Yes, sir.

27 Q. I'm going to show you a video here. For the record,
28 this is the Cross video, the first of three.

1 Can you see that from where you are, sir? You may need to
2 step down?

3 A. I'm not sure what I'm looking at.

4 Q. The monitor. It's here. I'm going to play a clip of
5 a video and I just want to make sure the glare is not
6 obstructing your ability to see. So you may need to reposition
7 yourself. Can you see without a glare there?

8 A. Yes, sir.

9 Q. And I'm starting at frame zero, and I'm just going to
10 play this clip and I'm going to ask you some questions about it.

11 A. Yes, sir.

12 (Video played.)

13 Q. I've stopped the video at frame 115.

14 Do you recognize that officer there standing in front of
15 the wall?

16 A. It looks like Officer Mehserle.

17 Q. And I'll continue.

18 (Video played.)

19 Q. Stopped it again at frame 235.

20 There's another officer who just came in. Do you know who
21 that is?

22 A. No, sir.

23 Q. You don't recognize that officer?

24 A. No, sir.

25 Q. Does it look anything like Officer Jonathan Guerra?

26 A. It very well may be. I don't know who else it would
27 be. There was nobody else up there.

28 Q. Okay. Now, scroll forward here a little bit. Would

1 it be -- do you know where you are when this is going on? Do
2 you have any idea?

3 A. I'm assuming at the TO cab, sir.

4 Q. I'm going to keep rolling.

5 (Video played.)

6 Q. Now, you see Mr. Grant beginning to get up?

7 A. Yes, sir.

8 Q. I want you to listen to what happens next, and I want
9 you to tell me if you recognize the voice that can be heard on
10 the video, okay?

11 A. Yes, sir.

12 (Video played.)

13 Q. I've stopped at frame 854.

14 Did you hear anyone say, "Sit down God damn it. Sit the
15 fuck down," when I just played that?

16 A. I heard the F word.

17 Q. You want me to play it again?

18 A. That portion, please.

19 Q. Sure. I'm going back to frame 728.

20 (Video played.)

21 Q. I stopped it at 850.

22 That time, did you hear it?

23 A. It sounded like I said, and I did recognize my voice,
24 "Sit the fuck down."

25 Q. And do you remember -- did you hear, when I just
26 played it, someone saying, "Sit down God damn it"?

27 A. No, sir. All I heard is it sounded like me said,
28 "Sit the fuck down."

1 Q. So despite the noise level --

2 THE COURT: Can the witness be seated?

3 MR. STEIN: Yes. Thank you.

4 Q. So when you got Mr. Grant to the ground, and I'm
5 referring to frame 850, can you describe for me how it was
6 you're able to do that?

7 A. It looks like I pushed him down.

8 Q. Do you remember how you grabbed him and pushed him
9 down?

10 A. No, I don't remember.

11 THE COURT: Mr. Stein, we're going to take a
12 10-minute recess. 10 minutes.

13 (Court in recess.)

14 THE COURT: Mr. Stein.

15 BY MR. STEIN:

16 Q. Officer, before you went to the train operator, did
17 you tell the other officers on the platform that you believed
18 there was high probability that the young men against the wall
19 has guns?

20 A. I don't remember.

21 Q. You don't remember saying that?

22 A. No, I do not, sir.

23 Q. Is it possible it happened and you just don't
24 remember it?

25 A. I don't remember.

26 Q. Okay. Prior to you leaving the young men who are
27 seated against the wall and you walking to the train operator,
28 did you ever ask any of the other officers to pat search these

1 young men?

2 A. I don't remember.

3 Q. Prior to leaving the young men against the wall and
4 you going to the train operator, do you recall ever telling any
5 of the officers on the platform that these young men had not
6 been pat searched?

7 A. I don't remember.

8 Q. As you sit there now, do you think that that is
9 something that was of significant importance that the officers
10 know this?

11 A. Yes, sir.

12 Q. And can you think of a reason as to maybe why you
13 didn't do that?

14 A. Well, there was a lot going on at the time, sir.

15 Q. And is it because of what was going on that maybe you
16 didn't tell them if you didn't? Is that what you're saying?

17 A. I don't remember, sir.

18 Q. Now, while you said there was a lot going on, you
19 remember things being thrown?

20 A. Yes, sir.

21 Q. What kind of things were being thrown?

22 A. I do not know, sir.

23 Q. When did you first recall things being thrown at you
24 or in your direction?

25 MR. RAINS: Objection. Vague. Does he mean which
26 interview or --

27 THE COURT: Hold on. It is vague. But is it
28 relevant?

1 MR. STEIN: Well, he says -- I'm not going to spend a
2 lot of time with it, Judge.

3 THE COURT: So don't. All right. Overruled.

4 BY MR. STEIN:

5 Q. You say that things were been thrown in your
6 direction; is that right?

7 A. Yes, sir.

8 Q. When were things being thrown in your direction?

9 A. During the contact, sir.

10 Q. Do you recall at what point during the contact that
11 things were being thrown at you?

12 A. Dealing with Grant, sir.

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

14 A. The first time I remember anything hit the ground and
15 shattering was during the attempt of handcuffing Oscar Grant.

16 Q. And you said something shattered?

17 A. It's what it sounded like, sir.

18 Q. It sounded like glass to you?

19 A. I heard glass too, sir.

20 Q. And this was happening right around where you were?

21 A. In the area, sir.

22 Q. Now, when you came back from the train operator, you
23 approached the young men who were seated and you saw Mr. Grant
24 get up and you said that at that point you felt that he was a
25 threat; is that correct?

26 A. Yes, sir.

27 Q. And before he got up, is it fair to say that you had
28 given direction to Officer Mehserle that two people were going

1 for 148; is that correct?

2 A. I told him at some point. Yes, sir.

3 Q. Did you tell him before or after Mr. Grant began to
4 get up?

5 A. I believe it was before, sir.

6 Q. And the two people you pointed to were Mr. Grant and
7 Mr. Greer; is that correct?

8 A. Yes, sir.

9 Q. Now, when Mr. Grant got up, and I think you saw in
10 the video, the last video clip we played, you put him right back
11 down; fair to say?

12 A. Yes, sir.

13 Q. And is it at that point in time, prior to you putting
14 him down, that you attempted to deliver what you coined a
15 distraction blow?

16 A. Yes, sir.

17 Q. And you did that by taking your left knee and driving
18 it into his right pant's pocket; is that right?

19 A. Well, it never did happen. It was just a thought
20 that went through my head.

21 Q. And so did you ever hit him at any point during that
22 encounter?

23 A. No, sir, not that I remember.

24 Q. Do you remember ever giving Mr. Grant a forearm to
25 the upper head -- upper body region?

26 A. No, sir.

27 Q. The entire night you don't ever remember doing that?

28 A. I do not remember doing that, sir.

1 Q. Now, do you have the second transcript in front of
2 you, Transcript No. 2?

3 A. Yes, sir.

4 Q. Can you turn that to page 59. Do you have page 59?

5 A. Yes, sir.

6 Q. Can you turn to or look at line -- starting at line
7 2617. And this is the time when you approached Mr. Grant for
8 the first time when he got up. Starting at line 2617.

9 "Grant is advancing towards my partner with a Taser
10 in her hand -- this is you talking -- then I came
11 over, addressed Grant, pushed him up against the
12 wall, told him to sit down. He attempted to -- to
13 not only knee me, but also kick me in the groin. Um,
14 at that point, I put up my forearm up in a defensive
15 posture, may have come into contact with his head. I
16 mean, looking at the video that they've released,
17 something hit him. But it definitely wasn't a fist."

18 Having seen that first, does that refresh your
19 recollection as to whether or not you ever delivered an elbow to
20 the upper portion of Mr. Grant's body?

21 A. It reflects that I did not.

22 Q. Does this refresh your memory as to whether or not
23 you raised your forearm to the upper part of Mr. Grant's body?

24 A. No, it does not.

25 Q. So tell me, what is it you're referring to when you
26 say, "I put my forearm up in a defensive posture and it may have
27 come in contact with his head." What are you referring to
28 there?

1 A. I'm trying to describe what took place during that
2 video.

3 Q. So at some point you take your forearm and you put it
4 up towards Mr. Grant's head and you say that it may have come
5 into contact with his head?

6 A. That's what it says here.

7 Q. Well, that's what you said, right?

8 A. Yes. And, again, I was trying to justify or describe
9 what took place in the video that I had never seen before.

10 Q. Are you saying anything here today in your testimony
11 in the hopes to justify your conduct on that platform?

12 A. No.

13 Q. How about when you gave these statements? Did you
14 give these statements in order to try to justify what you did on
15 that platform?

16 A. No, I did not.

17 Q. Now, when you told Officer Mehserle that Oscar Grant
18 was going for 148, 148, as you've described, is obstructing a
19 police officer in the performance of his or her duties; is that
20 correct?

21 A. Yes, sir.

22 Q. That's a misdemeanor, correct?

23 A. Yes, sir.

24 Q. Why is it then that you never told anyone that Oscar
25 Grant is going to be arrested for assault on a police officer,
26 which is a felony? Why didn't you tell them that if, in fact,
27 that's what happened?

28 A. I don't remember.

1 Q. You know what 243(C) of the Penal Code is?

2 A. Yes, sir.

3 Q. What is that?

4 A. Battery on an officer.

5 Q. And you know that that is a felony, correct?

6 A. Yes, sir.

7 Q. And Oscar Grant, according to what you're saying now,
8 committed a felony. Actually, maybe 3 Counts, 3 separate counts
9 of violation of 243(C) against you prior to you telling Mehserle
10 that he was going for a misdemeanor; isn't that correct?

11 A. Yes, sir.

12 Q. So the reason you didn't say he's going for felony
13 assault on a police officer is because he never assaulted you;
14 isn't that true?

15 A. No, that's not true.

16 Q. Were you trying to cut Mr. Grant a break by charging
17 him or arresting him with a misdemeanor when, in fact, you had
18 every right to arrest him for a felony?

19 A. Those words came out of my mouth to inform my fellow
20 officers that these two individuals need to be arrested.

21 Q. And it's -- go ahead.

22 A. I was going to say, as far as charges are concerned,
23 to me it's semantics. Either way, they're under arrest, taken
24 into custody.

25 Q. But the words you chose were 148?

26 A. Yes.

27 Q. And why is it that you didn't say he's under arrest
28 for assault on a police officer?

1 MR. RAINS: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. STEIN:

4 Q. You said that at some point during your exchange with
5 Mr. Grant, he mentioned to you the fact that he had a 2-year-old
6 daughter. Do you remember that?

7 A. I don't remember the age. I'm not sure if it was a 2
8 or 4-year-old daughter.

9 Q. Do you recall when it was that Mr. Grant said this to
10 you?

11 A. Not exactly. I do not remember.

12 Q. Was it at or about the time he was being taken into
13 custody?

14 A. I don't remember.

15 Q. You said that all along from the very beginning, Mr.
16 Grant never stopped with the profanities, the vulgarities and
17 the racism, true?

18 A. Yes, sir.

19 Q. Except for this one period of time where you say that
20 he mentioned to you that he had a daughter; is that correct?

21 A. Yes, sir.

22 Q. And his concern was that he wanted to see his
23 daughter, get home to see his daughter; isn't that correct?

24 A. I don't remember, sir.

25 Q. You don't remember the context in which he was
26 talking about his daughter?

27 A. Or the exact words that were used.

28 Q. During the time he was telling you about his

1 daughter, was he also throwing profanities, vulgarities and
2 racism at you at that time?

3 A. I don't remember, sir.

4 Q. You've testified that when you and Officer Mehserle
5 went to put handcuffs on Mr. Grant that he violently resisted;
6 is that true?

7 A. Yes, sir.

8 Q. Do you draw a distinction between someone who resists
9 arrest and someone who violently resists arrest?

10 A. Yes, sir.

11 Q. And what is that distinction?

12 A. Aside from not going along with the program or trying
13 to break free from the grasp or grabbing weapons, I'm not sure
14 if I understand the question.

15 Q. Give me an example in your mind of someone who just
16 resists and compare and contrast that with someone who you
17 believe is violently resisting.

18 A. Well, if I ask you to put your hands behind your back
19 you simply say no, that's resisting.

20 Q. Okay. Can you give me an example of violent
21 resistance?

22 A. When you have them in your waistband and you will not
23 give them up, even with efforts to pull them from your
24 waistband.

25 Q. And that is what you characterize as violent
26 resistance?

27 A. One type. Yes, sir.

28 Q. Is that the type of violent resistance that you were

1 describing in this particular case?

2 A. At some points. Yes, sir.

3 Q. Can you describe any other violent resistance on the
4 part of Oscar Grant other than you saying that you couldn't get
5 his arms from underneath him?

6 A. At what point in time are we speaking of?

7 Q. At any point in time.

8 A. Not to include the attempts to punch and knee and
9 grab in that nature?

10 Q. Yes.

11 A. Including those? I'm not understanding the question.

12 Q. You described those instances where you say he tried
13 to knee you in the groin and he actually tried to punch you.

14 A. Yes. Along with the verbal threats of doing just
15 that.

16 Q. Does that constitute violent resistance on your part?

17 A. Yes, sir.

18 Q. The verbal, the things that he was saying?

19 A. No. I was speaking of the punches and the knees.

20 Q. When you took him down to the ground, you and/or Mr.
21 Mehserle, I think you said Mr. Mehserle took him to the ground;
22 is that right?

23 A. I believe so. Yes, sir.

24 Q. And when he took him to the ground, you said on prior
25 occasions that you believed that Mr. Grant was trying to escape
26 or get away; is that correct?

27 A. Yes, sir.

28 Q. What made you think that he was trying to do that?

1 A. Because he was squirming on the ground and he
2 wouldn't put his hands behind his back, sir.

3 Q. What part of his body was squirming?

4 A. The entire body.

5 Q. Okay.

6 A. The upper portion that I was dealing with.

7 Q. Okay. Showing the second Vargas video, and I'm at
8 frame number 5011, that first video.

9 Officer, in this frame, can you see the face of Oscar
10 Grant in between the legs of the officer on the right-hand side
11 of the image?

12 A. Yes, sir.

13 Q. And when -- does this -- at the time this was taking
14 place, you appear to have your right knee out to the side with
15 your right hand placed on top of your right knee; is that
16 correct?

17 A. Yes, sir.

18 Q. And is it at this time when Oscar Grant had his face
19 pushed against the platform that you said he was wiggling?

20 A. Yes, sir.

21 Q. His upper body specifically; is that right?

22 A. From what I remember, sir.

23 Q. And showing you the Tommy Cross video, specifically
24 frame number 2422.

25 In this particular frame, you see you are placing your
26 left hand on the back of Oscar Grant's head; is that correct?

27 A. Yes, sir.

28 Q. And you're pressing down, correct?

1 A. Yes, sir.

2 Q. Is it your testimony, as you are pressing down on
3 back of Oscar Grant's head into the platform, that he is
4 squirming and trying to break free?

5 A. Yes, sir.

6 Q. You're sure about that?

7 A. From what I remember, sir.

8 Q. You testified that once you had -- Mr. Mehserle took
9 Oscar Grant down to the platform, that you, in assisting Officer
10 Mehserle, looked up and you saw what you described as a wall of
11 people advancing towards you from the north end of the platform;
12 is that correct?

13 A. I said those words. But putting them in a time
14 relevance, I'm not sure where we're at.

15 Q. Okay. Do you have Transcript No. 2 in front of you?

16 A. Yes. Yes, I do.

17 Q. Can you please turn to page 21. Okay. Do you have
18 that, sir?

19 A. Yes, sir.

20 Q. If you could now look at line 927. I'll ask you if
21 this refreshes your memory as to when that was said.

22 "And Mehserle -- Officer Mehserle got on, uh, and I
23 believe straddled him, was straddling Oscar. And at
24 this point I'm looking up and I can't even hear
25 myself, but I'm yelling at Oscar to stop resisting,
26 'Put your hands behind your back.' And I'm yelling
27 that -- after I yelled at him, I'm looking up and I
28 see people just coming towards us. I see this --

1 this wall of people advancing on all of us and I
2 became very fearful at that point."

3 You said that, correct?

4 A. Yes, sir.

5 Q. And you were describing a wall of people that were
6 advancing on you from the north end of the platform, correct?

7 A. Yes, sir.

8 Q. And you saw them while you were taking Mr. -- trying
9 to take Mr. Grant into custody; is that correct?

10 A. Yes, sir.

11 Q. I'm going to start at -- this is the first Cross
12 video. I'm going to start at frame 1600, and I want you to tell
13 me when it is you -- first of all, looking at this image, the
14 north end of the platform is to your right, as you're looking at
15 the image, right?

16 A. Yes, sir.

17 Q. Okay. So I'm going to scroll forward and I want you
18 to tell me to stop when you look up and you see this wall of
19 people advancing towards you, okay? Can you see from where
20 you're at?

21 A. Yes, sir.

22 (Video played.)

23 Maybe right about there.

24 Q. Here you seem to have your left hand on the upper
25 right chest of Mr. Jackie Bryson, the person who is to your
26 right; is that correct?

27 A. I don't know his name.

28 Q. The individual on his knees?

1 A. Yes.

2 Q. Apparently being taken into custody?

3 A. Yes.

4 Q. You're looking at him, correct?

5 A. Yes.

6 Q. You seem to be speaking to him; is that correct?

7 A. I don't know.

8 Q. Okay. He appears to be looking at you. His mouth is
9 moving. Do you remember any of this taking place?

10 A. No, I do not.

11 (Video played.)

12 Q. So I've stopped now at 2469.

13 Isn't it true, sir, that you never looked down the
14 platform and you see any people coming towards you? Isn't that
15 true?

16 A. No, it is not, sir.

17 Q. So is it your testimony that when you were engaged in
18 this dialogue with Mr. Bryson, it is at that time you noticed a
19 wall of people coming behind you?

20 A. Yes, sir.

21 Q. I'm sorry. Coming from behind him?

22 A. From the platform yes, sir.

23 Q. Now, do you recall ever seeing anyone with handcuffs
24 out while you were trying to apprehend Mr. Grant?

25 A. No, sir.

26 Q. What was your intention in pushing him down and
27 holding him down? What was your intention? What was your
28 objective?

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

2 THE COURT: Sustained.

3 BY MR. STEIN:

4 Q. When you were pushing him down, what was your
5 objective? You weren't doing that for kicks. You had an
6 objective, right?

7 A. It was an arrest.

8 Q. What were you planning to do? What were you
9 participating in? You were in the process trying to get cuffs
10 on him, right?

11 A. Yes, sir.

12 Q. But no one had cuffs out, right?

13 A. I don't know. I know I didn't have cuffs out, sir.

14 Q. Were you planning personally on placing cuffs on
15 Oscar Grant?

16 A. No, sir.

17 Q. And why is that?

18 A. I was on the upper portion of the body, sir.

19 Q. Just so I have a sense of what you're thinking, are
20 you of the mindset then that that would be Officer Mehserle's
21 responsibility?

22 A. Yes, sir.

23 Q. You were expecting him to put the cuffs on him?

24 A. Yes, sir.

25 Q. Now, as you were holding him down, you said that he
26 was trying to get up; is that right?

27 A. Yes, sir.

28 Q. Did you ever have your knee on the back of his neck?

1 A. I don't remember, sir.

2 Q. Is it possible you did?

3 A. I don't remember.

4 Q. You said that you weigh, with your duty belt, upwards
5 of 250 pounds; is that correct?

6 A. That's an estimation, yes.

7 Q. And Officer Mehserle bigger than you, as far as you
8 know, in terms of weight and size?

9 A. I do not know, sir.

10 Q. Would you estimate that he's heavier than you? Do
11 you have an opinion as to that?

12 A. I would venture to say probably the same.

13 Q. About the same?

14 A. Yes, sir.

15 Q. Were you surprised that Officer Mehserle was not able
16 to control Mr. Grant given his weight -- he, Officer
17 Mehserle's -- and your weight, which is upwards of 250 pounds?

18 A. Yes, sir.

19 Q. And despite all this weight being placed on Mr.
20 Grant, it's your testimony that he was trying to get up and he
21 was trying to get away? Is that your testimony?

22 A. Yes, sir.

23 Q. You never saw a Taser light on the back of Mr. Grant
24 after he went to the ground; is that correct?

25 A. That's correct, sir.

26 Q. You've said before that the reason why you changed
27 positions was because you felt that there was a threat coming
28 from you or possibly could be a threat coming from the south end

1 of the platform; is that right?

2 A. Yes, sir.

3 Q. Now, the wall of people advancing on you were coming
4 from the north end; is that right?

5 A. Yes, sir.

6 Q. And at some point you felt that you were exposed to
7 the south end and so that's why you turned your back on all
8 these people who were advancing towards you; is that correct?

9 A. It was one of the reasons. Yes, sir.

10 Q. When you turned your back, did you see anybody on the
11 south end of the platform advancing towards you?

12 A. No, sir.

13 Q. You said that when you were holding Mr. Grant down,
14 he was wriggling and squirming around and you said that it was
15 like trying to hold a fish out of water down on the deck; is
16 that correct?

17 A. Yes, sir.

18 Q. When you had his head placed down into the platform,
19 did you have any trouble keeping hold of his head?

20 A. No, sir.

21 Q. When he was wriggling around, do you recall whether
22 or not that was going on when you were having this exchange with
23 Mr. Bryson when you had your hand up on his shoulder?

24 A. No, sir. I didn't even remember that conversation
25 taking place.

26 Q. Now, you've testified as to a number of things that
27 you heard Mr. Mehserle say. You said that initially you heard
28 him utter the command, "Put your hands behind your back." Then,

1 "Stop resisting." Then, "I'm going to tase him." Then, "I
2 can't get his arms and his hands are going for his waistband."

3 Is that correct?

4 A. Not necessarily in that order, but yes.

5 Q. You don't think it was in that order?

6 A. I don't recall.

7 Q. Let me see if I can refresh your recollection by
8 looking at Transcript No. 1. Can you turn to page 13, please.
9 Do you have page 13?

10 A. Yes, sir.

11 Q. I want to start at line 18 where it reads:

12 "At which time, somehow he got to the ground belly --
13 belly first and, uh, just immediately went for the
14 upper portion, uh, basically held his head and
15 shoulders down onto the ground. And, uh, I started
16 telling him to stop resisting. 'You're under arrest.
17 Put your hands behind your back.' And at that time,
18 I heard Officer Mehserle telling him, 'Put your hands
19 behind your back. Stop resisting. Stop resisting
20 and put your hands behind your back.' Uh, and then
21 he said, uh, 'I'm going to tase him. I'm going to
22 tase him.' And, uh, 'I can't get his arms. He won't
23 give me his arms.' Uh, 'His hands are going for his
24 waistband.' Uh, and then he popped up and said, uh,
25 uh, 'Tony, Tony, get away, back up, back up.' And at
26 which time I jumped up and that's when I heard the
27 bang."

28 Does that refresh your recollection as to the order in