

1 which the statements were made by Mr. Mehserle?

2 A. Yes.

3 Q. And so, in fact, the order in which the statements  
4 were made by Mr. Mehserle were exactly the way that I presented  
5 them to you just a minute ago, true?

6 A. From what I remember on the 1st, yes.

7 Q. And when Mr. Mehserle asked you to, "Get up, get up,"  
8 you thought that was odd, correct?

9 A. Yes, sir.

10 Q. And you've never been told that before to get up  
11 under those circumstance, correct?

12 A. That's correct, sir.

13 Q. And that was because you were in the process of  
14 trying to keep hold of this individual and here he is telling  
15 you to get off of this individual, correct?

16 A. Yes, sir.

17 Q. That didn't make sense to you at the time?

18 A. No, it didn't.

19 Q. And even though at the time that he was telling you  
20 this, you saw Oscar Grant's hands, so you say, go to towards his  
21 waistband, correct?

22 A. All I saw was a red triangle.

23 Q. Did you see his hands go towards his waistband?

24 A. I never saw his hands.

25 Q. Can you pick up the first transcript again.

26 A. Yes, sir.

27 Q. And turn to page 14. Start at line 12, where it  
28 reads:

1 "Uh, if he was trying to get away, it would have been  
2 a lot different. He would have been trying to do a  
3 pushup type position, but he clearly had his hands by  
4 his waistband."

5 Did you say that to the officers in the morning of the  
6 1st?

7 A. Yes, I did.

8 Q. So you, in fact, saw his hands go to his waistband,  
9 true?

10 A. No, not true.

11 Q. You never saw Mr. Grant's hands going for his  
12 waistband?

13 A. His arms were here. I made the assumption that his  
14 hands are in extension of his arms. And since his arms were in  
15 this fashion, that his hands were at his waistband.

16 Q. Well, I know that if Mr. Grant is laying down and  
17 he's laying on his hands, you or no one else is going to be able  
18 to see them, right?

19 A. Yes, sir.

20 Q. But what I'm trying to get from you, sir, is whether  
21 or not he made a motion with his arms or his hands that led you  
22 to believe that his hands were going for his waistband.

23 A. No, he did not.

24 Q. He never made a motion that led you to believe that?

25 A. I never saw his hands disappear. I just saw his arms  
26 in that fashion.

27 Q. Yet you told the officers the morning of this  
28 incident that he clearly had his hands by his waistband?

1 A. Yes, sir.

2 Q. But you're saying here now that he never did anything  
3 that led you to believe his hands were going for his waistband?

4 A. I don't remember saying that.

5 Q. Okay. Can you turn to page 27 of that transcript?

6 A. Yes, sir.

7 Q. Line number one. This is the first transcript. You  
8 have the first transcript there, sir?

9 A. Yes.

10 Q. Can you turn to page 27?

11 A. Yes, sir.

12 Q. I want to start at line nine where you say the  
13 following:

14 "Yeah. For -- for me, based on my experience in  
15 wrestling or fighting with people who are, uh,  
16 resisting or trying to flee, generally speaking, they  
17 put their hands in their chest area or outside the  
18 chest area in a pushup type position in an attempt to  
19 get away or get up. This, uh, this individual did  
20 nothing of the sort. As a matter of fact, he put his  
21 hands, both hands, into his waistband, if not down  
22 into the groin area, and that's generally where  
23 weapons are kept. And that's where our concern was."

24 Did you say that to the investigators the morning of the  
25 1st?

26 A. Yes, sir.

27 Q. And so when Oscar Grant put his hands to his groin  
28 area, you believed that at that time he was going for a weapon,

1 true?

2 A. I don't remember saying that.

3 Q. Okay. Does it refresh your memory to read what I  
4 just read? Does that refresh your memory at all?

5 A. Yes. Yes, it does.

6 Q. And so did you tell the investigators that Oscar  
7 Grant was using his hands to go towards his waistband,  
8 specifically his groin area, and that that in fact posed an  
9 imminent threat of death to you?

10 A. Well, it says that I said, "And that's generally  
11 where weapons are kept, and that's where our concern was."

12 Q. So when Oscar Grant did that, you had that concern,  
13 true?

14 A. When I saw his elbows, like I said, in a fashion to  
15 where it appeared that his hands were at his waistband, yes.

16 Q. Yes what?

17 A. That's where my concern is, his hands are at his  
18 waistband or groin area.

19 Q. And you believe that if his hands are going towards  
20 his waistband, where you believe oftentimes people carry  
21 weapons, you at that time felt that he, Mr. Grant, posed an  
22 imminent threat of death to you, correct?

23 A. To all of us.

24 Q. Including yourself?

25 A. Yes, sir.

26 Q. And that was your mindset when you saw his hands  
27 going for his waistband, right?

28 A. Again, I never saw his hands going for his waistband.

1 I just saw his arms in a fashion where the hands would be at his  
2 waistband. I never saw a movement of his arms going for his  
3 waistband. When I looked down, I saw his elbows sticking out to  
4 the side as if he were grabbing his waistband.

5 Q. That's what you believed?

6 A. That's what I saw.

7 Q. Right. You couldn't see his hands because they were  
8 under?

9 A. Exactly.

10 Q. You saw his elbows positioned in the way that led you  
11 to believe where his hands were?

12 A. Yes, sir.

13 Q. Even though you couldn't see his hands?

14 A. Yes, sir.

15 Q. And based on what you saw, you had the belief that he  
16 posed an imminent threat of death to you and other officers?

17 A. Danger. Yes, sir.

18 Q. And at that time when you saw that, you were in fear  
19 for your life, correct?

20 A. Well, I saw Officer Mehserle wrestling for his arms.

21 Q. That wasn't my question. My question was: When you  
22 saw what you saw --

23 A. Yes.

24 Q. -- isn't it true that at that time you were in fear  
25 for your life?

26 A. Yes, sir.

27 Q. Based on that action?

28 A. Yes, sir.

1 Q. You believed at that time that it's possible this guy  
2 has a gun under there and he could pull it on us, possibly shoot  
3 someone, true?

4 A. Yes, sir.

5 Q. Now, when you saw that and you believed that he could  
6 be going for a gun and you felt that you were in imminent threat  
7 of death or great bodily injury or maybe your fellow officers  
8 were, why didn't you pull your gun?

9 A. I had more control over his body without my gun in my  
10 hand than I would have if I pulled my gun out.

11 Q. So you didn't want to occupy your hands?

12 A. That's correct.

13 Q. Now, were you concerned that possibly he could break  
14 free, turn around and pull a gun on you?

15 A. Was I concerned for that?

16 Q. Yes.

17 A. Is that the question, sir?

18 Q. Yes. At that time, was that going through your mind?

19 A. No, because I had control of his upper body, sir.

20 Q. But you said he was squirming. In fact, I think you  
21 said just before the shot went off, he had broken free.

22 A. I don't think I said just before the shot, sir.

23 Q. When did he break free?

24 A. During the initial takedown.

25 Q. Okay. Didn't you say that he broke free and that's  
26 what caused you to then turn and put your back towards the north  
27 end of the platform?

28 A. Yes, sir.

1 Q. That's just right before the shot went off, right?

2 A. I don't know.

3 Q. Okay. See, I'm starting here on frame 2095, and I'm  
4 going to play it. I'm going to stop it. I think it's going to  
5 show you turning your back to the north end of the platform.

6 (Video played.)

7 A. Right there. He just wiggled free.

8 Q. Okay. I'm going to go back. You tell me to stop.  
9 Can you see that or are you just doing that based on your  
10 independent recollection?

11 A. You can see his head come up from underneath my leg.  
12 So I could not have possibly been putting 250 pounds of weight  
13 on his body if he was able to squirm free like that.

14 Q. You tell me where you see him squirming free. I'm  
15 going backwards and then I'm going to go forwards frame by  
16 frame, and you tell me when. Here we see you having your hand  
17 on the chest of Mr. Bryson?

18 A. Yes.

19 Q. You look down.

20 A. And it's because he's squirming free right there.

21 Q. Okay. And that's based on your independent  
22 recollection or is there something you're seeing in this image?

23 A. I'm looking at his head. It's down by my shin now.

24 Q. Down by your shoe?

25 A. Shin area, I'm guessing. The video is kind of  
26 blurry.

27 Q. It is. So now you're turning your back towards the  
28 north end of the platform; is that right?

1 A. That's correct.

2 Q. And my question is: This is the time when he breaks  
3 free; is that correct?

4 A. He already broke free.

5 Q. So at this point in time at frame 2392, is he free or  
6 have you regained control of him?

7 A. I believe I've got control over him at this time,  
8 sir.

9 Q. And in this frame 2420, you can see your hand is  
10 clearly on the back of his head pushing down, correct?

11 A. Yes, sir.

12 Q. Now, is it at this time that his hands are going for  
13 his waistband and you are in imminent fear of death?

14 A. I don't remember.

15 Q. Now, when Mr. Mehserle said for you to get up, you  
16 were holding Mr. Grant. And although you were in imminent fear  
17 of death, you felt it was better for you to not pull your gun,  
18 in other words, use lethal force or the threat of lethal force,  
19 to combat the lethal force that was being thrust upon you; is  
20 that correct?

21 A. I don't understand. Where is the lethal thrust?

22 Q. The lethal force.

23 A. The lethal force, where is that?

24 Q. Well, if you think Oscar Grant is going for his groin  
25 area or his waistband; you think there's a high probability that  
26 maybe he's got a gun; you've testified already that that's what  
27 you thought he was doing; I would think that you would want to  
28 combat that threat because that's lethal force being put upon



1 you, correct, potentially?

2 A. I've not seen a gun.

3 Q. But in your mind that's what you're thinking he's  
4 doing, correct?

5 A. Well, I don't see the hands, so I don't see a threat.

6 Q. Okay. So are you saying that you did not pose -- he  
7 did not pose a threat at that time?

8 A. He can have a gun in his waistband. And because his  
9 hands are still in his waistband and the gun is not pointed at  
10 me, it's not a threat to me.

11 Q. Or any other officer?

12 A. Or any other officer.

13 Q. So as long as those hands stay where they are, it  
14 doesn't pose a threat to you, true?

15 A. He's still under arrest and we're trying to handcuff  
16 him to get as safe as we could possibly be.

17 Q. I understand. But if you're able to stay on his  
18 back, which apparently you are, at least in this frame, right?

19 A. Yes.

20 Q. And you're able to hold him down --

21 A. Yes, sir.

22 Q. -- and those hands stay at his waistband, he does not  
23 pose a threat to you or other officers, true?

24 A. True.

25 THE COURT: All right. Mr. Stein, that's a good  
26 point to break for the day. Tomorrow morning at 9:00 a.m.

27 (Whereupon, proceedings were adjourned

28 and continued to June 4, 2009.)

1 STATE OF CALIFORNIA )  
2 ) SS  
3 COUNTY OF ALAMEDA )  
4

5 I, RUBY GOMEZ, an Official Court Reporter of the  
6 Superior Court, State of California, County of Alameda,  
7 Certificate No. 12971, do hereby certify that the foregoing  
8 pages 758 through 914 constitute a full, true, and correct  
9 computer-aided transcription of the proceedings that I reported  
10 in Department 2 on June 3, 2009, in the within-entitled matter.

11 Dated in Oakland, California, this 15th day of June, 2009.  
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17 **RUBY GOMEZ**

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19 RUBY GOMEZ, RPR, CSR No. 12971  
20 OFFICIAL COURT REPORTER  
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