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

---oOo---

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
JOHANNES MEHSERLE,
Defendant.

NO. 547353

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRELIMINARY HEARING

RENE C. DAVIDSON

OAKLAND, CALIFORNIA

THURSDAY, JUNE 4, 2009

APPEARANCES:

For the People: THOMAS ORLOFF
 DISTRICT ATTORNEY
 BY: DAVID STEIN
 Deputy District Attorney

For the Defendant: MICHAEL RAINS
 Attorney at Law

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1 THURSDAY, JUNE 4, 2009

2 PROCEEDINGS

3 ---oOo---

4 THE COURT: Good morning, Counsel.

5 MR. STEIN: Good morning, Your Honor.

6 MR. RAINS: Good morning, Your Honor.

7 THE COURT: All right. Counsel, you wanted to put
8 something on the record. Everybody is here on time?

9 MR. RAINS: Yes.

10 THE COURT: Go ahead.

11 MR. RAINS: Thank you, Your Honor.

12 Your Honor, at the close of our hearing last
13 Thursday, the Court had indicated in discussion with counsel
14 in chambers that the Court wanted us to conclude this
15 hearing by today, the end of the session today. And I had
16 the brief discussion with the Court and counsel about the
17 fact that I did not feel I could adequately represent my
18 client, and conclude this hearing on his behalf by the end
19 of today.

20 THE COURT: You've done a good job in representing
21 your client.

22 MR. RAINS: I appreciate that. I'm not sure I agree
23 with the Court's assessment.

24 THE COURT: Of you or your job?

25 MR. RAINS: Pardon me.

26 THE COURT: Of you or your job?

27 MR. RAINS: Perhaps, both.

28 THE COURT: Okay. Perhaps, both.

1 MR. RAINS: Your Honor, just by way of reminder,
2 when we set the preliminary hearing, to begin with we talked
3 about two weeks. We talked with Mr. Stein, and I think we
4 were in Judge Jacobsen's Court at the time, and I think we
5 all agree.

6 THE COURT: I think you lawyers agreed to that, not
7 me.

8 MR. RAINS: That may be true. I know that Mr. Stein
9 indicated that he thought that his case would take roughly
10 two days, and I always assumed and I always believed that my
11 case would take six. And I didn't anticipate frankly the
12 length of cross-examination by Mr. Stein in the six days, so
13 I missed that mark for sure. But anyway, having said that,
14 at the close of today, we will have had five days as part of
15 the defense case since Mr. Stein rested. And Your Honor,
16 for the record, I have and Mr. Stein has been gracious and
17 willing to work with us in terms of stipulating to some
18 evidence subject to an objection I think on his part on
19 cumulative grounds. But some of the witnesses I intended to
20 call I'm going to make an offer of proof and ask that we
21 simply stipulate prior statements into evidence. And in
22 order to try to speed things along, I had planned to have
23 the BART training officer who actually trained Mr. Mehserle
24 in the Taser. I'm dispensing with his testimony. I'm
25 trying to work around that, so we can do this case without
26 that. And what I am left with, Your Honor, at this point in
27 my case, in order to, I think, adequately represent
28 Mr. Mehserle's position here is we have Officer Pirone on

1 the stand; Mr. Stein has said somewhere between 20 and 40
2 minutes left on cross with Pirone. I have then, Your Honor,
3 Mr. Jackie Bryson, who I have subpoenaed. I believe the
4 People have him waiting to testify. I anticipate probably a
5 half-hour of testimony of him. He was a percipient witness
6 to events on the platform. He's actually pictured up here
7 on the screen to the right of Officer Pirone on the image.
8 That is Jackie Bryson. And I believe he would give
9 testimony that would go to the issue of lack of malice on
10 the part of Mr. Mehserle.

11 THE COURT: Well, that's not the appropriate offer
12 of proof. I mean, if that's what you think he's going to
13 say, that does not fall within the statute. You know, the
14 statute tells me, it says "A Magistrate shall not permit,"
15 so I've tried to be liberal in allowing the lawyers to get
16 their case out. I think it's important that everybody gets
17 a fair shot here. I think it's important that everybody
18 gets to tell their story, and I tried to do that. But
19 Mr. Bryson, he can't add anything to me. He can't -- no one
20 can really tell me what Mr. Mehserle's thoughts were at the
21 time. I don't care what I see, hear or what other witnesses
22 tell me. There are witnesses -- I'll tell you, you lawyers
23 have done a tremendous job in cross-examining the witnesses,
24 and that's what the confrontation clause is all about,
25 because through both of your cross-examinations, it's given
26 the Court a much clearer picture of the scenario that I
27 heard that evening. I mean, I came in here very fresh in
28 terms of what happened. I didn't know what happened here.

1 People have talked about it. I kind of stayed away from it.
2 I saw one video, but the videos don't really tell the
3 picture. The video is a just a video. But it's what
4 happened during the course of this really is what has been
5 shapened by the lawyers here. So to the extent that you
6 want to give me something else, I'm not going to allow him
7 to testify, 'cause he's not going to aid this Court in its
8 finding.

9 MR. RAINS: Let me indicate to the Court that
10 Mr. Mehserle's state of mind and that is his lack of malice,
11 which is an element of the offense of murder, which we have
12 the right to introduce evidence on at a preliminary hearing,
13 and the Court cannot restrict the defense from introducing
14 evidence that negates an element of the offense. Here, it's
15 malice.

16 THE COURT: I sure can.

17 MR. RAINS: Well --

18 THE COURT: I sure can make a finding under the law
19 that based upon what I've seen here, I can use my sound
20 discretion and tell you that a witness who is not the person
21 whose state of mind is at issue cannot aid this Court in
22 terms of determining as to whether or not it will negate an
23 element of the crime itself.

24 MR. RAINS: As the Court is well aware, the issue of
25 state of mind like any other disputed fact can be proven or
26 disproven circumstantially. The Court does not need direct
27 evidence to prove state of mind. Your Honor, we are
28 attempting to show the Court, to show the world, that

1 Mr. Mehserle harbored no malice when he drew and fired his
2 weapon. That is a disputed fact, the fact that will be and
3 can be proven circumstantially. What this Court is trying
4 to do is to gut our opportunity to put on circumstantial
5 evidence of a disputed fact, an element of the offense of
6 murder, and I believe it to be fundamental and prejudicial
7 error to my client to deprive him of his due process rights
8 to present that evidence to this Court.

9 THE COURT: If I wanted to gut your case, I wouldn't
10 allow you to call all these witnesses, because these
11 witnesses have all been cumulative. They really haven't
12 added anything to the case itself to that extent. But you
13 make your record, that's good, and if there's somebody
14 higher up that says I'm wrong, then I'm wrong. But I make
15 my decision based upon what I've seen in here today, and
16 clearly based upon what has been presented to me in terms of
17 the dynamics, it's clear to me that there's nobody else who
18 can sit on that platform and tell me what Mr. Mehserle was
19 thinking at the time that this thing occurred. It's only
20 Mr. Mehserle himself. That's what this is all going to boil
21 down to. And you can't tell me whoever this guy --
22 Bryson -- he can't tell me what Mr. Mehserle thought,
23 because if you believe Pirone in terms of what he said
24 yesterday, and all these officers add little bits and pieces
25 to the scenario, there was a time that it was clearly he
26 believed that Mr. Mehserle was going to take out his Taser,
27 however, then he says that he believed Mr. Grant was going
28 for his belt and that he was going for a gun. That's a

1 change of mind set. You go from a Taser to the thought he
2 was going for a gun, the reaction is not a Taser, the
3 reaction is probably a gun, because it's deadly force
4 against deadly force, that might be his mind set. So this
5 is a preliminary hearing, and the prosecution's burden is
6 really, very small, but to the extent that it's small, you
7 guys have enhanced the prosecution's case by these
8 additional witnesses, because they've changed the dynamics
9 from possibly an accident to a mistake to a setting that
10 everybody is afraid that the fact that these People might
11 have harbored weapons and that they needed to use weapons in
12 order to contradict the weapons that they may have had. It
13 changes the whole dynamic. So to that extent, that's my
14 ruling on Bryson. So he's not going to be allowed to
15 testify.

16 MR. RAINS: Your Honor, just if I may for offer of
17 proof to the extent that Mr. Stein has attacked and will
18 continue to try to attack credibility of Officer Pirone to
19 him being biased or not credible, Mr. Bryson, who was one of
20 Mr. Grant's friends who was with him that night, and who was
21 only inches away from this confrontation depicted on the
22 board, also heard Mr. Mehserle just seconds before the
23 weapon was fired say, "I'm going to tase him," and he would
24 so testify, I believe, if he testified consistent with an
25 interview he has provided to the District Attorney's office.

26 THE COURT: So once again, that's cumulative,
27 because I already got two people who already said that.

28 MR. RAINS: And Mr. Stein attacked Mr. Pirone's

1 credibility.

2 THE COURT: I think Mr. Pirone -- you know, it's
3 very interesting. There are some things that are very
4 obvious that he can't remember, and there are some things
5 that now all of a sudden he's gotten information that makes
6 him remember that it happened one way. But I think he was
7 pretty clear, and I think he was very honest yesterday when
8 he finally on cross-examination gave us the information and
9 told this Court that, hey, I thought there was deadly force,
10 and he was reaching for a gun. That's pretty honest,
11 because I hadn't heard that before. That's the first time
12 we've actually really heard that, and he was right there.
13 He was right there. And when he says that Mr. Mehserle
14 moved back, which was a shock to him, that was a little
15 different. So to that extent, I've already made my ruling.

16 What's the next issue?

17 MR. RAINS: Well, Your Honor, the next issue, I have
18 two more witnesses after Mr. Bryson, one is Mr. Schott who
19 will show the video. Mr. Stein has indicated that he does
20 not have an objection to the video.

21 THE COURT: I told you you could have him show the
22 video. I think that's fair. They showed video. You can
23 show video.

24 MR. RAINS: And then we have a Taser training expert
25 to testify.

26 THE COURT: What's the relevance of that?

27 MR. RAINS: The relevance is that Mr. Mehserle had
28 been trained with a Taser for a grand total of three weeks,

1 before this event occurred. When I say trained, I mean
2 probably ill trained. Ill trained is probably the more
3 correct word. And as the Court knows -- I suspect the Court
4 knows -- officers, when they resort to drawing their weapon,
5 resort to motor skills; motor skills that are instinctive;
6 motor skills that are learned with repetitive training,
7 that's what this fellow would testify to. He's going to
8 testify that given the circumstances of this case, given
9 what we see in the video of this case, which he's examined,
10 given all of the factors he's examined in this case,
11 Mr. Mehserle's drawing of his weapon was an accident. He,
12 in fact, intended to use his Taser; he, in fact, intended to
13 draw his Taser; the video shows us that; he'll explain that,
14 and therefore there was no malice, because Mr. Mehserle had
15 the right to use the Taser to take Mr. Grant into custody as
16 he actively resisted arrest.

17 THE COURT: All right. So that's speculation, what
18 he thinks Mr. Mehserle was going to do at the time he did
19 what he did, 'cause he wasn't there, he can't determine what
20 his motor skills are. He can't tell this Court what he was
21 thinking, so that's denied.

22 MR. RAINS: You know, Your Honor, the Court can say
23 that about any expert witness who testifies. Well, since
24 they weren't percipient and they weren't there, their
25 testimony is denied. Why would we ever have an expert
26 testify in any court if the Court required the expert to be
27 percipient to the event?

28 THE COURT: But to the extent -- I haven't done

1 that. I have given you a lot of leeway, both lawyers. I
2 think some of the cross-examination was overbroad, but, you
3 know, I allowed it because you lawyers, I let you do what
4 you do. I've been a trial lawyer; I understand that. But
5 you know, it is what it is. He's not going to testify.
6 That's not going to aid this Court in making a determination
7 as to whether or not he made a mistake, or what he intended
8 to do. It's not at that time, not at the time he did it.
9 All right. So he's not going to be allowed to testify.

10 Next?

11 MR. RAINS: Your Honor, I have a proposed stipulated
12 statements by a woman named Lydia Kierstead who was on the
13 train and witnessed the event. And Ms. Kierstead has given
14 a statement, and I propose to submit her transcript of her
15 interview indicating that she was watching Mr. Mehserle
16 struggle with Mr. Grant, that she could see Mr. Mehserle
17 could not get Mr. Grant's arms out from under him as
18 Mr. Grant kept his arms under him. And that immediately
19 after the shooting, she looked at Mr. Mehserle, and saw a
20 shock -- a look of shock on his face. That is what she
21 said; that is what the transcript indicates. I've provided
22 a copy of that to Mr. Stein, that is, the relevant portion
23 of that.

24 THE COURT: So stipulated, Mr. Stein?

25 MR. STEIN: Yes.

26 THE COURT: All right. The Court will accept that
27 stipulation.

28 MR. RAINS: And Your Honor, Carlos Reyes. Carlos

1 Reyes was the gentlemen that's on the platform. Again,
2 percipient to the events that occurred. Carlos Reyes was
3 right there. Carlos Reyes said that right after the
4 shooting, he looked at Officer Mehserle. He saw Officer
5 Mehserle, and he heard Officer Mehserle say, "Oh, shit. Oh,
6 shit."

7 THE COURT: All right. So stipulated, Mr. Stein?

8 MR. STEIN: Yes.

9 THE COURT: All right. The Court will accept that
10 stipulation.

11 MR. RAINS: And I propose to introduce their
12 statements. And then one last one is Michael Greer.
13 Michael Greer was percipient to the events. He was
14 handcuffed to by Officer Pirone. There's been testimony to
15 that. And Michael Greer, when interviewed, was asked
16 whether or not Mr. Grant tensed up when he was being placed
17 on the ground to be placed under arrest, and Mr. Greer's
18 response was, to use the quote, "Yeah, he resisted a
19 little." That's what he said. I propose to introduce that
20 statement through stipulation.

21 THE COURT: All right. So stipulated, Mr. Stein?

22 MR. STEIN: Your Honor, I stipulate that the
23 transcript can come in. I just want the wording to be
24 precise. I'll stipulate to what it says in the transcript.

25 THE COURT: All right. The Court will accept that
26 stipulation.

27 MR. RAINS: All right. And I propose to have those
28 marked and introduced.

1 THE COURT: Why don't you just give them to my clerk
2 and have them marked.

3 MR. RAINS: Thank you.

4 THE COURT: Anything else, counsel?

5 All right. Let's get Officer Pirone back here.

6 THE WITNESS: Good morning, Your Honor.

7 THE COURT: Good morning.

8 All right. You are still under oath.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Mr. Stein?

11 MR. STEIN: Thank you, Your Honor.

12 **CROSS-EXAMINATION BY MR. STEIN**

13 Q. Officer Pirone, would it be fair to say that with
14 regard to the decisions about who was going to jail that
15 night, that those decisions were made by you?

16 A. In relation to Mr. Greer and Mr. Grant, yes.

17 Q. In terms of the investigation of who may be involved
18 in a fight or things that may have occurred while you were
19 on the platform, did you make decisions about who was going
20 to jail and who was not?

21 A. I don't understand the question. What do you mean
22 in regards to the fight? That was never established on the
23 platform.

24 Q. Right. But you went to the train operator to
25 investigate a fight.

26 A. Yes, sir.

27 Q. And you didn't really get any identifiable
28 information, true?

1 A. Correct.

2 Q. When you came back, you made the decision that two
3 people against the wall -- I'm sorry -- one person who was
4 on the ground who was handcuffed, and another person, Oscar
5 Grant, were going to jail; is that correct?

6 A. Yes, sir.

7 Q. While Mr. Grant was being taken into custody, there
8 was a man, his name was Jackie Bryson. And you can see him
9 in this photograph here, it's the Cross video, the first
10 one, 2246, and I don't know if you can see that from where
11 you are at?

12 A. It's the gentlemen I touched, correct?

13 Q. Yes, you had your left hand up on his right
14 shoulder.

15 A. Yes, sir.

16 Q. And I think he's looking at you, and you are kind of
17 looking at him.

18 A. Yes, sir.

19 Q. He's in a handcuffing position, is he not, and he's
20 on his knees?

21 A. It appears that way, yes.

22 Q. Did you give any officer a directive to arrest
23 Mr. Bryson?

24 A. No, sir.

25 Q. And when you saw him in this position, what were you
26 thinking?

27 A. I was just wondering why he was so close to me in
28 the proximity of my positioning on the floor.

1 Q. So at that time, did you have any idea as to why he
2 was being placed in handcuffs?

3 A. No, sir.

4 Q. Now, do you have the supplemental in front of you?
5 I think it's People's 38. It should be to your left.

6 A. Yes, sir.

7 Q. Can you turn to Page 3 of that supplemental, and I
8 want to direct you to the third paragraph where it says --

9 A. These are labeled 141, 142.

10 Q. The third page. I think the third page is 223. Let
11 me see what yours says.

12 The third paragraph on the third page where it reads
13 "As Pirone returned from the train operator, he walked
14 towards the detainees. Pirone pointed at the direction of
15 Grant, and the male, Jackie Bryson, who was seated to
16 Grant's left and told the other officers on scene, 'These
17 guys are going for 148.'" Do you see that?

18 A. Yes. Yes, I do.

19 Q. When you were on the platform for the walk-through
20 on the 4th of January with Detective Maes and the other
21 investigators, did you tell them that you ordered that Oscar
22 Grant and Jackie Bryson, the man to Oscar Grant's left, be
23 arrested for 148?

24 A. No, I did not.

25 Q. When you reviewed this supplemental report, People's
26 38 prior to being interviewed on March 17 of 2009, did you
27 ever tell the investigators that this part here where it
28 says that I asked that Jackie Bryson be in handcuffs, that

1 never happened?

2 A. No, I did not. I believe I was asked that question
3 during the DA's interview as well, and I said I had no idea
4 why at that time he was being handcuffed, until this time I
5 did not -- until this morning, I did not know that
6 gentlemen's name. But I informed the DA that I had no idea
7 why Officer Mehserle or Officer Guerra handcuffed that
8 particular individual, 'cause they were not given that
9 instruction by me. And I believe that interview was given
10 on the 21st of January, well before I saw the supplemental.

11 Q. Okay. But I want to focus your attention now on the
12 March 17th interview.

13 A. Okay.

14 Q. And you were asked at the beginning portion of that
15 interview what things you had reviewed, and I believe you
16 said this supplemental was one of the things that you had
17 reviewed; is that true?

18 A. I do not remember.

19 Q. Okay. Would it refresh your memory if you looked at
20 the transcript of that interview where your attorney said
21 that he received these items for purposes of you reviewing
22 them? Would that refresh your memory?

23 MR. RAINS: Well, that misstates his testimony
24 yesterday.

25 THE COURT: It does. Sustained.

26 BY MR. STEIN: Q. Okay. Why don't you take
27 Transcript No. 3, do you have that?

28 A. Yes, sir.

1 Q. If you could turn to Page 2 of Transcript No. 3, and
2 if you could see Line 75 when the question is asked, "Have
3 you had an opportunity to review any of the videos that have
4 been on TV or on the internet, and if so, you've taken the
5 opportunity and looked at them?" And your answer was, "Some
6 of the videos. I don't know all of the videos.

7 "Question: Okay. And it's how many times do you
8 think that you looked at those?

9 "Answer: Uh, one, maybe twice per video would be a
10 good estimation." The next question: "Okay. Okay. You've
11 had a chance to review the information or the past
12 interviews that we submitted to your attorney prior to this
13 interview?" And then your attorney says, "There were two
14 documents that I received. One was a CD of an interview
15 conducted by" -- and it's unintelligible "on January 1st and
16 the other was a supplemental report of a walk-through, I
17 believe was on January 4th, um." And then the first
18 questioner says, "Yes, correct." And then your attorney
19 says, "Those are what you're referring to?" And the
20 investigator says, "Yeah." And then you say, "Yes, I have."

21 Having read that, having listened to me read that,
22 does that refresh your recollection as to whether or not you
23 reviewed this supplemental prior to giving this interview?

24 A. No, it does not.

25 Q. Do you know whether or not during that third
26 interview you ever told the investigators that where it says
27 here that "I asked that Jackie Bryson be arrested," that
28 that's inaccurate? Do you ever remember pointing this out

1 to any of the investigators?

2 A. No, I did not point it out.

3 Q. Now, at no time while you were on the platform with
4 Mr. Grant did you believe he showed any signs of being under
5 the influence of alcohol or drugs; is that fair to say?

6 A. The question one more time, please?

7 Q. At no time while you were on the platform with
8 Mr. Grant, did you observe any signs or symptoms that he was
9 under the influence of alcohol; is that correct?

10 A. No, that's not correct.

11 Q. Can you please take Transcript 1? Do you have
12 Transcript 1?

13 A. Yes.

14 Q. Can you please turn to Page 10? Can you get Page 10
15 there?

16 A. Yes, sir.

17 Q. Start at Line 4, question by Detective Enriquez, did
18 you observe any objective signs of alcohol or drug use with
19 the suspect?" Your answer, "You know, I don't know. I
20 didn't. And those weren't, uh, that wasn't what I was
21 trying to pay attention to." Do you remember being asked
22 that question and giving that answer?

23 A. Yes.

24 Q. And is it true that you never told the investigators
25 that you, in fact, observed signs of Mr. Grant being under
26 the influence of alcohol or drugs?

27 A. I don't remember.

28 Q. Now, you have testified that the noise level on the

1 platform was very loud, correct?

2 A. Yes, sir.

3 Q. And is it fair to say that when you got off the
4 train with Mr. Grant -- he was the first person who got off
5 the train --

6 A. Sir?

7 Q. Is that correct?

8 A. No, I never got on the train with Mr. Grant.
9 Mr. Grant came to me off of the train.

10 Q. You got him off the train.

11 A. Yes, sir.

12 Q. You directed him off the train.

13 A. Yes, sir.

14 Q. After you directed him off the train, at that time
15 the crowd or the noise level was fine, was it not?

16 A. I don't recall.

17 Q. Can you take the second transcript, Transcript No. 2
18 that you have before you and turn to Page 56. Do you have
19 Page 56?

20 A. Yes, I do.

21 Q. If you could look down to Line No. 2487, 2487 where
22 it says "Question: So things were fine when you got Oscar
23 off the train as far as the crowd?

24 "Answer: Yes, I didn't really hear. There was
25 nothing that drew my attention away."

26 Having read that, does that refresh your
27 recollection as to whether or not the crowd or the noise
28 level was at a moderate level at that time?

1 A. Well, to be quite honest, I wasn't paying attention
2 to the crowd. I was talking with Mr. Grant.

3 Q. But having read this, does it in anyway refresh your
4 recollection as to what the level of noise was at the time
5 that you asked Mr. Grant to get off the train?

6 A. It refreshes the fact that I did not know. I was
7 not paying attention to the crowd at the time. I had
8 Mr. Grant at my hands, and that's who I was speaking to.

9 Q. Would it be fair to say that when the noise level
10 did get high, that after that point you could not hear your
11 radio at all?

12 A. There were times where I did not hear my radio,
13 that's correct, sir.

14 Q. You did testify, however, on direct examination that
15 when you were responding to the platform from the free area,
16 that as you were going up the stairs, you heard over the
17 radio that units 11, 12 and 14 were coming to the station,
18 correct?

19 A. Yes, sir.

20 Q. Tell me how long do you think it took you to get
21 from the free area when you first got the initial call to
22 get up to that platform?

23 A. It would be an estimation of maybe two minutes.
24 Maybe a little bit longer, only because I tried to get the
25 station agent to come over and watch the detainee that I had
26 locked up in the back of my patrol vehicle.

27 Q. But you were sure you were going up the stairs when
28 you heard the radio say that 11, 12, and 14 were on their

1 way?

2 A. It may have been somewhere between the vehicle and
3 going up the stairs.

4 Q. But before you got to the platform?

5 A. Yes.

6 Q. You testified that at no time did you push that
7 emergency button that's on your radio?

8 A. That's correct, sir.

9 Q. And if I understand your testimony, your reason for
10 not doing that was because you did not want to occupy the
11 airwaves; is that correct?

12 A. That's correct, sir.

13 Q. And you know, if life or death is at issue, what is
14 the concern with occupying the airwaves?

15 A. Well, if life or death is an issue, pushing a button
16 on my radio is not -- what is that going to provide for me?

17 Q. Well, more officers, I would think.

18 A. More officers were coming, sir.

19 Q. But would you agree that you would want as many as
20 officers as were available?

21 A. They had already put out a Code 33 by the time
22 things started to get out of hand. I had at least five
23 officers en route as well as Officer Domenici out there.

24 Q. Do you think that you could have handled that entire
25 situation with five officers?

26 A. How was I supposed to know how the situation was
27 going to unravel beforehand?

28 Q. Well, when it did unravel, okay, you didn't push the

1 button, then, did you?

2 A. No, sir.

3 Q. And the reason for that was what?

4 A. For what purpose?

5 Q. To get more officers.

6 A. I need to get control of the situation.

7 Q. And more officers would assist you.

8 A. At no time did I have time to look at my button and
9 push it.

10 Q. You don't need to look at it to push it, do you?

11 A. Or even think about pushing the button.

12 Q. Now, when Officer Grant was on the ground, you
13 described how you were holding him down. You believed that
14 the way he was moving, he wanted to escape or get away; is
15 that correct?

16 A. Yes, sir.

17 Q. And you believed that with regard to Mr. Grant,
18 something was up with him, the other individuals, they had
19 been complying, but Mr. Grant, he was different; is that
20 correct?

21 A. What is "something is up"? I don't understand.

22 Q. Well, those were your words, actually, and so I'm
23 wondering what you meant when you said --

24 A. Okay. What was the context of it being said?

25 Q. Why don't you take out Transcript No. 1?

26 A. Yes.

27 Q. Do you have that in front of you?

28 THE COURT: What's the evidence item number,

1 Mr. Stein.

2 BY MR. STEIN: Q. It says Transcript No. 1 on the
3 top.

4 A. Yes.

5 Q. You have it. And if you could please turn to Page
6 26?

7 A. I'm on Page 26, sir.

8 Q. If you could look at line number -- I think we can
9 start at Line 12, where you say, "It had been escalating to
10 the initial contact to where it was just verbal, to where he
11 was physically getting up and disobeying our orders to stay
12 seated. Um, at that point when we made contact to place him
13 under arrest in handcuffs, that's when he started to
14 violently resist."

15 "Question: Based on your training and experience,
16 what did that indicate to you?" Your answer, "Well, there
17 was a severe officer-safety issue. For some reason, this
18 guy wants to resist and/or escape; get away. I don't -- I
19 don't know what his intentions are, but something's not
20 right, something's up with this particular individual,
21 because everyone else -- the other three suspects -- were
22 willing to comply. Uh, he was the only one who kept
23 escalating the whole issue of not going with the program."

24 So my question is when you say "something's up,
25 something's up with this particular individual," what did
26 you mean?

27 A. Well, a couple of things, one he either was trying
28 to escape or maybe he was under the influence of drugs,

1 alcohol or just crazy. I don't know. It can cover a lot of
2 items or a lot of theories.

3 Q. So that's what you meant when you said something was
4 up with this guy?

5 A. Yes.

6 Q. It is your opinion, is it not, that Mr. Grant was
7 the most aggressive of the individuals who were there on the
8 platform against the wall; is that correct?

9 A. Yes, sir.

10 Q. When you were pushing him down while you were trying
11 to take him into custody, you were using your weight, and I
12 believe you said that you had one hand on his upper back and
13 the other hand on his head; is that correct?

14 A. Yes.

15 Q. And you pushed Mr. Grant's head against the platform
16 and you pushed his chest against the platform; is that
17 correct?

18 A. I pushed his back, which in turn would put his chest
19 on the platform, yes.

20 Q. And you were using your arms to do this because you
21 felt stronger using your arms than any other part of your
22 body; is that true?

23 A. More control, yes, sir.

24 Q. Now, prior to the shot going off, is it true that
25 you do not recall Mr. Mehserle ever saying anything about a
26 gun?

27 A. That's correct, sir.

28 Q. Can you tell me approximately -- well, let me put it

1 this way, the time between you heard Mr. Mehserle say the
2 words "I'm going to taze him," and the time you heard the
3 shot, was about five or six seconds; is that correct?

4 A. That would be a guesstimation, sir.

5 Q. And would you say that that's an accurate
6 guesstimation?

7 A. An accurate guesstimation?

8 Q. Well, I guess what I should say is that was what I
9 said, but would you agree with that, when I say about five
10 to six seconds, would you agree with it?

11 A. Yes, that's a good guesstimation.

12 Q. And isn't it true that after the shot, you never
13 heard Mr. Mehserle say anything, other than later at the
14 south end of the platform where he came up to you, but
15 immediately after the shot, you don't recall him ever saying
16 anything to you, correct?

17 A. No.

18 Q. And prior to the shot, Mr. Mehserle never said
19 anything to you that indicated to you that Mr. Grant had a
20 weapon other than what you've already testified to, correct?

21 A. As far as going for his waistband and those things?

22 Q. Yes.

23 A. Yes.

24 Q. And after the shot rang out, he never said anything
25 to you that indicated that he believed Mr. Grant was going
26 for a gun, other than the statement he made to you at the
27 south end of the platform?

28 A. Yes, sir.

1 Q. Is that true?

2 A. Yes.

3 Q. Now, after the shot rang out at that time, you did
4 not know whether or not Mr. Grant had a firearm on him; is
5 that true?

6 A. That's correct.

7 Q. And at some point after the shot rang out, you told
8 Mr. Mehserle to put handcuffs on Mr. Grant; is that correct?

9 A. Yes, sir.

10 Q. And after the shot rang out, you do not know whether
11 or not Oscar Grant was even pat-searched; is that correct?

12 A. That's correct, sir.

13 Q. You've testified that when you were trying to hold
14 Mr. Grant down, you were afraid of getting shot yourself,
15 correct?

16 A. After -- I think the question was posed to me, at
17 some point in time was I ever afraid of getting shot when
18 the gunshot went off, is that where this is coming from,
19 because I don't understand the question.

20 Q. Okay. Before the shot went off, you were afraid of
21 getting shot, true?

22 A. No, sir.

23 Q. You have Transcript No. 1 in front of you?

24 A. Yes, I do.

25 Q. Can you turn to Page 14 and if you could tell me
26 when you get to that page?

27 A. I'm on Page 14.

28 Q. Okay. I'll direct you to Line 14 where it says --

1 and this is you talking -- "But he clearly had his hands by
2 his waistband, and like I said, when Mehserle told me to --
3 to -- to -- he just -- he called my name. And when he
4 called my name twice, that's when he said, "Get away. I
5 popped up and -- and that's when the gun went off."

6 Detective Enriquez asked you, "Question: What were you
7 afraid of?" Your answer, "Of getting shot. I thought the
8 suspect was going for a gun, and I couldn't tell what -- uh,
9 what he was doing or what he was going for."

10 You told Detective Enriquez that you were afraid of
11 getting shot because you saw Mr. Grant putting his hands
12 toward his waistband, correct?

13 A. And then hearing the gun go off, yes.

14 Q. When you saw Mr. Mehserle holding the gun, he was
15 holding the gun in a two-handed grip type of format; is that
16 correct?

17 A. Briefly.

18 Q. Can you demonstrate for me what it is to hold a gun
19 in a two-handed form or manner?

20 A. From what I remember seeing on the platform, it was
21 like this (indicating).

22 Q. And may the record reflect that Officer Pirone has
23 stood up from his chair and has taken both of his hands in
24 front of him in front of his waist, has brought them
25 together and they are -- I think his left hand is covering
26 his right; is that correct?

27 THE COURT: The record will so reflect.

28 MR. STEIN: Thank you. Officer, you can have a

1 seat.

2 Q. Now, I'm showing on the monitor Frame No. 2466 from
3 the first Cross video. And in this video, you've testified
4 that we can clearly see Mr. Grant's hands are behind his
5 back and in a handcuffed position, true?

6 A. Yes, sir.

7 Q. And you testified that after the shot rang out, you
8 believed that there had been a Taser malfunction, correct?

9 A. Yes, sir.

10 Q. And you believed that after the shot rang out,
11 rather, you looked to the back of Mr. Grant and that you
12 were looking for probes; is that correct?

13 A. Correct.

14 Q. In the first statement that was taken from you the
15 morning of January 1st, 2009, you never told anyone that you
16 believed this to be a Taser malfunction, and that you were
17 looking for probes, true?

18 A. Correct.

19 Q. In the second, the walk-through on the 4th of
20 January when you and the other investigators and detectives
21 were on the Fruitvale platform, you never told anyone that
22 you believed that this was the result of a Taser malfunction
23 and that you were looking for probes in the back of
24 Mr. Grant; is that true?

25 A. Correct.

26 Q. On the 26th of January, when you met with members of
27 the DA's office, you never told anyone that after the shot
28 rang out, you believed it to be a Taser malfunction and that

1 you looked into Mr. Grant's back to look for probes; isn't
2 that true?

3 A. If that's what it says, then yes, it is.

4 Q. Well, you tell me. Do you have a recollection of
5 ever mentioning that?

6 A. I've given four voluntary statements, and I don't
7 remember exactly what I said in every one, sir.

8 Q. Well, I'm not asking you everything you said. I'm
9 only asking about one thing you may have said. And that one
10 thing is whether or not you told anyone that after hearing
11 the gun go off, you believed it to be a Taser malfunction,
12 and that you looked at Oscar Grant's back looking for
13 probes?

14 A. Okay. What's the question?

15 Q. Did you ever say that to anyone?

16 A. I believe I did --

17 Q. No, no. Let me ask the question so you understand
18 it. Did you say that to anyone when you spoke to the
19 members of the District Attorney's office on the 26th of
20 January?

21 A. I don't remember.

22 Q. Are you saying that it's possible you did and right
23 now you just can't recall that?

24 A. Yes, I am.

25 Q. What about the final statement that you gave on the
26 17th of March, 2009, isn't it true that never did you ever
27 mention that you believed this to be a Taser malfunction and
28 that you looked to Mr. Grant's back looking for probes;

1 isn't that true?

2 A. I don't know.

3 Q. Isn't it true Officer Pirone that you're only saying
4 that now in this courtroom for the very first time because
5 you have now learned what the defense is putting forth as
6 their defense in this case?

7 A. No, sir.

8 Q. With regard to the third -- I'm sorry, the second
9 and the third interviews, the Transcript No. 2 and the
10 Transcript No. 3, do you have those in front of you, sir?

11 A. Yes, I do.

12 Q. Why don't you take a minute to look through those
13 and tell me if you can find the area, if you did, where you
14 mentioned that you believed this to be a Taser malfunction
15 or where you told the investigator that you looked to
16 Mr. Grant's back for probes?

17 THE COURT: Let's short circuit this. Is it in the
18 transcripts, yes or no?

19 MR. STEIN: No. I'll offer the stipulation that
20 it's not.

21 THE COURT: Counsel, you both read the transcripts.
22 Mr. Rains?

23 MR. RAINS: I'm going to rely on Counsel's good
24 faith representation it's not.

25 THE COURT: All right. It's not in the transcript.

26 THE WITNESS: Thank you, Your Honor.

27 THE COURT: All right. So next question.

28 BY MR. STEIN: Q. Now after the gun went off, do

1 you recall Mr. Grant saying to you or Mr. Mehserle,
2 something to the effect of "You shot me"?

3 A. I don't remember who said that. I heard somebody
4 saying "You shot my cousin. You shot my brother." People
5 were yelling that from all sides in every direction. I
6 don't remember Mr. Grant ever saying anything after the shot
7 went off.

8 Q. Now, after the shot went off, did you ever ask
9 Mr. Mehserle why he shot him?

10 A. No, I did not.

11 Q. Weren't you curious?

12 A. My objective at that point was to administer first
13 aid.

14 Q. Did you administer --

15 A. Not to find out why the gun went off.

16 Q. Did you administer first aid?

17 A. I spoke to Mr. Grant and I tried to keep him alive.
18 I don't have the knowledge or the capabilities of taking
19 care of the second chest wound on the platform.

20 Q. You said you didn't ask Mr. Mehserle why he shot him
21 because it was your objective at that time to perform first
22 aid. My question is, did you perform first aid?

23 A. From the best I could do, yes.

24 Q. And what was the first aid that you performed?

25 A. I spoke to Mr. Grant and kept him conscious.

26 Q. What else?

27 A. And kept his attention.

28 Q. What else?

1 A. And that's it. Had him lay down.

2 Q. That's the first aid you are referring to?

3 A. That's the first aid I'm referring to.

4 Q. You never searched Mr. Grant for guns after he was
5 shot, true?

6 A. Correct.

7 Q. You never advised radio that this was an
8 officer-involved shooting, true?

9 A. Correct.

10 Q. And the reason you never did that was what?

11 A. There's no protocol, and I didn't feel the need to
12 get the other officers throughout the district that are near
13 the four counties distraught knowing that there was, another
14 officer -- or that there was an officer-involved shooting.

15 Q. Well, didn't you think it was necessary that someone
16 higher up ought to know that there has just been an officer
17 involved shooting?

18 A. Well, I think with letting them know I got a gunshot
19 victim a the platform, and asking for a supervisor within
20 the matter of seconds, it would as well suffice. There's no
21 protocol for us that I'm aware of that indicates that I need
22 to advise anyone over the radio of an officer-involved
23 shooting.

24 Q. Did you purposely not advise?

25 A. Of course not.

26 Q. Now, at some point after Mr. Grant was handcuffed,
27 the handcuffs were taken off him?

28 A. That's correct.

- 1 Q. Who gave that directive, if you know?
- 2 A. I do not know.
- 3 Q. Did you?
- 4 A. No, I did not.
- 5 Q. Now, I want to talk to you about the moment in time
- 6 Mr. Mehserle came up to you, tried to get your attention and
- 7 said the words to you, "Tony, I thought he was going for a
- 8 gun." Do you have that time frame in mind?
- 9 A. Yes, I do.
- 10 Q. You said that it was at a time when you were trying
- 11 to cue your mike, and I assume what you mean by that, you
- 12 were about to make a radio communication?
- 13 A. That's correct.
- 14 Q. And you asked him to hold on a minute. Did you go
- 15 ahead and make that radio communication?
- 16 A. Yes, I did. I requested for supervisors.
- 17 Q. And then after you made that radio communication,
- 18 you then turned to him or you gave him your attention; is
- 19 that fair to say?
- 20 A. Correct.
- 21 Q. And this was about two or three minutes after the
- 22 shot had rung out; is that correct?
- 23 A. I don't know if it was about two or three minutes,
- 24 but soon after, yes.
- 25 Q. Well, you have that second transcript in front of
- 26 you, Transcript No. 2?
- 27 A. Yes.
- 28 Q. If you could turn to Page 63, Line 2788 please. And

1 it begins, "How much time had passed between the shot and
2 the time Officer Mehserle approached you and said, 'Hey,
3 Tony, I thought he was going for a gun.'" And your answer,
4 "Oh, approximately two to three minutes."

5 My question is, does that refresh your recollection
6 about how long it took between the shot and --

7 A. Yes.

8 Q. And was it about two to three minutes?

9 A. That's what I said, yes.

10 Q. And that's because that's about how long --

11 A. Yes, I mean, why would I make something up.

12 Q. Oh, I'm not suggesting that you did. And this was
13 at the south end of the platform; is that correct?

14 A. Not far from the location, yes.

15 Q. Okay.

16 A. Essentially, I stood up for a brief minute, started
17 walking south, and as I was walking south from where we were
18 at, where Oscar Grant was on the ground, Mehserle approached
19 me as I was walking. And as I was walking I was
20 transmitting. And when I stopped walking and stopped
21 transmitting, that's when Officer Mehserle told me. So
22 approximately what location on the platform, I don't know.

23 Q. Do you know if you had reached the lead car?

24 A. There was no train on the platform.

25 Q. Okay. So the train had already left?

26 A. Yes, sir.

27 Q. Do you know if you had reached that area where the
28 lead car had been?

1 A. No, I did not.

2 Q. So you were --

3 A. Yes.

4 Q. You were north of that location?

5 A. Yes, sir.

6 Q. Now, in response to Mr. Mehserle saying this, all
7 you said was, "Okay, man," correct?

8 A. Correct.

9 Q. You didn't say anything else to him?

10 A. No, I did not.

11 Q. No, no. He didn't say anything else to you?

12 A. Not that I remember.

13 Q. Now, when you were interviewed the morning of this
14 incident, you never mentioned to the investigators about
15 this exchange that you and Mr. Mehserle had at the south end
16 of the platform; is that correct?

17 A. That's correct, sir.

18 Q. By the way, with regard to the people who were
19 detained against the wall, including Mr. Grant, did you ever
20 ask any of them if any of them were on probation or on
21 parole?

22 A. No, I did not. I didn't even know their names.

23 Q. Had everyone -- now, with regard to what your
24 objective was that evening after you got on to the platform,
25 you began to investigate the fight, you made decisions to
26 arrest certain individuals, did you have any plans or
27 intention to run any of these people for warrants?

28 A. I'm not sure I understand your question. Are you

1 asking me at the beginning of the contact or if everything
2 had gone smoothly?

3 Q. Yeah.

4 A. So you are saying, in a perfect world if everyone
5 cooperated, what would I have done?

6 Q. Yes.

7 A. Is sent them home.

8 Q. Is send them home?

9 A. Yes, not even ask them for their name.

10 Q. Not even ask for their name?

11 A. No, not on New Year's Eve at 2:00 a.m. in the
12 morning. I think I said that to the DA's office when one of
13 the inspectors asked me that question.

14 Q. And I think you told them that had everyone,
15 quote-unquote, "gone with the program," you would not had
16 even run of any of them for warrants?

17 A. That's correct, sir. I already had somebody in the
18 back of my patrol unit that were going to go to jail from a
19 previous 242 right before this call came out. I didn't have
20 time to be running people out for nothing.

21 Q. In the clip that I played yesterday where you were
22 forcing Mr. Grant to the ground, and you identified, I
23 believe, your own voice saying words to the effect of "sit
24 the fuck down," do you remember that part of your testimony?

25 A. Yes, I do.

26 Q. When you told Oscar Grant to put his hands behind
27 his back and to stop resisting, you were yelling at that
28 time, were you not?

1 A. I believe so, yes.

2 Q. And you were yelling at him to put his hands behind
3 his back while Mr. Mehserle was trying to get his hands; is
4 that correct?

5 A. Yes, sir.

6 Q. And Mr. Mehserle was also yelling at Mr. Grant to
7 get his hands behind his back; isn't that true?

8 A. Yes.

9 Q. Now, I want to show you a clip of this video, and
10 I'm starting at Frame 1808, and I'd like, if you could,
11 please, tell me if you can hear your voice yelling at
12 Mr. Grant to put his hands behind his back the way you were
13 able to hear your voice saying "sit the fuck down." And for
14 the record, this is starting at Frame 1808.

15 (Video playing)

16 Q. Okay. In this frame, you can see you are just about
17 to kneel down and take hold of Mr. Grant. So I'm going to
18 play it now, and I'd like if you could listen to see if you
19 can hear yourself or Mr. Mehserle, for that matter, shouting
20 the words or yelling "get your hands behind your back, and
21 stop resisting," okay?

22 A. Yes, sir.

23 Q. Okay. I stopped it at frame 2404.

24 During that short clip, Officer Pirone, did you ever
25 hear yourself saying or yelling "Put your hands behind your
26 back. Stop resisting"?

27 A. No, sir.

28 Q. In that clip, did you ever hear Mr. Mehserle

1 shouting or yelling the words "Put your hands behind your
2 back. Stop resisting"?

3 A. No, sir.

4 Q. Now, you told us yesterday that while you were on
5 the platform, at times you used profanity, correct?

6 A. Yes, sir.

7 Q. What about racial slurs? Did you use racial slurs?

8 A. No, sir.

9 Q. You are sure of that?

10 A. Yes, sir.

11 Q. Isn't it true that just before Mr. Grant was thrown
12 to the ground and shot in the back, you yelled in his face
13 the words "bitch ass nigger, bitch ass nigger"?

14 A. I don't recall ever saying anything like that.

15 Q. Well, if you did say it, is there any doubt in your
16 mind that as you sit there now, you'd remember?

17 A. Well, if I did say it, it was in a context of I
18 can't believe you just called me a bitch ass nigger.

19 Q. Explain to me what you mean.

20 A. Well, if he's calling me those names, which I find
21 odd that someone would talk to a police officer like that, I
22 would refer to it, in fact, ask him, "You are calling me a
23 bitch ass nigger?"

24 Q. You would say that?

25 A. If I'm asking the question, yes. Yes, sir.

26 Q. Do you remember saying those words not in the form
27 of a question?

28 A. No, sir.

1 Q. Would you ever conceive of any scenario where you
2 would be saying those words in the face of Oscar Grant not
3 in the form of a question?

4 A. No, sir.

5 Q. Now is it your testimony that as you sit there now,
6 you don't have an independent recollection of ever saying
7 those words in the face of Oscar Grant?

8 A. No.

9 Q. That is your testimony?

10 A. Yes, it is my testimony.

11 Q. Now, I'm going to play a clip here, and for the
12 record, I'm starting at Frame 1520. And I want you to
13 listen for your voice saying the words, "Bitch ass nigger,
14 right? Bitch ass nigger, right?" And then you end with
15 saying, "Yeah," at the time Mr. Grant is thrown to the
16 ground. And I'd like for you to cue on a person who's on
17 the train who asks a question, "Really?" After you hear
18 that person saying, "Really," that's when I want you to
19 listen for your voice. Are we clear?

20 A. No. I understand where you're saying that I said
21 that to Oscar Grant, but then someone on the train is asking
22 me a question, and I'm responding to them on the train?

23 Q. No.

24 A. That's where my confusion is.

25 THE COURT: Here is what I'm going to do so you can
26 clear it. I have my reporter here who volunteered to do
27 this while my reporter is upstairs reading the read back to
28 my jury, we're going to give her a 15 minute break, or I

1 won't have a reporter.

2 MR. STEIN: Thank you, Your Honor.

3 (Recess taken)

4 THE COURT: All right. Mr. Stein?

5 MR. STEIN: Thank you, Your Honor.

6 Q. Officer Pirone, again, I want you to listen to this
7 video clip I'm about to play, and I want to know if you can
8 hear yourself saying the following: "Bitch ass nigger,
9 right? Bitch ass nigger, right?" And when Mr. Grant goes
10 to the platform, you step back and say, "Yeah." Are we
11 clear on that?

12 A. Yes, sir.

13 Q. And again, your cue for when to listen for it is
14 when you hear a person on the train say the word "Really?"
15 Okay?

16 A. Understood.

17 (Video playing)

18 MR. STEIN: And I stopped it now at 1807.

19 Q. Did you hear your voice or you saying the words
20 "Bitch Ass nigger, right? Bitch ass nigger, right?" And
21 then you step back and say, "Yeah."

22 A. I heard some of the words, but not all of the words
23 that you're saying that I said.

24 Q. Let me play it again.

25 What words did you hear first of all?

26 A. "Bitch." Sorry.

27 Q. Okay. So you can hear you saying the word "bitch"
28 to and in the face of Mr. Grant, but you can't hear what's

1 being said after you say the word "bitch"?

2 A. Yes, sir.

3 Q. How many times did you hear yourself say the word
4 "bitch"?

5 A. I don't remember.

6 Q. And why did you shout the word "bitch" in the face
7 of Mr. Grant?

8 A. Again, I'm assuming -- I'm repeating the fact that
9 that's what he called me, and I was in shock that he called
10 me that.

11 Q. Again, listen for the cue when the person says
12 "Really?"

13 (Video playing)

14 BY MR. STEIN: Q. Were you able to hear it better
15 that time?

16 A. I can't definitively say that that's exactly what I
17 said.

18 Q. Do you hear yourself saying the words "bitch ass"?

19 A. Yes, sir.

20 Q. So you said the words "bitch ass" twice, correct?

21 A. Yes, sir.

22 Q. But you can't tell me for sure whether or not the
23 third word in that sequence was "nigger," correct?

24 A. That's correct, sir.

25 Q. Is there some reason why -- is it distorted in your
26 mind when you listen for the third word as opposed to the
27 first two?

28 A. There's a lot of background noise, sir.

1 Q. But the background noise does not prevent you from
2 hearing the first two words, I'm just wondering why it is
3 you can't hear the third?

4 A. That's correct. I don't know why.

5 Q. You don't know why. And you are not asking him a
6 question when you are using those words, are you?

7 A. It sounds like it to me.

8 Q. And what is the answer to the question that you are
9 looking for?

10 A. I don't know. Again, I'm asking him -- I can't
11 believe he must have called me that. I don't know why I
12 would say something like that, that's not language I
13 normally use.

14 Q. But you do not deny that you used it?

15 A. I heard "bitch ass" yes, twice.

16 Q. And those words were coming from your voice?

17 A. It sounded like it.

18 Q. And when you step back and Mr. Grant goes to the
19 ground, you say, "Yeah." Did you hear yourself say that?

20 A. No, I did not.

21 Q. Let me play it again.

22 A. Okay.

23 Q. So it's after you say "Bitch ass nigger, right?
24 Bitch ass nigger, right? Yeah." That's when it comes in
25 the sequence, so I want to know if you can hear yourself
26 saying that. Starting again at 1808 -- excuse me, 1520.

27 (Video playing)

28 Q. I've stopped it now at 1845. When I played it that

1 time, did you hear yourself say "Yeah," as you stepped back
2 and Mr. Grant went to your feet?

3 A. I hear somebody saying "Yeah," but I wouldn't say
4 that it was me. I couldn't be sure that it was me.

5 Q. So you hear a voice saying "Yeah," would you agree
6 that that voice sounds very much like your voice?

7 A. Well, then I would be saying that I said it, so I
8 can't definitively say that that word came out of my mouth.
9 It doesn't sound like me saying it. Somebody is saying it.

10 Q. As you sit there now, do you ever recall saying the
11 word "Yeah," when Mr. Grant went to the ground?

12 A. No, this is the first time I heard it or seen this.

13 Q. This is the first time you've heard this video?

14 A. Yes, it is.

15 Q. Let me show you the Vargas video, second of two, the
16 same area, and see if we can ask you a few questions about
17 it. And I'm going to start at Frame 3968. Can you see the
18 monitor without the glare, sir?

19 A. Yes, sir.

20 Q. Starting at 3968, here on the left hand side of the
21 image as you looking at it is Officer Domenici, true?

22 A. Yes, sir.

23 Q. To the right, the next officer as you are looking at
24 the officer, is you, correct?

25 A. Yes, sir.

26 Q. To your right as you are looking at the image is
27 Officer Guerra?

28 A. Yes, sir.

1 Q. And then Officer Mehserle to his right?
2 A. Yes.
3 Q. And then Officer Woffinden?
4 A. Yes, sir.
5 Q. Now, I want you to focus on yourself, and as I
6 scroll through here, it appears that you are looking down at
7 Mr. Grant and you are pointing at him and then pointing at
8 yourself. And I want to know what it is, if you remember,
9 you're saying at this particular time? And I'm going to
10 scroll forward frame by frame. See here?
11 A. Yes, sir.
12 Q. See how you are pointing at him?
13 A. Yes.
14 Q. And you point back to yourself, and you lean into
15 him, and you appear to be shouting in his face. Do you know
16 what you were saying there, sir?
17 A. No, sir.
18 Q. You don't remember?
19 A. No, sir.
20 Q. But you were shouting something?
21 A. It appears that I was, yes, sir.
22 Q. And in the other video, before you hear yourself
23 saying "Bitch ass, bitch ass," did you hear yourself saying
24 anything to the effect of "You don't know nothin' "?
25 A. I didn't hear that, sir.
26 Q. You didn't hear that?
27 A. No, I was just listening for what you asked me to
28 listen for.

1 Q. Okay. Let's stay with this, going now to Frame
2 4359. In Frame 4359, we see you -- again, just for clarity,
3 as you are looking at this frame, the person to the left,
4 the officers is Officer Domenici, the officer who was facing
5 the camera is Officer Woffinden. You appear to be looking
6 down in the direction of Mr. Grant. You can see the right
7 side of your face. Officer Mehserle is bent over, and
8 appears to be putting Mr. Bryson in handcuffs or assisting
9 in that regard. Is that fair?

10 A. Yes, sir.

11 Q. Now I want you to focus on the right side of your
12 face there as I move forward. I'm going to play this and
13 again I'm going to ask if you hear yourself saying the words
14 "Bitch ass nigger, right? Bitch ass nigger, right? Yeah."
15 Okay?

16 A. Yes, sir.

17 (Video playing)

18 BY MR. STEIN: Q. Did you hear it that time?

19 A. I couldn't definitively say that that's what I
20 heard.

21 Q. Did you hear yourself saying the words "Bitch ass"?

22 A. No, sir.

23 Q. Did you hear yourself saying the word "Yeah," when
24 Mr. Grant came down in front of you?

25 A. No, sir.

26 THE COURT: Mr. Stein, you need to move on.

27 MR. STEIN: I'm sorry?

28 THE COURT: You need to move on.

1 BY MR. STEIN: Q. Now, you testified that
2 oftentimes you use profanity to gain compliance, correct?

3 A. Yes, sir.

4 Q. Is it fair to say that you were shouting the words
5 "Bitch ass nigger. Bitch ass nigger," to gain compliance?

6 A. No.

7 MR. RAINS: Objection, relevance.

8 THE COURT: Sustained.

9 BY MR. STEIN: Q. Can you think or conceive of any
10 set of circumstances where it would be appropriate for you
11 to shout the words "Bitch ass nigger" in the face of a
12 person who's being detained?

13 MR. RAINS: Objection, relevance.

14 THE COURT: Sustained.

15 BY MR. STEIN: Q. Officer Pirone, when you were
16 using those words in the face of Mr. Grant, would you agree
17 that you had lost all self-control?

18 A. No, sir.

19 MR. RAINS: Objection, argumentative and assumes
20 facts not in evidence.

21 THE COURT: Overruled. He's answered, so next
22 question.

23 BY MR. STEIN: Q. Would you agree that when you
24 step back and in a sign of approval of what was happening to
25 Mr. Grant, you said the words "Yeah," that you had lost all
26 self-control?

27 A. I still have not determined the fact that I said
28 "yeah," sir.

1 Q. If you had said that, you would agree that you would
2 have lost all self-control, true?

3 A. No, sir.

4 MR. RAINS: Objection, argumentative.

5 THE COURT: Overruled.

6 MR. STEIN: I'm sorry?

7 THE COURT: He said, "No, sir." Objection was
8 overruled.

9 BY MR. STEIN: Q. Now, going back to the Cross
10 video, when you and Mr. Mehserle took Mr. Grant to the
11 ground starting at Frame 1831 -- can you see that frame,
12 1831 from where you are, sir?

13 A. Yes.

14 Q. You may need to step down. If you do, let me know.
15 This is about the time when Mr. Grant is being taken to the
16 platform, right?

17 A. Yes, sir.

18 Q. Okay. When he was taken to the platform, he was
19 thrown across the left leg of Carlos Reyes, was he not?

20 A. I don't know, sir.

21 Q. You don't have an independent recollection of that?

22 A. No, sir.

23 Q. Okay. Do you see Mr. Reyes's right leg here is the
24 sole of his right foot -- and if you need to step down,
25 please do.

26 A. I see pant leg. I don't know which leg it is.

27 Q. Why don't you come down. Can you tell whose pant
28 leg that is, when you come down?

1 A. Whoever that is against the wall.

2 Q. Okay. Let's assume for the sake of argument that
3 that's Mr. Reyes, okay. And if that's his right leg, does
4 that appear to be his left foot or the sole of his left
5 foot?

6 A. I would be guessing, but yes.

7 Q. Okay. And Mr. Grant appears to be in between the
8 sole of his right foot and the sole of his left foot, true?

9 A. I can't make out what that is.

10 Q. You can't tell if that's Mr. Grant or not?

11 A. I can't even see the difference between my leg and
12 his shirt.

13 Q. Can you see any part of Mr. Grant in this image?

14 A. Yes, I see his head.

15 Q. And is his head located somewhere between
16 Mr. Reyes's right foot and his left foot?

17 A. It's in between the two legs it appears.

18 Q. Okay. Okay. And I'm going to have you sit down in
19 just a second. I don't want to have you going up and down,
20 so hang on just a second. Now I'm going to roll this photo
21 and see if you can tell me whether or not you are trying to
22 lift Mr. Grant off of Mr. Reyes's left leg, okay?

23 A. Yes, sir.

24 Q. Now, do you see yourself here in Frame 2115 reaching
25 down and lifting up Mr. Grant?

26 A. Well, I can't see what my hands are doing. I see
27 that I'm bent over. What I'm doing, I can't see.

28 Q. As I'm scrolling forward, does this refresh your

1 memory as to what you're doing? You appear to be
2 repositioning Mr. Grant, would that be fair to say?

3 A. Sure.

4 Q. And you seem to be repositioning him to the right as
5 we're looking at the image, true?

6 A. Yes.

7 Q. Now, Mr. Reyes appears to have his hands out. Do
8 you remember him shouting anything at you at this time?

9 A. No, I do not.

10 Q. Now, again, you are reaching down and you move your
11 baton, and you are repositioning yourself; is that correct?

12 A. Yes.

13 Q. Now, I've stopped at Frame No. 2419. If I could
14 just have just a second.

15 Now, when Mr. Reyes had his arms out there on his
16 side, you don't recall whether or not he was saying
17 anything; is that correct?

18 A. That's correct, sir.

19 Q. I'm going to start now at Frame 1763, and I want you
20 to listen to see if this refreshes your recollection as to
21 whether or not he was saying anything. Now, again, for
22 purposes of giving you a cue, you'll first see Mr. Reyes
23 with his hands up by his side against the back of the wall.
24 And when I want you to listen specifically for is when his
25 hands come out in front of him in the direction of his left
26 leg like this, okay. When he's doing this, see if you can
27 hear what he's saying at that time. Are you clear?

28 A. Yes, sir.

1 Q. Okay. I'm going to go ahead.

2 (Video playing)

3 BY MR. STEIN: Q. Were you able to hear that clip?

4 A. I heard noise. I couldn't make out what anybody is
5 saying, other than whoever was next to the camera.

6 Q. You never heard Mr. Reyes saying "My leg, my leg,
7 Bro. Look at my leg."

8 A. No.

9 Q. Okay. You can have a seat now. Do you ever
10 remember reaching down and removing Mr. Reyes's leg from
11 underneath Mr. Grant?

12 A. No, sir.

13 Q. Did you ever do that?

14 A. I don't know, sir.

15 Q. Is it possible you did?

16 A. I don't know.

17 Q. Is it fair to say that since you don't know, that it
18 could be within the realm of possibility?

19 A. I don't know.

20 THE COURT: Let's move on. He doesn't know. All
21 right, next question.

22 BY MR. STEIN: Q. Look at Frame 2419, which I'm
23 showing, do you see your left hand is on the head of Mr,
24 grant correct

25 A. Yes, sir.

26 Q. Do you see your right hand?

27 A. Yes, sir.

28 Q. Do you know what it is on in this frame?

1 A. No, I do not, sir.

2 Q. I'm going to scroll forward hear frame by frame. Do
3 you see Mr. Reyes's left leg come out and he brings it
4 underneath him? Do you see that?

5 A. Yes, sir.

6 Q. I'm going to back here. You see it, it's
7 underneath. It's out in front of him and now it's tucked
8 under him. Do you see that?

9 A. Yes, sir.

10 Q. Do you remember ever lifting up Mr. Grant to allow
11 Mr. Reyes to take his leg out from underneath Mr. Grant?

12 A. No, sir.

13 Q. Do you ever remember taking Mr. Reyes's leg out from
14 underneath Mr. Grant?

15 A. No, sir.

16 Q. Isn't it true, sir, that when Mr. Reyes's leg was
17 removed from underneath Mr. Grant, that then Mr. Grant was
18 able to get his hands behind his back; isn't that true?

19 A. No, sir.

20 Q. Would you agree, Officer Pirone, that by you and
21 Officer Mehserle pushing Mr. Grant onto the platform over
22 the legs of Mr. Reyes, that you had botched this arrest?

23 MR. RAINS: That assumes facts not in evidence and
24 it's argumentative.

25 THE COURT: Sustained. It is.

26 BY MR. STEIN: Q. Well, would you agree that
27 when -- you said Officer Mehserle pushed him to the ground
28 correct? Isn't that your former testimony?

1 A. Yes, sir.

2 Q. And when he did so, when he pushed him over the legs
3 of Mr. Reyes, that was a less-than-ideal situation for you;
4 is that correct?

5 A. Yes, sir. I didn't see the push over the legs.

6 Q. But you see it now?

7 A. Yeah.

8 MR. RAINS: That misstates his testimony.

9 THE COURT: It does. Sustained.

10 BY MR. STEIN: Q. You know, did you see any need to
11 push Mr. Grant to the platform?

12 Did you hear me?

13 A. Yes. At what point in time, sir?

14 Q. At the point he was pushed to the platform?

15 A. Yes.

16 Q. You saw a need for that?

17 A. He needed to be handcuffed, sir.

18 Q. Oh, I understand he needed to be handcuffed. But my
19 question is did he need to be thrown face first down onto
20 the platform surface?

21 MR. RAINS: Assumes facts not in evidence.

22 THE COURT: Sustained. It's argumentative. It can
23 speak for itself. Ask another question.

24 BY MR. STEIN: Q. You see, this is Frame No. 1630?
25 See Mr. Bryson here?

26 A. Yes, sir.

27 Q. He's being placed in handcuffs on his knees?

28 A. Yes, sir.

1 Q. Could have placed Mr. Grant into custody the same
2 way Mr. Bryson was placed into custody, couldn't you?

3 MR. RAINS: Calls for speculation.

4 THE COURT: Sustained.

5 BY MR. STEIN: Q. Now, isn't it true, Officer
6 Pirone, that the problem of handcuffing Mr. Grant had more
7 to do with the manner in which he was brought down to the
8 platform surface than it did with any resistance that you
9 may have perceived?

10 MR. RAINS: That calls for speculation.

11 THE COURT: Sustained.

12 BY MR. STEIN: Q. Did you and Officer Mehserle plan
13 to put him over the legs of Mr. Reyes? Was that
14 intentional?

15 A. No, sir.

16 Q. You had intended to put him onto the platform
17 surface, correct?

18 MR. RAINS: That misstates his testimony.

19 THE COURT: Overruled.

20 THE WITNESS: The question again, sir?

21 BY MR. STEIN: Q. You had intended on putting him
22 onto the platform surface as opposed to across the legs of
23 Mr. Reyes, correct?

24 A. Yes, sir.

25 Q. And when you say you were surprised when the gunshot
26 went off, you were surprised because you believed that once
27 Mr. Reyes was able to get his foot out from underneath
28 Mr. Grant, that the problem would have been solved; isn't