

Justice for Oscar Grant III:
The People vs. Johannes Mehserle Preliminary Hearing
Notes from Day 2 Inside the Courtroom

The second day of the preliminary hearings in the trial of Johannes Mehserle continued today, May 19th with the prosecution, led by David Stein, calling three more witnesses to the murder of Oscar Grant III on January 1, 2009. The defense team, led by Michael Rains, again tried to disprove what the video evidence showed happened that night. He also tried repeatedly to get witnesses to give contradictory statements but had no success. The witnesses, in the same manner as the previous day, were clear, level-headed and articulate about what they saw and each of their stories was supported by the others' testimony and the video evidence that was shown in court. The prosecution rested today and the defense will be presenting tomorrow.

The first witness, Tommy Cross, an African American college student who was on the train that night with a couple of friends took what has been described as the clearest video footage of the murder. After disembarking at Bay Fair station Cross was viewing the video with his friends and trying to figure out what exactly had happened when their group was approached by a BART police officer. The officer saw a group of young men of color around a video camera and invited himself into their group. When he looked over their shoulders and saw that they had footage of what had happened at Fruitvale he immediately asked them to come to their office. The Lieutenant had been radioed from Fruitvale about what had happened and were on the look out for anyone who had taken video at the station. Cross was invited back to the BART police office where his camera was confiscated and the memory chip removed. When asked why he gave up his camera and memory card Cross replied that he was "fearful" and was worried that he did not want the same thing to happen to him that had happened to Oscar. The BART police only handed over the video footage to the DA's office after it was subpoenaed in April. The video and witness testimony showed Mehserle pulling his weapon, stepping back, grasping it with both hands and firing it at a completely cooperative Oscar Grant on the ground. Cross also reiterated the same details that had come up in previous testimony that Officer Pirone and Officer Dominic were acting very

aggressively and used unnecessary force repeatedly. The most incredible part of Cross' testimony was when he teared up describing the trauma he experienced when visiting Fruitvale BART in subsequent weeks. He explained he was unable to go to the Fruitvale platform for weeks after the murder and would hyperventilate and had to close his eyes when passing through the station on his way home from San Francisco to San Leandro.

The second prosecution witness, Lui Tong, also included video footage he had captured to the courtroom. When asked why he started videotaping he explained that he always carried his camera with him and when things began unfolding on the BART platform he knew what was happening was "unusual and interesting" so he began filming. This is consistent with what the witnesses said yesterday about why they were able to capture the murder on tape. Tong came across very articulate and precise in his answers even when questioned by Rains who tried to get him to contradict his story.

The third prosecution witness was a sixteen year old who was one of the many friends who was with Oscar Grant III the night he was murdered. Though he was young and had never appeared as a witness before he was clear and did not appear intimidated by Rains and his personal questions. He was straight-forward in his testimony and decisive in his thoughts and what he knew and had seen. It was clear he was telling the truth. The witness also took video footage of what happened. Because he was a close friend of Oscar's who was traveling with him that evening he was particularly harassed by Rains on cross-examination. He was able to add more details about what led up to the police pulling everyone off the train. The youth were pulled off unfairly and though the defense tried to get him to admit that there was a fight on BART prior to them being removed from the train he admitted only that there was a small struggle but it did not warrant any police action and was not occurring at the time the train had pulled into Fruitvale. Rains also asked about the audio on the video that had the young man using the N word. Rains asked pointedly why he was using racial slurs and he answered that he was using a common slang term used by his friends and this is supported by the fact that there were no Black officers on the platform that night. Rains also tried to cast doubt on Oscar and the witness' character by asking about gang colors and what his clothing represented that night. The witness handled this line of questioning well and clearly showed in the video the variety of clothing worn by the youth on the platform and that

none of them were gang-affiliated. Rains additionally tried to assassinate Oscar's reputation by asking the witness if he had seen Oscar drinking that night. The witness calmly replied that he "was not Oscar's shadow" and did not follow him around the entire night but was sure he did not have more than one beer. Rains also asked the witness if he was being represented by John Burris and why during his interview he was with Jack Bryson, the father of two of the young men on the platform that night. He calmly answered that Bryson was his uncle and is "supposed to stick with me." Again the truth prevailed and the video and candor of the witness testimony proved that there was no reason that Oscar was shot and no reason the youth were pulled off the train in the first place.

The prosecution rested today and presented enough evidence that the charge of murder should stand as the trial proceeds. The defense will begin their smear campaign tomorrow and try to break down the mountain of evidence provided by the prosecution. There will be no trial Thursday or Friday of this week and defense arguments will resume on Tuesday after the Memorial Day holiday.

Submitted by: Dana Blanchard