

Justice for Oscar Grant III:
The People vs. Johannes Mehserle Preliminary Hearing
Notes from Day 3 Inside the Courtroom

The preliminary hearing continued today with the defense attorney Michael Rains presenting his first witness to try to prove that Johannes Mehserle should not be charged with murder in the killing of Oscar Grant III. Rains started out saying that this wasn't a murder and that it wasn't intentional before he called his first witness. In theory the purpose of a preliminary hearing is to establish that a crime was committed not how it actually happened. The first witness for the defense was a man named Dennis Zoroto. Zoroto testified that he had seen a scuffle on Bart and that it was a large group of young Black males and someone else, then he later stated it was a fight and that it was between a black male and a white male. He said that he got on a Richmond train and then transferred to a Dublin train and that he sat on the first car. The fact he was on the first car is very crucial because all of the witnesses from Day 1 and 2 who had taken video were actually on the third or fourth car of the train. It became clear Zoroto couldn't provide the best account of what happened since he said that he couldn't see because of the train being too crowded. Zoroto was also the one who alerted the BART authorities that there was some sort of problem on the train. Rains then tried to establish that Oscar was the one who was fighting on BART. Assistant District Attorney David Stein said that none of the defense witnesses had anything to do with this case and didn't want to try the case, he just wanted to make it clear that a crime was committed, and that the crime was murder. However, Judge C. Don Clay wanted to hear if the testimony was relevant. It also became clear on Stein's cross-examination that when BART investigators spoke to Zoroto and his wife on the phone two days after the murder that she gave a very different statement which cast a doubt on Zoroto's credibility as a witness.

The second defense witness was David Horowich. He was the person who was alleged to have had a fight with Oscar on the train that night. Horowich was on BART with his two sons and Horowich knew Oscar from county jail and he and Oscar were good friends. Rains asked if he had seen Oscar at the Fireworks show and he said that he had. When asked what Oscar did when he saw him Horowich stated Oscar gave him two

fingers and when Rains asked what did those two fingers mean he answered the two fingers were the peace sign. The courtroom then burst out laughing because Rains had been trying to make it out to be a gang sign of some kind.

The third defense witness was a woman name Alike Rogers. She wasn't any more effective than the first two witnesses. She testified that she boarded the train at Civic Center and that nothing happened on the train she was on. Rains purpose for calling her was to establish that the train got chaotic at one point but then settled down. She was seated by a door on the second train and attributed some of the supposed "chaos" to it being New Year's Eve. Her testimony was that she noticed the BART police acting aggressively at Fruitvale and that everyone was hysterical when the BART police kneed Oscar in the face. She said that Officer Pirone was the one acting aggressively and that she had told all this to the BART investigators who she spoke to the next day. She also testified that Mehserle was the one who she had seen shoot Oscar in the back and that she witnessed Officer Pirone hit someone in the face and that he pulled people off in a very aggressive manner. She also happens to be a paramedic and she was the one who called BART about what she had witnessed. She said that after seeing officer Mehserle shoot Oscar and before the train pulled off nobody responded to Oscar in a medically correct manner.

As is standard practice in a case against the police the defense called as a witness another BART police officer, John Woffinden. Woffinden began his testimony by talking about what a "busy, chaotic" night it was on New Year's Eve, as if to make some excuses for the officers behavior on the platform that night. He spoke about an incident at the West Oakland BART station and was quickly silenced by Judge C. Don Clay when he tried to elaborate more on this completely unrelated event. The defense clearly wanted to make links between what allegedly happened at West Oakland and the reason why the officers took the young men off the train in Fruitvale. When he got a call to go to Fruitvale, Woffinden said his "adrenaline was pumping" and that he heard yelling and commotion over the radio.

The scene that Woffinden paints at the Fruitvale BART station is very different than the one that everyone saw on video in the previous days of the trial. Woffinden said he saw Officers Pirone, Dominici and Mehserle with some young men on the ground and

against the wall. This part is accurate and true to the video footage. What he left out was that Pirone was physically assaulting one of the young men and that there were not “two groups” of citizens on the platform but rather two groups: one of citizens and one made up of cops. The people the train who were not the people being directly harassed were screaming and yelling at the officers. Woffinden testified that the crowd on the trains and the young men were yelling loud expletives and he tried to get them to obey but “to no avail” so he got out his baton and began advancing on them. Two additional officers then arrived and a couple of minutes after that Mehserle had shot Oscar Grant. The footage on the video clearly shows that the young men were not resisting arrest and were in fact cooperating with everything they were being told to do. Woffinden’s version of events simply does not fit with the video. Woffinden had his back to Mehserle when Oscar was shot and he testified to still “dealing with the crowd” when he heard the gunshot. He said people threw paper and a cell phone at him from part of the group. When he says “the group” one can only assume he is referring to the group of people on the train because all of the young men against the wall had their hands in plain sight.

Woffinden then finished his defense testimony by stating that after Oscar was shot he was “very, very” afraid for his own safety, the officers were extremely outnumbered and he had called for backup. At no point did he discuss why no one called for an ambulance and he tried to make it seem like the situation was completely out of control when the only out of control people were the officers who were armed to the teeth and had just killed an innocent young man.

The Assistant District Attorney, David Stein, was then allowed to cross-examine Woffinden. He asked about the noise that Woffinden heard and Woffinden said it sounded loud, like a taser and that afterwards Mehserle looked flushed and sweaty but did not say anything. Stein then asked about the report that was written about the incident and Woffinden said he wrote it later that morning but could not recall if he had spoken to any of the other officers who had been there that night before writing the report. It was also noted that Woffinden had his own attorney present in court but he declined to state why he felt he needed one in the first place. Stein then pressed on the issue of the scene when Woffinden arrived at Fruitvale. He asked Woffinden why his adrenaline was pumped and he admitted it was due to earlier radio calls involving potential situations

with guns and not with what was actually happening at Fruitvale. Stein clarified that the “crowd” Woffinden mention in his first testimony was actually a group of four or five people but Woffinden insisted that they had “clenched fists” and were advancing on him though none of this is evident in any of the videos. The worst violence against him was eventually exposed as people throwing cell phones and shouting rude things. Woffinden then pretended that when he heard the gunshot he did not realize who had been shot or if it had even been a shot or a taser sound despite the fact that blood was coming out of Oscar’s mouth. He then said that he saw many people filming and then he took out his baton and raised it like bat telling someone he would hit them if they did not get back. He went on to talk about how this incident was the scariest incident he had ever been involved in, yet at no point in the evening had he pressed his emergency button. He even went so far as to say that he could have used twenty to thirty more officers on the scene to control the crowd.

After Woffinden finished his testimony it was clear that his version of events in no way matches the video evidence presented in court. Even his own behavior in the situation does not fit the assessment that this was a highly volatile scene. The defense is trying to make it seem like the use of force that night was somehow justified and that the cops were terrified and feared for their safety. This is disputed by the videos which show all the violence and frightening behavior coming from the cops and absolutely nothing being done to deescalate the situation, instead an “adrenaline pumped” group of officers openly terrorizing and murdering innocent young men on the platform. The very fact that Woffinden had his own lawyer in the courtroom is proof that he knows, and everyone else knows, there is no way to justify the actions of the BART police that night.

Though the defense tried to demonstrate something other than murder they were completely derailed **and the main reason for this is that** the murder was caught on video by at least five people and these videos, no matter the angle, point to cold blooded murder.

Submitted by: Dana Blanchard