

Justice for Oscar Grant III:
The People vs. Johannes Mehserle Preliminary Hearing
Notes from Day 1 Inside the Courtroom

Today at 8:30 AM the trial of former BART police officer Johannes Mehserle for the murder of Oscar Grant III on January 1st of this year began with preliminary hearings. The people of Alameda County and the Grant family were represented in court as the prosecution was led by Assistant District Attorney David Stein. On the other side of the courtroom were Mehserle and his defense team led by Michael Rains, an attorney frequently used by police officers standing trial in the Bay Area. Family members of Oscar Grant and his supporters were allowed only twenty-seven seats in the courtroom and press who had drawn names in a lottery in order to attend occupied several of those seats. There was no closed-circuit viewing room available for those waiting in the hallways that were turned away due to the lack of space. Many folks had lined up as early as 6:30 AM in order to get a spot in the courtroom. Those in attendance to support Oscar and his family wore shirts emblazoned with his picture and the words “Gone but not forgotten” on the back. Upon entering the courtroom we were told we could not leave at any time and we had to be silent.

Michael Rains presented his first motion to Judge C. Don Clay asking that the district attorney be removed from the case for allegedly violating Mehserle’s 6th amendment rights by having officers question him after his arrest in Nevada on January 12th. Rains was able to recite some of the information in the brief even though he was told only to present new information. Rains also at one point referenced the public pressure around the case and asked the judge to “not succumb to the mobs outside.” Judge Clay tried to keep Rains in line by stating that his courtroom would be a “forum of law” and the motion was quickly dismissed. The prosecution was then allowed to begin calling witnesses to present their case for why Mehserle should be charged with murder.

The prosecution called four witnesses: two eyewitnesses from the BART platform who had taken video footage of the murder and the events surrounding it and also the forensic pathologist who examined Oscar’s body and the video expert from the county DA’s office. The first eyewitness to take the stand was Karina Vargas who was on the

BART train on January 1st and took video of what happened that night. She started off by recounting that BART Officer Tony Pirone forced his way onto the train car in front of her and yelled “You get the f***k off the car” to several young men who were doing nothing that warranted them being removed from the train. Her testimony went on to emphasize that the young men who were with Oscar that night as well as Oscar himself were completely cooperative with the officers and that the reason she had begun filming was that it appeared that the officers were being violent towards the young men for no reason. Karina Vargas’ footage did not show the actual murder but the loud gunshot was caught on tape and she also captured the stunned reactions of the crowd of witnesses who were clearly horrified by what had happened. On the defense’s cross-examination Rains tried to get Vargas to say Mehserle was not acting aggressively prior to when Oscar was pinned to the ground and that he seemed “dumbstruck” after the shooting. Clearly the defense will try to make out Mehserle’s actions as somehow accidental and that Officer Pirone was the real instigator of the violence that night. The video footage demonstrates completely that Oscar Grant III was totally non-violent and cooperative through the entire incident and that he was murdered for no reason. This begs the question, though, of why has Tony Pirone not been charged in this crime since the video evidence shows he was in the middle of the whole thing and at one point even has his knee on Oscar’s neck.

The second prosecution witness was the forensic pathologist, Dr. Thomas Rogers, who established that after examining Oscar’s body he died of a gunshot wound to the torso. He pointed out the angles at which the bullet entered and traveled through Oscar’s body and the defense on cross-examination tried to get him to testify about where the gun was held and the position of Oscar’s body using the angles he had outlined. Dr. Rogers said he was unable to determine that and basically exposed the defense strategy for what it was: a desperate measure to try to implicate Oscar and say he was leaning back and trying to rise up at the time he was shot. The defense also pushed on the issue of blunt force trauma and whether or not there was visible evidence that Oscar was hit before he was shot. Dr. Rogers said he found no visible evidence of trauma but that did not mean that it did not happen. Rains also tried to insinuate that the only thing that would have saved Oscar would have been to get him into a trauma emergency room immediately after being shot so therefore the lack of lifesaving measures done by the officers after the

shooting was somehow justified. The problem with this analysis is it assumes that Mehserle and Pirone and the other officers were as knowledgeable as doctors and knew exactly what kind of trauma Oscar was experiencing which is obviously false. This was just another straw the defense tried to grasp at to attempt to overcome the overwhelming video evidence that shows the guilt of their client and the other officers on the platform that night.

Vicky Long was called to testify third and she has been a video technician for the Alameda County DA's office dealing with video evidence in cases for over 28 years. She validated the way the video evidence was preserved and viewed, and authenticated it as not having been tampered with or altered in any way by her office. She also showed the court how she was able to view footage frame by frame to allow for close examination of what was happening in the form of still images.

Long set the stage for the final prosecution witness of the day, Margerita Carazo, another eyewitness from the BART train who also took video footage of the incident. Carazo was extremely well spoken and gave her testimony in such a way it was clear she was relaying factual information. She also stated that she began filming when she realized that the police were behaving in an inappropriate way and she wanted to get it documented. At one point in the video she can be heard saying "I'm getting this on video motherf**kers" to the police who were trying to confiscate her camera and intimidate the other passengers as part of their initial cover-up after the shooting. Carazo and Vargas were both very clear that they had voluntarily given up their video evidence after learning Oscar had died and were not initially contacted by John L. Burris, the Grant's attorney in their civil suit, and did so on behalf of justice and not for any material reward. Both Carazo and her testimony showed that Oscar had been doing nothing to warrant getting dragged off the train, slammed into the concrete wall of the station and then forced onto his stomach with his hands behind his back which was the position he was in when he was shot. The background noise on her video captures the outrage and disbelief of the train passengers as they witness the harassment of the young men by the police and then the unjustified murder of Oscar Grant III before being pushed back onto the train and having the doors closed in their faces. Carazo can be heard at the end of her tape asking

someone to hold the door open so she could continue filming as the train pulls away from the Fruitvale station moments later.

Overall the prosecution took the day in court on the sheer magnitude of their video evidence and eyewitness testimony. The defense, though, under the devious leadership of Rains has already begun to insinuate that Mehserle was not the real aggressor on the platform, even though he is the one who murdered Oscar, and that perhaps Oscar was trying to resist and that is why he was shot. Both of these insinuations are utterly false and cannot be proven by any of the hard, video evidence of the crime but we cannot be naïve and must understand that this looks to be a long and painful trial with a rabid defense team that will try anything they can to cover up the truth and get the charges reduced to manslaughter. It is critical that we continue to be a public presence both in the courtroom and outside and that we realize it will only be through the vigilance of the people in the community and the family members that we will be able to get justice in this case. The evidence is on our side: it is time for us to make history and convict an on-duty officer of murder in the first degree.

Submitted by: Dana Blanchard