

Justice for Oscar Grant III:
The People vs. Johannes Mehserle Preliminary Hearing
Notes from Days 6 and 7 Inside the Courtroom

On Wednesday, June 3rd the preliminary hearing in the trial of former BART officer Johannes Mehserle for the murder of Oscar Grant III continued. Court began where it had left off the week before: defense witness and BART Officer Tony Pirone being questioned by defense attorney Michael Rains. Rains began the day with a verbal complaint about court starting at 8:00 AM because he claimed he was not ready. Judge C. Don Clay told Rains the prosecutor was ready and that court would start on time. Pirone began his testimony by describing the scene at Fruitvale BART when he arrived around 2 AM the night of January 1st, 2009. He said that Oscar Grant was cussing repeatedly at him calling him a “punk bitch” and that many other people on the platform were also cussing and yelling that he was “not a real cop.” Pirone went on to say that he identified Oscar as being the leader of the group because he was the one who was repeatedly asking, “why are you stopping us?” Pirone stated he pushed Oscar against the wall because he was not cooperating but did not elaborate on what this non-compliance was except that he kept asking why they were being stopped. Pirone then said he pulled his taser out because Oscar “kept coming at him” even though there was no evidence of this movement in the video footage. He spent part of his testimony describing the way the taser was fitted to his belt—no doubt trying to establish some part of the defense claim that Mehserle only meant to “tase” Oscar. Pirone testimony about the taser, though, seemed to undermine the defense. He described in detail how the taser is mounted to the weak side of an officer’s belt and how an officer must release the safety to remove the taser from the belt. This shows how ridiculous it is to assume that an officer could mistakenly reach for a taser and accidentally get a gun instead when to remove the taser requires an extra activation step. Pirone said that after pulling out his taser the young men complied with the order to get against the wall. Officer Marysol Domenici then took over the scene and Pirone went back onto the train to get the other guys he thought were involved in the fight. At some point in all this Pirone claimed that Domenici lost control and that the young men were coming at her. When asked why he did not press his

emergency button when this occurred Pirone stated he “knew back-up was on the way and did not want to jam up the radio.” Pirone also said he went to the front of the train and spoke with the conductor who said the men on the wall were the ones who were fighting. Pirone then ordered Mehserle and Officer John Woofinden to arrest the young men for a 248pc that is a misdemeanor charge. Pirone went on to say that Oscar and Michael Greer were resisting this arrest, yelling and doing their best to hit the officers. None of this is evident on any of the videos submitted into evidence. Pirone used this supposed “resisting arrest” behavior to justify his actions in the video footage which shows him coming over to Oscar and putting his knee on Oscar’s neck as he lays prone on the ground with Mehserle positioned directly above Oscar’s legs.

Rains finished his line of questioning by having Pirone go over what happened when Oscar was shot and immediately afterwards. Pirone stated the Oscar did not have his hands behind his back and that Mehserle muttered something about wanting to “tase” him because he could not get a hold on his hands to handcuff him. Pirone then stated that Mehserle yelled, “Get back! Get back!” before discharging his gun. Judge Clay earlier had ruled this testimony about what Mehserle was saying inadmissible because it is hearsay but some deal was worked out with the prosecution to allow it in on this day. Pirone then said that when the gun went off he thought the taser had malfunctioned but when he saw that Mehserle had fired his gun he said “Oh, shit” to himself. Pirone said he then looked over at Mehserle and saw a look of shock on the officer’s face. Pirone ended his defense testimony by stating that Mehserle approached him after the shooting and said “I thought he had a gun” about the unarmed Oscar Grant which appears to undermine the idea that Mehserle was intending to use his taser. Overall, Pirone’s testimony highlighted the aggressive, leadership role he played on the platform that night in escalating the situation into violence and then being part of the police cover-up of what really happened.

Assistant District Attorney David Stein then cross-examined Pirone. He began his questioning by displaying the video shot by Tommy Cross on the flat screen TV in the courtroom and going frame by frame through the shooting of Oscar Grant. Stein froze the

frame immediately after the shot rings out and asked Pirone what he sees and Pirone admitted that Oscar's two hands are behind his back. Pirone's testimony was then concluded for the day and continued the following day on Thursday, June 4th.

Notes from the Courtroom Day 7

The final day of the preliminary hearing began with a motion by defense attorney Michael Rains to be able to call two further witnesses: Jackie Bryson, one of Oscar Grant's friend who was on the platform with him the night he was murdered and a "taser expert" who was meant to testify to Johannes Mehserle's state of mind at the time of the incident and his training previously with the taser. Judge C. Don Clay did not allow these witnesses to testify stating that only Johannes Mehserle can testify as to his own state of mind and anyone else trying to do so would be speculating. Assistant District Attorney David Stein continued with his cross-examination of BART Officer Tony Pirone. Stein proceeded to read back previous statements Pirone had made in court as well as in statements he gave voluntarily early in the investigation. These statements contradict each other and when asked about this Pirone responded by saying 'I gave four voluntary statements and I don't remember everything I said.' Examples of some of the contradictions were that Pirone said in a statement that Mehserle did not say anything after shooting Oscar but testified in court that Mehserle said that he thought Oscar had a gun. When pressed Pirone also could not recall the comment he made earlier about Mehserle saying he was trying to tase Oscar and said he did not remember making the taser comment. Stein then asked Pirone if he made the taser comment for the first time in court because he knew that it was going to be the defense strategy for explaining the murder. Pirone denied this. Then Stein went on to ask Pirone why he did not call in an officer involved shooting when he spoke to his supervisor after the shooting. He said, "It is not part of the protocol that I'm aware of" which appears ridiculous given the severe nature of Oscar's wounds and the need for an immediate investigation into the circumstances surrounding his death.

Stein also questioned Pirone about his use of racial slurs. Pirone explained that Oscar was cussing at him so he did say “bitch ass” which is clearly audible on the tape, but would not admit to using the “n” word. He went on to say if he used this language it was only because Oscar had used those words towards him and he was shocked that someone felt like they could talk to a police officer that way. The video was shown again and Pirone is visible yelling, “bitch ass” at least twice in Oscar’s face. Stein closed his cross-examination by asking Pirone “isn’t it true that you posed more of a threat to Oscar Grant than he did to you?” to which Pirone responded a flat “no.” However, the video shows Pirone repeatedly acting forcefully and aggressively towards Oscar and his friends so he is clearly being dishonest about who was the bigger threat that night.

The next witness to be called by the defense was a forensic image analyst named Michael Schott. Schott, a former member of law enforcement, said he had synchronized all of the videos that were taken. He went on to state that at certain angles the videos could appear distorted. He used this argument to try to undercut the eye witness testimony of Karina Vargas who said in court the first day of the hearing that she was within ten feet of Oscar and the officers when everything happened but Schott said that because of her image on other videos she was only within 53 feet. Schott then went on to talk a lot about his process of synchronization. Judge C. Don Clay began to lose patience with this line of testimony because he said that he can use his own eyes to see the video and did not need an expert to tell him what he saw. He informed Rains that he had five more minutes to question Schott and that Stein would only have 5-7 minutes to cross-examine Schott. Stein said he had no questions for the witness. The key information that came out of Schott’s testimony was that the entire incident from the time the young men were pulled off the train to the time that Oscar was shot was 12 minutes, certainly not enough time for full blown chaos to develop in the way the officers have described.

The final witness to testify was BART Officer Tony Foreman. He was called in after the shooting to interview Mehserle. He arrived at the Lake Merritt interview room at 3:30 AM on January 1st and spent five and a half hours with Mehserle that night and was in contact with him each day until his arrest on January 13th. Foreman stated that

Mehserle never admitted to shooting Oscar by mistake and never stated that he was going for his taser. Mehserle did say, "I thought he had a gun, he was going for his pocket." From this testimony it is clear that Mehserle's defense team has put forward the taser argument only in recent months as a way to explain what happened and not from any real evidence of any of the interviews Mehserle gave police investigators about his actions that night.

The preliminary hearing ended with Stein reviewing the purpose of the hearing: to determine if there is sufficient cause to bind the defendant with the charge of murder. The elements of murder are that there was a killing and that there was expressed or implicit malice (intent to kill). Stein went back to the video evidence and eyewitness testimony to show that Mehserle did shoot Oscar with malice. As part of his wrap up Stein talked about the video showing that Mehserle looks at his gun holster then pulls his gun and looks down at his gun - he is looking at what he is doing - this shows intent because it was being done by an officer who is trained to use a gun. Stein also pointed out that Mehserle shot Oscar in the center of his body, not his leg or other part of his body, which shows his intent to kill. Rains went on to close by stating that the evidence actually shows there was no malice on the part of Mehserle. Judge C. Don Clay then issued his decision. The judge said that it was clear from the preliminary hearing that the charge of murder should stand and that because Mehserle did not take the stand there is no way to know his state of mind though it appeared and that the defense was unable to prove his state of mind was any else but intent to kill. He also said it is clear that Oscar Grant was unarmed and that the defendant is not claiming self-defense and that there is no evidence that this was an accident. Judge Clay also stated that from the evidence Oscar Grant did nothing to warrant deadly force. In the end it boiled down to the fact that Mehserle did not take the stand and so the arguments about his state of mind by other witnesses at the time of the murder were completely irrelevant. Judge Clay rightly pointed out with regards to the idea that Mehserle thought he was using a taser it seems unlikely given the fact in the videos he is shown grasping the gun with both hands. The judge also stated that, "I have no doubt that Mehserle intended to shoot with his gun and not his taser." With that Judge Clay confirmed Mehserle's three million dollar bail and dismissed the courtroom.

The next step for Mehserle is to be arraigned at 9 AM on Thursday, June 18th. The charge of murder for an on-duty officer is unprecedented in California history. This is an important victory in the journey to win justice for Oscar Grant and to get Johannes Mehserle convicted and put in jail for a very long time.