

1 Michael L. Rains, SBN 091013
2 **RAINS LUCIA STERN, PC**
3 2300 Contra Costa Boulevard, Suite 230
4 Pleasant Hill, CA 94523
5 Telephone: 925.609.1699
6 Facsimile: 925.609.1690
7 Email: mrains@rlslawyers.com

8 Attorneys for Defendant
9 JOHANNES MEHSERLE

FILED
ALAMEDA COUNTY

JUN 03 2010

CLERK OF THE SUPERIOR COURT

By M. [Signature]

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 **THE PEOPLE OF THE STATE OF**
13 **CALIFORNIA,**

14 **Plaintiff,**

15 **v.**

16 **JOHANNES MEHSERLE,**
17 **Defendant.**

AOC# 1009606-10

Alameda County Superior Court Case #161210

MOTION TO EXCLUDE CERTAIN TESTIMONY BY
ANTHONY PIRONE AND REGARDING A
STATEMENT MADE BY ANTHONY PIRONE

18 Approximately one minute before the shooting, then Officer Mehserle was involved in a
19 brief physical confrontation with Jack Bryson, during which Bryson attempted to strike
20 Mehserle. Mehserle responded by taking Bryson to the ground. Mehserle then brought Bryson
21 to his knees and cuffed him.

22 During this episode, a short distance away, Officer Anthony Pirone was engaged in a
23 verbal exchange with Oscar Grant. There is no evidence Mehserle heard any of words
24 exchanged between Pirone and Grant. Certainly there is no evidence Mehserle took part in the
25 shouting match. Indeed, there seems to be uniformity among the witnesses—Mehserle was not
26 heard to use any profanity, invective, and so forth on the platform.

27 ///

28 ///

1 The same cannot be said for Grant or Pirone. Among other things, Grant called Pirone a
2 “bitch ass nigger.” In response, Pirone said something like, “I’m a bitch ass nigger, huh, bitch
3 ass nigger, right?”

4 The exchange should be excluded pursuant to Evidence Code § 352. It is hard to
5 exaggerate the prejudice to the defendant of the introduction of such language into this
6 proceeding. Although Mehserle is white and Grant was black, this case is not about race.
7 Mehserle has been not been charged with a hate crime. There is no evidence he expressed any
8 racist sentiments or acted out of some racist purpose. But if the jury hears that another officer
9 on the platform used such language—even if in response to use of the same language by
10 Grant—it may well attribute such sentiments to the defendant. And if does so, it would be
11 unnecessarily and badly distracted from its true purpose—determining Mehserle’s true intent
12 when he shot Grant.

13 Although Mehserle in no way conducted himself in the aggressive manner exhibited by
14 Pirone on January 1, 2009, it will difficult enough for the jurors to judge Mehserle without
15 regard for Pirone’s conduct. Add to that Pirone’s statements about “bitch ass nigger” and a fair
16 and impartial analysis of Mehserle’s conduct becomes almost impossible. It would be wrong to
17 ignore the fact that the jurors who sit on this case are citizens of a community in which police
18 racism and police brutality against minority communities have been serious historical problems.

19 The exchange is prejudicial not simply because Pirone used an offensive and racist
20 word, but because he did so while wearing a BART police uniform. The danger, of course, is
21 that the jurors will take the inappropriate conduct of one man and generalize it to BART police
22 in general, and to the defendant specifically.

23 The evidence is also relevant to no issue in dispute in this case. Pirone’s aggressive
24 conduct on the BART platform will be evident by other evidence. Indeed, while his words were
25 offensive, in *this* instance Pirone was actually *responding* to a verbal attack by Grant. But in
26 any case, the prosecution will have ample ammunition to prove that Pirone acted aggressively
27 in his dealing with Grant and his companions.

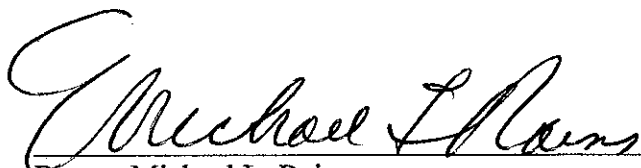
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Most importantly, of course, Mehserle was not involved in the heated verbal exchange between Grant and Pirone. So the evidence in no way bears on Mehserle's mental state. Pursuant to § 352, therefore, the Court should exclude evidence of the "bitch ass nigger" exchange, whether offered during Pirone's testimony or through any other percipient witness.

Dated: June 3, 2010

Respectfully submitted,
RAINS LUCIA STERN, PC



By: Michael L. Rains
Attorneys for Defendant JOHANNES
MEHSERLE