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**FILED**  
**ALAMEDA COUNTY**

JUN 03 2010

CLERK OF THE SUPERIOR COURT  
By M. Blum

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 THE TESTIMONY OF**  
**SOPHINA MESA PURSUANT TO EVIDENCE CODE**  
**§352, OR IN THE ALTERNATIVE TO PERMIT**  
**CROSS-EXAMINATION ON THE SUBJECT OF**  
**GRANT'S PROBATION AND PAROLE**

18 The prosecution seeks to offer the testimony of Sophina Mesa. As appears, the  
19 testimony should be excluded pursuant to Evidence Code §352. In the alternative, should Mesa  
20 take the stand, in keeping with Mehserle's sixth amendment confrontation rights and his  
21 fourteenth amendment due process rights, the defense must be able to cross-examine Mesa  
22 fully. Specifically, and contrary to this Court's prior ruling, the defense should be permitted to  
23 cross-examine Mesa on the subject of Grant's probation and parole.

24 Ms. Mesa was Grant's girlfriend and is the mother of Grant's child. Mesa was with  
25 Grant on the train headed for the Fruitvale BART station on January 1, 2009. Mesa observed  
26 Grant's fight with a white man on the train. Mesa has testified in a civil deposition that when  
27 the train arrived at the Fruitvale BART station she told Grant to stay on the train. She did so  
28 because she knew Grant was on parole, that he was subject to arrest due to the fight, that she

1 knew police had been summoned to the Fruitvale station, and thus she was concerned that he  
2 would be arrested and returned to state prison.

3       When the train arrived at Fruitvale, Mesa told Grant to remain on the train, and told him  
4 to meet her at the next station. Mesa left the train and descended the Fruitvale BART stairs to  
5 the first floor. Shortly thereafter she telephoned Grant. By that point Grant had been detained  
6 and was sitting against the platform wall. Mesa is a percipient witness only to the following:  
7 she claims that during the conversation with Grant, Grant told her the police were beating Grant  
8 and his friends for no reason.

9       The testimony, however, is entirely redundant of two other witnesses who will be called  
10 to testify. Both Tommy Cross (a witness with no particular bias because he was not one of  
11 Grant's friends) and Jack Bryson will testify that they heard Grant make the same remark. For  
12 that reason, alone, Mesa's testimony should be excluded pursuant to Evidence Code § 352.

13       Unlike both Cross and Bryson, Mesa was not on the platform and thus her appearance at  
14 the trial offers no real assistance to the jurors and will unnecessarily consume trial time. It  
15 seems clear the District Attorney seeks to offer Ms. Mesa simply to remind the jurors that Grant  
16 was a father of a small child at the time of his death. The unnecessary and undue prejudice  
17 resulting from her appearance is yet further reason to exclude Mesa under § 352. Both Cross  
18 and Bryson are witnesses and they can testify to this evidence. There is no need for the state to  
19 offer the same statement by Grant through three separate witnesses.

20       Finally, if the District Attorney is permitted to elicit evidence from Mesa that it will  
21 already have placed into evidence through Cross and Bryson, pursuant to Mehserle's sixth  
22 amendment right of confrontation and his fourteenth amendment right to due process, Mehserle  
23 should not be restricted in his ability to cross-examine Ms. Mesa about the full extent of her  
24 interest, bias, and involvement in the events of January 1, 2009.

25       Like Grant, Mesa was highly motivated to make sure that Grant not be arrested that night  
26 because she knew an arrest would mean a quick trip back to state prison. Although Grant had  
27 been involved in the train fight, and Mesa knew that officers had been called to the platform,  
28 she advised Grant to stay on the train to avoid police contact. She then called him, presumably

1 to check on his status. It would be impossible to fully and fairly cross-examine Mesa pursuant  
2 to Evidence Code §780 on interest and bias, as well as to explore her substantive involvement  
3 in the events, without eliciting testimony regarding Grant's probation and parole status.

4 The Court has previously excluded such evidence. But here the issue arises in a different  
5 context. Rather than being used to prove Grant's character, the evidence would be placed before  
6 the jurors as part of the full cross-examination of Mesa to which Mehserle is entitled by the  
7 federal constitution. The prosecution can avoid the introduction of the evidence regarding  
8 Grant's criminal history simply through the Cross and Bryson descriptions of Grant's platform  
9 statement. If it insists on placing Ms. Mesa on the stand, it cannot avoid the full confrontation  
10 guaranteed by the sixth amendment.

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12 Dated: June 3, 2010

Respectfully submitted,  
RAINS LUCIA STERN, PC

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16 By: Michael L. Rains  
17 Attorneys for Defendant JOHANNES  
MEHSERLE