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**ENDORSED  
FILED**  
ALAMEDA COUNTY

APR 23 2010

CLERK OF THE SUPERIOR COURT  
BY: [Signature] Deputy

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

10  
11 **THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

12 **Plaintiff,**

13 **v.**

14 **JOHANNES MEHSERLE,**

15 **Defendant.**

**AOC# 1009606-10**

**Alameda County Superior Court Case #161210**

**DEFENDANT JOHANNES MEHSERLE'S MOTIONS  
IN LIMINE**

16  
17  
18 Defendant Johannes Mehserle hereby in limine as follows:

- 19 **1. TO REQUIRE THE DISTRICT ATTORNEY AND PROSECUTION WITNESSES TO REFER TO  
20 OSCAR GRANT BY NAME, RATHER THAN REFERRING TO HIM AS THE VICTIM**

21 The prosecution no doubt believes that Oscar Grant is the victim of a crime. In fact, until  
22 twelve jurors convict defendant Mehserle of a crime, such references by the prosecution or its  
23 witnesses would be unnecessarily argumentative, distracting, and inaccurate. For that reason the  
24 Court should insist that the DA and its witnesses refer to Mr. Grant by name.

25 In the event the Court denies the motion, defendant reserves the right, and there should be  
26 no objection, to the defense referring to Mr. Grant as the *suspect* or the *arrestee*. In fact, such  
27 references are more literally accurate than referring to Grant as the victim, which assumes a crime  
28 has been committed.

1           **2. TO REQUIRE THE DISTRICT ATTORNEY AND PROSECUTION WITNESSES TO REFER TO**  
2           **DEFENDANT MEHSERLE AS OFFICER MEHSERLE**

3           At the time of all relevant events in this case, Johannes Mehserle was not a defendant, he  
4           was not a suspect—he was a BART police officer. The parties and witnesses therefore should be  
5           required to refer to the defendant as Officer Mehserle during this trial.

6           Doing so will have one important benefit unrelated to accuracy. Elsewhere Mehserle will  
7           argue that for various reasons relating to Mehserle’s Fifth Amendment rights, evidence relating to  
8           employment actions taken against Mehserle should be excluded. By requiring that the parties  
9           refer to the defendant as *Officer Mehserle*, the Court will avoid any speculation by jurors  
10          regarding Mehserle’s refusal to provide a statement to BART investigators, employment actions  
11          taken against Mehserle as a result of that decision or for any other reason, and the significance of  
12          such employment actions.

13           **3. TO REQUIRE THE DISTRICT ATTORNEY TO ADMONISH HIS WITNESSES NOT TO**  
14           **REFER TO THE GRANT SHOOTING AS A MURDER**

15          In the days and weeks following Oscar Grant’s death, members of the media, community  
16          leaders, religious leaders, and local, state, and national politicians, referred to the event as a  
17          murder, and in some cases an execution. Strictly speaking, of course, *murder* is an abstraction—a  
18          label we use to describe a particular confluence of act and mental state as to which the legislature  
19          has imposed a particular prison sentence. In fact, a homicide does not become properly  
20          classifiable as a murder until twelve jurors agree that the prosecution has satisfied the elements of  
21          Penal Code §187 beyond a reasonable doubt.

22          In this case the use of the word *murder* to describe the event is particularly prejudicial  
23          where the defendant is a police officer who shot a resisting suspect. But various individuals who  
24          will likely appear as prosecution witnesses have used the word—in interviews, at the preliminary  
25          hearing—to describe the events of January 1, 2009. Mehserle therefore seeks an order of this  
26          Court directing the District Attorney to admonish its witnesses, both lay and expert, not to use the  
27          word in their testimony.

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1           **4. TO PRECLUDE SPECTATORS FROM WEARING BUTTONS, RIBBONS, OR ANY OTHER**  
2           **SIGNS OF PARTISANSHIP DURING THE TRIAL**

3           As the Court is aware, the Grant shooting and the resulting prosecution have garnered  
4 massive and unprecedented community and media attention. As a result of that attention, and of  
5 violence that arose in Alameda County after the shooting, the matter was transferred to this Court.  
6 But given that demonstrations by groups and other supporters of Oscar Grant in favor of  
7 Mehserle's conviction have persisted, and will no doubt intensify during the trial, there is the real  
8 risk that jurors could be unduly influenced. In an effort to avoid such an invalid impact on  
9 Mehserle's right to a fair and impartial jury, a weakening of the presumption of innocence, and  
10 potential interference with the defendant's Sixth Amendment confrontation rights, the defendant  
11 moves the Court to preclude spectators seated in the gallery from wearing buttons, ribbons, or any  
12 other signs that suggest they support either the prosecution or the defense.

13           There can be no doubt that the Court has the power to control its courtroom and thus to  
14 impose such a restriction. *See Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 564  
15 (recognizing superiority of defendant's right to a fair trial over first amendment rights of  
16 nonparticipants). Because the presumption that a defendant is innocent until proved guilty is a  
17 "basic component of a fair trial under our system of criminal justice," "courts must be alert to  
18 factors that may undermine the fairness of the fact-finding process" and "must carefully guard  
19 against dilution of the principle that guilt is to be established by probative evidence and beyond a  
20 reasonable doubt." *Estelle v. Williams* (1976) 425 U.S. 501, 503.

21           Courts have long recognized two problems that arise when spectators with an obvious view  
22 that the defendant should be convicted are permitted to display signs of that view in the presence  
23 of the jurors. First, such a practice undermines the presumption of innocence. *See, e.g., Norris v.*  
24 *Risley* (9<sup>th</sup> Cir. 1990) 918 F.2d 828, 831 (buttons worn by women attending a rape trial  
25 "constituted a continuing reminder that various spectators believed the defendant's guilt before it  
26 was proven, eroding the presumption of innocence.")

27           Second, the display of such signs impacts a defendant's Sixth Amendment right of  
28 confrontation. *See Norris*, 918 F.2d at 833 ("failing to exclude the buttons interfered with the

1 defendant's constitutional right to be accused from the 'witness stand in a public courtroom  
2 where there is full judicial protection' of the rights of confrontation and cross-examination"),  
3 quoting *Turner v. Louisiana* (1965) 379 U.S. 466, 472-73.

4 Defendant looks forward to a fair public trial before twelve unbiased jurors. He believes  
5 that an important means of ensuring such a fair trial and avoiding the undue influence of  
6 spectators on the jury is for the Court to insist that those observing the proceedings keep their  
7 views to themselves.

8 **5. TO ADMIT EVIDENCE OF PRIOR MISCONDUCT BY OSCAR GRANT, GRANT'S**  
9 **PROBATIONARY STATUS IN 2007, HIS PAROLE STATUS AT THE TIME OF THE 2009**  
10 **SHOOTING, AND THE FACT THAT GRANT HAD BEEN DRINKING IN THE HOURS PRIOR**  
11 **TO THE SHOOTING**

12 Defendant anticipates that the DA will move to exclude (a) evidence relating to Grant's  
13 2007 arrest and conviction for gun possession, including the fact that Grant was a felon on  
14 probation at the time of that arrest, (b) proof that at the time of the January 1, 2009, shooting  
15 Grant was on parole release after his conviction for the 2007 gun arrest, and (c) evidence that  
16 Grant had been drinking alcohol in the hours before the shooting, as proven by his elevated blood  
17 alcohol level.

18 As will appear, this evidence is both highly relevant and unquestionably admissible.  
19 Moreover, its probative value far outweighs any prejudice to the prosecution, and its admission  
20 will not lead to undue consumption of time or juror confusion. Finally, exclusion of the evidence  
21 would amount to federal due process error.

22 **a. Evidence Relating to Grant's 2007 Arrest and Conviction for Gun Possession**  
23 **and His Probationary Status at the Time of that Arrest**

24 Just over two years before the shooting, Oscar Grant and two friends were riding in a car in  
25 San Leandro. (Exhibit A, Police Report). At the time, Grant was on felony probation, having  
26 been convicted for a narcotics offense in early 2006. Police made a traffic stop. The officer saw  
27 what he believed to be a handgun in Grant's pocket, though Grant denied that he was armed.  
28 Grant opened the rear passenger door and took off running. Police gave chase, ordering Grant to  
stop, but he did not.

1 Eventually the police used a TASER. It hit Grant, causing him to fall to the ground. Grant  
2 tried to get rid of the gun. With Grant now on the ground, officers ordered him to show his  
3 hands, but Grant refused to show his left arm or hand. An officer had to kick Grant several times  
4 to get him to comply. Finally the officers arrested and cuffed Grant. Police eventually recovered  
5 his gun—a loaded .380 caliber pistol.

6 Following the arrest, police discovered that Grant's probationary status, and therefore  
7 charged him for the following offenses: (a) §12021(a)(1)(felon in possession of a firearm, (b)  
8 §12025(a)(1)(felon in possession of a concealed firearm in a vehicle), (c) §12031(a) (convicted  
9 felon in possession of a loaded firearm), and (d) 148(a)(1)(resisting arrest).

10 Following the 2007 arrest and various gun and resisting charges, Grant again pled guilty—  
11 this time to the §12021(a)(1), felon in possession of a firearm count, and was sentenced to sixteen  
12 months in state prison. The conviction was his third felony conviction. Grant was released on  
13 parole in August 2007 and remained on parole on January 1, 2009.<sup>1</sup>

14 The preliminary hearing judge excluded evidence of the gun incident, holding that unless  
15 Mehserle took the stand, the evidence was inadmissible. The magistrate cited no authority for  
16 such a proposition. And in deciding defendant's §995 motion the Superior Court acknowledged  
17 the ruling was erroneous.

18 Section §1103 says this: "(a) In a criminal action, evidence of the character or a trait of  
19 character (in the form of an opinion, evidence of reputation, or evidence of specific instances of  
20 conduct) of the victim of the crime for which the defendant is being prosecuted is not made  
21 inadmissible by Section 1101 if the evidence is: . . . Offered by the defendant to prove conduct of  
22 the victim in conformity with the character or trait of character."

23 In other words, a criminal defendant can offer evidence that the victim in the case has a bad  
24 character, including evidence of prior bad acts by the victim, so long as that evidence is offered to  
25 prove that the victim acted in conformity with that character trait at the time of the charged  
26 offense.

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27  
28 <sup>1</sup> Grant was arrested again for drug and vehicular offenses in June of 2008. He was returned to state prison until  
September of 2008. Defendant does not seek to introduce those offenses into evidence.

1 That, of course, is precisely the situation here. Mehserle's position is that Grant behaved in  
2 such a way—vigorously resisting arrest—so as to justify the officer's decision to employ a  
3 TASER. Similarly, as the Court will learn, the defense position is that because Grant would not  
4 give up his arms, and appeared to be moving one arm toward the waistband of his pants, Mehserle  
5 believed Grant might be going for a gun. It was that belief that caused Mehserle to decide to use  
6 a TASER, just as the officer did when the armed Grant refused to comply with police orders in  
7 October 2006.

8 Under Evidence Code §1103(a) Mehserle is entitled use evidence of Grant's character in  
9 support of his defense. Defendant is entitled to place before the jurors circumstantial evidence—  
10 in the form of specific prior bad acts—that Grant is the *sort of person* or had the *sort of character*  
11 that would lead him to behave during the relevant events in the manner asserted by the defense—  
12 resisting arrest, possibly due to his probationary status, refusing to give up his arms during an  
13 attempted arrest, and vigorously resisting arrest.

14 Longstanding California law supports the admission of the evidence precisely as described.  
15 Indeed, California courts have held that the right of a defendant to offer the evidence of the  
16 alleged victim's character for violence—which, of course, is precisely the type of evidence at  
17 issue here—rises to a due process right under the federal constitution. *People v. Mizchele* (1983)  
18 142 Cal.App.3d 686, 691, citing *Chambers v. Mississippi* (1973) 410 U.S. 284, 302.

19 In *Mizchele*, the defendant was accused of killing his wife. He claimed at trial that during  
20 an argument he picked up his wife's coat in an effort to remove a gun he knew was inside the  
21 jacket to avoid her using it— the gun went off accidentally. The trial court excluded evidence  
22 that the wife had been violent in the past, including on occasions with others than the defendant.  
23 The court of appeal reversed, holding that the evidence was admissible on Mizchele's defense that  
24 the shooting had been an unintentional accident. 142 Cal.App.3d at 691.

25 Most important to this Court's analysis is the fact that the evidence in *Mizchele* of the  
26 victim's character was deemed admissible on *two distinct bases*. First, the evidence was  
27 admissible to prove the defendant's state of mind at the time of the offense. So, for example,  
28 where a defendant asserts self-defense, and is aware that the victim has acted violently in the past,

1 the victim's violent history has powerful relevance to the defendant's state of mind and therefore  
2 his intent at the time of the alleged offense. *See People v. Rowland* (1968) 262 Cal.App.2d 790,  
3 797 ("It has long been recognized that where self-defense is raised in a homicide case, evidence  
4 of the aggressive and violent character of the victim is admissible.")

5 At the preliminary hearing, the magistrate took the view that because Mehserle did not  
6 testify he could not say he was aware of Grant's prior offense. And if the basis for admission  
7 described above—that is, state of mind—were the only one relied up by *Mizchele*, the court  
8 would have been right.

9 But there was a separate and entirely independent basis for admission. Notwithstanding the  
10 defendant's awareness of victim's violent history, the *Mizchele* court held the evidence  
11 admissible under §1103(a) *to prove that the victim acted violently on the occasion of the charged*  
12 *offense*—that is, that the victim acted in conformity with a character for violence proven by his  
13 prior bad acts. *See also People v. Rowland* (1968) 262 Cal.App.2d 790, 797. The ruling in no  
14 way relied on the defendant's awareness of the prior bad acts, and exclusion of the evidence  
15 amounted to due process error without regard for the defendant's awareness of the character  
16 evidence.

17 Thus, contrary to the magistrate's view, it makes no difference whatsoever whether  
18 Mehserle was aware of Grant's prior acts of resistance, probationary status, and gun possession.  
19 Under longstanding California law, because the character evidence (here in the form of prior bad  
20 acts) was offered to prove that Grant behaved in conformity with that character trait during the  
21 incident that led to criminal charges against Mehserle, it was admissible without regard to  
22 Mehserle's awareness. And, as in *Mizchele*, any exclusion of the evidence interfered with  
23 Mehserle's right to present a defense and therefore would comprise federal due process error.

24 To see how clearly this rule is established and how the magistrate's ruling ran afoul of the  
25 evidence code, turn the tables for a moment. Assume for the moment that a hypothetical  
26 defendant, Smith, was charged with assault on Officer Mehserle. Can this Court say that Smith,  
27 in an effort to assert self-defense, would not be able to offer evidence that Officer Mehserle had

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1 improperly used force on ten defendants in the past if he could not prove that he was aware of  
2 those incidents at the time he assaulted Mehserle?

3 As California courts have long held, Smith would indisputably be entitled to offer such  
4 evidence under § 1103(a). *See, e.g., Lemelle v. Superior Court* (1978) 77 Cal.App.3d 148  
5 (Evidence of officer's tendency to violence, whether in the form of opinion, evidence of  
6 reputation, or evidence of specific acts of conduct, is admissible in prosecution in which  
7 defendant is charged with battery on a police officer and resisting arrest.); *Kelvin L. v. Superior*  
8 *Court* (1976) 62 Cal.App.3d 823 (evidence of prior acts of unwarranted or excessive violence by  
9 arresting officer would be admissible at juvenile's trial for battery on police officer on issue of  
10 self-defense.)

11 As appears, the evidence of Grant's 2007 gun arrest and his probationary status at the time  
12 of that arrest is admissible. As noted, its exclusion would comprise federal due process error.

13 Neither should the court exclude the evidence pursuant to Evidence Code §352. The  
14 defense will present a single witness on the subject—the officer who stopped and arrested Grant  
15 and who eventually recovered the gun. The testimony should not be long: the officer will  
16 describe the events, and will testify as to Grant's probationary status. There is no need for the  
17 jurors to learn why Grant was on probation in late 2006.

18 The evidence is highly probative on the subject of Grant's character—indeed, in some  
19 respects the incidents are eerily similar: in both instances Grant, subject to serious sanction due to  
20 his probationary/parole status, refused to comply with police orders and resisted arrest, in both  
21 cases he refused to give up his arms for cuffing, and in both cases Grant's resistance to detention  
22 and/or arrest compelled officers to use force in the form of a TASER.

23 The evidence is not at all prejudicial. Although the incident does not make Grant look like  
24 an angel, neither does it so besmirch his character that any juror is likely to acquit simply because  
25 of Grant's criminal history. Rather, the evidence allows the jurors to understand who Grant was,  
26 and the sort of decisions he might have made on January 1, 2009, regarding willingness to be  
27 arrested without use of force by police.

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1 Finally, nothing about the evidence would confuse or distract the jurors—it is being  
2 introduced on the central issue in the case: did Grant resist arrest on January 1, 2009, such that  
3 Mehserle was justified in deciding to use his TASER.

4 **b. Evidence that Grant Was on Parole at the Time of the 2009 Shooting**

5 Evidence that Grant was on parole at the time of the 2009 shooting is admissible for similar  
6 reasons and under the same authorities. Likewise, exclusion of the evidence would amount to  
7 federal due process error. Finally, evidence of Grant’s parole status should not be precluded  
8 under §352.

9 Again, a key factual dispute in this case is whether Grant was actively resisting arrest  
10 during the January 1, 2009, incident, thus justifying Mehserle’s decision to use his TASER. In  
11 that regard, the jurors may reasonably ask themselves why Grant did not simply allow himself to  
12 be arrested. The clearest answer to that question is that perhaps more than anyone on the  
13 platform that night, Grant had reason to avoid arrest—had would almost certainly have been  
14 headed back to state prison.

15 Grant ran during the 2006 gun arrest because he was on probation and was a felon and  
16 knew that if he were caught he would likely be going to state prison. He refused to be detained,  
17 ran, leading to the use of a TASER. Grant then continued to resist, refusing to give up his arms  
18 for cuffing. The police officer involved had to kick Grant in order to get him to submit.

19 As noted, Grant’s circumstance was more problematic in January 2009—he was on parole,  
20 and he was no doubt aware that if he were arrested for resisting arrest or for fighting, there was a  
21 substantial likelihood that he would be sent back to San Quentin.

22 Defendant has a federal due process right to offer proof of Grant’s motive to resist on  
23 January 1, 2009—such proof being circumstantial proof that Grant *did* resist up to the time of the  
24 shooting—but defendant cannot meaningfully do so without introducing evidence that Grant was  
25 on parole at the time. Such evidence can be introduced quickly, and in a manner that need not be  
26 unduly prejudicial or confusing to the jury.

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1                   c. Evidence that Grant Had Been Drinking Alcohol in the Hours Before the  
2                   2009 Shooting

3                   One of Grant's parole conditions was that *he* "totally abstain from the use or possession of  
4 any alcoholic beverages, liquors, or self-prescribed medications with alcohol." Toxicology  
5 reports done at Highland hospital after shooting establish that, Grant had been drinking in the  
6 hours prior to the shooting. Thus, Grant knew that if he were detained and his blood alcohol  
7 tested, he would be found to have violated his parole conditions and would be subject to  
8 reincarceration.

9                   As with Grant's parole status, the fact that he was drinking is relevant not because it makes  
10 Grant look bad—it was New Years Eve, after all—but rather because it explains his conduct.  
11 Again, Mehserle is entitled to offer circumstantial evidence that Grant resisted arrest up to the  
12 time of the shooting in form of proof that he had a strong motivation to do so. Because of the no  
13 alcohol parole condition, Grant had a powerful reason to avoid detention and arrest—if the police  
14 discovered he had been drinking, the consequence would have been a trip back to state prison.

15                   As with the evidence discussed above, there is nothing so complicated or confusing or  
16 prejudicial about these facts that would make them excludable under §352. But the evidence is  
17 critical to Mehserle's defense with regard to perhaps the central factual dispute in the case. For  
18 that reason, and relying on the foregoing authorities, the exclusion of evidence that Grant had  
19 been drinking would amount to federal due process error.

20                   **6. TO ADMIT EVIDENCE THAT OSCAR GRANT WAS INVOLVED IN A FIGHT ON THE BART**  
21                   **TRAIN, WHICH INCIDENT PRECIPITATED HIS DETENTION AND ARREST**

22                   Although the incident was the subject of much testimony at the preliminary hearing during  
23 both the prosecution and defense cases, and was discussed in detail in the prosecution's trial brief,  
24 defendant presumes in making this motion that the prosecution will seek to exclude pursuant to  
25 §352 evidence that Oscar Grant was involved in a fight on the BART train on January 1, 2009.  
26 It was, of course, that incident that led the train operator to summon police, which led to the  
27 detention of Grant and his friends, and which ultimately precipitated Grant's arrest. The incident

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1 is therefore relevant simply to explain what preceded and precipitated the events on the BART  
2 platform.

3 It is true, of course, that Grant was not arrested for fighting; rather, Officer Pirone informed  
4 Mehserle that Grant was under arrest for resisting. But without informing the jury of the reason  
5 for the original detention, the conduct of the officers in this case—that is, those who began the  
6 detention, and ultimately Mehserle, who entered late in the process—would appear to be  
7 irrational. Without evidence of the train fight, the jury will be left to speculate about the reason  
8 for the detention. The evidence is highly probative.

9 Evidence that Grant fought on the train, like the evidence that he was on parole at the time  
10 of the shooting, is also relevant and admissible under §1103 as evidence of his character for  
11 violence and aggression. It is also relevant to establish circumstantially Grant's awareness that if  
12 the police detained him for fighting or some other violent behavior, as was true of his use of  
13 alcohol, he would have been subject to parole violation and thus incarceration in state prison.

14 The fight evidence is also not particularly consumptive of time or prejudicial or confusing.  
15 The proof will be straightforward, although there is some disagreement about the seriousness of  
16 the fight. As with the gun offense and probationary/parole evidence, while the BART train fight  
17 does not make Grant look particularly good, it also would not demonize him in a way that would  
18 unduly prejudice the state. And there is nothing about the evidence that would confuse or distract  
19 the jurors. Indeed, as noted, the jurors require education on how Grant and the others ended up  
20 on the platform, and there is no way to explain that circumstance without informing them of the  
21 fight.

22 **7. TO EXCLUDE EVIDENCE OF A SEXUAL RELATIONSHIP BETWEEN BART OFFICER**  
23 **ANTHONY PIRONE AND BART OFFICER MARYSOL DOMENICI**

24 Officer Anthony Pirone and Officer Marysol Domenici were the two BART officers who  
25 arrived at the Fruitvale BART station in response to the call of a fight on the train. There have  
26 been allegations in the civil case in this matter that they were sexually involved with each other  
27 and that some of the actions they took that night were because of their relationship.

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1 The evidence is entirely irrelevant to any matter in dispute in this case. Also, evidence of  
2 any nature that Officers Pirone and Domenici had a relationship should be excluded pursuant to  
3 Evidence Code § 352, because its admission will (a) necessitate undue consumption of time and  
4 (b) create substantial danger of undue prejudice, of confusing the issues, and of misleading the  
5 jury.

6 In order to establish if the allegations are true, the court would have to conduct a mini-trial  
7 regarding the private lives of Officer Pirone and Officer Domenici. This would necessitate undue  
8 consumption of time.

9 Further, any evidence of their relationship is likely to create substantial danger of undue  
10 prejudice, confuse the issues, and mislead the jury, because the central issue here is whether  
11 defendant intended to draw and fire a TASER instead of a gun. The proffered evidence has no  
12 significance to this vital issue or any other issues in the case against defendant. *People v.*  
13 *Rodrigues* (1994) 8 Cal.4<sup>th</sup> 1060, 1124-1125.

14 **8. TO EXCLUDE EVIDENCE OF BART EMPLOYMENT ACTIONS AGAINST OFFICER**  
15 **ANTHONY PIRONE AND OFFICER MARYSOL DOMENICI**

16 Following the shooting of Oscar Grant, BART commenced an administrative investigation  
17 that has resulted in the imposition of discipline against Officers Pirone and Domenici. Like  
18 assertions of a romantic relationship between the officers, evidence relating to their employment  
19 status or any discipline imposed has no probative value whatsoever as to any matter in dispute in  
20 this case.

21 Moreover, the evidence should be excluded pursuant to Evidence Code § 352, because its  
22 admission will (a) necessitate undue consumption of time and (b) create substantial danger of  
23 undue prejudice, of confusing the issues, and of misleading the jury.

24 The court would have to conduct a mini-trial regarding BART's Internal Affairs  
25 investigation of Officer Pirone and Officer Domenici. This would necessitate undue consumption  
26 of time.

27 Further, any evidence of the labor actions is likely to create substantial danger of undue  
28 prejudice, confuse the issues, and mislead the jury, because the central issue here is whether

1 defendant intended to draw and fire a TASER instead of a gun. The proffered evidence has no  
2 significance to this vital issue or any other issues in the case against defendant. *People v.*  
3 *Rodriguez* (1994) 8 Cal.4<sup>th</sup> 1060, 1124-1125.

4 **9. TO EXCLUDE EVIDENCE WHICH REFERS TO OR RELIES ON THE MEYERS NAVE**  
5 **REPORT DATED JULY 31, 2009 PREPARED FOR BART**

6 BART hired the law firm of Meyers Nave to investigate the actions of the officers present  
7 during the incident in question to determine if they acted within policy and procedure. In a report  
8 dated July 31, 2009, Meyers Nave made findings and recommendations, which focused primarily  
9 on Officer Pirone's and Officer Domenici's conduct. Meyers Nave was not hired to determine if  
10 Officer Mehserle intended to fire a TASER as opposed to a gun.

11 Defendant anticipates that the District Attorney intends to offer the report, or portions of  
12 that report. The report should be excluded as inadmissible hearsay. Also, the report is irrelevant  
13 to any issue in dispute in this case. It should also be excluded pursuant to Evidence Code § 352,  
14 because its admission will (a) necessitate undue consumption of time and (b) create substantial  
15 danger of undue prejudice, of confusing the issues, and of misleading the jury.

16 In order to establish if Meyers Nave's findings are correct, the court would have to conduct  
17 a mini-trial regarding the accuracy of the information proffered by Meyers Nave in reaching its  
18 conclusions. This would necessitate undue consumption of time. Its use in this case could  
19 prejudice Mehserle as a result of its criticism of BART policing in general, but has little probative  
20 value on any issue in dispute in this case.

21 The criminal case does not concern whether the Meyers Nave firm concluded that Officer  
22 Pirone's or Officer Domenici's conduct was inappropriate that night, whether the parties worked  
23 properly as a team, whether the parties communicated properly to each other, or whether BART's  
24 policies invite transparency and accountability. The report thus has no relevance in this  
25 proceeding.

26 Finally, introduction of the report, which relies on the testimony of various witnesses and  
27 experts, would raise serious hearsay and Sixth Amendment confrontation problems as well, all of  
28 which would have to be sorted out before the Report or any part of it was placed into evidence.

1                   **10. TO EXCLUDE EVIDENCE OR TESTIMONY REGARDING OFFICER MEHSERLE**  
2                   **“FLEEING” TO NEVADA**

3                   Defendant anticipates that the District Attorney may attempt to present evidence that  
4 Officer Mehserle “fled” to Nevada after the incident, to show a consciousness of guilt. The  
5 District Attorney’s own actions, detailed below, indicate that the District Attorney knew the  
6 defendant did not “flee” to Nevada. Indeed, former DA Orloff made a public statement that his  
7 office did not consider the fact that Mehserle was arrested in Nevada to comprise evidence that  
8 Mehserle was attempting to avoid detention, arrest, or trial.

9                   Any evidence of defendant going to Nevada should be excluded pursuant to Evidence Code  
10 § 352, because its admission will (a) necessitate undue consumption of time and (b) create  
11 substantial danger of undue prejudice, of confusing the issues, and of misleading the jury.

12                  In order to establish if defendant “fled” to Nevada, the court would have to conduct a  
13 lengthy trial-within-a-trial regarding the circumstances surrounding defendant’s decision to leave  
14 California. If the District Attorney is allowed to go forward with this evidence, defendant will  
15 defend his actions by presenting evidence (a) of the death threats against him; (b) that the District  
16 Attorney knew he could reach defendant through his attorney at any time but, instead, chose to  
17 engage in inappropriate and unlawful conduct to try to obtain a statement from defendant; (c) that  
18 the District Attorney had actual knowledge of defendant’s location before and at the time of  
19 arrest; and (d) that the District Attorney’s claim in various court proceedings (which directly  
20 conflicted with the statement described above) that defendant was a flight risk was made solely  
21 for political reasons, to appease an angry public.

22                  Regarding the District Attorney’s actions, the DA knew who was representing defendant at  
23 all times and knew he could contact defendant through his attorney. He further knew that  
24 defendant had exercised his right not to be questioned without his counsel present. If the DA  
25 pursues a consciousness of guilt argument or instruction, the defendant would be forced to  
26 introduce evidence that former District Attorney Tom Orloff enlisted the assistance of Oakland  
27 police officers to interview defendant, *sans* counsel, at midnight on January 13, 2009 in violation  
28 of his Constitutional rights shortly after defendant had been arrested.

1 The DA should not be able to introduce evidence in support of a flight or consciousness of  
2 guilt argument when the DA knows that the defendant did not flee, and said so in the newspaper.  
3 Given the circumstances described above and in more detail elsewhere in this case, it ought to be  
4 clear that if the issue is placed before the jury there would be a substantial danger of undue  
5 prejudice, of confusing the issues, and of misleading the jury.

6 **11. TO EXCLUDE EVIDENCE OR TESTIMONY THAT JOHANNES MEHSERLE RESIGNED**  
7 **FROM HIS EMPLOY WITH THE BART POLICE DEPARTMENT**

8 On January 7, 2009, the defendant resigned from his position as a police officer at BART  
9 Police Department. On February 19, 2010, Deputy District Attorney David Stein filed the  
10 People's Trial Brief in this matter with the Alameda County Superior Court. In that Trial Brief,  
11 Mr. Stein noted this fact. (See p. 5 of the Trial Brief.) Thus, the defendant anticipates that the  
12 prosecution intends to present evidence on this nature.

13 First, evidence or testimony of this nature offers little to no relevance in the criminal trial  
14 and, therefore, necessitates exclusion. (Evid. Code § 210; *People v. Warner* (1969) 270  
15 Cal.App.2d 900; *People v. Slocum* (1975) 52 Cal.App.3d 867, 891.) This anticipated evidence  
16 has no legal significance to the vital issues in this case. (*People v. Rodrigues* (1994) 8 Cal.4<sup>th</sup>  
17 1060, 1124-1125.)

18 Second, this evidence should be excluded pursuant to section 352 of the Evidence. By  
19 permitting this issue, significant time will be spent, by the prosecution and defense alike, on  
20 issues concerning employment law, BART employment policies, Internal Affairs investigations,  
21 discipline procedures in general and specific to BART, etc. As previously stated, permitting  
22 commentary on and/or evidence about the defendant's resignation may force the defense to bring  
23 in rebuttal witnesses in the form of evidence or testimony from current or prior defense counsel,  
24 which would, of course, eviscerate on the defendant's attorney-client privilege.

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1           **12. TO EXCLUDE DIRECT OR IMPEACHMENT EVIDENCE AND ARGUMENT RELATING TO**  
2           **JOHANNES MEHSERLE EXERCISE OF HIS FIFTH AMENDMENT PRIVILEGE AGAINST**  
3           **SELF-INCRIMINATION IN BOTH THE ADMINISTRATIVE AND CRIMINAL**  
4           **INVESTIGATIONS OF THE OSCAR GRANT SHOOTING**

4           When investigators seek to question a California police officer about a matter that may  
5 result in a criminal sanction, they are required to inform that officer of his constitutional rights,  
6 including the right to remain silent in the face of such questioning. Govt. Code §3303(h);  
7 *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 829. The officer, too, is entitled to be  
8 represented by counsel and to be informed of that right prior to any questioning. The advisement  
9 contemplated by the statute is the same as required under *Miranda v. Arizona* (1966) 384 U.S.  
10 436, and must be given in the case of a criminal investigation or at any time an officer refuses to  
11 answer investigator's questions on self-incrimination grounds. 40 Cal.3d at 829 n.1.

12           Unlike in the usual criminal case, where *pre-arrest* silence by a defendant may be a proper  
13 subject of cross-examination<sup>2</sup> (*see Jenkins v. Anderson* (1980) 447 U.S. 231), because of the  
14 operation of §3303, in the police context such silence falls squarely within the protection of *Doyle*  
15 *v. Ohio* (1976) 426 U.S. 610.

16           Put another way, whether or not he has been arrested, when a California police officer is  
17 covered by §3303, as was defendant Mehserle, and receives advisement of his rights, his refusal  
18 to make any statement in reliance on that right may not be the subject of prosecution evidence or  
19 argument, whether in its case-in-chief or in cross-examining the defendant.

20           As will appear, Mehserle's refusal, upon the advice of counsel, to speak either to BART  
21 investigators or to the Oakland police or District Attorney falls squarely within these protections.  
22 The Court should therefore exclude any direct or impeachment evidence or argument relating to  
23 Mehserle's decision to remain silent in the face of questioning.

24           Within hours of the Grant shooting Mehserle was represented by counsel who joined him at  
25 the Lake Merritt BART Station. Thereafter, BART investigators and representatives of the

26 \_\_\_\_\_  
27 <sup>2</sup> Although there is conflict among the federal circuits on the issue, the California Court of Appeal recently held that  
28 such pre-arrest silence may *not* be used by the prosecution for any purpose other than impeachment of a testifying  
defendant, and may not be used in the prosecution's case-in-chief. *See People v. Waldie* (2009) 173 Cal.App.4th 358.



1 Alameda District Attorney's Office sought to question him. Mehserle was given the *Miranda*  
2 advisement. Through his counsel, and expressly relying on his Fifth Amendment right to remain  
3 silent, Mehserle declined to give a statement.

4 BART investigators thereafter sought to compel an administrative interview with Mehserle,  
5 who was then still employed by BART. The interview was compulsory in the sense that while  
6 Mehserle had a Fifth Amendment right to remain silent, his failure to speak would have amounted  
7 to insubordination that could have been grounds for administrative sanction, including  
8 termination. *See Lybarger*, 40 Cal.3d at 827. As was his right under the circumstances, Mehserle  
9 resigned rather than submitting to the compelled interview or, alternatively, refusing to answer  
10 any questions and subjecting himself to firing.

11 Finally, late on January 13, 2009, in a jail cell in Nevada, two Oakland police officers again  
12 attempted to interview Mehserle. After they gave him the *Miranda* admonition, Mehserle  
13 declined to give a statement.<sup>3</sup>

14 Under *Doyle*, the prosecution can make no use of Mehserle's *post-arrest* silence for any  
15 purpose in this criminal case. *See People v. Champion* (2005) 134 Cal.App.4th 1440, 1447-1448  
16 (no use in case-in-chief); *People v. Evans* (1994) 25 Cal.App.4th 358, 367 (no use as  
17 impeachment evidence).

18 Moreover, because from the outset Mehserle faced with police and administrative  
19 interviews, was covered by §3303, was therefore formally advised of his *Miranda* rights, and  
20 expressly relied on his Fifth Amendment right in choosing not to give a statement, the  
21 prosecution is similarly barred from using Mehserle's *pre-arrest* silence for any purpose at trial.

22 That fact is made absolutely clear when one considers what would have happened had  
23 Mehserle, then covered by §3303, decided to speak to administrative investigators. In that case  
24 his statements—which are considered involuntary—would not have been admissible for any  
25 purpose at the criminal trial, including impeachment. *See New Jersey v. Portash* (1979) 440 U.S.

26 \_\_\_\_\_  
27 <sup>3</sup> As Mehserle has argued elsewhere, the *attempt* to seek a statement from Mehserle after his arrest, and long after he  
28 had retained counsel, was a violation of his Sixth Amendment right to counsel pursuant to *Massiah v. United States*  
(1964) 377 U.S. 201.

1 450; compare *Harris v. New York* (1971) 401 U.S. 222 (statements obtained in violation of  
2 *Miranda*, unlike those obtained involuntarily, may be used in cross-examination of a defendant).  
3 It would be illogical to exclude the statements themselves, yet permit the DA to use evidence of  
4 silence.

5 In the event this Court were to find that evidence or argument relating to Mehserle's silence  
6 is *not* constitutionally barred, it should nevertheless be excluded under Evidence Code §352. In  
7 *Jenkins* the United States Supreme Court made clear that even where pre-arrest silence is  
8 admissible to impeach a defendant without violating the Fifth or Fourteenth Amendments, state  
9 courts may insist that the evidence the prosecution seeks to offer is more probative than it is  
10 prejudicial. *Jenkins*, 447 U.S. at 239.

11 Mehserle had a right under Government Code §3303 and by operation of the BART Police  
12 Union contract to be represented by counsel in the case of a police-involved shooting. Counsel  
13 arrived at the Lake Merritt BART Station, where Mehserle had been taken after the shooting.  
14 Counsel then informed the investigators that Mehserle would exercise his Fifth Amendment right  
15 not to give a statement or answer any questions.

16 In view of the chaotic circumstances at the Fruitvale BART platform, and given that by all  
17 accounts Mehserle appeared to be in a state of shock after the shooting, it may well be that the  
18 lawyer advised Mehserle not to provide a statement at that time, and that Mehserle simply  
19 followed his advice without carefully contemplating the possible impact of that decision. If the  
20 prosecution were to be able to offer evidence of Mehserle's silence in support of a consciousness  
21 of guilt theory, in that case, how probative would the evidence really be?

22 Also, if the prosecution attempts to use the silence evidence, certainly the defendant would  
23 want to offer opposing proof that he was simply following the directives of his lawyer in  
24 circumstances in which his own ability to make a reasoned judgment was compromised. But in  
25 order to explore the issue fully, Mehserle would have to invade sanctity of the attorney-client  
26 relationship, and might well be forced to waive the privilege in an effort to counter the  
27 prosecution's evidence. This Court should not put Mehserle in such an untenable position.

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1 In any event, the process would be unwieldy and time-consuming. It would likely distract  
2 the jurors from their primary task—that is, to determine whether Mehserle intended to use his gun  
3 on January 1, 2009.

4 Finally, as noted, the evidence is of very little probative value. The admittedly serious  
5 incident rapidly deteriorated into a circus in the days after the shooting, with members of the  
6 press, community and religious leaders, and politicians of all stripes calling Mehserle a murderer  
7 before the investigators had finished their work. In that light, Mehserle's decision not to speak—  
8 until, perhaps, the relative calm of a criminal trial—would seem to have more to do with  
9 appreciating the futility in asserting that he accidentally shot Grant than with evidencing  
10 consciousness of his own guilt.

11 On the other hand, the evidence could be extremely prejudicial, given that lay people often  
12 attribute a failure to defend oneself in the face of criminal allegations by police or the media as a  
13 proxy for an admission of guilt.

14 The evidence should be excluded on both Constitutional and §352 grounds.

15 **13. TO ADMIT EXPERT TESTIMONY BY DEFENSE EXPERTS GREG MEYER AND WILLIAM**  
16 **J. LEWINSKI, PH.D.**

17 As the Court is by now aware, it will be Mehserle's defense to the charge of malice murder  
18 that he neither intended to kill nor to shoot Oscar Grant with his gun. Rather, justifiably intending  
19 to use his TASER, and after announcing that intent, Mehserle mistakenly and accidentally pulled  
20 and fired his service weapon. *Compare Torres v. City of Madera* (9<sup>th</sup> Cir. 2008) 524 F.3d 1053;  
21 *Henry v. Purnell* (4<sup>th</sup> Cir. 2007) 501 F.3d 374; *Torres v. City of Madera* (E.D. CA 2009) 655  
22 F.Supp.2d 1109, 1123; *see also Atak v. Siem* (D. MN 2005) 2005 WL 2105545 \*2.

23 At the preliminary hearing defendant sought to introduce highly qualified expert testimony  
24 on matters that are central to his defense: for example, how officers *should* be trained to use  
25 TASERS; how Mehserle's training fell far short; how as a result of his inadequate and incomplete  
26 training the chance of an accident of precisely the sort that occurred in this case was

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1 greatly increased; and how, based on the physical evidence, it is the expert's conclusion that  
2 Mehserle attempted to deploy his TASER but mistakenly fired his gun.

3 The preliminary hearing court excluded expert testimony on the training and use of  
4 TASERs. When Mehserle challenged the magistrate's ruling in his motion pursuant to Penal  
5 Code §995, arguing that exclusion of this key evidence was federal due process error, the  
6 Superior Court found that the defendant's proffer had been inadequate. The §995 court declined  
7 to reach the merits of Mehserle's constitutional claim.

8 In an abundance of caution, therefore, and because Mehserle anticipates the District  
9 Attorney will again seek to preclude the fact finder from considering this critical defense  
10 evidence, Mehserle offers this legal analysis and offer of proof relating to two of his proposed  
11 expert witnesses. Mehserle of course reserves the right to seek the admission of additional expert  
12 evidence—in the form of expanded subject matter from the two experts identified here, or  
13 through other experts—as the case proceeds.

14 **a. The Law**

15 There are four fundamental and overlapping limitations on expert testimony in California.

16 First, an expert may offer opinion testimony only on subjects "sufficiently beyond common  
17 experience that the opinion of an expert would assist the trier of fact." Evidence Code §801(a);  
18 *People v. Cole* (1956) 47 Cal.2d 99, 103. "Even though facts may be within the knowledge or  
19 understanding of the trier of fact, the conclusions to be drawn therefrom may require expert  
20 testimony. The decisive consideration in determining the admissibility of expert opinion evidence  
21 is whether the subject of inquiry is one of such common knowledge that men of ordinary  
22 education could reach a conclusion as intelligently as the witness or whether, on the other hand,  
23 the matter is sufficiently beyond common experience that the opinion of an expert would assist  
24 the trier of fact." *People v. Harvey* (1991) 233 Cal.App.3d 1206, 1227 (internal quotation marks  
25 and citations omitted).

26 Second, under Evidence Code §803, a court may not admit "testimony in the form of an  
27 opinion that is based in whole or in significant part on matter that is not a proper basis for such an

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1 opinion.” For example, where an expert bases his or her opinion on matters not reasonably relied  
2 upon by other experts in the field, the opinion evidence is inadmissible.

3 Third, pursuant to Evidence Code §720, “A person is qualified to testify as an expert only if  
4 he or she has sufficient knowledge, skill, experience, training or education to qualify as an expert  
5 on the subject matter of his or her testimony.”

6 Finally, while courts have been hesitant to permit experts to pronounce opinion on the  
7 ultimate guilt or innocence of a defendant (*see People v. Torres* (1995) 33 Cal.App.4th 37, 46-47  
8 (citing cases); *People v. Stoll* (1989) 49 Cal.3d 1136, 1149 n.13), Evidence Code §805 provides  
9 that “Testimony in the form of an opinion that is otherwise admissible is not objectionable  
10 because it embraces the ultimate issue to be decided by the trier of fact.”

11 In other words, while an expert cannot tell a jury to convict, he or she can render a qualified,  
12 properly based opinion, even though it treads on the jury’s ultimate obligation to decide the facts  
13 of the case. As the court of appeal said in *People v. Harvey* (1991) 233 Cal.App.3d 1206, 1227:

14 Testimony in the form of an opinion that is otherwise admissible is  
15 not objectionable because it embraces the ultimate issue to be  
16 decided by the trier of fact. We believe . . . that there is no hard and  
17 fast rule that experts may not be asked questions that coincide with  
18 the ultimate issue in the case, and that the true rule is that  
19 admissibility depends on the nature of the issue and the  
20 circumstances of the case, there being a large measure of discretion  
21 involved. We believe further that the modern tendency is against  
22 making a distinction between evidentiary and ultimate facts as  
23 subjects of expert opinion.

24 (Internal quotation marks and citations omitted)

25 Many cases in varying contexts have so held. *See People v. Olguin* (1994) 31 Cal.App.4th  
26 1355, 1370 (officer permitted to offer opinion on ultimate issue in the case, which was whether  
27 the defendant was a member of a gang); *People v. Doss* (1992) 4 Cal.App.4th 1585, 1596 (police  
28 officer permitted to testify on ultimate issue, which was whether the drugs possessed by the  
defendant were intended for sale; court notes that “It is neither unusual nor impermissible for an  
expert to testify to an ultimate issue, and such opinions are expressly contemplated by Evidence  
Code section 805”); *Paez v. Alcoholic Beverage Control Appeals Bd.* (1990) 222 Cal.App.3d

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1 1025, 1026 (officer could testify on ultimate issue—whether customer in bar was obviously  
2 intoxicated)

3 Moving to the key issue in this case, experts have often been called upon to provide  
4 insights and opinions relating to the question whether a certain set of facts might or might not  
5 have been the result of an accident and/or how a particular outcome might have resulted given a  
6 particular set of facts. *See, e.g., People v. Harbert* (2009) 170 Cal.App.4th 42, 50 (defense  
7 accident reconstruction expert explains how defendant might not have seen the victim in time to  
8 avoid hitting her with his car); *People v. Tackett* (2006) 144 Cal.App.4th 445, 451 (crime scene  
9 reconstruction experts on both sides offer opposing testimony regarding whether the defendant  
10 could have been driving the truck that led to a fatality); *People v. Wattier* (1996) 51 Cal.App.4th  
11 948, 952 (prosecution expert testifies that accident and fatality was caused by unsafe and erratic  
12 driving on part of defendant); *People v. Singh* (1995) 37 Cal.App.4th 1343, 1377 (officer could  
13 offer opinion whether automobile accident had been staged); *People v. Marsh* (1985) 175  
14 Cal.App.3d 987, 992 (prosecution experts testify that based on injuries suffered by child, death  
15 could not have been accidental); *People v. Smith* (1983) 196 Cal.Rptr. 106 (unpublished)(defense  
16 forensic expert testifies that shooting was result of an accident due to contact with gun by third  
17 person).

18 **b. The Proposed Expert Testimony**

19 **i. Greg Meyer**

20 **1. Offer of Proof**

21 Defense expert Greg Meyer is a nationally recognized expert in the field of use of force. He  
22 has 34 years of law enforcement experience. *See* Exhibit A, Greg Meyer CV. Meyer is a retired as  
23 a Captain with the Los Angeles Police Department. He has more than 30 years experience with  
24 TASERs, including research, testing, instructor training, and use in tactical situations. He has  
25 written and lectured widely on various law enforcement subjects including TASER training and  
26 deployment and use of force. Mr. Meyer, while Captain of the Los Angeles Police Academy from  
27 2004-2006, commanded units that taught firearm and TASER use. Mr. Meyer has consulted in  
28 more than 100 criminal, civil, and administrative cases, including numerous officer-involved

1 shootings and TASER-related cases. Mr. Meyer has testified for and against police officers in  
2 criminal, civil, and administrative cases, including officer-involved shooting cases, TASER cases,  
3 and use of force cases.<sup>4</sup>

4 Mr. Meyer will offer testimony as follows (notably, some of what follows falls into the  
5 category of facts considered by Meyer, upon which his conclusions rely; some are the conclusions  
6 themselves):<sup>5</sup>

- 7 1. Mr. Meyer has reviewed investigation reports, witness interviews, and all of the  
8 relevant documentary and physical evidence relating to the Oscar Grant shooting,  
9 including videotapes;
- 10 2. Mr. Meyer has conducted personal interviews with the BART training officers who  
11 conducted TASER training of the defendant on December 3, 2008. He has also  
12 reviewed the videotape of the defendant being tased during the course of that training  
13 class;
- 14 3. Mr. Meyer is thoroughly familiar with the TASER X26 carried by the Defendant on  
15 January 1, 2009, and is aware of the manner in which it was carried on the defendant's  
16 equipment belt;
- 17 4. Meyer is also thoroughly aware of the firearm carried by the defendant on January 1,  
18 2009 and the manner in which that firearm would commonly be drawn from the  
19 Safariland ALS Holster carried by the defendant on the date at issue;
- 20 5. Mr. Meyer is thoroughly familiar and has studied approximately six other documented  
21 incidents prior to January 1, 2009, in which police officers intended to deploy their  
22 TASERs and/or announced their intention to deploy their TASERs and, instead and by  
23 mistake, drew and fired service weapons;

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25 \_\_\_\_\_  
26 <sup>4</sup> This brief contains a summary statement of Mr. Meyer's qualifications to give the Court a clear sense that the  
expert is qualified to offer opinions in the subject areas that follow. He will, of course, be fully qualified at trial.

27 <sup>5</sup> Mehserle has attempted to be complete in his general description of the proposed Meyer testimony. He of course  
28 reserves the right to add or subtract areas of evidence depending on the prosecution's case.

- 1           6. Mr. Meyer is familiar with various civil actions that have ensued as a result of those  
2           prior matters and where available has read judicial opinions relating to those cases;
- 3           7. Based upon Mr. Meyer's review of the evidence in this case, including statements of  
4           witnesses describing Mehserle's reaction to the shooting, and evidence that Mehserle  
5           stated his intention to tase Mr. Grant just prior to firing the fatal round, it is Mr. Meyer's  
6           expert opinion that the fatal shooting of Oscar Grant by defendant Johannes Mehserle  
7           was an accident resulting from Mehserle's attempt to use a TASER and his mistaken  
8           use of his firearm instead;
- 9           8. Mr. Meyer will testify that defendant's decision and attempt to use the TASER was  
10          objectively reasonable and proper according under the circumstances, the relevant law,  
11          BART policy, and the training the defendant had received prior to January 1, 2009  
12          concerning deployment of the TASER;
- 13          9. Mr. Meyer will also testify concerning numerous instances in which the TASER has  
14          been deployed by police officers in an attempt to avoid the use of lethal force against  
15          police officers by suspects—i.e., instances in which officers might have resorted to the  
16          use of firearms but, instead, chose to deploy TASERs in the face of the threat of the use  
17          of lethal force against them.

18          Mr. Meyer will also provide testimony as follows:

- 19           10. It was objectively reasonable under the law, their training, and the circumstances for  
20           BART officers to detain subjects they reasonably believed were involved in the fight on  
21           the train;
- 22           11. It was objectively reasonable under the law, their training, and the circumstances for the  
23           officers to handcuff those subjects;
- 24           12. Grant unlawfully physically resisted detention in violation of Penal Code § 148a;
- 25           13. Grant's resistance caused the officers' efforts to bring him under control to be  
26           prolonged;
- 27           14. Various factors, including the increase in noise on the BART platform, the large  
28           number of bystanders compared to police officers, and the justifiable conclusions of the



- 1 officers that the crowd could become aggressive, escalated tensions and stresses in the  
2 incident and are circumstances relevant to the question whether Mehserle acted in an  
3 objectively reasonable manner during the Grant detention;
- 4 15. Police may use force to make an arrest, overcome resistance, or prevent escape and to  
5 defend themselves or others from bodily harm;
- 6 16. Under the circumstances, training, and law, the force used to attempt to subdue and  
7 handcuff Grant prior to the shooting was an objectively reasonable use of force to  
8 overcome Grant's unlawful resistance;
- 9 17. Grant physically resisted the lawful control efforts of the officers by secreting his right  
10 arm under his body and resisting the efforts of Officer Mehserle to pull it out;
- 11 18. Officer Mehserle engaged in prolonged physical efforts to gain control of Grants right  
12 arm with the apparent intent to handcuff Grant;
- 13 19. Grant repeatedly contorted his body by twisting and turning and bucking against the  
14 officer's attempts to control him and handcuff him;
- 15 20. Various facts apparent from the physical evidence as well as his training, it is apparent  
16 that Officer Mehserle determined to deploy the TASER to attempt to control Grant;
- 17 21. Under the law, his training, and the circumstances, the decision to deploy the TASER  
18 was an objectively reasonable decision, after conventional soft empty-handed tactics  
19 failed to control Grant;
- 20 22. The TASER is typically far less injurious than hard-hands tactics or blunt force  
21 instruments, which were the next level of force above what the officers were using on  
22 Grant;
- 23 23. If Officer Mehserle observed or perceived that Grant's hand was entering his waistband  
24 or pants pocket area, it was likely that Officer Mehserle's level of fear would escalate,  
25 and in that case, under the law, the circumstances and his training, it was objectively  
26 reasonable for Officer Mehserle to deploy a TASER to stop Grant's actions;
- 27 24. Officer Mehserle loudly announced that he was going to use the TASER on Grant;

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- 1 25. Officer Mehserle's ultimately failed attempt to draw the TASER impacted by the
- 2 stresses of the moment and inadequate training and experience with the TASER;
- 3 26. Officer Mehserle had great difficulty drawing his weapon, a fact proven by the
- 4 contorted actions of his right hand and thumb, which seemed be employing TASER
- 5 unholstering techniques on the gun holster;
- 6 27. Officer Mehserle accidentally drew his handgun instead of his TASER;
- 7 28. Officer Mehserle stood up and positioned his right hand and right arm in a manner
- 8 entirely consistent with an intention to deploy a TASER—namely he attempted to
- 9 create a sufficient spread between the two TASER darts to achieve a neuromuscular
- 10 incapacitation and stop Grant's resistance;
- 11 29. Officer Mehserle's position immediately before the shot was entirely inconsistent with
- 12 an attempt to shoot a handgun;
- 13 30. The physical evidence uniformly supports the claim that Officer Mehserle believed he
- 14 was firing a TASER, not a handgun, when he fired the single shot;
- 15 31. Officer Mehserle's physical actions and facial expressions immediately after firing the
- 16 shot are indicative of shock and surprise;
- 17 32. Officer Mehserle's announcement that he was going to use the TASER on Grant and his
- 18 statement shortly afterward to Officer Pirone that he (Mehserle) thought that Grant was
- 19 going for a gun, are not at all inconsistent with each other or with an attempt to deploy
- 20 the TASER;
- 21 33. Meyer is aware of dozens of incidents in which police officers were either concerned
- 22 about an imminent deadly threat from a suspect, or actually faced such a threat, and
- 23 chose to use TASERs to end the incident without deploying deadly force;
- 24 34. A suspect's back has been the preferred TASER target area for more than 30 years;
- 25 35. Using a TASER to overcome physical resistance is entirely consistent with BART
- 26 policy and is typical of other TASER policies throughout the world;
- 27 36. As the result of three different TASER holster configurations issued to officers on
- 28 different shifts, BART officers did not become sufficiently familiar with the equipment

1 to achieve the muscle memory required to perform automatically in emergency  
2 situations;

3 37. The fact that Mehserle had use of the TASERs for only one month before the Grant  
4 shooting greatly increased the risk of the sort of accidental shooting that occurred;

5 38. By not incorporating realistic, dynamic, interactive, stress-inducing tactical scenarios  
6 during TASER training, BART did not adequately prepare its officers for the realities of  
7 tactical decision-making and TASER use in the real world;

8 39. Other than the fact of the shooting itself, there exists no physical evidence that Officer  
9 Mehserle attempted to use deadly force on January 1, 2009.

10 **2. Argument for Admissibility**

11 After they hear the opening arguments of counsel—the DA stating his belief that the  
12 shooting was intentional, defense counsel stating his position that the shooting was an accident—  
13 there will naturally be two central questions in the minds of the jurors relating to Mehserle’s  
14 asserted defense: first, how could a police officer make such a mistake? And second, why would  
15 Mehserle have chosen to use his TASER in the first place?

16 Neither question is answerable by reference to the jurors’ common experience. And even if  
17 some of the facts are within the jurors’ experience—say, the noise on the platform—the relevant  
18 conclusions to be drawn therefrom require expert assistance. *People v. Harvey* (1991) 233  
19 Cal.App.3d 1206, 1227. The defendant is entitled to offer evidence from a qualified expert in  
20 order to assist the jurors to understand that Mehserle’s decision to use the TASER in this case was  
21 entirely justified.

22 Mehserle is likewise entitled to offer expert testimony to assist the jurors in their  
23 understanding of the physical evidence, and in particular the videotape. Meyer will explain, for  
24 instance, how various circumstances apparent from the video—e.g., Mehserle’s position, the  
25 actions of his hand during long effort to unholster the gun, the manner in which he held the gun,  
26 his conduct following the shooting—are consistent with an attempt to deploy the TASER and  
27 inconsistent with an attempt to deploy his firearm.

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1 Mehserle is also entitled to offer expert testimony that the mistake he made and the  
2 accidental shooting that occurred was not at all a surprise under the specific circumstances—  
3 inadequate and improper training, lack of experience in tactical situations, the particular stressors  
4 at the BART platform, and so forth—and that the mistake was not the product of an conscious  
5 disregard for human life. All of the categories of testimony listed above relate to these two  
6 questions and Meyer is obviously qualified to offer his opinion accordingly.

7 Moreover, under the authorities discussed previously, Meyer should be allowed to render  
8 his ultimate opinions that (a) Mehserle's intent was to draw the TASER and not his firearm and  
9 (b) Mehserle's use of the gun rather than a TASER in this case was an accident and was not the  
10 product of an intent on the part of the officer to employ deadly force.

11 A brief look back at the preliminary hearing suggests why such expert testimony on the  
12 training and use of TASERS, as well as the proper use of non-lethal force, will be so critical to the  
13 jurors ultimate decision on the murder charge. Recall, of course, that the magistrate had excluded  
14 Meyer's testimony. In the absence of that assistance, the magistrate concluded that Mehserle  
15 intended to shoot and not to tase Grant. (PHT 1061) That conclusion was based two on two facts:  
16 (a) that Mehserle had two hands on his weapon when he fired it and (b) that Mehserle drew the  
17 weapon with his strong (i.e., dominant) hand. The magistrate concluded that both facts were  
18 consistent with an intent to fire his gun, and inconsistent with an intent to use the TASER. Here's  
19 what the court said: "The fact that he grabbed it with his right hand and the testimony is he took  
20 two hands and shot down at the victim, tells me that it's consistent with his intent to shoot the  
21 victim at the time." (PHT 1061)

22 Had the magistrate permitted Meyer to assist him in his understanding of the relevant facts,  
23 the outcome of the preliminary hearing might have been very different. The expert would have  
24 squarely contradicted the magistrate's conclusion that the two-hand grip and the strong hand draw  
25 support are inconsistent with Mehserle's accident defense.

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1 First, expert Meyer will explain at trial, there was nothing whatsoever about Mehserle's  
2 two-hand grip that was inconsistent with an attempt to use the TASER or a belief that he had the  
3 TASER in his hand when he shot Grant. Indeed, a training video upon which Meyer's relies in  
4 part for his opinions proves the opposite. Meyers will testify that officers are *trained* to use a  
5 two-hand grip when deploying the TASER. Similarly, the expert will make clear that the fact that  
6 Mehserle grabbed the gun with his right (strong) hand is in no way inconsistent with an attempt to  
7 deploy the TASER.

8 In case the Court chooses to instruct the jury on the lesser-included offense of involuntary  
9 manslaughter, Meyer's expert opinion becomes doubly relevant. As defendant has discussed in  
10 detail in his Trial Brief on Instructional Issues, the focus of the jury's attention, should they be  
11 required to decide whether Mehserle was sufficiently reckless on the BART platform to warrant  
12 an involuntary manslaughter conviction, would be (a) whether he was justified in using the  
13 TASER under the circumstances (i.e., whether his conduct was *objectively reasonable*) and (b)  
14 whether his mistake in firing his gun rather than his TASER demonstrated a level of recklessness  
15 that suggests an indifference to the consequences. As the federal courts have found in the context  
16 of §1983 cases involving the mistaken use of a gun rather than a TASER, facts such as adequacy  
17 of training, officer compliance with training, and factors distracting the officer from his or her  
18 training, including the conduct of a suspect, are highly relevant to the question of the officer's  
19 reasonableness. These are precisely the subjects of expert Meyer's proposed testimony.

20 Finally, it must be said that given his importance to the defendant's case, the exclusion of  
21 Meyer's expert opinion evidence in this case would amount to federal due process error. As the  
22 United States Supreme Court held in *Chambers v. Mississippi* (1973) 410 U.S. 284, 302 (1973):  
23 "Few rights are more fundamental than that of an accused to present witnesses in his own  
24 defense."; *see also Washington v. Texas* (1967) 388 U.S. 14, 18-19 (due process error to exclude  
25 defense evidence).

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**ii. William Lewinski**

**1. Offer of Proof**

William Lewinski, PhD, is an expert on psychological and physiological factors surrounding the use of force by police officers, including use of deadly force and officer-involved shootings. He has been qualified in this and related areas and testified in civil and criminal matters more than 150 times. See Exhibit B, William Lewinski CV. Dr. Lewinski, a professor at Minnesota State University, is currently the Director of the Force Science Research Center, which is “dedicated to the study of human dynamics in high stress, rapidly unfolding force encounters. Through classes and consultation, the Institute strives to facilitate the application of Force Science concepts during investigations, training and the evaluation of the appropriateness of officers' behavior during these encounters.”

Dr. Lewinski will offer testimony as follows:

1. He has reviewed evidence in this case which is relevant to making a determination concerning psychological and physiological factors which may have impacted Officer Mehserle’s observations, his thought processes and his responses during the events of January 1, 2009. His review of evidence has included documentary evidence and videotapes take of the incident in question;
2. He has reviewed Officer Mehserle’s training records and training history in the areas of the use of a TASER and his training concerning use of a firearm. From his review of written reports and materials, he is familiar with Mehserle’s prior experience in dealing with subjects who are perceived to be a threat because of the placement of their hands or other factors. He is familiar with and has personally conducted a variety of research projects directly relevant to issues in this case including, but not limited to, (a) the threat level of a prone subject who is suspected of having a gun in his hand or is reaching for a gun; (b) the attentional resources that are directed to a threat and their effect on perception, decision-making and response; (c) the role of training in developing automaticity in behavior which can facilitate correct decision-making and performance

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1 in high stress situations; and (d) training and behavioral elements that can lead to a  
2 mistaken response in the type of circumstances involved in this incident;

3 3. Based upon studies he has conducted and which are currently ongoing, Dr. Lewinski  
4 will testify regarding the threat level that a prone subject poses to a police officer.  
5 Specifically, he will describe research data demonstrating that a suspect prone on the  
6 ground who has a weapon either underneath his body or in a pocket can draw and fire  
7 the weapon at an officer who already has his weapon trained on a suspect and who has  
8 his finger on the trigger of the weapon at a faster rate than the officer can return fire.  
9 Research conducted by Dr. Lewinski has established that a prone suspect with a gun  
10 underneath the body or in a front pocket can draw and fire the weapon between one  
11 fourth of a second and two thirds of a second;

12 4. Dr. Lewinski will testify how an officer's training and experience influence how the  
13 officer sees, interprets, and reacts to the behavior of a suspect. This will include  
14 testimony concerning the fact that once an officer's focus is directed to a particular area,  
15 his ability to observe other potentially important things around the officer becomes  
16 significantly impaired, causing something referred to as "inattentional blindness";

17 5. Dr. Lewinski will testify how inattentional blindness and the focus on a particular  
18 isolated area of action which an officer perceives to be a potential threat will force the  
19 officer to rely on automatic behavior to deal with the threat;

20 6. Dr. Lewinski will explain the decision-making process that is most commonly used in a  
21 highly threatening, visually and behaviorally complex, dynamic, and rapidly evolving  
22 situation;

23 7. Dr. Lewinski will explain that an officer is trained to perceive certain actions by  
24 individuals as a threat and to respond with a certain pattern of behavior or an "automatic  
25 process." Such training does not involve mere mechanical issues—it must include  
26 training on recognizing the pattern of behavior and formulating an appropriate and  
27 instinctive response;

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- 1 8. In order for an officer to respond appropriately to a pattern of threatening behavior, the  
2 officer needs to be trained that the response needs to be instinctive. Where there is  
3 insufficient training, the response may not occur at all or may not be the desired  
4 response;
- 5 9. Dr. Lewinski will testify regarding the training of police officers to develop  
6 automaticity in behavior, which then can facilitate correct decision-making and  
7 performance in threatening, visually and behaviorally complex, dynamic, and rapidly  
8 evolving tactical situations;
- 9 10. Dr. Lewinski will explain what studies show concerning how often training must be  
10 conducted to repeat the correct and desired response to a perceived pattern of conduct  
11 so that the desired behavior/response becomes the default option;
- 12 11. Dr. Lewinski will testify to the fact that inadequate and improper training can lead to  
13 problems of inattentional blindness and what is sometimes referred to as "confirmation  
14 bias," where whatever information an officer is receiving during a stressful moment  
15 erroneously signals to him that he has made the right choice to respond to a threat when  
16 in fact, that is not the case at all;
- 17 12. Dr. Lewinski will testify that Mehserle's reactions as shown on the video immediately  
18 after the shot was fired are indicative of a response which he did not anticipate before  
19 firing the shot;
- 20 13. Based upon a comprehensive study of the evidence in this case, his participation in  
21 relevant research studies, and his awareness of relevant research in the field, Dr.  
22 Lewinski will offer his opinion that, as a result of contextual factors, including  
23 Mehserle's prior training and experience, together with the presence of a variety of  
24 factors which affected his attentional resources and, in turn, his perception, decision-  
25 making, and response, together with his responses immediately following the firing of  
26 the weapon, it is clear that Officer Mehserle accidentally drew and fired his firearm  
27 rather than his TASER on January 1, 2009.
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**2. Argument for Admissibility**

Dr. Lewinski is unquestionably qualified to offer analysis and opinion on the subject of psychological and physiological factors surrounding the use of force by police officers. This witness is an international leader in this field, having been regularly qualified in courts around the country on these very issues, often on behalf of prosecutors. He is the director of an organization that is solely dedicated to research in this area.

Like expert Meyer, Dr. Lewinski's testimony is admissible on the key defense claim: that Mehserle intended to use his TASER, but rather used his gun. Again, the jurors will fairly be asking themselves, how is it a trained officer makes this sort of mistake? They require and defendant is entitled to offer the jurors assistance in answering this question.

To recap, Meyers will testify regarding the justifiability of the intended use of force, will explain how Mehserle's lack of adequate or effective training made an accident more likely, and will show how Mehserle's conduct on January 1, 2009, was entirely consistent with an intent to use his TASER and entirely inconsistent with an intent to use his gun.

Dr. Lewinski will explain how the inadequate and ineffective training, the fact that he had not carried or used the TASER with any regularity, and the various circumstances present on January 1, 2009—including, but not limited to, Grant's position on the platform, the fact that Grant refused to give up his arms for cuffing, the noise, the number of people on the platform, the perceived threat level, and the fact that Mehserle was aware that guns had been retrieved from BART riders that evening—led Mehserle to make the tragic mistake that officers in several other cases made before him.

Jurors can certainly imagine the circumstances on the BART platform—they can understand the noise, the chaos, and perhaps can even imagine that the officers felt outmanned and under siege. But, as per *People v. Harvey* (1991) 233 Cal.App.3d 1206, 1227, while they may understand these facts, they are in no position, without assistance from an expert like Dr. Lewinski, to grasp how those factors and the others described above might have resulted in the sort of confusion, and mistaken physiologic response, that led to the accidental shooting.

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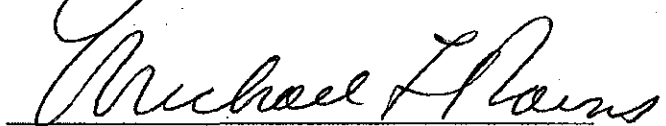
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The question is simply whether this area is “of such common knowledge that men of ordinary education could reach a conclusion as intelligently as the witness”—in other words, whether Dr. Lewinski’s testimony would in no meaningful way assist the jurors in their understanding of what happened on January 1, 2009. In fact, this expert’s many years studying psychological and physiological factors surrounding the use of force by police officers in tactical put him in a unique position to assist the jurors.

Dated: April 23, 2010

Respectfully submitted,

**RAINS LUCIA STERN, PC**



By: Michael L. Rains  
Attorneys for Defendant JOHANNES MEHSERLE

1 **PROOF OF SERVICE**

2 I, Joseph Lucia, am a citizen of the United States, and am over 18 years of age. I am  
3 employed in Contra Costa County and am not a party to the above-entitled action. My business  
4 address is Rains Lucia Stern, PC, 2300 Contra Costa Blvd., Suite 230, Pleasant Hill, California  
5 94523. On the date set forth below I served a true and correct copy(ies) of the following  
6 document(s):

7 **Defendant Johannes Mehserle's Motions in Limine**


8 upon all parties addressed as follows:

9 Nancy E. O'Malley, District Attorney  
10 Michael O'Connor, Sr. Deputy District Attorney  
11 David Stein, Deputy District Attorney  
12 County of Alameda  
1225 Fallon Street, 9<sup>th</sup> Floor  
Oakland, CA 94612

13 said service was effected as indicated below:

- 14  **HAND DELIVERY** - I placed true and correct copies of the above-referenced  
15 document(s) in a sealed envelope, addressed to the above-named parties, and personally  
16 delivered them.  
17  **FACSIMILE TRANSMISSION** - I caused true and correct copies of the above-referenced  
18 document(s) to be delivered by facsimile transmission.  
19  **ELECTRONIC MAIL** - I caused true and correct copies of the above-referenced  
20 document(s) to be delivered by electronic mail transmission.  
21  **OVERNIGHT DELIVERY** - I placed true and correct copies of above-referenced  
22 document(s) in a sealed envelope, properly addressed to the above-named parties, with  
23 fees prepaid in a receptacle regularly maintained by OnTrac.  
24  **MAIL** - I placed true and correct copies of above-referenced document(s) in a sealed  
25 envelope, properly addressed to the above-named parties, with postage prepaid in a  
26 receptacle regularly maintained by the United States Post Office.

27 I declare under penalty of perjury under the laws of the State of California that the  
28 foregoing is true and correct and was executed on April 23, 2010, at Pleasant Hill, California.

  
Joseph Lucia

1. DEFENDANT'S TRUE NAME (Leave Blank)				2. PFN <b>BEA382</b>		3. REPORT NUMBER <b>2006-00041639</b>		SEND VERIFICATION TO:	
4. DEFENDANT'S LAST NAME <b>GRANT, OSCAR JULIUS III</b>				FIRST <b>OSCAR</b>		MIDDLE <b>JULIUS</b>		GEN <b>III</b>	
6. AKA / NICKNAME				5. ARREST NO.		7. AJIS NUMBER		RIGHT THUMB	
8. DOB <b>02/27/1986</b>		20	POB	HEIGHT <b>5'09</b>	WEIGHT <b>160</b>	HAIR <b>BLK</b>	EYES <b>BRO</b>	RACE <b>B</b>	SEX <b>M</b>
10. ARREST DATE <b>10/15/2006</b>		11. ARREST TIME <b>21:15</b>		12. SALIENT CHARACTERISTICS (SMT'S)					
13. HOME ADDRESS <b>724 LEWELLING 212, SAN LEANDRO, CA 94579-</b>				LEFT THUMB					
14. BUSINESS ADDRESS / SCHOOL <b>KENTUCKY FRIED CHICKEN / WEBSTER ALAMEDA, CA -</b>									
15. HOME PHONE <b>(510)706-3216</b>		16. DRIVER'S LICENSE # <b>D4581150/CA</b>			17. SOCIAL SEC # <b>549-89-4299</b>			18. MISC ID #	
19. BUSINESS PHONE		20. OCCUPATION <b>MANAGER</b>			21. CLOTHING				
22. CODE SECTION <b>12021 PC-F</b>		23. MIF	24. COURT	25. CIR	26. WARRANT #		27. CEN		28. BAIL
<b>12025 PC-F</b>									ID CONFIRMED TO PFN <input type="checkbox"/> NEW PFN
<b>12031(A)(2)(F) PC-F</b>									ID CONFIRMED BY
<b>148(A)(1) PC-M</b>									CII NO.
<b>NOT LISTED</b>									FBI NO.
									CHECKS <input type="checkbox"/> PIN <input type="checkbox"/> NCIC <input type="checkbox"/> UPDATED
									CASH AT BOOKING
									COURT DATE / TIME
									TOTAL BAIL: <input type="checkbox"/> BAIL POSTED
									\$
29. LOCATION OF ARREST <b>712 LEWELLING BLVD SAN LEANDRO</b>				SIGNATURE OF PERSON TAKING PRINTS					
30. ARRESTING OFFICER <b>296\ HIDAS, ALEX, J,</b>		NO.		31. TRANSPORTING OFFICER <b>296\ HIDAS, ALEX, J,</b>		NO.		SIGNATURE OF PERSON PRINTED	
32. CO-DEFENDANT				33. CO-DEFENDANT <b>X</b>					
34. VEHICLE					35. TOWED TO		36. TOW TAG		HOLD FOR
37-43. CITIZEN'S ARREST INFORMATION / DECLARATION LOCATED ON SLPD STATEMENT FORM									
44. PERSON TO BE NOTIFIED IN EMERGENCY				45. RELATIONSHIP		46. HOME PHONE		BUS. PHONE	47. DATE / TIME NOTIFIED
48. ADDRESS OF PERSON TO BE NOTIFIED						49. LOCAL AGENCY USE			
50. NARRATIVE: <b>SEE REPORT.</b>									
52. RELEASE REASON / JUV DISPO <b>BOOKED</b>		53. OFFICER OUTGOING		DATE / TIME <b>10/15/2006</b>		54. PRISONER SIGNATURE OUTGOING <b>X</b>		55. SUPERVISOR	

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EXHIBIT A

ORIGINAL 12

1. DEFENDANT'S TRUE NAME (Leave Blank)		2. PFN BEA382		3. REPORT NUMBER 2006-00041639		SEND VERIFICATION TO:	
4. DEFENDANT'S LAST NAME FIRST MIDDLE GEN GRANT, OSCAR JULIUS III				5. ARREST NO.		RIGHT THUMB CPPSY CDLY CIIY	
6. AKA / NICKNAME				7. AJIS NUMBER			
8. DOB 02/27/1986	20. POB	HEIGHT 5'09"	WEIGHT 160	HAIR BLK	EYES BRO		
9. SLPD BOOKING NUMBER		10. ARREST DATE 10/15/2006		11. ARREST TIME 21:15		12. SALIENT CHARACTERISTICS (SMT'S)	
13. HOME ADDRESS 724 LEWELLING 212, SAN LEANDRO, CA 94579-						LEFT THUMB	
14. BUSINESS ADDRESS / SCHOOL KENTUCKY FRIED CHICKEN / WEBSTER ALAMEDA, CA -							
15. HOME PHONE (510)706-3216		16. DRIVER'S LICENSE # D4581150/CA		17. SOCIAL SEC # 549-89-4299		18. MISC ID #	
19. BUSINESS PHONE		20. OCCUPATION MANAGER		21. CLOTHING			
22. CODE SECTION 12021 PC-F		23. MF	24. COURT	25. CIR	26. WARRANT #	27. GEN	28. BAIL
12025 PC-F							10,000
12031(A)(2)(F) PC-F							10,000
148(A)(1) PC-M							2,500
NOT LISTED							
12316(B)(1) PC							10,000
29. LOCATION OF ARREST 712 LEWELLING BLVD SAN LEANDRO						SIGNATURE OF PERSON TAKING PRINTS	
30. ARRESTING OFFICER 296\ HIDAS, ALEX, J.			31. TRANSPORTING OFFICER 296\ HIDAS, ALEX, J.			SIGNATURE OF PERSON PRINTED	
32. CO-DEFENDANT			33. CO-DEFENDANT			X	
34. VEHICLE				35. TOWED TO		36. TOW TAG HOLD FOR	
37-43. CITIZEN'S ARREST INFORMATION / DECLARATION LOCATED ON SLPD STATEMENT FORM							
44. PERSON TO BE NOTIFIED IN EMERGENCY			45. RELATIONSHIP		46. HOME PHONE BUS. PHONE		47. DATE / TIME NOTIFIED
48. ADDRESS OF PERSON TO BE NOTIFIED					49. LOCAL AGENCY USE		
50. NARRATIVE: SEE REPORT.							
52. REASON FOR RELEASE / JUV DISPO BOOKED							
53. OFFICER OUTGOING		DATE / TIME 10/15/2006		54. PRISONER SIGNATURE OUTGOING X		55. SUPERVISOR	

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# SAN LEANDRO POLICE DEPARTMENT

## POLICE REPORT

901 E. 14TH STREET  
SAN LEANDRO, CA 94677  
(510) 577-3217 RECORDS



CASE NO.

# 2006-00041639

PAGE 1 OF 5

ASSOCIATED SLPD CASE #(S)

2006-00041643  
2006-  
2006-

- DVR  RRES
- GANG RELATED
- CONFIDENTIAL REQUESTED
- BAWAR INFO PROVIDED
- VICT OF VIOLENT CRIME NOTIFIED

EVENT

DATE REPORTED 10/15/2006	TIME 21:07	OCURRED INCIDENT TYPE TRAFFIC STOP	CRIME SCENE TECHNICIAN 293\ RUFF, DANIEL, B,
OCURRED FROM 10/15/2006	TIME 21:07	DOMESTIC RELATIONSHIP	WEAPON FIREARM - HANDGUN
AND 10/15/2006	TIME 21:30	LOCATION OF OCCURRENCE TECHCO GAS STATION, 15201 WASHINGTON AVE / SAN LEANDRO	

OFFENSES

NO.	SECTION - TYPE	ATTEMPT / COMMIT	COUNTS	MO FACTORS	<input type="checkbox"/> FORCED TO DISROBE	<input type="checkbox"/> OTHER SEX ACTS
1	12021 PC-F	COMMITTED	1	<input type="checkbox"/> ALARM DISABLED	<input type="checkbox"/> FORCED TO FONDLE SUSP	<input type="checkbox"/> PHONE DISABLED
2	12025 PC-F	COMMITTED	1	<input type="checkbox"/> BOUND/GAGGED	<input type="checkbox"/> FORCED TO REAR STORE	<input type="checkbox"/> POWER DISABLED
3	12031(A)(2)(F) PC-F	COMMITTED	1	<input type="checkbox"/> DEFECATED	<input type="checkbox"/> GLOVES WORN	<input type="checkbox"/> RAPED
4	148(A)(1) PC-M	COMMITTED	1	<input type="checkbox"/> DEMAND NOTE USED	<input type="checkbox"/> HATE MOTIVATED	<input type="checkbox"/> RAPED WITH OBJECT
5	NOT LISTED	COMMITTED	1	<input type="checkbox"/> DISROBED BY SUSP	<input type="checkbox"/> IMPERSONATE POLICE/LAW	<input type="checkbox"/> SODOMIZED
6				<input type="checkbox"/> EJACULATED	<input type="checkbox"/> KNEW LOC HIDDEN LOSS	<input type="checkbox"/> TORTURED
7				<input type="checkbox"/> FIRED WEAPON	<input type="checkbox"/> MASK WORN/FACE HIDDEN	<input type="checkbox"/> VICT CLOTHES CUT/TORN
8				<input type="checkbox"/> FOLLOWS/STALKS VICT	<input type="checkbox"/> MASTURBATED	<input type="checkbox"/> WEAPON USED
				<input type="checkbox"/> FORCED COVER FACE	<input type="checkbox"/> ORALLY COPULATED	<input type="checkbox"/> WINDOW SMASH BURG
				<b>BURGLARY DETAILS</b>	<b>TOOLS</b>	<input type="checkbox"/> PLIERS
				POINT OF ENTRY	<input type="checkbox"/> BOLT CUTTER	<input type="checkbox"/> PRY TOOL
				METHOD	<input type="checkbox"/> BRICK/ROCK	<input type="checkbox"/> SAW/DRILL
				POINT OF EXIT	<input type="checkbox"/> FLASHLIGHT	<input type="checkbox"/> SCREWDRIVER
				METHOD	<input type="checkbox"/> GLASS CUTTER	<input type="checkbox"/> TAPE WIRE
					<input type="checkbox"/> KEY/LOCKPICK	<input type="checkbox"/> VICE GRIPS

SUBJECTS

NO.	INVOLVMENT	NAME (LAST, FIRST, MIDDLE, SUFFIX)	DATE OF BIRTH	AGE	RACE/SEX	HAIR/EYES	HGT / WGT
1	VI	STATE OF CALIFORNIA,					
2	SU	GRANT, OSCAR JULIUS III	02/27/1986	20	B / M	BLK / BRO	5'09 / 160
3	IP	GREER, MICHAEL RAY JR.	08/26/1986	20	B / M	BLK / BRO	5'06 / 160
4	IP	JACKSONANDERSON, IKE DWAYNE	01/29/1986	20	B / M	BLK / BRO	6'04 / 315
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VEHICLES

NO.	LICENSE NUMBER	YEAR	MAKE	MODEL	STYLE	COLOR(S)
VICT 1	/					/
	DESCRIPTION					
VICT 2	/					/
	DESCRIPTION					
SUSP 1	1KKU433 / CA	1984	OLDSMOBILE	DELTA 88	4 DOOR	/ TAN
	DESCRIPTION					
SUSP 2	/					/
	DESCRIPTION					

01137

DOCS

TECH REPORT    
  ARREST REPORT    
 \_\_\_ FST / 11550 FORM    
 \_\_\_ CHP180  
 PHOTO REPORT    
  OFFICER SUPPLEMENT    
  STATEMENT FORM    
 \_\_\_ CHP555

REPORTING OFFICER 296\ HIDAS, ALEX, J,	DATE / TIME WRITTEN 10/15/2006 22:13	APPROVING SUPERVISOR
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PRIMARY OFFENSE / OCCURRED INCIDENT		SAN LEANDRO POLICE DEPARTMENT				CASE NO.		PAGE		
TRAFFIC STOP		INVOLVED SUBJECTS 1 - 6				2006-00041639		2 OF 5		
REPORTING OFFICER						DATE / TIME WRITTEN				
296\ HIDAS, ALEX, J,						10/15/2006 22:13				
1	INVOLVMENT		NAME					DOB		AGE
	VICTIM		STATE OF CALIFORNIA,							B
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE		PRIMARY LANGUAGE
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
EMPLOYER / SCHOOL ADDRESS						BUS. PHONE				
2	INVOLVMENT		NAME					DOB		AGE
	SUSPECT		GRANT, OSCAR JULIUS III					02/27/1986		20 A
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE		PRIMARY LANGUAGE
	B	M	5'09 -	160 -	BLK	BRO	D4581150 / CA	BEA382		ENGLISH
	RESIDENCE ADDRESS							PRIMARY PHONE		
	724 LEWELLING 212, SAN LEANDRO, CA 94579-							(510)706-3216 / CELL		
	E-MAIL ADDRESS							OTHER PHONE		
EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION				
EMPLOYER			KENTUCKY FRIED CHICKEN			MANAGER				
EMPLOYER / SCHOOL ADDRESS			WEBSTER ST ALAMEDA, CA -			BUS. PHONE				
3	INVOLVMENT		NAME					DOB		AGE
	INVOLVED PARTY		GREER, MICHAEL RAY JR.					08/26/1986		20 A
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE		PRIMARY LANGUAGE
	B	M	5'09 -	160 -	BLK	BRO	D5621116 / CA	BEK850		ENGLISH
	RESIDENCE ADDRESS							PRIMARY PHONE		
	494 SYBIL AVE SAN LEANDRO, CA 94578-							(510)895-9427 / HOME		
	E-MAIL ADDRESS							OTHER PHONE		
EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION				
SCHOOL			WYOTECH			STUDENT				
EMPLOYER / SCHOOL ADDRESS			FREMONT, CA -			BUS. PHONE				
4	INVOLVMENT		NAME					DOB		AGE
	INVOLVED PARTY		JACKSONANDERSON, IKE DWAYNE					01/29/1986		20 A
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE		PRIMARY LANGUAGE
	B	M	6'04 -	315 -	BLK	BRO	D6192247 / CA			
	RESIDENCE ADDRESS							PRIMARY PHONE		
	2392 SLEEPY HOLLOW HAYWARD, CA 94545-							(510)776-7972 / HOME		
	E-MAIL ADDRESS							OTHER PHONE		
EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION				
EMPLOYER			NONE			UNEMPLOYED				
EMPLOYER / SCHOOL ADDRESS						BUS. PHONE				
5	INVOLVMENT		NAME					DOB		AGE
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE		PRIMARY LANGUAGE
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
EMPLOYER / SCHOOL ADDRESS						BUS. PHONE				
6	INVOLVMENT		NAME					DOB		AGE
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE		PRIMARY LANGUAGE
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
						01138				
EMPLOYER / SCHOOL ADDRESS						BUS. PHONE				

REPORTING OFFICER

DATE / TIME WRITTEN

<b>1</b>	INVOLVMENT		NAME						DOB	AGE
	VICTIM		STATE OF CALIFORNIA,							B
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE	PRIMARY LANGUAGE	
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
EMPLOYER / SCHOOL ADDRESS							BUS. PHONE			

<b>2</b>	INVOLVMENT		NAME						DOB	AGE
	SUSPECT		GRANT, OSCAR JULIUS III						02/27/1986	20 A
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE	PRIMARY LANGUAGE	
	B	M	5'09 -	160 -	BLK	BRO	D4581150 / CA			
	RESIDENCE ADDRESS							PRIMARY PHONE		
	724 LEWELLING 212, SAN LEANDRO, CA 94579-									
E-MAIL ADDRESS							OTHER PHONE			
EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION				
EMPLOYER / SCHOOL ADDRESS							BUS. PHONE			

<b>3</b>	INVOLVMENT		NAME						DOB	AGE
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE	PRIMARY LANGUAGE	
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
EMPLOYER / SCHOOL ADDRESS							BUS. PHONE			

<b>4</b>	INVOLVMENT		NAME						DOB	AGE
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE	PRIMARY LANGUAGE	
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
EMPLOYER / SCHOOL ADDRESS							BUS. PHONE			

<b>5</b>	INVOLVMENT		NAME						DOB	AGE
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE	PRIMARY LANGUAGE	
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
EMPLOYER / SCHOOL ADDRESS							BUS. PHONE			

<b>6</b>	INVOLVMENT		NAME						DOB	AGE
	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	DRIVERS LIC. NO. / STATE	OTHER I.D. / STATE	PRIMARY LANGUAGE	
	RESIDENCE ADDRESS							PRIMARY PHONE		
	E-MAIL ADDRESS							OTHER PHONE		
	EMPLOYER / SCHOOL TYPE			EMPLOYER / SCHOOL NAME			OCCUPATION			
EMPLOYER / SCHOOL ADDRESS							BUS. PHONE			





# SAN LEANDRO POLICE DEPARTMENT

## POLICE REPORT

901 E. 14TH STREET  
SAN LEANDRO, CA 94577  
(510) 577-3217 RECORDS



CASE NO.

2006-00041639

PAGE  
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5

PRIMARY OFFENSE / OCCURRED INCIDENT

TRAFFIC STOP

### CASE NARRATIVE

REPORTING OFFICER

296\ HIDAS, ALEX, J,

DATE / TIME WRITTEN

10/15/2006 22:13

APPROVING SUPERVISOR

#### DETAILS:

On 10/15/06, about 2105 hours, I was on duty in full police uniform and driving a marked patrol vehicle (#361). I was driving W/B on Fargo Ave, when I noticed a vehicle traveling on Fargo Ave in the opposite direction (E/B). As the vehicle approached and passed me, I noticed all four head lamps including the high beams were on, and the driver did not turn off the high beams, in violation of 24409(a) V.C. The high beams affected my vision and I had to pull over temporarily.

I made a U-turn, caught up to the vehicle, and performed an enforcement stop in the parking lot of the Techco Gas Station, 15201 Washington Ave. I noticed three occupants in the vehicle, so I requested another unit for assistance and Officer Deguzman was dispatched to assist me. I contacted the driver, (IP) Ike Jackson Anderson, the front seat passenger, (IP) Michael Greer, and the passenger sitting behind Greer, (AR) Oscar Grant. The driver stated he had his high beams on because one of his head lamps is broken. The driver had no valid form of identification and was later arrested per 40302(a) V.C.

I noticed Grant was not wearing his seat belt, in violation of 27315(d)(1) V.C., so I asked him to show me his identification. Grant was wearing a black jacket that was unzipped and blue jeans. He moved his jacket aside and appeared to be checking all of his pockets, but he stated he left his ID at home. As Grant moved his jacket away from his left front pant pocket, I noticed what appeared to be the handle of a pistol inside his left front pant pocket. The handle was flat, rectangular, and it was brown and black.

For safety reasons, I told Grant to place his hands on the headrest of the front passenger seat. I also told the driver to place his hands on the steering wheel, and the front passenger to place his hands on the dashboard, and all parties complied, initially. I drew my firearm and waited for assistance. Grant moved his right arm away from the headrest, so I pointed my firearm at him and ordered him to place his hands back on the headrest. I told Grant not to move because I believed he was in possession of a firearm. Grant stated he had "weed" on him, but no gun.

Suddenly, Grant opened the right rear passenger door, and fled on foot through the parking lot and onto S/B Washington Ave. I chased Grant on foot and ordered him to stop and get on the ground. Grant refused to stop and kept running. I advised SLPD Dispatch and continued after Grant. Officer Deguzman arrived and followed Grant in his marked patrol vehicle onto the property of Big O Tires on Washington Ave.

Grant refused to stop, so Officer Deguzman and I both chased Grant on foot through the intersection of Washington Ave and Lewelling Blvd toward the ARCO Gas Station at 712 Lewelling Blvd. I advised that Grant was armed. Officer Deguzman caught up to Grant and ran along side of him with his Taser (Less Lethal Weapon) pointed at Grant. Grant refused to stop, so Officer Deguzman fired his Taser at Grant.

01140

It appeared the Taser struck Grant in that he lost his balance and began to fall to the ground. As he was falling, Grant threw the object believed to be a firearm into the air and it landed in the parking lot of the ARCO gas station. Grant fell and collided with a parked vehicle in the parking lot. His upper body was underneath the vehicle, and I could not see his left hand or arm.

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# SAN LEANDRO POLICE DEPARTMENT

## POLICE REPORT

901 E. 14TH STREET  
SAN LEANDRO, CA 94577  
(610) 577-3217 RECORDS



CASE NO.

2006-00041639

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PRIMARY OFFENSE / OCCURRED INCIDENT  
TRAFFIC STOP

### CASE NARRATIVE CONTINUATION

REPORTING OFFICER

2961 HIDAS, ALEX, J,

DATE / TIME WRITTEN

10/15/2006 22:13

APPROVING SUPERVISOR

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Officer Deguzman and I both ordered Grant to show us his hands, but he did not bring his left arm or hand behind his back or into our view. Since, I believed Grant was armed and had a weapon in his left front pant pocket, and he refused to show me his left hand, I kicked Grant in the left side of his upper body (about 2-3 times) until he brought his hand behind his back. Grant was detained in hand cuffs without further incident.

I located the object Grant threw about 15-20 feet in front of him in the parking lot. The object was a .380 caliber pistol with brown pistol grips. The pistol was the same pistol I saw in Grant's pocket earlier. The pistol had a magazine attached to it and it appeared to be loaded. I brought the pistol back to Officer Deguzman's location, and I began to return to the Techco Gas Station.

Since, I noticed and located a firearm on Grant while he was inside the vehicle, I advised other SLPD Officers to locate and perform a high risk stop on the vehicle back at the Techco Gas Station. Other SLPD Officers arrived, completed a high risk vehicle stop, and detained the remaining two occupants. I searched the vehicle incident to arrest, but I did not locate any other weapons or anything illegal inside the vehicle. Both parties were pat searched for weapons, but none were found in their possession. Greer was released, but I arrested Anderson per 40302(a) V.C. Officer Teng transported Anderson to the SLPD Jail for booking. (See SLPD Case 2006-41643).

I returned to the ARCO Gas Station. Officer Ruff arrived as the evidence technician. He photographed and recovered the pistol, performed a records check on the pistol, and submitted it into SLPD Property as evidence. He advised me the pistol was loaded with one unexpended bullet in the chamber and 5 unexpended bullets in the magazine. The records check did not produce any exact matches for the pistol, and it was not listed as being stolen.

A records check on Grant revealed he is a convicted Felon, and he is on active probation with a four way (S7) search clause for a violation of 11377 HandS and 11359 HandS. Therefore, I arrested Grant upon probable cause for a violation of 12021(a)(1) P.C. (Convicted Felon in possession of a firearm), 12025(b)(1) P.C. (Convicted Felon in possession of a concealed firearm), 12031(A) P.C. (Convicted Felon in possession of a loaded firearm), 12316(b)(1) P.C. (Convicted Felon in possession of ammunition), and 148(a)(1) P.C. (Resisting arrest).

Officer Deguzman advised me Grant vomited and was injured during his arrest. Grant complained of pain in his back, the left side of his head, and his left knee. He had an abrasion on his left knee and was limping. Officer Ruff photographed Grant's injuries, and Officer Deguzman transported Grant to San Leandro Hospital for treatment. I followed him there and took custody of Grant at the hospital.

01141

I read Grant his rights per Miranda, and he decided to give me a statement. Grant stated he was a passenger in his friend's vehicle earlier when I pulled them over. Grant admitted to having a loaded pistol in his left front pant pocket and claimed ownership of the pistol. Grant then stated he wanted to wait for his lawyer, so I ended the interview. See Grant's statement attached.

Grant was treated and cleared for incarceration by hospital staff. I transported Grant to the SLPD



**SAN LEANDRO POLICE DEPARTMENT**

**POLICE REPORT**

901 E. 14TH STREET  
SAN LEANDRO, CA 94577  
(510) 577-3217 RECORDS



CASE NO.

**2006-00041639**

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PRIMARY OFFENSE / OCCURRED INCIDENT

**TRAFFIC STOP**

**CASE NARRATIVE CONTINUATION**

REPORTING OFFICER

2961 HIDAS, ALEX, J,

DATE / TIME WRITTEN

10/15/2006 22:13

APPROVING SUPERVISOR

Jail for booking.

I parked and locked Anderson's vehicle at the scene and gave him the keys.

Sergeant Calcagno and Lt. Dekas arrived to assist us and view the scene. I advised Sergeant Calcagno of my findings and the use of force applied on Grant per SLPD policy.

See Officer Deguzman's Supplemental Report and Officer Ruff's Photo and Tech Reports attached.

No further details.

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**SAN LEANDRO POLICE DEPARTMENT**

**POLICE REPORT**

901 E. 14TH STREET  
SAN LEANDRO, CA 94577  
(510) 577-3217 RECORDS



CASE NO.

**2006-00041639**

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PRIMARY OFFENSE / OCCURRED INCIDENT

**SUPPLEMENTAL NARRATIVE**

REPORTING OFFICER

3011 DEGUZMAN, WARREN, F,

DATE / TIME WRITTEN

10/15/2006 23:00

APPROVING SUPERVISOR

On 101506 about 2107 hours, I was working patrol wearing a San Leandro police uniform and driving a fully marked police vehicle when I responded as a cover officer for Ofc Hidas at the Tech Co Gas Station on Washington Ave and Fargo Ave. As I approached southbound on Washington Ave near the intersection of Fargo Ave, I immediately noticed two persons begin to run. I then recognized Ofc Hidas chasing after a black male subject, later identified as AR-Oscar Grant, southbound Washington Ave on the west sidewalk. Ofc Hidas advised on the radio that he was in a foot pursuit of the subject.

I followed after Grant in my vehicle. Grant continued to run southbound on the west sidewalk past Big O Tires. I pulled into the Big O Tires parking lot, exited my vehicle and removed my Taser X-26 from my holster. I then ran southbound, parallel to the west sidewalk, through the Big O Tires parking lot. I saw Grant stumble and almost fall near the intersection of Lewelling Bl at Washington Ave. At this point, I heard Ofc Hidas yell that Grant was in possession of a gun. I continued to run southbound after Grant from his blind side, on his right, across Lewelling Bl. As I got within the taser's 21 FT shooting range, I pointed the red laser dot at Grant's rear center body mass and pulled the trigger. I saw a prong enter Grant's jacket and knew I had hit my mark. Grant then began to stumble forward as his momentum carried him. I continued to run forward as well in order to keep the prong intact. Grant finally collapsed to the ground where he hit his head on the side of a parked vehicle in the Arco Gas Station just a few feet from the south sidewalk of Lewelling Bl. When Grant collided with the parked vehicle, I saw a small black object fly into the air over the parked vehicle. When Grant tried crawling underneath the parked vehicle where I could not see his hands, I continued to depress the taser trigger. After Grant continued to resist, I executed a right foot strike to the right side of Grant's ribs and ordered Grant to show me his hands. Grant finally cooperated and placed his right hand to his side. Ofc Hidas managed to get control of Grant's left hand. I then detained Grant in handcuffs.

After detaining Grant, I looked over the parked car and saw a small black handgun laying on the ground. I advised Ofc Hidas of it's location. Ofc Hidas retrieved the handgun and placed it on the hood of the parked vehicle. He then retrieved my vehicle and parked it in the Arco Gas Station. I then removed the taser prong off of Grant's jacket and placed Grant in the back of my patrol vehicle. I then secured the handgun inside the trunk of my vehicle.

When Tech Ofc Ruff arrived on scene. I advised him of Grant's gun inside the trunk of my vehicle. Ofc Ruff then took custody of the weapon and rendered the weapon safe. See Ofc Ruff's tech report for more details.

I then transported Grant to the San Leandro Hospital for medical clearance since he had injured himself during the foot pursuit as well as having been tased.

I collected the spent taser cartridge with the prongs and wires and submitted all into property as evidence.

See Ofc Hidas' report for more details.

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**SAN LEANDRO POLICE DEPARTMENT**

**POLICE REPORT**

901 E. 14TH STREET  
SAN LEANDRO, CA 94577  
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CASE NO.

**2006-00041639**

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PRIMARY OFFENSE / OCCURRED INCIDENT

**CRIME SCENE TECHNICIAN NARRATIVE**

REPORTING OFFICER

2931 RUFF, DANIEL, B,

DATE / TIME WRITTEN

10/15/2006 19:55

APPROVING SUPERVISOR

On 15Oct06, about 2115 hrs, I responded to the area of Washington/Fargo to cover Officer Hidas. While at the scene, I photographed a suspect who was in custody for a firearms violation. The suspect, AR Grant, had hit his head on a parked vehicle after falling during the arrest. I also took custody of a Mauser HSc pistol, .380 caliber, serial # 4241, that Officer Hidas had recovered from Grant. The pistol was loaded with one cartridge in the chamber and five cartridges in the magazine. The photos were taken at the ARCO station, Washington/Lewelling and are as follows:

- #1 Case sheet
- #2 Overview of AR Grant
- #3 C/U of Grant's face
- #4 Same as above - left side
- #5 Same as above - right side
- #6 View of recovered Mauser pistol, loaded magazine and live cartridge taken from chamber
- #7 Same as above showing left side of pistol
- #8 C/U of slide and serial number
- #9 C/U of serial number

All photos were taken using a Canon digital camera with an 18-55 lens and flash. All photos were downloaded to a CD and submitted into property as evidence. I unloaded the pistol and submitted it into property as evidence, along with the magazine and ammunition. SLPD dispatch performed a records check and could not locate any owner information or DROS for the pistol.

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REPORTING OFFICER: \_\_\_\_\_ DATE / TIME WRITTEN: \_\_\_\_\_

**SUPPLEMENTAL - PROPERTY**

CODE: B-BURNED C-COUNTERFEIT/FORGED D-DESTRUCTION E-EVIDENCE F-FOUND K-SAFEKEEPING G-DAMAGED L-LOST  
O-OBSERVATION R-RECOVERED S-STOLEN T-STOLEN/RECOVERED

1	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	E	6	YES	WEAPON			
	DESCRIPTION 6 .380 CAL CARTRIDGES, G.F.L. HEADSTAMP, RECOVERED FROM MAUSER HSc						
2	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
3	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
4	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
5	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
6	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
7	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
8	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
9	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						
10	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	DESCRIPTION						

**SUPPLEMENTAL - FIREARMS**

1	CODE	TYPE I - GUN TYPE	TYPE II - ACTION	CALIBER	VALUE	SUB
	EVIDENCE	PISTOL	SEMI-AUTOMATIC	.380 CALIBER		YES
	MAKE	FINISH	SERIAL NUMBER	OWNER APPLIED NUMBER	SPECIAL HANDLING	
	Mauser GE/WG	BLUE STEEL	4241			
	DESCRIPTION MAUSER MODEL HSc PISTOL, .380 CAL, BLUE STEEL, WOOD GRIPS, MAG					
2	CODE	TYPE I - GUN TYPE	TYPE II - ACTION	CALIBER	VALUE	SUB
	MAKE	FINISH	SERIAL NUMBER	OWNER APPLIED NUMBER	SPECIAL HANDLING	
	DESCRIPTION					

**SUPPLEMENTAL - VEHICLES**

VEHICLES	NO.	LICENSE NUMBER	YEAR	MAKE	MODEL	STYLE	COLOR(S)
	VICT	1	/				
	DESCRIPTION						
VICT	2	/					/
	DESCRIPTION						
SUSP	1	/				01145	/
	DESCRIPTION						
SUSP	2	/					/
	DESCRIPTION						

REPORTING OFFICER	DATE / TIME WRITTEN
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**SUPPLEMENTAL - PROPERTY**

CODE: B-BURNED C-COUNTERFEIT/FORGED D-DESTRUCTION E-EVIDENCE F-FOUND K-SAFEKEEPING G-DAMAGED L-LOST  
O-OBSERVATION R-RECOVERED S-STOLEN T-STOLEN/RECOVERED

1	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
	E	1	YES	ELECTRONICS	T04-593329		
DESCRIPTION ONE SPENT TASER X-26 CARTRIDGE							
2	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
3	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
4	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
5	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
6	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
7	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
8	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
9	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							
10	CODE	QUANTITY	SUB	TYPE	SERIAL #	VALUE	SPECIAL HANDLING
DESCRIPTION							

**SUPPLEMENTAL - FIREARMS**

1	CODE	TYPE I - GUN TYPE	TYPE II - ACTION	CALIBER	VALUE	SUB
	MAKE	FINISH	SERIAL NUMBER	OWNER APPLIED NUMBER	SPECIAL HANDLING	
DESCRIPTION						
2	CODE	TYPE I - GUN TYPE	TYPE II - ACTION	CALIBER	VALUE	SUB
	MAKE	FINISH	SERIAL NUMBER	OWNER APPLIED NUMBER	SPECIAL HANDLING	
DESCRIPTION						

**SUPPLEMENTAL - VEHICLES**

VEHICLES	NO.	LICENSE NUMBER	YEAR	MAKE	MODEL	STYLE	COLOR(S)
	VICT	1	/				/
	DESCRIPTION						
	VICT	2	/				01146
	DESCRIPTION						
SUSP	1	/				/	
DESCRIPTION							
SUSP	2	/				/	
DESCRIPTION							

**SAN LEANDRO POLICE DEPARTMENT**

**ORIGINAL**

CRIME/INCIDENT <b>12021 P.C. / FEAR IN POSSESSION FIREARM</b>		POLICE REPORT - STATEMENT		CASE NO. <b>2006-41639</b>	
DEFENDANT'S NAME		DOB	RACE/SEX	ARREST CHARGE	
VICTIM <b>STATE OF CA</b>					
CITIZEN ARREST: I hereby arrest the above defendant on the charge indicated and request a Peace Officer take him/her into custody. I will appear when notified to sign a complaint against the person I have arrested. <span style="float:right">X</span>					
MIRANDA ADMONITION: I want to advise you; (1) You have the right to remain silent; (2) Anything you say, can and will be used against you in a court of law; (3) You have the right to talk to a lawyer and have him present while you are being questioned; (4) If you cannot afford to hire a lawyer, one will be appointed to represent you, free of charge, before any questioning, if you wish one.					
WAIVER: Do you understand each of these rights I have explained to you? <b>YES, SIR</b> Date: <b>10-15-06</b> Having these rights in mind, do you wish to talk to me/us now? <b>YES</b> Time: <b>2:55</b>					
Witness Officer: X <b>Officer #296</b>			I have been advised of my rights and understand what they are. X <b>Oscaer Grant</b>		
NAME <b>GRANT, OSCAR JULIUS III</b>		DOB <b>02-27-86</b>	RACE/SEX <b>B/M</b>	HEIGHT/WEIGHT <b>5'09"/160</b>	HAIR/EYES <b>BLK/BRO</b>
ADDRESS <b>724 LEWELING RND 212 SAN LEANDRO CA 94579</b>		PHONE <b>(510) 706-5216</b>	DRIVERS LIC. NO. <b>D4581150</b>	STATE <b>CA</b>	
EMPLOYER NAME/ADDRESS <b>KFC WEBSTER ST AZAMUDA</b>		OCCUPATION <b>ASST MGR</b>		EMP. PHONE	
LICENSE NO. <b>1KRU433</b>	STATE <b>CA</b>	YEAR MAKE <b>84 CRD</b>	MODEL <b>DELTA 88</b>	STYLE <b>4DR</b>	COLOR <b>TRN</b>
1. Q: WERE YOU A PASSENGER IN A VEHICLE TONIGHT?					
2. A: YES, SIR.					
3. Q: DID YOU HAVE A LOADED PISTOL IN YOUR LEFT FRONT PANT POCKET?					
4. A: YES, SIR.					
5. Q: WHY?					
6. A: I DON'T KNOW, SIR.					
7. Q: IS IT YOUR GUN?					
8. A: YES.					
9. Q: WHOSE DID YOU GET IT FROM?					
10. A: CAN I WAIT FOR MY LAWYER?					
11. NO FURTHER QUESTIONS, THE ABOVE STATEMENTS ARE TRUE, X <b>Oscaer Grant</b>					
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REPORTING OFFICER <b>ADAMS</b>	SERIAL NUMBER <b>296</b>	<input checked="" type="checkbox"/> PATROL <input type="checkbox"/> CID	DIVISION	<input type="checkbox"/> TRAFFIC <input type="checkbox"/> RECORDS	DATE / TIME WRITTEN <b>10-15-06 / 0000</b>
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