

**Justice for Oscar Grant III:
The People vs. Johannes Mehserle Second Los Angeles Hearing
Notes from Inside the Courtroom:**

The preliminary hearing on February 19, 2010 dealt with four main things: the reduction of bail, the removal of the Alameda DA, a ruling made by Judge Espinoza, and the schedule of the case.

Reduction of Bail:

Bail was originally set in January 2009 for \$3 million. Since that time Mehserle has been out on bail. The prosecution initially argued that Mehserle deserved such a large bail because he was a flight risk, had no long standing ties to the community, had quit his job, was not married, and owned no property. The defense originally argued against this bail amount, arguing that because Mehserle's his parents lived in the Bay, this proved he had ties to the community. They also argued that the judge should consider the fact that he had made all of his court appearances thus far.

Along with these points, it seemed that the primary argument put forward by Rains, Mehserle's defense attorney, was that bail should be reduced on the grounds that the DA had failed to disclose documents that showed that they actually knew he was not a flight risk and that bail was set under false pretenses.

Judge Perry stated that "it was understandable" that Mehserle would leave the jurisdiction based on the supposed "death threats" that he has claimed to receive. This was one of many references that Judge Perry has made to supposed "death threats" that Mehserle has received after being indicted. The defense supported that claim by arguing that there were at times "threatening crowds" and that he was even "scared at times." Still Judge Perry ultimately decided that he did in fact have the jurisdiction to review bail and that his finding was that the DA did not argue for bail under a false pretense and that while Mehserle is under "very stressful circumstances" he is still considered a flight risk and his bail would not be reduced.

Writ of Mandate:

The defense has filed this writ twice, once in Alameda and once in LA. The writ of mandate seeks to disqualify the Alameda DA Office and remove the Alameda DA from the case. Not only did the Alameda DA oppose to this writ, the California State Attorney General also filed an opposition to this disqualification. Essentially the defense argues that Mehserle's 6th Amendment rights were violated because they mirandized him and ask him if he wanted to answer questions. Mehserle refused, invoking his 5th Amendment right to remain silent. The defense argued that despite the fact that Mehserle invoked his rights to remain silent and refused to make a statement, that the police had violated his 6th Amendment rights by asking him questions after he had obtained a lawyer.

The defense argued that the original District Attorney, Orloff, acted with impunity to deny Mehserle his 6th Amendment rights and that this was indicative of an "overall conspiracy" by Orloff, Creighton, the entire Alameda DA's office, and the Oakland Police Department to deny Mehserle access to a fair trial. The defense attorney Rains called these acts "shameful" and "unseemly." He went on to claim that there was evidence representing a "smoking gun," proof that it was Mehserle that had had his rights violated. Rains made numerous references to this supposed "smoking gun," a metaphor that seemed highly inappropriate given the circumstances of the case.

Judge Espinoza's ruling:

Both the prosecution and the defense were clarifying a ruling by Judge Espinoza about the public nature of witness's names. The main question was around whether to redact witnesses names or not. The defense claimed that they have witnesses that were on the platform that support Mehserle's claims that he intended to tase Oscar Grant, but that now these witnesses have refused to speak to them for fear of their safety. In essence, the defense used this opportunity in front of Judge Perry and the media to once again attack the family's attorney, Burris, and again challenge his ability to speak to the press about the case. He was also making another claim that witnesses for the _defense_ have been threatened. The defense attorney appeared to be trying to lay the argument that the only person who has had anything to fear in this process has been Mehserle. Judge Perry eventually ruled that both sides can file names or issues about the case under seal if they choose.

Scheduling and Jury Selection:

Both the prosecution and the defense will be using a juror questionnaire to help filter potential jurors for the case. Judge Perry noted that he was usually against the use of questionnaires because of "a lack of juror literacy" but that there was no where near the pretrial publicity in Los Angeles as there was in Oakland. He ultimately ruled that the defense and prosecution should work together on a questionnaire that would exclude people with certain attitudes towards the police or law enforcement.

It appears that the direction of this trial and the arguments that are going to be made are going to center on the "state of mind" of Mehserle. Judge Perry stated in court that he felt this case was "fairly straightforward" because it was a "state of mind case." Because of this, it appears as though a great deal of testimony will center on experts and most likely Mehserle himself. The court has scheduled the trial to begin June 7th and last 3-4 weeks.

The next hearing is scheduled for March 26 at 1:30 pm and will address eliminating motions and the questionnaire.

Video of protest outside:

<http://www.indybay.org/newsitems/2010/02/21/18638342.php>

By Traci and Erinn

~ Los Angeles Coalition for Justice for Oscar Grant