



Shareholder Dale Allen Obtains Defense Verdict for Johannes Mehserle and Four Other BART Police Officers

On December 1, 2011, Low, Ball & Lynch shareholder DALE L. ALLEN, JR., and associate DIRK LARSEN obtained a defense verdict for five Bay Area Rapid Transit (BART) police officers, including Johannes Mehserle, who is widely known for his involvement in the Oscar Grant incident of January 1, 2009. While Mr. Allen also represents BART in the civil suit arising out of the Oscar Grant incident, the December defense verdict arose out of an entirely separately incident that took place six weeks before.

On the night of November 15, 2008, BART officers were detailed to the Coliseum BART Station to ensure the safety of patrons attending a concert at the Oakland Coliseum. The plaintiff, a building engineer, alleged that after he criticized BART police officers at the station for being lazy and incompetent, Officer Mehserle grabbed him from behind and took him to the ground using a leg sweep. The plaintiff alleged that four other BART officers jumped in and “piled on” top of him, kicked and punched him, hog-tied him, and carried him by the strap of the hog-tie to a police car.

The plaintiff retained counsel and came forward with his allegations against Mehserle and the other officers after Mehserle’s name became public as the officer involved in the shooting. While the district attorney originally charged the plaintiff with resisting arrest, those charges were dropped after Mehserle was charged with murder by the same district attorney.

The plaintiff sued BART and the officers in federal court, alleging that the defendants retaliated against him for exercising his First Amendment right to criticize the police, arrested and prosecuted him without having a valid basis to do so, and used excessive force and battered him during the arrest. Plaintiff claimed that the defendants never informed him that he was under arrest, failed to properly document the arrest and force they used, failed to collect video of the incident—as cameras were present the Coliseum Station—and failed to obtain citizen witness statements.

The BART officers denied the plaintiff’s allegations. They claimed that the plaintiff was persistently antagonistic, profane and threatening violence, including the physical threat of rapidly approaching one officer from behind while raising his clenched fists. The officers claimed they took the plaintiff into custody for the real, immediate physical threat he posed, along with his violent resistance to their control efforts, and not for his criticism of BART Police. Indeed, the officers testified that they respected the plaintiff’s First Amendment right to criticize the police, and had been trained to de-escalate such situations. The defense contended that the officers’ actions were reasonable under the circumstances, particularly the threat the plaintiff posed to them and his resistance to arrest. In addition, the officers claimed that they did not “pile on” the plaintiff and did not kick or punch him, but attempted to control his thrashing limbs while on the ground. Finally, while the plaintiff was handcuffed and his legs placed in a standard-issue hobble restraint, the officers consistently and adamantly denied that they “hog-tied” him in any way.



The officers' version of events was supported by the testimony of two BART station agents who witnessed the incident. One of the station agents independently wrote a report of the events minutes after they occurred, and this report corroborated the officers' claims.

Prior to trial, the court granted summary adjudication in the defendants' favor as to plaintiff's claims for racial discrimination, failure to intervene, and his claim against BART for unconstitutional pattern or practice under the doctrine of *Monell v. Dept. of Soc. Svcs.*, 436 U.S. 658 (1978).

Pre-trial settlement discussions ended early as it became apparent that the parties would not be able to reach a compromise, with plaintiff demanding \$495,000 and the defendants not willing to offer more than \$5,000.

The plaintiff was represented at trial by Chris Dolan, a prominent San Francisco trial attorney. The plaintiff sought recovery for medical expenses of \$7,506, lost income of \$300, bail of \$250, pain and suffering, and punitive damages. His attorney suggested a "seven-figure" damages award to the jury. The defendants sought a complete defense verdict.

Result

Following a seven-day trial and six hours of deliberation, the jury returned a unanimous verdict for the BART officers. It found that the officers did not violate the plaintiff's civil rights by use of excessive force, that Mehserle did not maliciously prosecute him, that Mehserle did not commit a battery against the plaintiff, and that none of the officers retaliated against him for exercising his First Amendment rights.

Given the allegations against Johannes Mehserle, a number of Bay Area media outlets—including KTVU, ABC7, CBS5, the *San Francisco Chronicle*, *San Francisco Examiner*, and *Oakland Tribune*—closely followed the trial and reported on the proceedings. Click [HERE](#) for ABC7's report and interviews after the trial, [HERE](#) for KTVU's report on the verdict and [HERE](#) for the *Tribune's* coverage of the proceedings.

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