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“Scapegoat” cop wins back job with Force Science help

A northern California transit officer who was fired on charges of lying about circumstances that preceded a nationally controversial OIS has been ordered reinstated after an arbitration hearing in which Force Science played a pivotal role.

Twenty-nine-year-old MarySol Domenici was among half a dozen Bay Area Rapid Transit (BART) officers whose actions were challenged amidst a racially fueled “media frenzy” after they responded to a brawl on a public train near San Francisco early on New Year’s Day, 2009.

One of the group, Ofcr. Johannes Mehserle, shot and killed one of the unruly male suspects when he mistakenly drew and fired his pistol instead of his Taser. Initially charged with murder, Mehserle was sentenced to 2 years in state prison for involuntary manslaughter [see Force Science News Transmission #154 for details of the role Force Science played in his case].

Domenici was accused of conspiring to “cover up” alleged excessive force by another officer just before the shooting occurred.

After hearing a Force Science analysis of her actions and viewing enhanced video of the chaotic scene, Arbitrator William Riker characterized the official investigation that led to her job termination as “flawed,” incomplete, and lacking in “critical information necessary” for proper evaluation of what took place that fateful morning.

His order that Domenici be restored to her job “would not have been possible” without testimony from Dr. Bill Lewinski, executive director of the Force Science Institute, says the officer’s attorney, Alison Berry Wilkinson. “He provided a key component of evidence that led to the arbitrator’s decision.”

Act I: Conflict on the Platform

The fight broke out about 0200 in the first car of an 8-car BART train as it came to a stop in Oakland on the east side of San Francisco Bay. The train was “jam-packed” with boisterous New Year’s celebrants, many of whom appeared to be under the influence of alcohol or drugs. The operator was instructed by a dispatcher to hold the train at the Fruitvale station so that BART officers could remove the combatants.

Ofcr. Tony Pirone was the first responder to hurry upstairs from street level to the reverberant din of the elevated platform where the train was waiting. Domenici, a 5-year veteran of the transit agency and a black belt in karate, followed about 15 seconds later.

On the noisy platform, Pirone quickly detained a cluster of young males and asked Domenici to cover them while he pursued 2 other suspected fighters who had ducked back into the train in an apparent effort to avoid police contact. Domenici directed the group to sit on the platform with their backs against a wall, legs outstretched, and hands on their thighs.

Almost immediately, the platform erupted in chaos. As Pirone struggled to remove subjects later identified as Michael Greer and Oscar Grant III from the train, some of Domenici’s detainees leapt to their feet “highly agitated” and started toward her, yelling that the situation was “all fucked up.” She pushed them back toward the wall and ordered them to sit down and “stay out of it.”

While trying to physically control and monitor them, she stole fast glances over her shoulder to confirm that her partner was ok. He managed to take Greer down and cuff him and then turned his attention to Grant.

Simultaneously, one of Domenici’s detainees started yelling, “Hey, blood!” to several individuals milling nearby. Three other males then began quickly approaching on her right flank. One held something ambiguous in his hand (a cell phone, it turned out); another had his hands in his pockets. “These men had angry looks on their faces, were yelling, and were calling her a ‘fucking bitch,’” says Atty. Wilkinson.

Domenici turned fully in their direction, pulled her Taser, and ordered them to step back. She focused particularly on one subject “who would step back for a short while, then step toward her again in a threatening manner while shouting curses,” Wilkinson says.

Other BART officers were swarming onto the platform by now, including Mehserle who headed toward Pirone and a struggling Oscar Grant, about 15 feet away and on the other side of a pillar from Domenici. As Domenici started to raise her Taser to deploy it toward the male who was threatening her, another officer came up behind that subject and tackled him.

Moments later, the fatal and fateful shot was fired by Johannes Mehserle, and 22-year-old Oscar Grant III—ex-convict, current felony probationer, and reputed gangbanger—was dead. Grant was black and unarmed, Mehserle white. A familiar tinderbox was lit.

Roughly 5 minutes had passed since MarySol Domenici bounded up the escalator onto the platform.

Act II: Accusations and Termination

Although Domenici had no direct involvement in Grant's shooting, she and every other officer on the platform that morning came under intense scrutiny in the firestorm of activist outcry ignited by Mehserle's bullet.

BART management, in what one observer characterizes as a move to "appease people who were more interested in something other than justice," hired Meyers Nave, a California legal firm that specializes in public agency law, to investigate the incident for possible violations of departmental policies and procedures.

Apart from Mehserle, who resigned quickly after the shooting and soon faced criminal charges, the firm in its report exonerated 4 officers involved in the fracas of any misconduct. But it leveled serious accusations against Pirone and Domenici, based on statements of witnesses and on video from a platform camera and recording devices collected from various civilians who were on the train.

Among other things, Pirone was judged to have used excessive force in his handling of Greer and Grant, thereby helping to escalate the situation to the point that Grant was shot. Domenici, it was claimed, lied in her original statements and in later testimony about Pirone's behavior in a conspiratorial effort to cover up his supposed misdeeds.

The conclusions against her ranged from absurdly trivial to significant. She was found to have been untruthful, for example, when she described the noise level on the platform as "very loud."

More important, it was said that she was being disingenuous when she failed to report and later denied seeing Pirone use excessive force on Greer and Grant, including smashing a fist into Grant's face with a right hook without reason.

Based on the Meyers Nave findings, both officers were fired. Both appealed their terminations to arbitration. Through their union, the BART Police Officers Assn., they were entitled to representation from the Legal Defense Fund of PORAC, the Peace Officers Research Assn. of California.

Domenici's case was assigned to veteran police attorney Alison Berry Wilkinson and associate counsel Jeff Martin, who are graduates of the Force Science Institute's

certification course in Force Science Analysis. Wilkinson claimed that Domenici had been fired as “a political scapegoat” amid a “media frenzy.” Her case was arbitrated first.

Act III: Force Science Speaks

“Our training at the Force Science class was a huge part of developing the defense case,” Wilkinson told Force Science News. “It gave us tools and a language that were vital.” Two key components shaped their strategy:

1. The painstaking work of Michael Schott, a former sheriff’s sergeant who specializes as an attorneys’ expert in developing forensic evidence from video footage. He was able to uniquely synchronize images from 6 different cameras with different shooting speeds and image quality so that what transpired on the platform could be analyzed frame by frame from different angles in precisely timed sequence. (Meyers Nave investigators had not done this, Wilkinson says.)
2. Testimony and behind-the-scenes consultation with FSI’s Bill Lewinski. Drawing on scientific studies of human performance, he was able to explain in simple but compelling terms how evidence from the synchronized videos confirmed that Domenici was being truthful and not deceitful in her accounts of what she saw and didn’t see during the platform confrontation.

Last October, Lewinski spent a full day on the stand before Arbitrator Riker, addressing the most critical accusations against Domenici.

For one thing, it was claimed in the Meyers Nave report that she at one point had seen Pirone start to bring his hand up to punch Grant in the face. But then, her accusers said, she deliberately turned away to avoid witnessing the actual blow so that she would not have to report seeing her partner deliver inappropriate force.

Analyzing video of that moment frame-by-frame, Lewinski was able to determine that Domenici had already started to turn away when Pirone’s hand began to move up. At that point, his hand was open, with fingers spread, not a closed fist. At most, Lewinski testified, Domenici would have had less than one-third of a second to catch a glimpse of Pirone’s hand in her peripheral vision.

In that flicker of time, she could not possibly have seen the movement, interpreted it as an impending assault, decided to conspire not to see it so as not to have to report it, and moved to further divert her view, he concluded. He supported his assertion with data from Force Science studies and other research about stimulus/response times and decision-making.

What’s more, Lewinski determined based on enhanced video of Pirone’s action, Pirone never did ball his hand into a fist to strike Grant anyway. His hand remained open to grasp the suspect on the back of the neck for a takedown. By the time of that action,

Domenici's attention was focused fully in another direction. "In effect," Lewinski says, "she was fired for not reporting something that didn't happen and for lying when she said she didn't see it."

Domenici also was alleged to be untruthful when she said she didn't witness any excessive force used by Pirone in removing Michael Greer from the train. In this regard, Lewinski explained concepts such as "selective attention" and "inattentional blindness," which are explored in Force Science training and have to do with how intense concentration affects perception and memory.

With only quick glances over her shoulder to confirm Pirone's well-being during the removal process, Domenici likely was not really seeing and registering much of anything other than a gross impression that her partner was alright, Lewinski explained, because her compelling concentration was on watching and controlling the rambunctious detainees she had against the platform wall.

For most of the time Pirone was handling Greer, Domenici's back was to the train and to the action. "She was intently focused on her own business and the danger these defiant suspects presented to her," Lewinski insisted.

Using slides, film footage, and research results, Lewinski in effect presented the arbitrator with a mini-seminar on human behavior principles that related to Domenici's "rapidly unfolding, dynamic" situation. "To cut through all the misconceptions from the racial turmoil and media outrage, it was important to explain in simple terms what had really happened that night," Lewinski says.

And so it went, with the defense team piece by piece countering the doubts about her integrity that led to Domenici's firing. Lewinski described Wilkinson as "one of the best attorneys I have ever worked with—sensitive and insightful, with a great depth of understanding of the psychological and physical components of human behavior. She and Jeff Martin did an awesome job."

Act IV: The Decision

The arbitration hearing stretched across 14 days and included 2 site visits to the Fruitvale platform. Both sides presented what Arbitrator Riker termed "volumes of documentary evidence, a significant amount of video combined with extensive analysis, and live testimony from numerous witnesses."

On Dec. 17, he made public his decision: "Just cause for the termination of Officer MarySol Domenici did not exist.... The Arbitrator finds no basis for the conclusion that Officer Domenici was untruthful in her statements and testimony.... The proper remedy is reinstatement with full back pay and benefits, as well as the removal of all findings inconsistent with this Decision from her personnel record."

BART's reliance on the Meyers Nave report was "misplaced," Riker wrote, because the report "did not contain a full vetting of the evidence...did not ask witnesses certain key and critical questions about [Domenici's] actions"...presented an analysis of the videos that "appears flawed" and failed to include "critical information necessary to the evaluation of whether Officer Domenici acted appropriately."

He itemized each of 7 specific accusations of lying against Domenici and explained why none could stand. He declined to rule on whether Pirone had used inappropriate force at any point because Pirone's appeal is being heard separately.

The day Riker's decision was released was the same day MarySol Domenici graduated from a fire academy in the Bay Area. On the chance that a decision against her might scuttle her preferred career in policing, she had decided to qualify as a firefighter in order to continue her service in public safety.

She said she was "thrilled" to be vindicated by Riker's decision. She will need to undergo a mental and physical fitness-for-duty evaluation that may take a month or more before resuming a patrol assignment, but Wilkinson says there is "no doubt she will happily return to duty in the BART system. She's a tough cookie and is not going to let them defeat her."

In a prepared statement, BART officials said they still believe "we did the right thing...to terminate [Domenici's] employment." But the agency said it would abide by Riker's ruling because the arbitrator's decision is binding under the union contract.

Act V: The Future

The ultimate conclusion of The Drama at Fruitvale Station is yet to play out.

The arbitration hearing for Tony Pirone is being delayed until spring because he is currently serving with the U.S. military in Afghanistan. The PORAC attorney defending him is William Rapoport, another certified Force Science Analyst.

Pirone, Domenici, and others are also defendants in a civil suit, filed by various parties claiming injury as a result of the Fruitvale detentions and shooting. That suit is scheduled for trial in May. Among those seeking recompense is Oscar Grant's father, who is serving a life term for murder. BART has already paid out \$1.5 million to Grant's 5-year-old daughter.

[Click here to download a full copy of the arbitrator's decision\]](#)

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Written by Force Science Institute
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