

1 get the driver out of the car.

2 A. Officer, who I believe was Officer Gonzalez at the
3 time, but it was actually Lieutenant Ayala. He was standing
4 next to the driver's door when I approached. We opened the
5 door. Lieutenant Ayala pulled her out -- the female
6 operator out of the car. I grabbed her put, her up against
7 the fence.

8 Q. All right. Who were all of the officers there if you
9 could name them, if you know?

10 A. Lieutenant Ayala, Officer Raul Gonzalez, and State
11 Trooper Gregorczyk.

12 Q. And yourself?

13 A. And myself.

14 Q. Describe the action that was being taken relative to
15 the car. What officers were focusing on parts of the car
16 that was parked in the driveway, backed in the driveway?

17 A. Well, at the moment when I pulled -- when the female
18 was out of the car, Officer Gonzalez, he was looking -- he
19 looked in the car. I don't know what he was looking for or
20 what he was doing.

21 Q. What part of the car did you see him look?

22 A. I believe it was the front, front seat area.

23 Q. Front seat area of the passenger or driver side?

24 A. I believe it was the passenger side.

25 Q. So, go ahead.

1 A. So, as that happened, as that was going on, the young
2 lady whispered to me: He's in the trunk.

3 I didn't know what she was talking about. I had no
4 clue. And at that moment I observed Officer Gonzalez and
5 State Trooper Gregorczyk head to the rear of the vehicle.

6 Q. Could you hear if they were speaking to each other?

7 A. No, sir.

8 Q. Were you watching them as they went to the back of the
9 trunk?

10 A. It was more peripheral. I was paying attention to the
11 female more than to anybody else, but I did see them moving.
12 So I wasn't actually staring at them as they walked to the
13 back of the car but I did notice them going back to the
14 back.

15 Q. And what happened?

16 A. As they approached the back of the car, I noticed the
17 rear trunk opening, and the trunk opened. There's a crack
18 at the bottom of the trunk. I could see a hand come up out
19 of the thing and a handgun in the hand.

20 Q. All right. Now, you say you saw the trunk opening.
21 Where was the state trooper and Officer Gonzalez in relation
22 to the trunk when you first saw it -- started to see it
23 open?

24 A. Officer Gonzalez was to the driver side rear of the
25 vehicle and Trooper Gregorczyk was on the passenger side

1 rear of the vehicle.

2 Q. Were either of those police officers right at the
3 trunk; in other words, a few inches from the trunk?

4 A. I don't recall if -- how close they were to the trunk.
5 I just know they were back there.

6 Q. Did it look like either of those officers were causing
7 the trunk to be opened?

8 A. No, sir.

9 Q. So what was -- describe how the trunk was opened.

10 A. I don't know how the trunk opened.

11 Q. So you -- how fast or slow was the trunk opened?

12 A. It's hard to say. It opened at a steady pace. It
13 wasn't like it was slammed open or anything like that.

14 Q. Now, you made some very significant observations of
15 what was in the trunk. What did you do?

16 A. Well, when I saw the handgun, I took a step backwards,
17 and before anything else, I heard the shooting begin and I
18 heard one of the officers -- well, either Officer Gonzalez
19 or Trooper Gregorczyk say: I'm hit. And at that point I
20 aimed my service revolver towards that trunk area and I
21 fired.

22 Q. Whereabouts were you standing, if you could show us
23 with the arrow?

24 A. I was standing about here. (Indicating)

25 Q. So you were looking at the car and the trunk was open?

- 1 A. Yes, sir.
- 2 Q. Where were you aiming your fire?
- 3 A. I aimed through the rear window of the vehicle towards
4 the trunk where I had saw the hand come up at. So I aimed
5 where I saw the hand initially.
- 6 Q. Where was the driver of the car?
- 7 A. She was standing to the right of me on the fence, but
8 after the shooting started I lost track of her.
- 9 Q. Did you see either -- you said you heard an Officer say
10 they were hit?
- 11 A. Yes, sir.
- 12 Q. And what tone of voice was that?
- 13 A. It was a yell, a scream.
- 14 Q. And did you know who screamed that, either Gonzalez or
15 Gregorczyk?
- 16 A. Not at the moment, no, sir.
- 17 Q. How many shots were being fired?
- 18 A. Oh, I don't recall.
- 19 Q. Was it a lot?
- 20 A. It was a lot of shots.
- 21 Q. What did you see develop, how did it come to -- how did
22 the shooting stop?
- 23 A. After I fired my round, I took cover behind the tree.
- 24 Q. How many rounds did you fire?
- 25 A. I believe one.

1 use Exhibit 30 as a reference.

2 If you can tell us by looking at this exhibit where you
3 would be standing.

4 Is the point at which you're standing, is that visible
5 in Exhibit 30?

6 A. Well, it's partially blocked by the tree.

7 Q. Okay. Is it generally -- can you use the arrow and
8 give us a sense, are you between where the tree is in that
9 photograph and where the car is?

10 A. When the female was out of the car, I had her against
11 the fence. We were standing up against the fence right
12 about here. (Indicating)

13 Q. Okay. And then did you move closer to the car?

14 A. Once I saw the trunk start to open, yes.

15 Q. Okay. When you saw the trunk start to open, where in
16 that photograph are you standing?

17 A. Somewhere in the area here. (Indicating)

18 Q. Closer to the car or closer to the tree?

19 A. Probably right in the middle.

20 Q. So somewhere in the middle. And from your perspective
21 there, you can see that trunk open?

22 A. Yes, sir.

23 Q. You can see it open but you can't see who's opening it?

24 A. I couldn't see a face, no.

25 Q. And when you testified a few minutes ago about what

1 your belief is as to who opened that car, that's your
2 belief, isn't it?

3 A. Yes, sir.

4 Q. Because you didn't see that, did you?

5 A. No, sir.

6 Q. Now, right after you say the trunk came open, you said
7 you see a pistol emerge --

8 A. Yes.

9 Q. -- is that right?

10 A. (Indicating)

11 Q. And can you see that from your position next to the
12 car, right?

13 Are you about halfway between where the car is at
14 between the front door and the back door, are you about
15 standing there?

16 A. I'm a little bit -- I'm probably even with that point
17 but I'm a little back.

18 Q. So let's imagine this is the front line of the front
19 and back door of the car. This would be the line. The
20 trunk would be back here. Is that accurate? (Indicating)

21 A. It's hard for me to say from this angle.

22 Q. We will use our imaginations here. If you are standing
23 here and the trunk is back here and you are standing next to
24 the car, as you just said, and the trunk is open and a
25 pistol is emerging from the back, how is it that you see

- 1 that?
- 2 A. I see it through the vehicle.
- 3 Q. You see through the car?
- 4 A. Through the windows, yes.
- 5 Q. Okay. At that point you hear gunfire?
- 6 A. Yes, sir.
- 7 Q. And you hear a volley of gunfire? You hear a lot of
- 8 shots, right?
- 9 A. Yes.
- 10 Q. And you start shooting your gun, right?
- 11 A. Yes, sir.
- 12 Q. Now, you don't even know where you're shooting at that
- 13 point?
- 14 A. I do know where I'm shooting.
- 15 Q. You do? You're shooting towards the rear?
- 16 A. Towards the trunk where I saw the hand.
- 17 Q. And you're shooting through the rear window, off the
- 18 driver's side door through the rear window of the car, is
- 19 that accurate?
- 20 A. Yes, sir.
- 21 Q. So you're shooting through two panes of glass towards
- 22 the trunk which is now open, correct?
- 23 A. Yes, sir.
- 24 Q. And you can see where your bullet is going to strike?
- 25 A. I don't know where it's going to strike.

1 that you have been testifying about?

2 A. Yes.

3 Q. All right.

4 MR. MASTROIANNI: I move both of these in as exhibits.

5 MR. KLYMAN: No objection.

6 THE COURT: All right. They will be marked as 47A,

7 47B.

8 (Exhibit No. 47A, photograph, marked)

9 (Exhibit No. 47B, photograph, marked)

10 Q. (By Mr. Mastroianni) Now, Officer, when you discharged
11 your weapon towards the trunk, was that before or after you
12 heard a fellow officer yell that he had been shot?

13 A. After.

14 Q. Okay. It's 47B -- Exhibit 47B is on the screen. Is
15 that the -- can you use your cursor there to show us what
16 area of the trunk you were looking through, if this depicts
17 it?

18 A. Well, I was on the other side, but I was looking
19 through the car through the windows right here.

20 (Indicating)

21 Q. Through that spot where the trunk kind of goes over the
22 back windshield?

23 A. Yes.

24 Q. Let's put up Exhibit 47A. All right. Now, does this
25 photograph again depict the area you were looking through

1 from where you were standing?

2 A. Yes, sir.

3 Q. Okay. Use the marker to show us.

4 A. Somewhere -- I was coming through here. (Indicating)

5 Q. All right. Now, put the marker in the area where you
6 saw a hand with a gun in it emerging from the trunk and when
7 the trunk started to open.

8 A. I believe it was somewhere in this area here.

9 (Indicating)

10 Q. Thank you?

11 MR. MASTROIANNI: No further questions, Your Honor.

12 MR. KLYMAN: If you can keep that up for a moment.

13 **RECROSS EXAMINATION BY MR. ANDREOPOULOS:**

14 Q. So that hand was coming straight up so you could see
15 that?

16 A. No, it wasn't straight up.

17 Q. Okay. All right. When you were dealing with
18 Ms. Fuller, do you recall her screaming: My babies, my
19 babies?

20 A. No, sir.

21 Q. You don't recall that. Do you recall a meeting with --
22 you had with the District Attorney's Office in March when
23 you talked about this case?

24 A. Yes.

25 Q. Do you remember Ms. Bell and Mr. Mastroianni were