

1 THE COURT: In the morning.

2 MR. HINTON: He can be on call.

3 THE COURT: Mr. Rangel, after Mr. Rangel?

4 MR. HINTON: Yes.

5 (In the presence and hearing of the jury.)

6 THE COURT: Deputy, you are excused. I'll  
7 ask you to come back at 10:00 o'clock tomorrow morning  
8 just in case you're needed to be recalled.

9 Your next witness.

10 MS. BUESE: The State calls Deputy  
11 Gutierrez.

12 THE COURT: Deputy Gutierrez, Jon.  
13 Deputy, please come right down here. Please raise your  
14 right hand to be sworn in.

15 (Witness sworn.)

16 THE COURT: Please have a seat. Speak to  
17 the jury, please.

18 Ms. Buese, you may proceed.

19 MS. BUESE: Thank you, Judge.

20 RAMON GUTIERREZ

21 Having first been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. BUESE:

24 Q. Deputy, why don't you introduce yourself to the  
25 jury?

1           A. Deputy, first name Ramon and last name  
2 Gutierrez.

3           Q. And how are you employed?

4           A. I'm a deputy with the Harris County Sheriff's  
5 Office. I'm an accident investigator.

6           Q. Are you a licensed peace officer in the State  
7 of Texas?

8           A. Yes, ma'am.

9           Q. Are you in good standing with the State of  
10 Texas?

11          A. Yes, ma'am.

12          Q. Can you tell the jury a little bit about what  
13 you need to do to become an accident investigator versus  
14 a regular patrol deputy?

15          A. There's training classes we have to take. I  
16 myself have taken accident investigation. One, accident  
17 investigation. Two, vehicle dynamics. And three,  
18 reconstruction.

19          Q. So how many hours are we talking about dealing  
20 with just accident investigations?

21          A. All those classes combined, about 200 hours.

22          Q. And how long have you been an accident  
23 investigator?

24          A. For seven years.

25          Q. How many accident scenes do you think you've

1 made?

2 A. Quite a bit. Seven years, I would say at least  
3 over a thousand.

4 Q. And did you actually make an accident scene on  
5 January 5th of 2012?

6 A. Yes, ma'am.

7 Q. Would that accident have been at I-10 and the  
8 Beltway?

9 A. Yes, ma'am.

10 Q. You're familiar with that location?

11 A. Yes, ma'am.

12 Q. If you know, is that location in Harris County,  
13 Texas?

14 A. Yes.

15 Q. Deputy, why did you actually go out to that  
16 location?

17 A. That day, when I'm assigned to accident  
18 investigation, we have county wide jurisdiction. We go  
19 where they need us. That particular day I was assigned  
20 to the east side of the county and I responded to the  
21 scene because the first deputy that arrived on the scene  
22 was investigation and an accident investigator was  
23 needed due to the severity of the injury.

24 Q. Deputy Gutierrez, other than your training and  
25 experience, what do you bring to a scene when you

1 arrive?

2 A. My patrol car is equipped with everything  
3 pretty much fatality. I have measuring tapes, video  
4 camera in my car. I have a camera for photos. A total  
5 station to take measurements if I need to. Pretty much  
6 equipped to work anything as far as an accident goes.

7 Q. Do you also have a digital camera?

8 A. Yes, ma'am.

9 MS. BUESE: May I approach the witness?

10 THE COURT: You may.

11 Q. (By Ms. Buese) Deputy, I'm going to show you  
12 what's been marked as State's Exhibit No. 13, 14, and  
13 15. Do you recognize those photographs?

14 A. Yes, ma'am.

15 Q. Are these photographs that you actually took  
16 with your digital camera at the scene?

17 A. Yes, ma'am.

18 Q. And do they accurately reflect the scene as you  
19 recall it?

20 A. Yes.

21 Q. How about the lighting? Do you remember it  
22 being quite that dark when you were there?

23 A. No. When we got there, it was daylight when I  
24 started taking the photos. It had already started to  
25 get dark.

1 MS. GARRETT: No objection to 13, 14, and  
2 15.

3 THE COURT: 13 through 15 are admitted.  
4 You may proceed.

5 Q. (By Ms. Buese) Deputy, when you first got to  
6 the accident scene, were you able to tell just from  
7 looking at the scene what had happened to that Dodge  
8 Durango?

9 A. Yes, initially I started walking around looking  
10 at -- when we get there, we talk to witnesses first,  
11 make sure first priority is to make sure that everybody  
12 that needs medical attention has medical attention. And  
13 after that, we start talking to the witnesses and  
14 looking at the vehicle damage and the evidence on the  
15 roadway.

16 Q. Is that what you did in this case?

17 A. Yes.

18 Q. And even if you hadn't had witnesses at the  
19 scene to explain to you what had happened to that Dodge  
20 Durango, were you able to tell, just based on looking at  
21 the evidence, what had happened to it?

22 A. I don't remember if I started looking at the  
23 Dodge Durango first and tried to figure out -- but say  
24 for instance, if I were to get there, I would have to  
25 look, I would say the evidence had the damage to the

1 vehicle, see where the principal direction of the force  
2 was applied to that vehicle, and then I would start  
3 looking at tire marks or any kind of evidence that's on  
4 the road that led me to believe how the vehicle rotated  
5 and how it came to its final designation.

6 Q. And just from looking at the vehicle, could you  
7 determine all those things?

8 A. Yes. I saw damage to the right rear quarter  
9 and then I saw the yaw marks, so I could tell it had  
10 some contact with a vehicle on the road and started  
11 basically into a counterclockwise.

12 Q. And did you photograph all of the scenes that  
13 were significant to you in your investigation?

14 A. Yes.

15 Q. And due to the lighting, were all of those  
16 pictures particularly clear and good quality?

17 A. Not all of them. There is some that have some  
18 good lighting, but some that don't.

19 Q. And between the photographs we have and your  
20 memory, do you have a clear recollection of what you saw  
21 at the scene?

22 A. Yes.

23 Q. And if you could, just walk us through State's  
24 Exhibit No. 13 here. What are we looking at here?

25 A. That's, I believe, there is a wrecker truck up

1 there. This is westbound service road of I-10 and where  
2 that patrol car is at, that's the southbound service  
3 road of the Beltway and then you have the Dodge Durango  
4 crashed over there by that pole, but there is also --  
5 can I get up.

6 MS. BUESE: May the witness leave the  
7 stand?

8 THE COURT: There's a pointer there. If  
9 you would like to use that too.

10 THE WITNESS: So there's the Dodge  
11 Durango. There's some roll like marks you can see  
12 that's probably going to be from the tires of the  
13 Durango, what we call a yaw mark, that's from the  
14 vehicle rotating toward that direction.

15 Q. (By Ms. Buese) Now Deputy, I know you tried to  
16 explain to me several times and I'm going to ask you one  
17 more time, what is a yaw mark?

18 A. Yaw mark is basically a tire that is sliding  
19 sideways on the road versus a skid mark when somebody  
20 hits the brakes and they go straight. A yaw mark would  
21 be from a tire going sideways.

22 Q. And did the mark you saw on the roadway  
23 compared to the marks you saw here in State's Exhibit  
24 No. 14 on the roof have any significance?

25 A. Yes. This is going to be, looks like one yaw

1 mark goes through here and that's where that tire,  
2 that's a curb strike. It strikes the curb and also over  
3 here and that's probably, in fact, I'm sure that's what  
4 caused the vehicle to flip over on its driver's side.

5 Q. And looking at State's Exhibit No. 15, is this  
6 just a closer upshot of that same curb and those same  
7 marks?

8 A. Yes.

9 Q. And Deputy, you also said you looked at the  
10 vehicle for locations of possible impact; is that  
11 correct?

12 A. Yes.

13 THE COURT: You can have a seat.

14 MS. BUESE: May I approach the witness?

15 THE COURT: You may.

16 Q. (By Ms. Buese) Deputy, I'm going to show you  
17 State's Exhibit No. 16 through 28. If you could, take a  
18 look at those for me please. Are these still the  
19 photographs that you took?

20 A. Yes, ma'am.

21 Q. Are they still of that same Dodge Durango  
22 vehicle?

23 A. Yes.

24 Q. And do they accurately reflect that vehicle?

25 A. Yes, ma'am.

1 MS. BUESE: At this time, I tender to  
2 opposing counsel.

3 MS. GARRETT: No objections, Your Honor.

4 THE COURT: Being no objections, 16  
5 through 28 are admitted.

6 This is probably a good time to explain  
7 the exhibits. You've heard them here, certain exhibits  
8 have been offered and admitted. When I say it has been  
9 admitted for the jury's consideration, it means in  
10 addition, in the fairly short time you see them here in  
11 the courtroom, upon written request from your foreman or  
12 forelady while in deliberations, you may see anything  
13 that has been admitted into evidence for as long as you  
14 want. And that's what that means. You will see them in  
15 addition to the short time you see them in the  
16 courtroom.

17 You may proceed.

18 MS. BUESE: Thanks, Judge.

19 Q. (By Ms. Buese) Looking here at State's Exhibit  
20 No. 16, what significant damage do you see in this  
21 photograph?

22 A. I see contact damage to the light pole and  
23 obviously the damage to the left side of the Dodge  
24 Durango and also has damage consistent with the pole  
25 right across the middle basically of the Dodge Durango.

1 Q. And if we just go around that vehicle in a  
2 clock wise direction, State's Exhibit No. 17, what part  
3 of the vehicle are we looking at in this photograph?

4 A. That's going to be the front left quarter  
5 panel.

6 Q. And did you note any significant damage or  
7 anything of interest in this particular section of the  
8 vehicle?

9 A. The door was opened, more than likely was  
10 opened by EMS and the left front tire is basically broke  
11 off the rim.

12 Q. Have you seen tires broken off of vehicles  
13 before?

14 A. Yes.

15 Q. What type of force is usually required to cause  
16 that to happen?

17 A. I'm sure it's got to be quite a bit more likely  
18 from contact, like in this instance, that curb, I'm  
19 sure, that's what broke those tires off.

20 Q. And looking at State's Exhibit No. 18, what  
21 part of the vehicle are we looking at now?

22 A. That's the front.

23 Q. What, if anything, is significant in this  
24 photograph?

25 A. I've seen some damage over here to the right,

1 almost underneath the right front headlight, right  
2 around the bumper, there's some damage there.

3 Q. And when you describe damage, is it a dent, is  
4 it a scrape, what are we talking about?

5 A. That looks like almost contact damage. It's  
6 not very major in my opinion. It looks like it had  
7 contact with something, but it doesn't look like it was  
8 a major impact right there where the damage is at.

9 Q. So in State's Exhibit No. 18, the front of that  
10 Durango, you see minor contact damage?

11 A. Yes.

12 Q. How about looking at State's Exhibit No. 19  
13 here, which side of the vehicle are we looking at?

14 A. That's the right side, passenger's side. There  
15 is some, looks like maybe a light scrape here right  
16 underneath the door panel of the right front door. The  
17 door is body outward and that's from induced damage from  
18 it striking that pole. It bowed out from the right side  
19 of that vehicle causing the door to come unseated by  
20 what we call the V pillar.

21 Q. Could you explain the difference between  
22 contact?

23 A. Induced.

24 Q. What's the difference between contact and  
25 induced damage?

1           A.    Induced damage is damage that the vehicle  
2 sustains from impact, from another direction.  See, for  
3 instance, in this case, the vehicle struck that pole,  
4 which caused this door to become damaged, so that  
5 becomes induced damage.  That doesn't mean this has  
6 contact with anything.  It means it came into contact  
7 somewhere else.

8           Q.    You mentioned some minor damage by the door  
9 handle.  What type of damage does that appear to be?

10          A.    That looks like a scrape, yeah, it's, I would  
11 classify it as a scrape.

12          Q.    What, if anything, can you tell us about paint  
13 transfer?

14          A.    Paint transfer is basically transferred from  
15 another vehicle or from an object.  If they strike a  
16 pole or car or anything that's a different color or even  
17 the same color and transfers paint from that vehicle on  
18 to another vehicle that may be paint transfer, but it  
19 looks like a scrape, but I would have to have a better  
20 shot to give any opinion to it.

21          Q.    Do you see any evidence of contact damage in  
22 this photograph?

23          A.    No.

24          Q.    And State's Exhibit No. 19, going to State's  
25 Exhibit No. 20, it's presumed it's shots of that back

1 quarter panel, and I'm going to play with the lighting a  
2 little bit here. There you go. Do you see any contact  
3 damage in this shot?

4 A. To the right rear door of the Dodge Durango, it  
5 looks like there is some contact damage there and maybe  
6 some paint transfer.

7 Q. State's Exhibit No. 21, which side of the  
8 vehicle are we looking at?

9 A. That's still the right side looking at the  
10 right rear corner.

11 Q. And what, if any, damage are you seeing in this  
12 photograph?

13 A. I see contact damage pretty much at the door  
14 jam of the right rear door and contact damage here at  
15 the right rear corner. And I see red paint transfer on  
16 the, around the tire of the vehicle, regular tire.

17 Q. And looking at State's Exhibit No. 22, is that  
18 the same tire you were just talking about?

19 A. Yes.

20 Q. And where specifically do you see paint  
21 transfer here?

22 A. Along the surface of the outer wall of the tire  
23 and the body of the rim right around the top of it.

24 Q. And what does that indicate to you when you see  
25 paint there?

1           A.    That it had contact with an automobile that was  
2 red in color.

3           Q.    I'm just going to go ahead and bring State's  
4 Exhibit No. 22 up to you since we are having some color  
5 and lighting issues, but if you can, looking at the  
6 picture, could you tell me specifically what color paint  
7 that you're seeing transferred?

8           A.    That looks red to me, reddish.

9           Q.    And Deputy, moving on to State's Exhibit No.  
10 23, what part of the vehicle are we looking at now?

11          A.    That's the rear of the vehicle.

12          Q.    And what is significant about the rear of this  
13 vehicle?

14          A.    It has a scrape and looks like contact damage  
15 to the bottom of the bumper, basically the bumper and  
16 almost extended pretty much the length of the spare tire  
17 and you have a pretty good area of contact damage here  
18 right above the spare tire and hence the bumper is  
19 cracked and it looks like it's got a little bit of  
20 damage right over here also.

21          Q.    And Deputy, based on your training and  
22 experience, does that damage appear to be from one  
23 strike or multiple strikes?

24          A.    It's hard to say, but it does have contact  
25 damage.

1 Q. And looking at State's Exhibit No. 24, do you  
2 see any paint transfer in this photograph?

3 A. Yes, right here, right above the tail pipe,  
4 there is a little bit of red paint that I can see right  
5 there.

6 Q. How does that red paint compare to the transfer  
7 that you already saw on the tire?

8 A. It looks pretty much the same.

9 Q. Looking at State's Exhibit No. 25, and looking  
10 down by that spare tire down there, do you see some more  
11 paint transfer there?

12 A. Underneath this part of the bumper there, that  
13 looks like it's coming down or cracked, I see a little  
14 red there and I see some oil or water on the tire, a  
15 stain on the spare tire.

16 Q. What does that indicate to you?

17 A. Also from engine fluids of a vehicle that  
18 started from the tire.

19 Q. And State's Exhibit No. 26?

20 A. This is some more of that contact damage from  
21 the back bumper.

22 A. Yes.

23 Q. And again, is there some red paint transfer  
24 there?

25 A. Yes, looks like along the bottom.

1 Q. State's Exhibit No. 27, what side of the  
2 vehicle are we looking at now?

3 A. That's the left side driver's side.

4 Q. And what damage do you see in the photograph?

5 A. I see that left rear wheel off of the vehicle,  
6 the bumper, is detached from here, possibly from induced  
7 damage, and it has heavy contact damage around the  
8 V-pillar of the vehicle, which is right around the  
9 middle from contact with the pole.

10 Q. And State's Exhibit No. 28, is that the same  
11 side of the vehicle?

12 A. Yes.

13 Q. And was it possible to determine looking at the  
14 driver's side of the vehicle if there were any  
15 additional contact points other than the major contact  
16 point with the pole?

17 A. Looking at the picture here, I don't see no  
18 damage to the left rear quarter panel like I did on the  
19 left side. The door is opened, but it was probably  
20 opened by EMS, but no, this is probably, it's contact  
21 damage and induced damage with contact with the pole.

22 Q. Deputy, based on what you saw, did you believe  
23 this had been a one car accident?

24 A. No, not when I was out there after learning  
25 some other stuff.

1 Q. And you say learning some other stuff, was that  
2 conversations you had with witnesses?

3 A. Yes, and looking at the damage of the vehicle  
4 and the etches on the road.

5 Q. Okay. And you talked about evidence in the  
6 road, what other evidence was there in the road?

7 A. There was a fluid trail that extended to the  
8 west from the final resting position of this vehicle.

9 Q. What is a fluid trail?

10 A. That's a trail -- it could either be from  
11 engine fluids, engine oil or radiator fluid, or fluid in  
12 the line, but this was radiator fluid from a vehicle.

13 MS. BUESE: May I approach the witness?

14 THE COURT: You may.

15 Q. (By Ms. Buese) I'll show you State's Exhibit  
16 No. 29 through 46. Did you photograph that fluid trail  
17 that you just told us about?

18 A. Yes, ma'am.

19 Q. And if you could look through those photos and  
20 tell me if those are some of the photos you took showing  
21 that fluid trail?

22 A. Yes, ma'am.

23 Q. And do all of these photographs accurately  
24 depict the scene as you found it?

25 A. Yes.

1 MS. BUESE: At this time, the State offers  
2 State's Exhibit No. 29 through 46 and tenders to  
3 opposing counsel.

4 MS. GARRETT: No objections, Your Honor.

5 THE COURT: Being no objection, 29 through  
6 46 are admitted. You may proceed.

7 MS. BUESE: Thank you, Judge.

8 Q. (By Ms. Buese) Deputy, where did the fluid  
9 trail actually start?

10 A. I saw it from the westbound service road right  
11 around, right before the, where the westbound service  
12 road and the northbound service road begins, right in  
13 that area, that's where I believe I first saw it and I  
14 extended to the final disposition of the Dodge and then  
15 passed that.

16 Q. And where does the place where you saw the  
17 fluid trail start compared to where the Dodge Durango  
18 came to rest?

19 A. I would say approximately 500 feet.

20 Q. Let's start with State's Exhibit No. 29 here.  
21 Is this the start of the fluid trail as you saw it?

22 A. Yes, that's the westbound service road and then  
23 northbound service road of the belt, that is where that  
24 intersection is.

25 Q. Is that the same intersection where the Durango

1 had come to rest on the far side?

2 A. Yes, at the next stop light which is green,  
3 right from there, that's where the Durango is at.

4 Q. So where we see the green light here is the  
5 intersection where the Durango is?

6 A. Yes.

7 Q. And what generally causes a fluid trail?

8 A. When the vehicle becomes damaged, the radiator  
9 becomes punctured or a line or the engine or something,  
10 there is impact to the vehicle that causes some fluids  
11 to leak out.

12 Q. And is that common in accident scenes where one  
13 car has rear ended another?

14 A. Yes.

15 Q. Which of those two vehicles in that situation  
16 would be likely to leak fluids?

17 A. The one that is struck from the back where the  
18 engine compartment is at.

19 Q. Were you able to follow the fluid trail in this  
20 case?

21 A. Yes.

22 Q. Is that what we are looking at here in State's  
23 Exhibit No. 30?

24 A. Yes, that's actually walking towards the  
25 Durango.

1 Q. And State's Exhibit No. 31?

2 A. So there, it is like I say, the left lane runs  
3 right into here.

4 Q. So did it move from one lane to the other or  
5 staying consistently in the left hand lane?

6 A. Right here it is still in the left lane.

7 Q. And in State's Exhibit No. 32, is it still  
8 staying in that left hand lane?

9 A. No, it's starting to cross the center divide  
10 into the center lane.

11 Q. Right. What we see here in this photograph is  
12 red, which intersection is that?

13 A. That's still the westbound service road. Now  
14 that's going to be the southbound service road of  
15 Beltway 8.

16 Q. Is that closer to where the Durango came to  
17 rest?

18 A. Yes.

19 Q. How about looking at State's Exhibit No. 33,  
20 what are we seeing here?

21 A. That's still the fluid trail going in the  
22 center lane towards the intersection.

23 Q. And Deputy, as an accident investigator, are  
24 you also asking for any indication that somebody might  
25 have hit the brakes or accelerated?

1 A. Yes.

2 Q. How can you tell that?

3 A. You look at the tire mark on the road and try  
4 to identify whether it's a skid mark from somebody  
5 coming to a stop or acceleration mark. Skid mark is  
6 somebody that is applying the brake. The tire mark will  
7 start out lightly and it gets darker when the vehicle  
8 stops. Acceleration, if you have a car stopped and they  
9 start spinning their tire, it starts off dark and it  
10 gets lighter as the vehicle takes off.

11 Q. And looking at State's Exhibit No. 34, and  
12 remember all the other photographs that we saw, did you  
13 ever see any indication that the vehicle leaving that  
14 fluid trail ever hit the brakes tract intended to stop?

15 A. No.

16 Q. State's Exhibit No. 35, do you still see that  
17 fluid trail here?

18 A. Yes.

19 Q. And do we see anything else in this photograph?

20 A. There's two tire marks. One here based on the  
21 inside of the fluid trail, they're pretty short, but  
22 they are also from a vehicle with a wheel base that  
23 matches its ride for a vehicle. Almost looks like an  
24 acceleration mark to me because they start off dark and  
25 get lighter.

1 Q. And looking at State's Exhibit No. 35, is that  
2 perhaps a better look at one of those marks you're  
3 discussing?

4 A. Yes.

5 Q. And why does it start dark and then get  
6 lighter?

7 A. Because that's where they have accelerated and  
8 the tires spinned and they gained traction when they go  
9 and it's lighter.

10 Q. Is there any way that could be some type of a  
11 brake mark?

12 A. No.

13 Q. And how do you know that?

14 A. Because the skid mark or something from a  
15 vehicle coming to a stop, usually the tire mark would be  
16 longer and it starts off light and then gets dark. This  
17 one started out dark and got lighter.

18 Q. So the lane is roadway in color?

19 A. Yes.

20 Q. State's Exhibit No. 37, what are we seeing  
21 here?

22 A. This is a still a fluid trail. Now it's  
23 changed direction back into the left lane.

24 Q. And can you explain to us in State's Exhibit --  
25 a while ago when you discussed the yaw mark that the

1 Durango started to leave.

2 A. Yes.

3 Q. In that photograph, were you also able to see  
4 at least part of that fluid trail that we are still  
5 seeing in these other photographs?

6 A. I don't see, the fluid trail is going to be  
7 further over here and the yaw marks, they are very faint  
8 right here. I can see one right here.

9 Q. If you could, you can actually use your finger  
10 and trace that mark?

11 A. Okay. I see it right around, right around in  
12 there. Actually to the left of that. You can see a  
13 real faint tire mark. You can actually see it right  
14 over here. Real faint, but there is, it is right there  
15 and it goes straight to that curb strike.

16 Q. In that far left hand corner of that  
17 photograph, is that part of that fluid trail we have  
18 seen?

19 A. No, I don't believe it is. This one here. But  
20 the picture is kind of short, but I guess it's from  
21 something else consistent with that. I think that was  
22 from something previous, by the fluid trail. I don't  
23 see it here. I think it's out of the trail.

24 Q. Deputy, when you're on a scene, or do you  
25 sometimes have a hard time distinguishing old from new

1 marks on a highway?

2 A. It's difficult sometimes.

3 Q. In this case, was it difficult?

4 A. When I, when it was daylight, it was pretty  
5 easy to see, but when it got dark, the picture didn't  
6 come out that good, but from looking at the photo I can  
7 clearly identify that tire mark was leading from this  
8 vehicle because that was a clean strike and it matches  
9 with the path of the Dodge Durango.

10 Q. And if you could do me a favor, tap the lower  
11 left-hand corner of the screen for me. Perfect.

12 State's Exhibit No. 37, are we still following that  
13 fluid trail?

14 A. Yes.

15 Q. And in the very far corner, that's a little bit  
16 of light there, there's a tow truck and then that little  
17 ledge there, is that actually the Dodge Durango?

18 A. Yes.

19 Q. And this roadway, either in the photograph or  
20 from your own memory, was there ever any indication from  
21 the physical evidence that a person had stopped a  
22 vehicle to get out and help or render aid?

23 A. Well, based on, this fluid started here,  
24 whatever vehicle left that fluid trail, they did not  
25 stop. They continued passed the scene.

1 Q. And how can you tell that?

2 A. Because the fluid trail itself, still, that  
3 looks, it's a high pressure water comes out of it, real  
4 high pressure. Had this vehicle come to a stop, there  
5 would be a puddle, a pretty large puddle of fluids and  
6 probably even some tire marks from him braking. It  
7 looks like he was traveling or whoever this person was  
8 was traveling. I can't tell you what speed, but they  
9 were traveling at a steady speed.

10 Q. And looking at State's Exhibit No. 38, is that  
11 that trail continuing?

12 A. Yes, and actually it's narrow right in here,  
13 the fluid trail, it's not as wide as it was. It's now  
14 more narrow.

15 Q. And State's Exhibit No. 39, can you still see  
16 the trail?

17 A. Yeah, very lightly, but it's getting even more  
18 narrow now.

19 Q. What does that indicate to you when the trail  
20 gets very narrow?

21 A. One of two things. Acceleration or that it's  
22 running out of fluids.

23 Q. In this case, were you able to figure out which  
24 one of those two options it was?

25 A. Yes. I determined it was due to acceleration.

1 The vehicle was accelerating.

2 Q. How were you able to determine that?

3 A. Further down the road was a curb and it got  
4 wide again after it got wider. So that indicates the  
5 fluid trail was wide, then once it passes the Dodge  
6 Durango, they accelerated, and then when they got to  
7 the curb, they had to slow down to negotiate the curb  
8 and when they slowed down there was more fluids that  
9 came to the ground due to the vehicle traveling slower  
10 going around the curb.

11 Q. I'm sorry. You said the vehicle traveled  
12 where?

13 A. Made a u-turn under I-10.

14 Q. Did it stay in the roadway when it did that?

15 A. It doesn't look like it. It looks like it went  
16 over the curb.

17 Q. Is that just based on following the fluid  
18 trails as well?

19 A. Yes, just basically that in the fluid trail  
20 itself, and I think there is tire marks, right around in  
21 there.

22 Q. State's Exhibit No. 41, what are we looking at  
23 here?

24 A. That's more fluid trail right along the curb  
25 and then a piece of, from the front wheel of a vehicle.

1 Q. Can you tell us what roll debris plays in your  
2 accident investigation?

3 A. Well, if it's a failure to stop and render aid,  
4 somebody leaves from the scene and they are not there  
5 any more, we collect evidence, you know, pieces of  
6 whatever we can, so if we do find the vehicle later on,  
7 we can mark parts to that particular vehicle.

8 Q. Is State's Exhibit No. 12, one of the items  
9 that you collected in this case?

10 A. Yes.

11 Q. Were you able to continue following that fluid  
12 trail?

13 A. Yes.

14 Q. Once it u-turned under I-10, did it continue on  
15 the feeder road for a period?

16 A. Yes. It went around the u-turn, and now we are  
17 going this direction, going back eastbound on the I-10  
18 service road.

19 Q. And looking at State's Exhibit No. 43, playing  
20 with the light again. Were you still able to follow  
21 that fluid trail?

22 A. Yes.

23 Q. Did you find more debris along that trail?

24 A. Yes, there is another piece of the grill.

25 Q. And based on your training and experience, were

1 you able to tell anything about the type of suspect  
2 vehicle you might be looking for based upon the debris  
3 that you found?

4 A. Due to my familiarity with vehicles, since I  
5 investigate accidents quite a bit, I could tell that was  
6 from a Chevy vehicle, Chevrolet, GMC truck.

7 Q. And State's Exhibit No. 44, is that just a  
8 close-up of that same debris?

9 A. Yes.

10 Q. And a different part of that debris is State's  
11 Exhibit No. 45?

12 A. Yes, that's a bigger section of that grill.

13 Q. And you say this is all from the grill, so that  
14 would be from what part of the suspect vehicle.

15 A. The front of the vehicle, underneath the hood,  
16 in between the bumper.

17 Q. Were you able to follow that fluid trail we  
18 still see in State's Exhibit No. 46 all the way to a  
19 possible suspect vehicle?

20 A. Yes.

21 Q. And how far did you have to go to find that  
22 suspect vehicle?

23 A. Approximately I would say a mile, mile and a  
24 half.

25 Q. And looking at State's Exhibit No. 11, does

1 that accurately reflect the path based on the fluid  
2 trail and the debris you found that the suspect vehicle  
3 took?

4 A. Yes.

5 Q. And Deputy, when you found that vehicle that  
6 you believed to be involved in the accident, what type  
7 of vehicle was it?

8 A. I want to say it was a black or gray Chevrolet  
9 truck, single cab.

10 Q. Did you take photographs of it?

11 A. Yes.

12 MS. BUESE: May I approach the witness?

13 THE WITNESS: You may.

14 Q. (By Ms. Buese) Deputy, I'm going to show you  
15 State's Exhibit No. 47 through 52. Take a look at those  
16 for me please. Is that the vehicle you located?

17 A. Yes, ma'am.

18 Q. Do these photographs fairly and accurately  
19 depict the vehicles photographed as those vehicles  
20 reflected on that evening?

21 A. Yes.

22 MS. BUESE: I hand 47 through 54 to  
23 opposing counsel.

24 MS. GARRETT: No objections, Your Honor.

25 THE COURT: Being no objection, 47 through

1 54 are admitted. You may proceed.

2 Q. (By Ms. Buese) What type of damage did that  
3 pickup truck have when you found it?

4 A. Front end distributed contact damage.

5 Q. And looking at State's Exhibit No. 47, is that  
6 the pickup truck we are discussing?

7 A. Yes.

8 Q. And what actual damage here do you see?

9 A. I see contact damage distributed, pretty much  
10 looks like from the, where the left side headlight  
11 starts all the way down to the right and distributed  
12 pretty much all the way around the front and pushed back  
13 toward the passenger's compartment.

14 Q. What does that tell you about the type of  
15 contact that vehicle had?

16 A. What we call a full impact. We have contact in  
17 the front and the back. Basically they were aligned in  
18 the same, in the same direction.

19 Q. And No. 48, still looking at the same car;  
20 right?

21 A. Yes.

22 Q. Excuse me, same pickup truck, any further  
23 damage you can see in this photograph?

24 A. Looks like there might be some induced damage  
25 here on the left front fender. Looks like there might

1 be right here at the door jam of the door here, there is  
2 a gap and a gap here between the hood and the fender.

3 Q. Would that be another point of contact between  
4 this vehicle and something else?

5 A. Probably not from looking at it from this photo  
6 right here. I'm going to say that would be induced  
7 damage.

8 Q. And State's Exhibit No. 49, what are we looking  
9 at here?

10 A. The rear of the vehicle.

11 Q. And did you note any damage to the rear of the  
12 black pickup truck you looked at it?

13 A. No, no contact damage that I could look, that  
14 I'm looking at from here.

15 Q. State's Exhibit No. 50, making our way around  
16 the pickup truck, any other additional damage that you  
17 noted?

18 A. No, I don't see none on the right rear or  
19 quarter panel there.

20 Q. Defendant's Exhibit No. 51, what do we see  
21 here?

22 A. I see. Looks like some scrapes or some paint  
23 transfer on the right door, possibly maybe from a side  
24 swipe, either to a pole or another vehicle, but there is  
25 some scrapes there and possibly some paint transfer.

1 Q. Now, you have already talked about paint  
2 transfer a little bit. If this vehicle left paint  
3 transfer somewhere else, what color would you expect  
4 that paint transfer to be?

5 A. If this vehicle left paint transfer somewhere  
6 else, black.

7 Q. Would this vehicle leave red paint transfer  
8 from anywhere?

9 A. No.

10 Q. The flat scrape or dark pink transfer, could  
11 that have possibly come from the black Dodge Durango?

12 A. It's possible.

13 Q. Is there anyway to tell definitively just by  
14 looking at it?

15 A. No.

16 Q. And looking at State's Exhibit No. 52, what do  
17 we see here?

18 A. It looks like the front of the vehicle, the  
19 right side where the right headlight used to be or right  
20 around there is some pretty good contact damage.

21 Q. And did that appear to match the debris,  
22 specifically State's Exhibit No. 12, that you collected?

23 A. From the pieces missing from the grill, yes.

24 Q. Deputy, did you continue a follow-up  
25 investigation on this accident?

1           A.    No, I just went to the scene and took the  
2 pictures and then I didn't do no more follow-up  
3 investigation.  After that, referred it over to Deputy  
4 Sterns who referred it over to the assault squad or  
5 homicide office.

6           Q.    And if it had been a traffic accident, an  
7 accident accident, would you have continued to handle  
8 that case?

9           A.    Yes.

10          Q.    So based on everything you saw at the scene at  
11 I-10 and the Beltway and then at that second location,  
12 based upon your training and experience, were you  
13 dealing with an accident?

14          A.    No.

15          Q.    And what makes you say that?

16          A.    Looking at the damage to the vehicle, the  
17 evidence, and basically putting everything together, the  
18 totality of the circumstances, what the witnesses said,  
19 I determined that it wasn't something that I needed to  
20 investigate, that it was somebody else's, homicide or  
21 assault squad to investigate it.

22                   MS. BUESE:  May I approach the witness?

23                   THE COURT:  You may.

24          Q.    (By Ms. Buese) Deputy, I'm going to show you  
25 some more photographs.  And these are not your

1 photographs, but this is State's Exhibit No. 53 through  
2 58. Take a look at those for me please. Do you  
3 recognize these photographs?

4 A. No, well, I saw them yesterday.

5 Q. Okay. So you've never actually seen this  
6 physical vehicle before?

7 A. No, ma'am.

8 Q. Were you asked to review these photographs when  
9 you were evaluating your final accident report in this  
10 case?

11 A. No.

12 Q. Did I show you these photographs and ask you to  
13 take a look at them?

14 A. Yes.

15 Q. Did I ask you to compare the damage you see in  
16 these photographs to the damage we see on the Durango  
17 and the pickup truck that you saw?

18 A. Yes.

19 Q. And did you see a correlation between the  
20 damages?

21 A. Yes.

22 MS. BUESE: Your Honor, pursuant to an  
23 agreement between Defense counsel and I. I would offer  
24 State's Exhibit No. 53 through 58 at this time.

25 MS. GARRETT: Right, Your Honor. We agree

1 that even though he wasn't the person that actually took  
2 the photos, that to kind of save time we wouldn't have  
3 to go out of order and in light of that agreement, we  
4 have no objections to 53 through 58.

5 THE COURT: Good. 53 through 58 are all  
6 admitted. You may proceed.

7 Q. (By Ms. Buese) And Deputy, before you saw any  
8 photographs of this red van, did you have any  
9 expectations based on the physical evidence that you saw  
10 at the scene that there may have been more than just the  
11 two vehicles that you saw involved?

12 A. Yes.

13 Q. And what made you think that?

14 A. The damage to the right rear quarter panel of  
15 that Dodge wasn't matching with the damage that we saw  
16 on the Chevy truck. The Chevy truck had front  
17 distributed damage and the, this vehicle here had damage  
18 to the right rear quarter and also some damage to the  
19 back. It looks like it had been impacted two times by  
20 two separate vehicles and the red paint transfer on the  
21 right side of this vehicle.

22 Q. So the red paint transfer you saw in State's  
23 Exhibit No. 22?

24 A. Yes.

25 Q. And looking at State's Exhibit No. 53, what

1 type of vehicle does this appear to be?

2 A. Looks like a Dodge Caravan or Plymouth Voyager.

3 Q. Is there actually a little Dodge there?

4 A. Yes.

5 Q. What color is this vehicle?

6 A. Yes, red.

7 Q. And in the photographs taken, obviously not by  
8 you, but the photographs taken of this vehicle, were you  
9 able to see damage to the van?

10 A. Yes, at the front left portion of the vehicle.

11 Q. Specifically what type of damage were you able  
12 to see?

13 A. I see pretty significant contact damage and  
14 also there is a transfer here, that paint transfer looks  
15 like rubber transfer from a tire. See the ridges.  
16 Those are the ridges from the thread of a tire.

17 Q. And how do you know that's from a tire and not  
18 from just regular paint transfer?

19 A. Just because of the ridges and the marks and  
20 the real dark color leads me to believe this was made  
21 from a tire.

22 Q. What about a tire is going to leave that type  
23 of a mark versus just a streak of color?

24 A. I'm sorry.

25 Q. Just a streak of color or rubber or whatever

1 car tires leave?

2 A. This is from a tire that was rolling because if  
3 the vehicle was parked, it would be more of a long  
4 streak, but since they are in a circular pattern and  
5 actually if you get a little bit further back, you can  
6 see the marks, two separate marks where the tire was  
7 rolling, whatever tire was the one that left that mark  
8 there.

9 Q. Let me see if I can help you out here, State's  
10 Exhibit No. 55, you see some of those marks that you are  
11 talking about?

12 A. Yes. There were some over here right on the  
13 other side of the door jam underneath the mirror and  
14 then some along the fender all the way towards the  
15 front.

16 Q. These marks would have been caused by tire or  
17 paint transfer or what?

18 A. This vehicle came in contact with the tire of  
19 the vehicle, kind of like a side swipe.

20 Q. Is there anything about the height of the marks  
21 on this vehicle that tells you something about the  
22 vehicle it struck?

23 A. Yes.

24 Q. The Dodge Durango was equiped with some chrome  
25 tires, I believe 22 inch tires. I didn't measure, but

1 they were pretty high tires, but the height matches to  
2 what was on the Dodge.

3 Q. Looking at State's Exhibit No. 56 here, what  
4 can we see in this photograph?

5 A. There's a, more contact damage here and you can  
6 see the circular pattern of the tire, tire mark here and  
7 here.

8 Q. And State's Exhibit No. 57?

9 A. Looks like there is some, looks like yellow  
10 paint here along the fender right above the left rear  
11 tire.

12 Q. Does it appear that that first mark starts off  
13 black and then goes to that yellow color?

14 A. Yes, it's black over here and yellow over here,  
15 but I don't think it's from the same tire or the same  
16 sequences. This might be old damage, but I'm not sure.

17 MS. BUESE: May I approach the witness?

18 THE COURT: You may.

19 Q. (By Ms. Buese) Deputy, if you could, let me  
20 see, if you could, have you taken a closer look at  
21 State's Exhibit No. 12. Do you see different tones of  
22 paint on this vehicle?

23 A. Yes.

24 Q. And the other items that you collected that  
25 were debris in this case, did you note that there was a

1 black and then a yellow gold undercoat to the black  
2 Chevy truck that you investigated?

3 A. I believe so. I know the light has two  
4 different colors.

5 Q. Based on that, is it possible that this black  
6 and then gold or yellow mark could have been left by  
7 that pickup truck?

8 A. Possible.

9 Q. And State's Exhibit No. 58, the back of the van  
10 we've been discussing, any damage here in this  
11 photograph?

12 A. No.

13 Q. Any indication it was rammed, struck,  
14 accidentally hit, anything like that?

15 A. No.

16 Q. Any induced damage?

17 A. No.

18 Q. Deputy, after you had an opportunity to review  
19 your file, the photographs of the Durango, the  
20 photographs you had taken of the pickup truck and had a  
21 chance to look at the red van photos, were you able to  
22 come to any conclusions based on your experience and  
23 training about how this crash occurred?

24 A. Yes.

25 Q. Did you make a diagram to help illustrate that

1 to the jury?

2 A. Yes.

3 MS. BUESE: May I approach the witness?

4 THE COURT: You may.

5 Q. (By Ms. Buese) Deputy, I'm going to show you  
6 State's Exhibit No. 65 and 66. Do you recognize these?

7 A. Yes.

8 Q. Did you actually create these?

9 A. Yes.

10 Q. Did you create them to diagnose and show the  
11 jury how you believe the accident occurred?

12 A. Yes.

13 Q. Are they still accurate?

14 A. Yes, they are.

15 MS. BUESE: At this time, I offer State's  
16 Exhibit No. 65 and 66 to Defense counsel for any  
17 objection.

18 MS. GARRETT: I have no objections, Your  
19 Honor.

20 THE COURT: Being no objection, 65 and 66  
21 are admitted. You may proceed.

22 Q. (By Ms. Buese) Deputy, let's start with State's  
23 Exhibit No. 66. What roadway are we looking at here?

24 A. This is the direction that the vehicles or the  
25 road the vehicles are on right now, it's I-10 westbound

1 service road.

2 Q. And how about the lanes we come, that we see  
3 coming north and south that are creating those two  
4 intersections?

5 A. The first lane over here to the east, the first  
6 one that's going to be the northbound service road to  
7 Beltway 8 and the other lane is the southbound service  
8 lane to Beltway 8.

9 Q. Looking very closely as State's Exhibit No. 3,  
10 could you maybe show us on the TV next to you over  
11 there, if you can see the intersection that you're  
12 actually discussing in your diagrams?

13 A. It's going to be these right here. This is the  
14 service road, then the northbound service road. Service  
15 road continues underneath the Beltway, and then you have  
16 the southbound service road of Beltway 8.

17 Q. Thank you, Deputy. Going back to your diagram  
18 here, were you able to determine where the first point  
19 of contact between the vehicles occurred?

20 A. I believe the first contact was either right  
21 before the intersection or just a little bit further  
22 because that's where I first started seeing the fluid  
23 drop right around in here.

24 Q. Were you able to determine which two vehicles  
25 came into contact at that point?

1           A.    The Dodge Durango and the Chevrolet pickup  
2 truck.

3           Q.    How did you know that?

4           A.    Based upon the fluid trail that led all the way  
5 to the Chevy truck and the damage sustained to the Chevy  
6 truck, which was in the apartment, which led me to  
7 believe that that's the vehicle that released the  
8 fluids.

9           Q.    And clearly that's not the only point of  
10 contact in your diagram.  What happened at the next  
11 intersection here?

12          A.    At the next intersection, I believe there was  
13 another collision between the Chevy and the Durango.  
14 And then the minivan, based on the damage of the minivan  
15 and then the damage on the Dodge, I believe the minivan  
16 struck the left front corner of that Dodge Durango,  
17 which caused it to rotate clockwise towards that metal  
18 pole.  And more than likely, the minivan, since it  
19 steered into the left into the Dodge Durango, the  
20 Durango turned, pulled over here, and the Chevy truck  
21 took off in the same direction.

22          Q.    Which vehicle, do you believe, based on your  
23 training and experience, was responsible for sending  
24 that Durango sideways and then on its side into that  
25 pole?

1 A. The minivan.

2 Q. What role, if any, did the Chevy pickup truck  
3 play?

4 A. At this point, since the truck had been hit in  
5 the back, it's not going to cause any rotation to either  
6 vehicle base. They are basically hitting front to back,  
7 so they would just keep on going forward, so they didn't  
8 call into a factor as far as my opinion, but what caused  
9 it to spin out was a minivan. You got, your center mass  
10 of gravity is going to spin it and it will spin.

11 Q. Is there any way to tell if the minivan acting  
12 by itself or the Chevy pickup truck acting by itself  
13 would have caused the same result or the combination or  
14 can we not tell?

15 A. Well, if you hadn't had the minivan there and  
16 it was only from front to back, there would be, there  
17 wouldn't be no rotation on this vehicle unless the  
18 driver had steering input, but there is really no way to  
19 tell there.

20 Q. Could the impact from the Chevy pickup truck  
21 alone cause a serious accident?

22 A. Yes.

23 Q. Could the impact from the minivan alone cause  
24 the major accident?

25 A. Yes.

1 MS. BUESE: I pass the witness.

2 THE COURT: Ms. Garrett, you may proceed.

3 MS. GARRETT: May I retrieve these photos.

4 THE COURT: You may.

5 CROSS EXAMINATION

6 BY MS. GARRETT:

7 Q. Deputy Gutierrez, I have a few questions for  
8 you. I have a half a page supplement that I'm happy to  
9 show you that has your name on it from the report.

10 A. Yes, ma'am.

11 Q. That's all I have that pertains to you?

12 A. Yes.

13 Q. Did you bring your report today?

14 A. No.

15 Q. Is this your report?

16 A. Yes, ma'am.

17 Q. Okay. This is half a page?

18 A. Yes.

19 Q. All right. Did you take some field notes?

20 A. No.

21 Q. You took no field notes?

22 A. No, ma'am.

23 Q. Okay. Do you ever take field notes?

24 A. Yes. If I was investigating the accident, yes.

25 Q. A lot of officers have little pads with them

1 and jot down handwritten notes because you are not  
2 sitting at a lap top; right?

3 A. No, ma'am.

4 Q. You did not take any field notes on this  
5 accident?

6 A. No, ma'am.

7 Q. And your report consist of this half page  
8 supplement?

9 A. Yes, I took photos and looked at the evidence  
10 and the investigation was being handled by Deputy  
11 Tarrance. I was assisting him taking photos.

12 Q. I understand, but your report consist of this  
13 half page?

14 A. Yes, ma'am.

15 Q. All of these findings and things that you told  
16 us or just stored up here in your head?

17 A. I looked at the photos and looked at the  
18 damages of the vehicles and I determined how it  
19 happened, yes.

20 Q. So all of this information that you've just  
21 relayed to us is basically stored in your head?

22 A. Yes, some of it.

23 Q. Everything in these two paragraphs?

24 A. Yes. Like I told you, I took the pictures of  
25 the damage and looked at the damage and I saw the

1 vehicles and final resting position of that minivan. I  
2 hadn't seen it until I got here. So I didn't know  
3 anything about that minivan.

4 Q. I can agree, we can agree you took photos?

5 A. Yes, ma'am.

6 Q. You had never laid eyes on that red minivan, 53  
7 through 58 until yesterday?

8 A. Yes, ma'am.

9 Q. So you made your findings about 53 through 58  
10 and everything pertaining to the red minivan yesterday?

11 A. Yes.

12 Q. Over two years after the accident?

13 A. Yes.

14 Q. No one ever asked you to look at these photos  
15 prior to yesterday?

16 A. No, ma'am.

17 Q. Let me clarify a couple of things just in my  
18 own mind about this fluid trail. I didn't realize until  
19 your testimony the fluid trail started, preceded the  
20 accident, the final accident; is that accurate?

21 A. Yes, it was before the final rest position of  
22 the Dodge.

23 Q. So, right. So the fluid trail starts somewhere  
24 before the accident. Accident occurs, then the fluid  
25 trail then continues?

1 A. Yes, ma'am.

2 Q. So there was some significant blow to that  
3 truck prior to the accident, final accident scene that  
4 caused a severe, what everybody is describing, severe  
5 radiator leak?

6 A. Yes.

7 Q. It would take a decent blow; is that fair?

8 A. To puncture a hose or radiator, yes.

9 Q. And you had no idea when or where that  
10 happened. You just know it happened because there was a  
11 fluid trail?

12 A. Yes, and based on the damage of the truck, it  
13 was from contact damage to the front of that vehicle.

14 Q. Right. But clearly some of that contact damage  
15 happened back here before the final blow to the Durango?

16 A. Yes.

17 Q. And you don't know which part of that contact  
18 damage happened when, do you? There is no way to know  
19 that; is there?

20 A. More likely where it started, that's where it  
21 happened because, I mean, once those fluids start coming  
22 out, that's where the damage happened to it. So my  
23 opinion is that it happened at that intersection before  
24 the final reposition of the Dodge Durango.

25 Q. Now, there were several pieces of debris that

1 you and Deputy Tarrance found along this fluid trail;  
2 correct?

3 A. Yes.

4 Q. Did you find it all?

5 A. Deputy Tarrance did. I was taking pictures and  
6 he was collecting as I went along.

7 Q. Did you submit it all?

8 A. I was just trying to take pictures and identify  
9 evidence.

10 Q. You're the accident investigator; correct?

11 A. Yes, ma'am.

12 Q. He's a scene officer? He's a patrol officer?

13 A. Yes.

14 Q. You're in charge of the accident investigation?

15 A. If it is -- we got the information pretty much,  
16 I'm going to say not right away, but within like 15  
17 minutes --

18 MS. GARRETT: I object to any hearsay  
19 answer.

20 THE COURT: Okay. Just phrase it without  
21 calling for anything anyone told you.

22 THE WITNESS: Okay.

23 THE COURT: The best you can.

24 Q. (By Ms. Garrett) My question was you were the  
25 accident investigator on the scene?

1 A. Yes.

2 Q. You would be at that point leading the  
3 investigation, at least over Deputy Tarrance, the patrol  
4 officer?

5 A. Yes.

6 Q. And then maybe later, if a detective comes in,  
7 you might turn the scene over to that person?

8 A. They made the call to have a detective come  
9 out. I don't know what the deal with that was. But at  
10 that point, I was not investigating it as an accident.

11 Q. But you were investigating the accident scene  
12 right then at that moment and then later a detective  
13 came on the scene; right?

14 A. Not while I was there.

15 Q. You had already left?

16 A. Yes. I took the pictures of the scene, helped  
17 Deputy Tarrance identify some of those marks when we  
18 found the truck. I took pictures of the truck and that  
19 was the extent of my involvement.

20 Q. So you were supervising, so to speak, Deputy  
21 Tarrance in recovering this debris?

22 A. I was not supervising him. I was helping him.

23 Q. But it was your investigation; right? These  
24 are pieces of the vehicle that are involved in the  
25 accident?

1           A.    Ma'am, I'm trying to tell you I was helping,  
2 but I was not lead on the scene and not investigating it  
3 as an accident.  It was being investigated as something  
4 else, so therefore I just assisted in taking pictures.

5           Q.    So was Deputy Tarrance was in charge?

6           A.    Yes.

7           Q.    And so he would have the rest of this debris?

8           A.    Yes.

9           Q.    But you saw him collect it?

10          A.    I don't remember.  It's been two years like I  
11 said.  I know I was taking pictures and if I believe  
12 correctly, he was collecting the evidence as we went.

13          Q.    So you know more debris that you believe was  
14 linked to the black truck was recovered?

15          A.    It's possible.  I can't tell you for sure if he  
16 collected all of it or not, but I know he was collecting  
17 as we went.  I don't know what he did with it or what he  
18 collected.  I don't recall.

19          Q.    You saw him pick it up?

20          A.    Yes.

21          Q.    Did you look at it?

22          A.    I looked at it when I was taking the pictures.

23          Q.    Okay.  Did you make a determination that, well,  
24 you know, that it came from the black truck?

25          A.    I'm very certain actually that it did come from

1 the black truck.

2 Q. And how did you make that determination if you  
3 only saw it through the lens of your camera?

4 A. I got up close to it and it was a Chevrolet,  
5 before we found the truck. When we found the truck, the  
6 grill is missing. It's along the fluid path from the  
7 direction we went and found the truck, unless someone  
8 planted it afterwards.

9 Q. Did you or someone take those items to see if  
10 they matched up to the black truck?

11 A. Yes.

12 Q. This was a serious accident scene; wasn't it?

13 A. Yes, there is.

14 Q. And you didn't know necessarily what the  
15 condition or the future condition of some of the  
16 occupants was going to be, very serious; right?

17 A. No.

18 Q. Okay. And so you are going to look at  
19 everything possible for a number of reasons, like it's  
20 important to have a very thorough investigation in a  
21 case like this; isn't it?

22 A. Yes, ma'am.

23 Q. And that's so you can compare it to maybe what  
24 the detective finds later, compare it, what you get from  
25 the scene, piece it together, if you will?

1 A. Yes.

2 Q. Right. State's Exhibit No. 12 is here. Did  
3 you compare that or put it up to the black truck to make  
4 sure it belonged to the black truck?

5 A. I didn't. I don't know whether Deputy Tarrance  
6 did or not.

7 Q. He didn't in your presence anyway?

8 A. Not that I recall.

9 Q. And you took all the photos we have here in  
10 evidence today except the red minivan?

11 A. Yes.

12 Q. Tell the jury what a CSU is?

13 A. Crime scene unit. Basically like you see in  
14 CSI, the one that collects evidence and processes the  
15 crime scene.

16 Q. And they take photos also?

17 A. Yes, sir.

18 Q. And the CSU was dispatched at the time; were  
19 they not?

20 A. I believe they were when we found the truck,  
21 but I think I just took the pictures after we found the  
22 truck and departed the scene. I don't know if they  
23 showed up afterwards or not.

24 Q. You never saw the CSU?

25 A. No.

1 Q. And you don't know if the CSU took more photos?

2 A. I don't know.

3 Q. Would you agree that a lot of these are  
4 unfocused and fuzzy?

5 A. Some of them are dark.

6 Q. Not just dark, they are all dark because they  
7 were taken at night, but some of them are fuzzy and  
8 completely unfocused?

9 A. Yes.

10 Q. Did you -- what time were you dispatched to  
11 this accident, Deputy?

12 A. I don't know the exact time. It's probably on  
13 my supplement, but I was there probably ten minutes  
14 after it happened.

15 Q. Was it still daylight?

16 A. Yes.

17 Q. Did you think you may be out to take photos in  
18 the daylight or not, have time right there?

19 A. No, we were trying to get everybody that may be  
20 potentially transported and witnesses secured and that's  
21 how it happened. It got dark.

22 Q. Okay. There's a difference between an offense  
23 report and an accident report; is that fair?

24 A. Yes, ma'am.

25 Q. In fact, they come on different forms.

1 Accident report looks different than the way you type up  
2 your offense report itself?

3 A. Yes, ma'am.

4 Q. And any time there is an accident, typically an  
5 accident report is done; correct?

6 A. Yes.

7 Q. Did you do an accident report?

8 A. No.

9 Q. The photos that have been admitted into  
10 evidence, is that all of the photos you took or just  
11 some of the photos you took, if you remember?

12 A. I'm not sure. I think that's all of them.

13 Q. You think this is all of them?

14 A. I haven't. I didn't count them. I just take  
15 them, and like I said, it's been two years, and after  
16 that, it is what I submitted.

17 Q. Okay. I'm looking, Deputy Gutierrez, at  
18 State's Exhibit 65 and 66, and I'm happy to bring them  
19 up to you, if you need them. I don't see any  
20 documentation on these diagrams of any skid marks. You  
21 didn't put any on here; did you?

22 A. No.

23 Q. You didn't put anything from the scene diagram  
24 of any yaw marks?

25 A. No.

1 Q. In fact, the testimony you have given about,  
2 well, you said there were no skid marks?

3 A. Just those two little acceleration marks, but  
4 they are not skid marks. I'm sorry. Go ahead.

5 Q. So the Durango did not leave skid marks?

6 A. It was the one that left the yaw marks,  
7 skidding sideways, but no marks.

8 Q. The Durango did not leave skid marks?

9 A. No.

10 Q. And you believe that faint line you pointed  
11 out, you believe that was a yaw mark left by the  
12 Durango?

13 A. Yes.

14 Q. And you are saying that there were no skid  
15 marks that could have been left by either of the other  
16 two vehicles?

17 A. Not that I could tell.

18 Q. Now it is possible, in fact, it happens all the  
19 time, Deputy Gutierrez, that one can apply someone's  
20 brakes and not leave a skid mark; right?

21 A. Yes.

22 Q. So you are not saying that nobody put on their  
23 brakes. You are saying that nobody put them on so hard  
24 to leave a skid mark?

25 A. Yes.

1 MS. GARRETT: May I approach the witness,  
2 Your Honor?

3 THE COURT: You may.

4 Q. (By Ms. Garrett) Thank you, Deputy Gutierrez.  
5 I'm showing you what's been admitted into evidence as  
6 State's Exhibit No. 5. It's real hard for me to see on  
7 these screens. I should have brought my glasses. Is  
8 this the spanning line you referred to earlier?

9 A. Yes.

10 MS. GARRETT: Your Honor, may I walk in  
11 front of the jury with my finger where the line is?

12 THE COURT: You may.

13 Q. (By Ms. Garrett) Now don't -- how is it that  
14 you've determined that's a -- don't yaw marks have a --

15 A. Striations.

16 Q. Yes. Thank you.

17 A. Well, it will, but in this case, when it  
18 started rotating, it didn't have, do a full rotation.  
19 It was barely starting to rotate when it hit that curb.  
20 If it had, your tire pattern would get wider and that's  
21 when you see the striations.

22 Q. Typically a lay person as myself, but having  
23 seen these photos, usually when you're talking about the  
24 the tire, it goes stip, stip, stip, but it's shaking and  
25 it leaves those little marks; right?

1 A. Yes.

2 Q. But there are no little marks on this?

3 A. No, I don't see any.

4 Q. But you still feel that is a mark left by the  
5 Durango; don't you?

6 A. Yes.

7 Q. But it's not on your diagram here?

8 A. No.

9 Q. And there is only one photograph of it?

10 A. I believe so. The other ones, they are not  
11 very clear. It's kind of dark on some of them.

12 MS. GARRETT: May I approach again?

13 THE COURT: You may.

14 Q. (By Ms. Garrett) State's Exhibit No. 6, it's a  
15 pretty decent shot of the wheels, of the wheels and  
16 tires on the Durango. And how many inches did you  
17 measure that to be?

18 A. I didn't measure it. I would assume they have  
19 to be at least over 20.

20 Q. You assumed?

21 A. Yes, by looking at the photographs and looking  
22 at them, I didn't really measure them.

23 Q. I take it you had no reason to think about how  
24 tall the tires were until yesterday?

25 A. Yes. When I saw the damage to the minivan and

1 saw the tires on this, yes, that's when I came to the  
2 conclusion that possibly that's what happened to that  
3 tire due to the size of it.

4 Q. The major part of this damage to the black  
5 truck in the front, with me, the major part of the  
6 damage to the black truck in the front is to the right  
7 front headlight?

8 A. Looks like it starts just by the left and  
9 extends towards, all the way to the left, there is a  
10 little bit, kind of starts, not halfway, but almost, if  
11 you come closer.

12 Q. May I approach. I mean it's pretty clear in  
13 State's Exhibit No. 47, there is significant damage to  
14 the right front part of the truck; right?

15 A. It kind of starts here. See the crumples on  
16 the hood from here on out. I see contact damage.

17 Q. Would you agree there is some significant  
18 damage to the front light, headlight?

19 A. Yes.

20 Q. That's why we have this right here?

21 A. More than likely.

22 Q. And no damage to the left front headlight?

23 A. Yes.

24 Q. And significant damage to the right?

25 A. Yes.

1 Q. The right back portion of the Durango; correct?

2 A. Yes.

3 Q. So the truck very easily could have the damage  
4 that's caused from here is from hitting the Durango in  
5 the back driver's side of the Durango. In fact, it's  
6 not just a straight on, you know, head on like you are  
7 talking about?

8 A. It's not looking at that damage there. It's  
9 not a full overlap, no, it's not, as far as on the back.  
10 It looks like it was more to the, you have the Dodge  
11 Durango here and the Chevy over here, off set a little  
12 bit to the left.

13 Q. Right. So the black truck would have been to  
14 the left of the Durango?

15 A. Yes.

16 Q. Not directly on it?

17 A. No.

18 Q. Like your diagram shows?

19 A. Well, yeah. No, it's not like that.

20 Q. Okay. It wasn't part of your job to talk to  
21 any of the scene witnesses; was it?

22 A. No, Deputy Tarrance interviewed all of them.

23 Q. Somebody else did that?

24 A. Yes.

25 Q. You didn't talk to any of them?

1           A.    When I was on the scene, when they were getting  
2 the people out of the vehicle, a gentleman showed up and  
3 I believe --

4           Q.    Don't go into -- pardon me for interrupting.

5           A.    I did talk to one.

6           Q.    You did talk to one.  Do you remember who that  
7 was?

8           A.    No, it was a Hispanic male.

9           Q.    But you pretty much turned that over to  
10 Tarrance?

11          A.    Yeah.

12          Q.    Obviously as the lead accident investigator,  
13 you spent some time looking at the Durango; right?

14          A.    Well, I wasn't the lead accident investigator.  
15 I wasn't the lead investigator at the accident.  I was  
16 helping out Deputy Tarrance.

17          Q.    Let me ask you, did you look at the Dodge  
18 Durango?

19          A.    Yes.

20          Q.    Did you take time to inspect it?

21          A.    I walked around and took pictures, but I didn't  
22 do any damage rating analysis or measurements, no.

23          Q.    No measurements, no damage rating, that is what  
24 you called it?

25          A.    No.

1 Q. You didn't measure the yaw mark?

2 A. No, ma'am.

3 Q. You didn't measure the alleged acceleration  
4 marks?

5 A. No.

6 Q. That's pretty typical in any major accident?

7 A. For accident investigation purposes, yes.

8 Q. Does the Durango have tinted window?

9 A. I don't recall. I would have to look at the  
10 pictures.

11 THE COURT: Ms. Garrett, maybe this is a  
12 good time for a short afternoon break.

13 Ladies and gentlemen, let's break. Again  
14 the same instructions, I'm sure you get tired of hearing  
15 this from me, but please, don't discuss this case among  
16 yourselves. Let's go back for about, until 3:30, and  
17 then come back. You can make calls and tell your  
18 families you will be leaving here at 4:30 this  
19 afternoon, so see you back in just about 11 minutes.  
20 Thank you.

21 (Out of the jury's presence.)

22 THE COURT: We will recess until 3:30.

23 (Short recess.)

24 (In the presence and hearing of the jury.)

25 THE COURT: Please have a seat. For the

1 record, you're the same Deputy Gutierrez who testified  
2 just before the short break; are you not?

3 THE WITNESS: Yes, sir.

4 THE COURT: You understand you are still  
5 under oath?

6 THE WITNESS: Yes, sir.

7 THE COURT: Ms. Garrett, you may proceed.

8 MS. GARRETT: Thank you, Your Honor.

9 CROSS EXAMINATION CONTINUED

10 Q. (By Ms. Garrett) Deputy Gutierrez, I believe we  
11 left off talking about whether the windows were tinted.  
12 You asked to see a vehicle picture of the Durango.  
13 There are no --

14 A. I don't remember if they are tinted or not.

15 Q. You can't remember.

16 A. And just the angles don't really show.

17 Q. Just so, I would like to ask you a  
18 hypothetical, okay. In your expertise as an accident  
19 investigator, I would like to ask you a hypothetical and  
20 it has to do, so you can get your bearings, it has to do  
21 with --

22 MS. GARRETT: May I approach, Your Honor?

23 THE COURT: You may.

24 Q. (By Ms. Garrett) State's Exhibit No. 54, which  
25 is a picture of the red minivan where you show the tire

1 marks or where you indicated these striations were tire  
2 marks?

3 A. Yes.

4 Q. And you also indicated that you are not totally  
5 sure whether some of this could be black transfer paint?

6 A. Yes, it looks like it's the same from that.  
7 So, I think it's from that tire.

8 Q. The tire. Okay. All right. May I stay up  
9 here for this so I have the photos?

10 A. Or, I'm sorry, or from the vehicle, black paint  
11 transfer, these right here are definitely from the tire.  
12 This is possibly paint or the same.

13 Q. I'm going to have you point it out so the jury  
14 can see what is possible. You said this is possibly  
15 paint?

16 A. Yes.

17 Q. Okay.

18 A. Let me see that could be paint, but there  
19 definitely, this, in my opinion, is going to be the  
20 tire.

21 Q. So I'm putting my left finger where you say it  
22 could possibly be black paint and my right finger where  
23 you are saying it's from the tire?

24 A. Yes.

25 MS. GARRETT: May I show it to the jury,

1 Your Honor.

2 Q. And a common sense looking at this, that makes  
3 sense, this solid mark could be paint, but these  
4 striations could be what you said is the tire?

5 A. Yes.

6 Q. So in my hypothetical, if, if the Durango was  
7 right here and the red minivan was to the left of the  
8 Durango?

9 A. Okay.

10 Q. And the black truck was to the left, to the  
11 left of the red minivan, are you with me?

12 A. Yes.

13 Q. If the Durango bumps into the red minivan and  
14 the red minivan bumps into the black truck, could the  
15 black truck have left the black paint transfer and the  
16 black tire marks? And before you answer that, I'm going  
17 to have you look at State's Exhibit No. 50 and look at  
18 the markings that are on that tire. Do you believe  
19 there is a possibility that the markings on the tire on  
20 the black truck could have made the markings on the red  
21 minivan. Just is it possible?

22 A. I don't see marks on it. It almost looks like  
23 it's some kind of a liquid. It's wet. I don't see no  
24 fresh tire rub off. See right here on the side wall,  
25 that's wet, wet, wet, wet, and that looks like it's dry.

1 I would expect if this tire was in motion you would have  
2 rub off in a circular motion.

3 Q. But you do see these marks that I'm referring  
4 to that cover about at least a third of the tire?

5 A. Yes.

6 Q. And if I put my finger where those marks are,  
7 is that accurate?

8 A. As far as accurate as what?

9 Q. Where the marks are?

10 THE COURT: One at a time please.

11 Q. Sorry, Your Honor. My finger is where the  
12 marks are on the tires?

13 A. Yes.

14 Q. You are not saying that's wetness; are you?

15 A. No, that looks like it's dry or some kind of a  
16 rub off.

17 Q. Some type of rub off, but --

18 A. But it's right there. The tire was not in  
19 motion when that rub off occurred is what I'm trying to  
20 tell you.

21 Q. But what you are saying is there is some rub  
22 off on that tire?

23 A. It looks like it, yes, ma'am.

24 Q. Furthermore on State's Exhibit No. 57, which is  
25 the driver's side of the red minivan, there is what

1 appears to be some black, possibly yellow paint  
2 transfer; is that correct?

3 A. Yes.

4 Q. Okay. So where I have my finger, and actually  
5 kind of above that, I can't put my finger on both  
6 places, there is paint transfer that is black and  
7 possibly yellow?

8 A. Yes.

9 MS. GARRETT: May I show it to the jury?

10 THE COURT: You may.

11 Q. (By Ms. Garrett) And again that's on the red,  
12 excuse me, driver's side of the red minivan. And I  
13 think you referenced earlier that it was the black truck  
14 that would possibly have some yellow to it?

15 A. Because this headlight has some gold paint, I  
16 don't know if the truck was gold or not and again I  
17 don't know if that's previous damage or not on that  
18 paint transfer.

19 Q. Thank you. We've already established that you  
20 made your findings about the red minivan yesterday. The  
21 findings that you told the jury in response to her  
22 questions, the prosecutor's questions about the other  
23 vehicles, were those made yesterday as well?

24 A. Yes.

25 MS. GARRETT: Your Honor, I have no

1 further questions for this witness.

2 THE COURT: Ms. Buese.

3 REDIRECT EXAMINATION

4 BY MS. BUESE:

5 Q. Deputy, we keep calling the scene that you  
6 responded to an accident. Is that accurate based upon  
7 what you saw in your training and experience?

8 A. No.

9 Q. Why were you not the primary investigator in  
10 this case?

11 A. Because I'm an accident investigator and we  
12 determined we weren't going to work it as an accident.  
13 It was something else, so I was not the primary on it.

14 Q. Was that based upon your expert finding that  
15 this had not been an accident? It was, in fact,  
16 intentional?

17 A. Yes.

18 MR. HINTON: Objection to eliciting an  
19 opinion from a witness about a defendant's intent. It's  
20 improper.

21 MS. BUESE: This is an expert. He's  
22 qualified under --

23 MR. HINTON: I'll cite Klein versus State.

24 THE COURT: Let's just rephrase it please.

25 MR. HINTON: Judge, could I get a ruling?

1 THE COURT: Yes, sir. Sustained.

2 MR. HINTON: Could I ask the jury be  
3 instructed?

4 THE COURT: No, it's not that.

5 MR. HINTON: I understand, but I would  
6 object to the Court not instructing the jury to  
7 disregard the last statement.

8 THE COURT: Okay. Ladies and gentlemen,  
9 the last statement elicited from the prosecutor to this  
10 witness, you will not consider that in any way during  
11 your deliberations either individually or certainly as a  
12 group. Certainly he is an expert, but his expertise  
13 just goes so far and she can rephrase it and ask him a  
14 different way, but as far as that elicitation, as far as  
15 that question asked, you will not consider it for any  
16 reason whatsoever.

17 MR. HINTON: Thank you. I move for a  
18 mistrial.

19 THE COURT: Denied.

20 Q. (By Ms. Buese) Deputy, in your training and  
21 experience, does an accident usually involve multiple  
22 vehicle strikes?

23 A. It just depends if the, every one of them is  
24 different. The time you would expect to see multiple  
25 strikes if you're traveling down the freeway and there

1 is five lanes and you have multiple vehicles and  
2 somebody loses control, then you could see multiple  
3 areas of impact, yes.

4 Q. Was that the case in this situation?

5 A. No.

6 Q. So based upon the multiple impacts that you  
7 believe happened in this case, was that consistent with  
8 an accident?

9 A. Well, like I said, it just depends. If I were  
10 to go out there and just look at the scene, I mean I  
11 would have some questions as to why did they travel that  
12 far after it was radiator fluid. Most people get in a  
13 collision, they stop right away. In this case it  
14 extended on and on and on. And if I were to just go out  
15 there and look at the scene and the vehicle there and  
16 then the fluid trail, it would lead me to believe there  
17 was an impact and the one vehicle hit the other and one  
18 kept on going and that would lead me to believe there  
19 was more to it than maybe just an accident.

20 THE COURT: You covered it. He's answered  
21 it. He's going to object one more time.

22 Q. (By Ms. Buese) Based upon your finding that  
23 this was not an accident, was this your investigation  
24 from that point forward?

25 MS. GARRETT: I object. It's been asked

1 and answered.

2 THE COURT: Sustained. It's been asked  
3 and answered.

4 Q. (By Ms. Buese) Who was supposed to handle the  
5 investigation from that point forward?

6 A. From that point we referred it over to the  
7 district and they had to make the call to hand it over  
8 to homicide or the assault squad.

9 Q. Have you had an opportunity to review the  
10 offense report?

11 A. No. I did the supplement after I left there.  
12 I did my supplement after I read the photos and I  
13 reviewed the report when I got the subpoena. I went  
14 through and looked through it.

15 THE COURT: The officer and deputy has  
16 testified that he was not there when someone else came  
17 over, whoever it was to take over the investigation.  
18 We've covered this.

19 Q. (By Ms. Buese) Deputy Gutierrez, why didn't you  
20 get out your measuring tape and measure the tires or  
21 skid marks, I'm sorry, no skid marks, the acceleration  
22 marks and yaw marks and everything you saw at the scene?

23 A. Because I wasn't going to do an accident report  
24 or accident investigation.

25 Q. Does the fact you didn't measure them change

1 what we see in the photos and what you saw at the scene?

2 A. No, ma'am.

3 Q. And since we appear to be having so many issues  
4 with this --

5 MS. BUESE: May I approach the witness?

6 THE COURT: You may.

7 Q. (By Ms. Buese) Deputy, I'm going to attempt to  
8 do a low tech explanation here and if you could, I've  
9 got three pads of paper that are supposed to represent  
10 the vehicles front and back. This one is labeled SUV  
11 and I drew a poor excuse for a steering wheel on each of  
12 these, an SUV, a pickup truck, and a van. Assuming this  
13 is the Dodge Durango you saw at the scene, could you use  
14 this pink highlighter to show where you saw contact  
15 damage on this vehicle?

16 A. Okay. I saw some, sorry, along the back right  
17 rear quarter and the damage from the pole and then I  
18 believe it has damage up here in the front.

19 Q. How about the pickup truck that you saw?

20 A. The pickup truck damage from right in here to  
21 there, and I believe it may have had some scraps over  
22 here.

23 Q. How about the van?

24 A. The van had damage here to the left front  
25 quarter.